

THE LAW

OF

RAILWAY, BANKING, MINING,

AND OTHER

JOINT STOCK COMPANIES

“ One of the most remarkable circumstances or features of our age, is the energy with which the principle of combination, or of action by joint forces, by associated numbers, is manifesting itself. It may be said, without exaggeration, that everything is now done by societies.”—CHANNING.

THE LAW

OF

RAILWAY, BANKING, MINING,

AND OTHER

JOINT STOCK COMPANIES.

Fifth Edition.

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LONDON:
WILLIAM BENNING AND CO., LAW BOOKSELLERS,
LATE SAUNDERS AND BENNING,
43, FLEET STREET.

1845.

LONDON
PRINTED BY RAYNER AND HODGES,
109, Fetter Lane, Fleet Street.

P R E F A C E
T O
T H E F I F T H E D I T I O N .

THE Edition of this compilation, published in November of last year, is now out of print. The present one is larger, by one-third, than its predecessor. This has been occasioned principally by the long and important Statutes (six in number) passed in the Session but just closed, for the consolidation of provisions usually inserted in acts incorporating Railway and other Companies for public undertakings. And, as this Work treats of Joint Stock Associations generally, it has been considered advisable to include in the Appendix the several Statutes relating to Friendly, Loan, and Benefit Building Societies.

In compiling this Edition a different arrangement of the subject has been made. The Chapters on the "Bankruptcy of Companies," and "Proceedings in Equity," have received considerable additions, and, it is hoped, improvements, with respect to which I have much pleasure in stating that I have been greatly assisted by my friend Mr. EDWARD JOHN WALLACE, of the Chancery Bar.

It is not within the scope of this, which is a Law Book merely, to deal with the Standing Orders of the Houses of

Parliament, which are regulations only for the conduct of private business taken before them, and as such, subject to frequent change. But mention may be here made of two Orders come to by both Houses on the last day of the Session, raising the Parliamentary deposits required from projected Railway Companies from five to ten per cent. From some cause or other the one of the Lords differs in its language from that of the Commons. The latter applies to such schemes only as had not, at the time it was made, been registered by the Registrar of Joint Stock Companies. The former includes all, whether they had been registered or not. Difficulties will arise under the operation of this Order with respect to those Companies which had been previously registered, and had proceeded so far as to get their Parliamentary deeds executed by the Subscribers to the respective undertakings. It is supposed, however, that the Provisional Directors of Companies in that position might borrow the additional five per cent. from their Bankers, or others, and pay the same to the Accountant General in Chancery, under the Statute for that purpose, and thus make up the deficiency at the time of taking their Bills before the House of Lords. But it is conceived, that this cannot be done, as the Joint Stock Companies' Act prohibits, by sect. 25, the borrowing of money pending the obtaining of the requisite Acts of Parliament.

CHARLES WORDSWORTH.

2, Paper Buildings, Temple,
24th August, 1845.

P R E F A C E
TO
THE FOURTH EDITION.



This Edition comprises the new Statutes relating to Banking, Railway, and General Joint Stock Companies, together with a variety of Registrations and other new Forms.

The decisions come to since the last Edition have been added, new Chapters composed, and a different arrangement of Chapters made.

C. W.

***2, Paper Buildings, Temple,
9th November, 1844.***

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ADDENDA.



At the close of the last Session, and after the following Work had been printed, several statutes were passed by the Legislature; only one of which, the Canal Act, 8 & 9 Vict. c. 28, was in time to be included in the Appendix (p. 533).

It will be seen that by the "Railways Clauses Consolidation Act" (Appendix, 516), powers have been given to Railway Companies, to vary the tolls, rates, and charges upon railways, so as to accommodate them to the circumstances of the traffic thereon. As greater competition for the public advantage would be obtained if canal companies and the commissioners or trustees of navigable rivers were invested with similar powers having the same object, the 8 & 9 Vict. c. 28 has been passed. The act in question extends to all companies of proprietors of canals and navigations, now, or hereafter, existing.

By section 1, the companies may alter or vary, and also from time to time reduce or raise their tolls and rates, provided that when an advance takes place the amount fixed in their several statutes must not be exceeded. By section 2, all tolls and rates must be charged equally to all persons, and after the same rate. By section 3, the powers of the act do not operate until the act itself shall have been adopted. Such adoption may be, where the property is vested in shareholders, by a majority of two-thirds of the votes of shareholders at a meeting to be convened for that purpose;—where the property is vested

Canal Act.

Canal Act.

in a body of commissioners or trustees, by a special meeting of such commissioners or trustees;—where the property is vested in one or more owners, by their mere determination to adopt. But the adoption in any of these cases must be advertised in the *London, Edinburgh, and Dublin Gazettes* respectively, and in a newspaper circulating in the particular county through which the canal may run, a month previously to the exercise of the powers in question. By section 4, all rights are saved where such had been expressly secured by any existing acts of Parliament. By section 5, such canal companies as may have already attained the maximum of profits fixed by their respective acts are restrained from using the power to raise their tolls conferred by the present statute.

Irish and
Scotch Banks.

Two acts have also been passed (8 & 9 Vict. c. 37 & 38) to regulate the issue of Bank notes in Ireland and Scotland respectively. It is contemplated to make further change in relation to joint stock banks in those countries; when that shall have taken place, these statutes, together with any new ones, will be published in a Supplement to this Work.

Bankruptcy of
Company's Act
(Ireland)

Another statute is the 8 & 9 Vict. c. 98, for "facilitating the winding up the affairs of Joint Stock Companies in Ireland, unable to meet their pecuniary engagements." Substituting the words "commission" for "fiat," and "court" for "commissioner," this act appears, after careful collation, to be verbatim the same as the English act for the same purpose (7 & 8 Vict. c. 111), which is contained in the Appendix, p. 200, except that sects. 3 & 24 of the English are omitted from the Irish act, and the words, "and the Vice Chancellor for the time being, or any two of them;" and the words, "fiat in bankruptcy shall mean also and include any commissioner of bankruptcy," contained in sects. 22 & 31 respectively of the

English, are omitted from the Irish act. But the Irish statute contains a clause (§9) which will have an operation on both sides of the Channel.

Bankruptcy of
Company's Act
(Ireland.)

“ And whereas an act was passed in the last Session of Parliament intituled, *An Act for facilitating the winding up of Joint Stock Companies unable to meet their pecuniary engagements*, the provisions whereof are applicable to companies carrying on business in England: and whereas several joint stock companies already have, and other joint stock companies may hereafter have establishments, and have carried on or may carry on business both in England and Ireland: be it therefore enacted, that in all cases in which any such joint stock company as in this act and the said recited act respectively is specified, and made subject to the provisions thereof, shall have had or hereafter shall have an establishment or establishments, or shall have carried on or hereafter shall carry on business, both in England and Ireland, if the head office of such company be or shall last have been in England, such company shall be deemed to be an English company, and within and subject to the provisions of the said recited act, and not of this act; and if the head office be or shall last have been in Ireland, such company shall be deemed to be an Irish company, and within and subject to the provisions of this act, and not of the said recited act.”

In forming the Appendix of Statutes, some provisions in the Stamp Act, 5 & 6 Vict. c. 79, under which a tax of £5 per cent. is levied upon railway passenger receipts were overlooked. These are here inserted.

Tax on Rail-
way Receipts.

IV. And be it enacted, that the proprietor or company of proprietors of every railway in Great Britain, and every other person who shall carry or convey, or cause to be carried or conveyed, any passenger for hire in or upon any railway in Great Britain, shall, from time to time and at all times, keep and enter or cause to be entered in a book or books to be kept for that purpose, in such manner and form as the Commissioners of Stamps and Taxes shall direct or approve, a just and true account of all and every sum and sums of money which shall be received or charged daily by or for such proprietor or company or other person for the hire, fare, or conveyance of all such passengers as aforesaid, whether the same shall be received for the conveyance of passengers on the railway of such proprietor or company or other person only, or on such last-mentioned railway and any other railway, or on any such other railway only, and for or in respect of all which sums of money the duties charged by this act shall, in manner hereinafter directed, be paid by the said proprietor or company or other person so receiving or charging the same as aforesaid, without any deduction or abatement thereout on any account or pretence whatever; and the proprietor or company of proprietors of any railway so receiving or charging any such sums of money as aforesaid shall, also in like manner keep and enter or cause to be entered an account of all

Accounts to be kept of money received for the conveyance of passengers on railways,

and of money paid by the persons carry-

**Tax on Rail-
way Receipts.**

ing such pas-
sengers to the
proprietors of
railways, an
account of
fares received
or for the use
of the railway.

Copies of the
accounts to be
delivered to the
commissioners
of stamps and
taxes, verified
by affidavit,
and duties
paid thereon
monthly.

sums of money paid or accounted for, or to be paid or accounted for, by such proprietor or company to the proprietor or company of proprietors of any other railway (specifying the same) upon which any of such passengers shall be carried or conveyed, as his or their share or proportion of any of such sums of money so received or charged as aforesaid, or as or for or in the nature of toll or otherwise for the use of such last-mentioned railway, in the conveyance of such passengers; and the proprietor or company of proprietors of every such last-mentioned railway shall in like manner keep and enter or cause to be entered an account of all sums of money so paid or accounted for to him or them as last aforesaid, and for or in respect of which the duties shall or ought to have been paid as aforesaid by such first-mentioned proprietor or company; and every such proprietor and company and other person and persons respectively shall, within five days after the first Monday in every calendar month, deliver to the Commissioners of Stamps and Taxes, or to the proper officer appointed for receiving the same, a true copy or true copies of the account or accounts by this act directed to be kept, so far as the same shall relate to all sums of money received or charged and paid or accounted for as aforesaid during the preceding four or five weeks, as the case may be; (that is to say,) from and including the first Monday in the preceding month up to the first Monday of the month in which such account shall be rendered or ought to be rendered as aforesaid; and to and with every such account there shall be annexed and delivered an affidavit (to be taken before any one of her Majesty's Justices of the Peace) of such proprietor or other person as aforesaid, or of the secretary, chief clerk, or accountant of such proprietor or company or other person, stating that the deponent is well acquainted with the books and accounts of the said proprietor, company, or other person, and that he has examined and checked the same, and also the account to which such affidavit is annexed, and that to the best of his knowledge, information, and belief such last-mentioned account doth contain and is a true and faithful account of all and every sum and sums of money received or charged by or for such proprietor or company or other person aforesaid for the hire, fare, or conveyance of passengers on any railway during the period comprised in such account, and of all other matters and things required by this act to be contained in such account; and such proprietor or company or other person shall, at the time of delivering every such account, pay or cause to be paid to the Receiver General of Stamps and Taxes, or to the officer authorized by the said commissioners to receive the same for the use of her Majesty, the duties chargeable under this act for or in respect of all and every the sum and sums of money so received or charged as aforesaid, and contained or which ought to be contained in such account.

Proprietors of
railways to de-
duct the duty
on the sums to
be paid over
to other pro-
prietors.

V. Provided always, and be it enacted, that it shall be lawful (where there shall be no express contract or agreement between the parties to the contrary) for any such proprietor or company to deduct from and retain out of the monies to be paid over to any such other proprietor or company as aforesaid, the amount of the duties by this act chargeable thereon, and which such proprietor or company receiving such monies shall have paid or be liable to pay.

VI. And be it enacted, that all and every the book and books of every such proprietor or company or other person, in which any account relating to such passengers, or to the money received or charged for the hire, fare, or conveyance of the same, or to any money received from or paid or accounted for to any other proprietor or company for such hire, fare, or conveyance as aforesaid, or a proportion thereof, or as or for such toll as aforesaid, shall be entered or kept, shall be open for the inspection and examination at all reasonable times of any officer or officers of stamp duties authorized by the Commissioners of Stamps and Taxes in that behalf; and every such officer shall be at liberty to take copies of or extracts from any such book or accounts as aforesaid; and if any such proprietor or other person, or the secretary or accountant, or any clerk or officer of any such proprietor or company or person, having or keeping the custody or possession of any such book, or having power to produce the same, shall, upon demand made by any such officer, and upon producing and showing his authority, refuse to permit such officer of stamp duties to inspect and examine such book, or to take copies thereof or extracts therefrom, or of or from any account entered or contained therein, or shall refuse to produce such book to such officer of stamp duties for his inspection and examination, every such person so offending shall for every such offence forfeit the sum of fifty pounds.

Tax on Rail-
way Receipts.

Books contain-
ing any such
accounts to be
open to inspec-
tion of officers
of stamps.

Penalty for re-
fusing to per-
mit inspection.

VII. And be it enacted that the proprietor or company of proprietors of every such railway, and every other person, before any passengers shall be conveyed or caused to be conveyed by him, or them on any railway as aforesaid, shall give security, by bond, to her Majesty, her heirs and successors, with a condition that such proprietor or company, or other person as aforesaid, shall from time to time enter and keep, and cause to be kept and rendered, in the manner directed by this act, the accounts by this act required to be kept and rendered by such proprietor and company and persons respectively, containing and setting forth justly, truly, and faithfully all the several matters and things by this act required to be contained and set forth therein; and that such proprietor or company or person, and his or their secretary, accountant, and clerk, and every other person under or subject to his or their order, direction, or control, having the custody or possession of any books or book of such proprietor or company or other person as aforesaid, in which any account relating to any passengers conveyed upon any railway, or the money received, charged, accounted for, or paid for the hire, fare, or conveyance of the same, shall be contained or entered, shall from time to time, upon every reasonable request of any officer of stamp duties authorized as aforesaid, produce and show to such officer, and permit him to inspect and examine the same, and to take copies thereof or extracts therefrom, and of and from any account entered or contained therein; and that such proprietor or company or other person aforesaid shall and will well and truly pay or cause to be paid, for the use of her Majesty, her heirs and successors, at the times and in manner directed by this act, all and every the duties which shall from time to time become chargeable under this act, and payable by him or them upon or for or in respect of the passengers, or the hire or fare or conveyance of the passengers, which shall be so conveyed as aforesaid along any railway; and that

Railway pro-
prietors to give
bond for se-
curing the
duties.

**Tax on Rail-
way Receipts.**

such proprietor or company, or other person aforesaid, shall well and truly do and perform, and cause to be done and performed, all such acts, matters and things as by this act are required or directed to be done or performed by or on the part or behalf of such proprietors or company or other person; and every such bond shall be taken with sufficient sureties to the satisfaction of the Commissioners of Stamps and Taxes, and in such sum as the said commissioners may judge to be reasonable and proper; and every such security shall be renewed from time to time, whenever and so often as such bond shall be forfeited, or as the parties to the same or any of them shall die, or become bankrupt or insolvent, or reside in parts beyond the seas, and also whenever and so often as the said commissioners shall in their discretion require the same to be renewed; and if any proprietor or company of proprietors of any such railway, or other person as aforesaid, shall convey or cause to be conveyed upon any railway any passengers for hire, without having first given such security by bond to her Majesty, in manner herein-before directed, or if any proprietor or company of proprietors of any railway shall permit or suffer any passengers to be conveyed for hire upon such last-mentioned railway, by any other person or company, before such other person or company shall have given security as aforesaid, and before a certificate, signed by the proper officer of stamp duties in that behalf, (which certificate such officer is hereby authorized and required to give,) that such security hath been given, shall have been issued, or after notice in writing, signed by any authorized officer of stamp duties, and delivered to the secretary or chief clerk of the proprietor or company of proprietors of such railway, or left at the office of such railway with any clerk or officer there, that any such security ought, in pursuance of this act, to be renewed, or is required to be renewed, and before a certificate, signed as aforesaid, that the same has been renewed, shall have been issued; or if any such proprietor or company of proprietors, or other person, shall refuse or neglect to renew such security, whenever and so often as the same is or shall by or in pursuance of this act be required to be renewed, such proprietor or company or person shall forfeit the sum of one hundred pounds, and the further sum of one hundred pounds for every day during the period for which there shall be any refusal, neglect, or default to give or renew such security as aforesaid, or for every day in which any such passengers shall be permitted to be conveyed before such security shall be given or renewed, and a certificate thereof issued as aforesaid, according to the true intent and meaning of this act.

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E R R A T A.

- Page 116, for "Reg." read "Rex," in note (b).
 117, for "Rex" read "Reg." *v.* Eastern Counties Railway Company.
 124, for "Reg." read "Rex," in note (b).
 279, add, for reference to Pitchford *v.* Davis, "5 M. & W. 2."
 371, in line 16 from the top of the page take away the second letter "r"
 in the word "rulers."
 411, in marginal note, for "inspector" read "inspection."

Appendix, page 225, in the first marginal note, read "before" for "after," and
 "after" for "before."

In last line of sect. 46, add the word "and" after "incor-
 porated."

283, in the second line of the seventh paragraph in form of
 subscribers' agreement, add the words "these presents"
 after "subscribing."

THE LAW
OF
RAILWAY, BANKING,
AND OTHER
JOINT STOCK COMPANIES.

—◆—
CHAPTER I.

JOINT STOCK COMPANIES DESCRIBED.

At common law partnerships are of two kinds:—Private partnerships, which are composed of two or more partners for some merely private undertaking, trade, or business: Public Companies, where a great number of persons are concerned, and the stock is divided into a great number of shares, the object of the undertaking being of an important nature, and often embracing public as well as private interests and benefits. (a) The latter are also subdivided into unincorporated companies or associations—and incorporated companies, fraternities (or guilds, as they were

Joint Stock
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described.

(a) Story on Partnership, 108. 721—793, 2nd ed.; Gow. 2, 3, 4, Watson on Partnership, pp. 3, 4, 3rd ed. Collyer on Partnership,

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described.

anciently called), and corporations existing under a charter from the Crown, or an act of Parliament, and having special powers and rights conferred thereby. (a) In both cases, however, the partnership, although commonly called a public company or association, is not, in contemplation of law, more than a mere private partnership, "for in the sense of the law no company is a public company or association whose interests do not exclusively belong to the public, and are not exclusively subject to the regulation and government of the Legislature, or other proper public functionaries. (b)

Unincorporated companies and associations differ in no material respect as to their general powers, rights, duties, interests, and responsibilities, from mere private partnerships, except that the business thereof is usually carried on by directors, or trustees, or other officers acting for the proprietors or shareholders, and they usually extend to some enterprise in which the public have an ultimate concern. (c) But incorporated companies, or corporations, are governed strictly as to their powers, rights, duties, interests, and responsibilities, by the terms of their respective charters, or acts of Parliament,—and the shareholders are not personally or individually liable in their private capacities, unless expressly so declared by their charters or acts of Parliament, for the acts, or doings, or contracts of the

(a) Com. Dig. tit. Trade, B. D. The King may erect *gildam mercatoriam*, a fraternity or incorporation of merchants, for the advancement of trade, 8 -Co. 125, a. Corporations seem, by the civil law, to have been created by the mere act and voluntary association of their members, provided such convention was not

contrary to law, for then it was *illicitum collegium*. Bl. Comm. vol. 1, 472.

(b) Story on Partnership, 108.

(c) Story on Partnership, 109. Watson on Partnership, pp. 3, 4, 2nd ed. Collyer on Partnership, 734, 764—771, 2nd ed.; 2 Bell. Comm. 627-8, 5th ed.

officers, or members of the company or corporation. Whereas in unincorporated companies the shareholders are personally responsible in their individual capacities for all acts of the officers and company, in the same manner and to the same extent, as private partners are. (a) And it should be added, that even if a company be incorporated the general law of partnership will be applicable in those respects in which the instrument of incorporation is silent.

It has been said (b) that "the great distinction in contemplation of law between common joint stock companies or partnerships, and corporations, is, that in the first, the law looks to the individuals of whom the partnership is composed, and knows the partnership no otherwise than as being such a number of individuals; while in the second, it sees only the creature of the charter, the body corporate, and knows not the individuals. Hence, on a judgment against a corporation, execution can only be levied on the corporate effects; or supposing a trading corporation to become wholly insolvent, the individual members or proprietors will only lose their stock or share in the capital of the body corporate, and do not become answerable for the debts in their individual capacities. But it is far otherwise with the members of unincorporated partnerships, who may be made answerable for the debts of the firm, to use a recent expression of the Lord Chancellor, "even to their last shilling and their last acre."

What has been said applies to incorporated and unincorporated companies simply. But there are companies which, created by letters patent, are invested with some only of the privileges bestowed on corporations. (c) So

(a) Story on Partnership, 109. Law, &c., 1825, p. 29.

(b) George's View of existing (c) See 1 Vict. c. 73, App. 74.

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described.

also there are others which, established under deeds of settlement, are regulated by general acts, such as banking companies. (a)

In Scotland there are Joint Stock Companies, properly so called, and Public Companies. The latter are created by Royal or Parliamentary authority. (b) The former are mere aggregations of shareholders, the business being, however, conducted by directors or other officers appointed by the general body, and the shares therein are made transferable. The liability of the shareholders to creditors is, by the common law of Scotland, limited to the amount of their respective shares, and they are not, as in ordinary partnerships, jointly and severally responsible for all the debts of the firm. (c)

Companies are incorporated by act of Parliament, or charter, or letters patent. An act of Parliament becomes necessary when the privileges sought for are exclusive and such as cannot, by the principles of the common law, be granted by charter, and when large powers are required, such as the power to take another man's land. A company, after incorporation, become what is called a

(a) See 7 Geo. 4, c. 46, App. 9, and 7 & 8 Vict. c. 113, App. 213.

(b) Bell. Comm. bk. 7, ch. 5, p. 656, 4th ed.

(c) Ibid. pp. 697-8. Story on Partnership, 112. There is a company in France called "*La Société en Commandite*." This consists of one or more partners, liable, without limitation, for the debts of the company,—and one or more partners, or *commanditaires*, liable only to the extent of the funds they have subscribed. A *com-*

manditaire must not, however, take any part in the business of the company; if he do this, he loses his inviolability, and makes himself responsible for the debts of the association. The names of the partners in such companies must be published, as also the amount of the sums contributed by the *commanditaires*. See the observations of Mr. M'Culloch on Companies, and his objections to *Sociétés en Commandite*, Com. Dict 380, 2nd ed.; and see upon

corporation aggregate, and they acquire many powers, rights, capacities, &c. ; such as, 1st, To have perpetual succession: 2nd, To sue or be sued, implead or be impleaded, grant or receive by its corporate name, and do all other acts as natural persons may; 3rd, To purchase lands and hold them for the benefit of themselves and their successors; 4th, To have a common seal; (a) for a corporation, being an invisible body, cannot manifest its intentions by any personal act or oral discourse—it therefore acts and speaks only by its common seal; 5th, To make bye-laws or private statutes for the better government of the corporation, which are binding upon themselves, unless contrary to the laws of the land, and then they are void. These five powers are inseparably incident to every corporation aggregate. (b)

Joint Stock
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described.

The recent statute, 7 & 8 Vict. c. 110, (c) "For the Registration, Incorporation, and Regulation of Joint Stock Companies," invests companies, after registration, with the qualities and incidents of corporations, with some modifications, and subject to certain conditions and regulations.

this subject, Pardessus, tom. iv. 4th edition, pp. 110—135; Story on Partnership, 110. In France there are also Anonymous Partnerships, which correspond with our ordinary Joint Stock Companies, and in which all the partners are engaged in the common trade or business. As will be seen, by reference to statutes 1 Vict. c. 73, and 7 & 8 Vict. c. 110, we have adopted in this country the principle of publishing or registering the shareholders' names. See

M'Culloch's Com. Dict. 376, and see p. 378 of the same work, where Mr. M'Culloch describes what are called "*Open or regulated Companies*," for certain trading purposes. Montefiore also describes "*Regulated Companies*," and Joint Stock Companies. The "*Russia Company*" is an instance of the former.

(a) See Co. Litt. 30, b.

(b) Bl. Com. vol. 1, 475, 476. See Kyd. Intro. 13.

(c) App. 164.

Joint Stock
Companies
described.

The term "Joint Stock Company" has now received a legislative meaning. (a) It comprehends:—

1. Every partnership with a capital divided into shares, transferable without the express consent of all the co-partners :
2. Every assurance company, whether life, fire, storm, marine, annuity :
3. Every institution enrolled under the Friendly Societies Acts, insuring lives to an amount exceeding 200*l.* on any one life :
4. Every partnership of more than 25 members.

With respect to the companies to which the act applies, they are :

Every company established for any commercial purpose, or for any purpose of profit, or for the purpose of assurance.

But it does not extend to (b)

Banking companies. (c)

Schools,

Scientific and literary institutions,

Friendly societies, except those above-mentioned, (d)

Loan societies, (d)

Benefit building societies, (d)

Nor to any companies for executing works for which Parliamentary powers must be obtained, such as railways, canals, &c. ; except for the purpose of registration up to the time of procuring their acts of Parliament,—(e)

(a) 7 & 8 Vict. c. 110, s. 2, App. 165.

(b) *Ibid.*

(c) See Chapter on Banking Companies, *post*.

(d) See the acts relating to

these societies, App. 21, 44, 52, 56, 108, 117.

(e) 7 & 8 Vict. c. 110, s. 2, App. 165. See *post*, Chapter on Railway Companies.

Nor to any company incorporated by statute or charter, now or hereafter ;

Joint Stock
Companies
described.

Nor to any company now or hereafter authorized, by statute or letters patent, to sue and be sued in the name of some officer ;

Nor to any partnership formed for the working of mines, &c. on the cost book principle ; (a)

Nor to " Anonymous Partnerships " in Ireland ; (b)

Nor to companies established in Scotland, or established there, and having an office or place of business in any other part of the United Kingdom. (c)

In order to bring a company within the provisions of the statute referred to, it seems to be required that it should be " established " in England or Ireland, for a " commercial purpose," or for a " purpose of profit." A question will arise whether, under the word " established," companies are included, the capital of which is intended to be transmitted to a foreign country for the purpose of making there a railway, or other work. In such a case the object to be carried out, and the " profit " to be derived, are entirely foreign, although the capital is raised in England. The inquiry may be, whether a *partnership* is formed in this country for the carrying on of the proposed work ? If, in answering this inquiry, it appears that a board of directors is intended to be formed, shares to be issued by them, and exchanged for capital subscribed, and a particular mode of regulating the company's affairs, whether by deed of settlement or otherwise, to be adopted, the company will be a partnership within the statute. But if the capital only is to be raised in this country, the

(a) Sect. 63, App. 189.

(c) Sect. 2, App. 165.

(b) Sect. 64, ib.

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parties supplying it merely receiving scrip shares, issued in a foreign country by the board of management there, then it would seem that the parties in this country exchanging the scrip for money stand in the situation of agents only to the directors abroad. This is often the case, in practice, with foreign railways, and provided the persons acting as agents in this country, however numerous they may be, confine themselves to the mere exchange of scrip for money, they do not become a joint stock company within the meaning of the statute.

CHAPTER II.

OF THE FORMATION OF JOINT STOCK COMPANIES BEFORE
THE 7 & 8 VICT. C. 110.

BEFORE the passing of the recent statute Joint Stock Companies were formed under various instruments :—

Modes of forming Joint Stock Companies before 7 & 8 Vict. c. 110.

1st. By act of Parliament.

2nd. By royal charter.

3rd. By letters patent and by registration under the act for conferring "certain powers and immunities on trading and other companies," 1 Vict. c. 73. (a)

4th. By deeds of settlement.

5th. By articles of provisional agreement.

And even since the passing of the 7 & 8 Vict. c. 110, companies may be established by any one of the first three instruments above mentioned ; for that statute, as will have been seen in the previous chapter, does not extend to such cases.

1st. *By act of Parliament.*—The provisions of the statute are framed with reference to the objects of the company, and to the standing orders of both houses of Parliament affecting private bills. (b)

By Act of Parliament.

(a) App. 74.

(b) See the forms of Parliamentary contract and subscribers' agreement used previous to ob-

taining Railway Acts, App. 278—285, and Chapter on Railway Companies, *post*.

Modes of forming Joint Stock Companies before 7 & 8 Vict. c. 110.

By Charter.

2nd. *By royal charter.*—The power to grant charters was limited to such matters as at common law might be granted. This power was augmented by the 6 Geo. 4, c. 91, s. 2, (a) under which a charter might have been granted, providing that the members of any corporation should be “individually liable in their persons and properties for the debts, contracts, and engagements of such corporation, to such extent, and subject to such regulations and restrictions as should be declared and limited in and by such charter.” But this was repealed by the 1 Vict. c. 73, (b) which however conferred certain powers on her Majesty, which, it would seem, she would not have been entitled to exercise at common law. So that a charter may be granted for a term of years, instead of in perpetuity, as formerly. (c)

Under Letters Patent.

3rd. *Letters Patent.*—Trading and other companies were invested, by letters patent, with certain powers in the conduct of their affairs, and for the security of the rights and interests of their creditors, by the 4 & 5 Wm. 4, c. 94. (d) The first section of this statute, after referring to the second section of 6 Geo. 4, c. 91, (e) states that, “Whereas divers companies and bodies of persons do and may from time to time associate themselves together for trading, charitable, literary, or other purposes, which associations it would be inexpedient to incorporate by royal charters, granted either according to the rules of the common law, or in pursuance of the said recited act, although it would be expedient to confer upon such associations, or some of them, some of the privileges of and incident to corporations created by royal charters, and especially the privilege of maintaining and defending suits,

(a) App. 6.

(d) App. 49.

(b) App. 74.

(e) App. 6.

(c) 1 Vict. c. 73, s. 20, App. 81.

actions, prosecutions, or other legal proceedings, in the name or names of some one or more of the principal officers for the time being of such associations respectively." The act then provides that his Majesty may grant, by letters patent, to any body of persons associated together for trading, charitable, literary, or other purposes, although not incorporated by such letters patent, any privileges which according to the rules of the common law, or in pursuance of the 6 Geo. 4, c. 91, it would have been competent to his Majesty to grant to any such body of persons in and by any charter of incorporation, and especially those of maintaining and defending actions in the name of any officer for the time being. Such privileges are to be granted in the letters patent in such manner and upon such conditions for the prevention of abuses and for the security of the rights and interests of their creditors, and for the protection of the public at large, as his Majesty may think fit to prescribe. The letters patent are made as valid and effectual in the law, as if an act of Parliament had been obtained for the same purpose. It is, however, provided, that for the purpose of discovery, in suits in equity, the name of any member of the company may be joined with that of the principal officer, on payment of costs.

Modes of forming Joint Stock Companies before 7 & 8 Vict. c. 110.

Under Letters Patent.

But both these acts were repealed by 1 Vict. c. 73. (a) The first section of this act states, that "whereas divers associations are and may be formed for trading or other purposes, some of which associations it would be inexpedient to incorporate by royal charters, although it would be expedient to confer on them some of the privileges of and incident to corporations created by royal charters, and also to invest such associations or some of them with

(a) App. 74.

Modes of forming Joint Stock Companies before 7 & 8 Vict. c. 110.

Under Letters Patent.

certain other powers and privileges: And whereas, it would also be expedient to extend the powers of her Majesty in reference to the creation of corporations, and to the conferring of privileges upon corporations and upon other bodies or companies enabled to sue and be sued." It then refers to the 6 Geo. 4, c. 91, s. 2, and the 4 & 5 Wm. 4, c. 94, and states, that the "provisions of the aforesaid acts have not been found effectual for the purposes thereby intended, and it is therefore expedient to repeal the same and to make such provisions in reference to the several matters aforesaid, as are hereafter contained." After repealing the second section of 6 Geo. 4, c. 91, and the whole of the 4 & 5 Wm. 4, c. 94, the act proceeds to make a variety of important provisions. (a)

Under this act of Parliament, a joint stock company may obtain by letters patent, although not incorporated thereby, any privileges, which according to the rules of the common law, it would be competent to her Majesty to grant to any company by a charter of incorporation. The letters patent may provide that suits shall be carried on in the name of one of the officers of any company appointed for that purpose; that the members of the company shall be individually liable in their persons and property for the debts, contracts, engagements, and liabilities of the company to such extent only per share as shall be declared and limited in the letters patent; that the company shall have a deed of partnership, which shall specify the number of shares into which the undertaking is divided; the name or style of the company, and also of the members thereof, the date of the commencement of the company, the business it is intended to carry on, and the principal or only place for carrying it on; and lastly, the names

(a) 1 Vict. c. 73, App 74.

of two or more officers to sue or be sued on behalf of the company.

Modes of form^d
ing Joint Stock
Companies
before 7 & 8
Vict. c. 110.

Within three months after the letters patent shall have been granted, the company are required to make a return to the Enrolment Office, containing the particulars which have just been mentioned with reference to the deed of partnership, and, in addition, the amount to which each share shall render the holder thereof liable; the names, and (except as to bodies politic) the places of abode of all the members, and the distinctive number or numbers of the respective shares which each member holds.

Under Letters
Patent.

After the company has been registered, which seems to be the effect of making the return to the Enrolment Office, its name cannot be changed; and if the place where the business is carried on shall be changed, there must be a return made of that fact to the Enrolment Office, within three months after the change shall have happened, and a return must also be made within the like period, whenever persons cease to be members of the company, except by the means of transfer of their shares. On transfer by deed or writing taking place, the transferee is required to give notice in writing to the company, specifying the date of transfer, the distinguishing number of the share transferred, the name and place of abode of himself and also of the transferrer, by leaving the transfer itself, when executed by both parties, or some note or memorandum thereof, signed by them at the company's office. Within three months afterwards the company must return these particulars to the Enrolment Office. (a)

If the extent per share of the liability of members shall have been limited by the letters patent, any person having made payment in respect of a share in the company under

(a) S. 9, 10, App. 77.

Modes of forming Joint Stock Companies before 7 & 8 Vict. c. 110.

a judgment against them, may make a "return" of such payment and have the same registered at the Enrolment Office. So also, when such sum shall have been repaid by the company, they are to make a similar return. (a)

Under Letters Patent.

Whenever a new officer, to sue and be sued, shall have been appointed by the company, there must be a return made. (b)

All returns by the company must be signed by one of the appointed officers, and verified by a declaration under the 5 Wm. 4, c. 62. (c) If any error or mistake shall arise in any of the returns, they will not become invalid, if within a month after information of the error the company shall make a correct return. But this provision does not prejudice any intermediate *bonâ fide* transaction, nor will it give effect to any fraudulent error or omission. (d)

By several clauses of the act directions are given to what office the returns are to be made in England, Scotland, and Ireland, by whom they are to be registered, and by whom regulations as to forms of returns and mode of keeping the registers are to be made, and also as to the fees to be paid for registering the returns, and for inspecting the registers, and for preparing certified copies of the returns, which are to be deemed evidence in all legal proceedings. (e)

The act of registration fixes the time from which a member is to be entitled to profits, (f) in like manner as his liability is put an end to from the time when the transfer has been registered. (g)

Proceedings by and against an officer of the company do not abate by reason of his decease or removal, nor by

(a) 1 Vict. c. 73, s. 11, 12, App. 77.

(b) *Ib.* s. 13, App. 78.

(c) S. 14, *ib.*

(d) S. 15, *ib.*

(e) S. 16, 17, 18, 19, *ib.* 78, 79.

(f) S. 20, *ib.* 79.

(g) S. 21, *ib.*

any change that may take place among the members of the company (a) and any such officer, and also every member of the company are made competent witnesses in such proceedings. (b)

Modes of forming Joint Stock Companies before 7 & 8 Vict. c. 110.

All judgments, &c. obtained in proceedings against any officer or member have the same effect against the property of the company and against the persons and property of the members as if the proceedings had been against all the members of the company as parties thereto. But where the liability per share has been limited by letters patent, no execution on any judgment can go against any member for more than the amount of the shares held by him, and that too, less any sum he may have already advanced or paid for the company under any former execution and not then repaid to him. (c)

Under Letters Patent.

The bankruptcy of any officer or member of the company does not affect the company or liabilities of any of its members. (d)

Where letters patent are applied for under this act, it is necessary to insert a notice of the application three times in the *Gazette*, and in one or more of the newspapers circulating within the county in which it is proposed that the principal place of business of the company shall be established. (e)

4th. *Deeds of Settlement.*—Companies were frequently created by, and managed under, a deed of settlement, and nothing else. That instrument is a covenant between a few of the shareholders chosen as trustees for the purpose, and the others, by which each of the latter covenants with the trustees, and each of the trustees covenants with the rest of the shareholders, for the due performance of a

Under Deeds of Settlement.

(a) 1 Vict. c. 73, s. 22, App. 80.

(d) S. 25, ib. 81.

(b) S. 23, ib.

(e) S. 32, ib.

(c) S. 24, ib. 80.

Modes of forming Joint Stock Companies before 7 & 8 Vict. c. 110.

Under Deeds of Settlement.

series of articles which are set forth. (a) It was by this deed that the transactions of the company were regulated up to the time of obtaining an act of Parliament, or charter of incorporation, or letters patent, or, if it was not intended to procure any privileges usually conferred by those means, then the deed of settlement was, as between the several shareholders of the company, the only instrument of regulation. With respect to the effect of this instrument, it need scarcely be stated that, as between the shareholders themselves the law affecting them is contained in it. Upon points, however, which are not comprehended in the deed the general law of partnership prevails; and even as to the provisions of the deed itself, they may be controlled, and effect given to or taken away from them, by courts of law and equity. On the other hand, as between the shareholders and strangers, or, in other words, as to transactions between the company and the world, it need scarcely be said that the deed of regulation is wholly inoperative for the purposes of the company, and that the shareholders stand upon the same footing as an ordinary partnership, as regards the rights and remedies of the parties with whom they deal.

But, although a company may have been established before the 1st November, 1844, under a deed of settlement only, yet they were required, by the 7 & 8 Vict. chap. 110, to be registered. (b) And if any such company desire to avail themselves of what hereafter (c) will be shewn

(a) See Outlines of Deeds of this description, App. 258—272, 304—309, 311—321.

(b) S. 58, App. 186. The object of the statute was, amongst others, to obtain a registry, or account, of all companies whatsoever, whether incorporated or not, and

therefore required those which existed before the 1st November, 1844, to take out a "certificate of registration," i. e. to be simply registered under the statute without being otherwise subject to its provisions.

(c) *Post*, ch 3.

to result from what is called "complete registration," they must conform to certain conditions.

Modes of forming Joint Stock Companies before 7 & 8 Vict. c. 110.

If the company existing before the 1st Nov. 1844, be constituted as required of a company established under the 7 & 8 Vict. c. 110, (a) or if the deed of settlement contain the particulars required by that act, and if the company fulfil any other conditions required to be fulfilled by the same, then a certificate of "complete registration" may be granted. But if otherwise, then the existing company must return a deed according to the requisites of the act, as also, in addition to the other matters required to be returned by an existing company, such other matters as are to be returned by a company established after the passing of that statute. Or a modification of the deed and of the returns may be made by the Board of Trade. If either of these two states of things take place, a certificate of complete registration will issue. The effect of obtaining this instrument is, from the date of it, to incorporate the company, and to invest it with the same powers and privileges as belong to a company formed after the 1st of November, 1844. (b)

Under deeds of settlement.

Registration.

With the consent of three-fourths of the shareholders of an existing company, their constitution may be altered by the directors so as to enable them to come within the statutory provisions. The alterations must, however, be approved by the Board of Trade, and their order is made evidence. (c)

This incorporation of an existing company does not affect their contracts or obligations before the date of the certificate of complete registration. (d)

(a) That is, a company established after 1st November, 1844. See *post*, 29.

App. 187.

(c) *Ibid*.

(d) S. 61, App. 188.

(b) 7 & 8 Vict. c. 110, s. 59,

Modes of forming Joint Stock Companies before 7 & 8 Vict. c. 110.

It has been already said that a modification may take place of the company's deed of settlement, and of the returns to be made by them. There may also be a modification or dispensation of the conditions and regulations of the statute itself, upon special memorial to the Board of Trade, within five years from the 1st of November, 1844. If such modification or dispensation take place, the statute is to be read as if it were contained in it. (a)

Under Provisional Agreement.

5th. *Provisional Agreement*.—Companies have also been created under regulations which are comprised in what is sometimes called a “provisional agreement,” without the assistance of any deed of settlement, or charter, &c.; and, generally, they were conducted from their inception up to the time of executing a deed of settlement by means of a “provisional agreement.” And it frequently happened that companies were managed under such an instrument until an act of Parliament or charter had been obtained.

A “provisional agreement” may be defined as containing the heads of certain stipulations which it is intended should thereafter be comprised within a deed of settlement, where such an instrument is in the contemplation of the parties. (b) But if otherwise, the provisional agreement itself contains such short conditions or regulations as may have been agreed upon by the parties at the commencement of the undertaking, and which are to be considered as binding all parties (when actually made, or when presumed to be, acquainted with it) who may take shares in or become members of the company. A provisional agreement is sometimes nothing more than a prospectus, and frequently advertised to the public as such.

(a) 7 & 8 Vict. c. 110, s. 62, App. 188.

(b) See Form, App. 310.

Companies can no longer be established under a provisional agreement alone, but, since the 7 & 8 Vict. chap. 110, must be registered, and regulated by a deed of settlement. But where, before that act, any such companies were carried on under that instrument, they may still exist, on being simply registered, in the same manner as has been already observed with respect to companies established under deeds of settlement. (a)

Modes of forming Joint Stock Companies before 7 & 8 Vict. c. 110.

Under Provisional Agreement.

(a) 7 & 8 Vict. c. 110, s. 58. See *ante*, 16.

CHAPTER III.

OF THE FORMATION OF JOINT STOCK COMPANIES SINCE
THE 7 & 8 VICT. C. 110.

Joint Stock
Companies
since 7 & 8
Vict. c. 110.

THE different forms under which joint stock companies might be existing at the time when the recent act came into operation, (1st November, 1844,) have been already pointed out. The first three forms mentioned in the previous chapter may still be resorted to. (a) It is now proposed to consider the course of proceeding to be adopted since that date, by persons who, being interested in the prosecution of any commercial or other enterprise, are desirous of establishing a company to carry out the design. (b) In such a case,

(a) *Ante*, 9.

(b) It may be stated that the requisites to be observed, as hereafter mentioned, do not apply to companies requiring Parliamentary authority, or charter, or letters patent, (see further, *ante*, p. 7), or companies or associations coming under any of the following designations :—

1. Associations not formed for purposes of pecuniary profit, *ex. gr.* clubs.
2. Scholastic, literary, or scientific institutions, whether a pecuniary profit is proposed to be derived from them or not.
3. Such Friendly, Loan, or

Benefit Building Societies, as are duly certified and enrolled under their respective acts, provided, with respect to the first-mentioned, that they grant no assurance upon any one life, or in favour of any one person, to a greater amount than 200*l.*, otherwise they fall within the scope of this work. The several statutes relating to these societies are, however, placed in the App. 21, 44, 52, 56, 108, 117.

4. Banking Companies. These are separately treated of, *post*.

if the company do not consist of a greater number of persons than twenty-five, (a) the law leaves the regulation of the association, (subject, of course, to the ordinary liabilities of partnership, and subject also to any considerations that may affect its legality, as explained in a subsequent Chapter,) (b) entirely to the private discretion of its promoters. But if the number of subscribers is to exceed twenty-five, even though no deviation from the ordinary partnership constitution is proposed, or if, whatever be the number of members, the association is to be one for the purpose of assurance or granting annuities, (c)—or if, whatever be the number of members, or even the object of the association, it is proposed to have a joint stock, with transferable shares,—in either of these cases the formation of the company is attended, *in limine*, with the following restrictions and regulations: (d)

Joint Stock
Companies
since 7 & 8
Vict. c. 110.

Certificate of
Provisional
Registration.

Before any step whatever can be taken to give publicity to the intended scheme, the promoters must make certain returns to the registrar of joint stock companies. (e) These returns (f) must contain,

(a) 7 & 8 Vict. c. 110, s. 2, App. 165.

(b) *Post*.

(c) Or, of making assurance under the Friendly Society Acts, to an extent exceeding, &c. 200*l.*, sect. 2, see *ante*, 6.

(d) 7 & 8 Vict. c. 110, s. 2, App. 165. *Qu.*, as to Friendly, Loan, and Building Societies, *not* enrolled? There are some Loan Societies formed for the purpose of lending to their own members, and not to third parties; the highest bidder succeeding in obtaining the loan. These do not appear to be within the Loan Societies'

Acts; nor are they within the Friendly Societies' Acts. See *Reg. v. Shortridge*, 1 Dowl. & L. 855. And see as to Loan Societies, note (b), App. 117. *Silver v. Barnes*, 6 Bing. N. C. 180.

(e) For the provisions relating to the office of registrar, see ss. 19—22, App. 173-5; and for a list of fees payable in respect of registration, App. 257.

(f) 7 & 8 Vict. c. 110, s. 4, App. 167, Sch. (C.) *ib.* 196. And see App. 231—239, for the forms of these returns, and "Instructions for Registration," *ib.* 256.

Joint Stock
Companies
since 7 & 8
Vict. c. 110.

Certificate of
provisional
Registration.

1. The proposed name of the intended company.
2. The business of the company.
3. The names, occupations, places of business, and places of residence of the promoters.

Either before or after making the scheme public, the following particulars are also to be returned:—

4. The name of the street, &c., where the provisional place of business is situate.
5. The names of the committee or promoters acting in the formation of the company, and their respective occupations, residences, &c., together with a written consent of each promoter to become such, and also a written agreement of each promoter entered into with trustees for the company, to take one or more shares in the proposed scheme, which agreement is to be signed by the promoter, but which need not be stamped.
6. The names, residences, &c., of the officers of the company.
7. The names, residences, &c., of the subscribers to the company.

And also, before it shall be circulated, or made public.

8. A copy of every prospectus (*a*) or other document addressed to the public, or subscribers, relative to the formation of the company.

It will be noticed that the forms referred to are not provided for sufficiently in Schedule (C.); nor, on the other hand, do the forms published by the "Registrar" embrace the particular return, No. 9, in s. 4. See App. 167, 238; and see s. 17, *ib.* 173, where a power is given to the Board of Trade to make regulations as to

these returns.

(*a*) If false pretences be made in it, (as, for instance,) relating to the patronage or direction of the company, it becomes an offence, to be visited with a penalty of 10*l.* This applies to present as well as future companies, s. 65, App. 189.

And afterwards, from time to time, until the complete registration of the company.

Joint Stock
Companies
since 7 & 8
Vict. c. 110

9. A return of a copy of every addition to, or change made in any of the above particulars.

When at least the first three particulars have been registered, the promoters may receive a certificate of provisional registration. (a)

Certificate of
Provisional
Registration

A penalty of 20*l.* is imposed if particulars be not registered within a month after they shall have been ascertained or determined. (b)

But this penalty will not attach to the promoters, if they appoint a solicitor, and send a duplicate of the appointment in writing to the registrar, signed by at least one promoter, together with a duplicate of the acceptance of the appointment signed by the solicitor appointed. This appointment remains in force until a duplicate of the revocation, or of the resignation of it, signed as before, be returned to the registrar, or until the solicitor's decease. (c) All returns are then to be made by the solicitor, and he is subject to the like penalty already mentioned, instead of the promoters, in case he fails to make them, with this addition that he may be suspended from practice, or struck off the rolls, if he fraudulently omit to make a return of the particulars. (d) But his authority to make returns also ceases when the company have obtained a certificate of complete registration. (e)

In order to entitle a joint stock company to receive a certificate of complete registration, (f) it must be formed

Certificate of
complete
Registration.

(a) For the effect of this certificate, see *post*, 27.

App. 239—240.

(b) 7 & 8 Vict. c. 110, s. 5, App. 168.

(d) S. 6, App. 168.

(e) S. 16, App. 172.

(c) For the forms of Returns as to Company's Solicitors, see

(f) For the effect of this certificate, see *post*, 28.

Joint Stock
Companies
since 7 & 8
Vict. c. 110.

Certificate of
complete
Registration.

by deed or writing under the hands and seals of the shareholders. (a) The deed must appoint not less than three directors, and one or more auditors. And in a schedule to it, in a tabular form, these particulars must be stated : (b)

1. The name of the company.
2. The business.
3. The principal place (and branch, if any,) of carrying on business.
4. The amount of proposed capital, and additional capital, and the means by which it is to be raised ; and where the capital shall not be money, or shall not consist entirely of money, then the nature of such capital and the value thereof must be stated.
5. The amount of money (if any) to be raised by loan.
6. The total amount of capital subscribed, or proposed to be subscribed, at the date of the deed.
7. The division of the capital (if any) into equal shares, and the total number of such shares, each of which is to be distinguished by a separate number in a regular series.
8. The names and occupations, and (except bodies politic) the places of residence of all the then subscribers.
9. The number of the shares held by each subscriber, and their distinctive numbers, distinguishing the numbers of the shares on which the deposit has been paid from those on which it has not been paid.

(a) 7 & 8 Vict. c. 110, s. 7, to complete registration, App. App. 168.

(b) See the requisite forms as

242, *et seq.*

10. The names of the then directors of the company, and of the then trustees (if any) and of the then auditors of the company, together with their residences, &c.

Joint Stock Companies since 7 & 8 Vict. c. 110.

11. The duration of the company, and the mode or condition of its dissolution.

Certificate of complete Registration.

The deed itself is to be framed in the mode, and to contain the particulars specified in the statute. (a) It must be signed by at least one-fourth in number of the persons, who, at the date of the deed, were subscribers, and who hold at least one-fourth of the maximum number of shares in the capital. The deed must be certified by two directors in a certain form. (b) A complete abstract or index to it must then be prepared, and approved by the registrar. The deed, together with a copy of it, and also the abstract, may then be taken to the registrar, who will grant a certificate of complete registration. (c) The certificate is to be taken as evidence of the proper provisions being inserted in the deed, and of the performance of the conditions required previously to the granting of a certificate of complete registration. Any defect or omission in the deed may be supplied by a supplemental deed, which may be registered, and then both the original and the supplementary deeds are to be considered as one.

The insufficiency, or incompleteness of the deed, may be notified by the registrar to the company, at any time either before or after complete registration. (d)

(a) 7 & 8 Vict. c. 110, s. 7, App. 168.

(b) Sch. (B) ib. 196.

(c) This is the course prescribed by the act (s. 7); but convenience, or the necessity of the thing, requires another course to be pursued, as to which see "Instruc-

tions for Registration," App. 256.

(d) S. 8, App. 170. If notified after the company has been completely registered, there does not appear to be any power to compel the company to conform to the registrar's notification

Joint Stock
Companies
since 7 & 8
Vict. c. 110.

A modification or dispensation of the conditions and regulations prescribed by the act, may be made on special application to the Board of Trade within five years after 1st November, 1844. In which event the act is to be read as if the modification or dispensation were contained in it. (a)

It may be here mentioned that companies, whether completely or only provisionally registered, are within the statute "for facilitating the winding up the affairs of " Joint Stock Companies unable to meet their pecuniary " engagements." (b)

(a) 7 & 8 Vict. c. 110, s. 62, (b) 7 & 8 Vict. c. 111, App.
App. 188, and see s. 17, ib. 173. 200.

CHAPTER IV.

OF THE POWERS AND PRIVILEGES OF COMPANIES GIVEN
BY REGISTRATION.SECT. 1.—*By Provisional Registration.*

A CERTIFICATE of provisional registration enables the company to act provisionally for twelve months. Unless the company proceed to obtain complete registration, the certificate must be renewed at the end of that period. But, no renewed certificate will be granted for a longer term than twelve months from the date of it. (*a*) It seems, therefore, that a company cannot, under provisional registration, have a longer existence than two years.

What acts may
be done.

The acts to be done by a company, provisionally registered, are prescribed:—they may assume the name of the intended company, adding the words “registered provisionally;” open subscription lists, allot shares, receive deposits at a rate not exceeding ten shillings per 100*l.* share, (*b*) and they may perform such other acts only as may

(*a*) 7 & 8 Vict. c. 110, s. 23, 47, as to Railway Companies.
App. 175. It will be understood that this chapter does not apply to Railway Companies. See *post*,

(*b*) There is nothing to prevent the creation of shares less in amount than 100*l.*

Provisional
Registration.

be necessary for constituting the company, or for obtaining letters patent, or a charter, or an act of Parliament. (a)

What acts may
be done.

But they may not make calls, nor purchase, or contract for, or hold lands, nor enter into contracts for services, or for the execution of any works, or the supply of any stores, except such services and stores, or other things, as may be necessarily required for the establishing of the company. Such purchase or contract may, however, be entered into, if made conditional on the completion of the company, and to take effect after obtaining a certificate of complete registration, or act of Parliament, or charter, or letters patent.

Certain acts, if done before provisional registration, are specifically denounced, with penalties. Monies, in consideration of the allotment of shares, &c., must not be taken, nor any note, or scrip, or allotment issued, nor the existence of the company advertised, nor any contract whatsoever made by or on their behalf. The penalty is 25*l.* for every offence. (b)

During provisional registration there can be no transfer of shares. (c)

SECT. II.—By Complete Registration.

A company, when a certificate of complete registration has been obtained, become *ipso facto* a limited corporation. The incidents of the incorporation are, the taking of the name set forth in the deed of settlement, the carrying on the business for which the company was formed, (but only according to the provisions of the statute 7 & 8 Vict. c. 110, and of such deed), and the suing and being sued in their registered name. The company remain so incor-

(a) 7 & 8 Vict. c. 110, s. 23,
App 175.

(b) S. 24, App. 175.

(c) S. 26. See *post*, 32.

porated until dissolved, and all their affairs wound up. (a) But the liability of shareholders is unrestricted, and, as will be hereafter seen, facilities are afforded for recovering the amount of any judgment against the company, and for enforcing contribution amongst shareholders. (b)

Complete
Registration.

What acts may
be done.

From the moment of incorporation, the company may enforce the conditional contracts entered into between provisional and complete registration,—

1. May use the name of the company, adding to it, “registered,”—
2. May have a common seal, with the company’s name inscribed on it,—
3. May sue and be sued in their registered name, in respect of any claim by or upon the company upon or by any person, whether a member of the company or not,—(c)
4. May enter into contracts for the execution of the works, and for the supply of the stores, or for any other necessary purpose of the company,—
5. May purchase and hold lands, either in their own name, or that of their trustees, for the purpose of occupying the same as a place of business, and also, (but with license first obtained from the Board of Trade), such other lands as the nature of the company’s business may require,—
6. May issue certificates of shares,—
7. May receive instalments from shareholders,—

(a) 7 & 8 Vict. c. 110, s. 25, App. 176.

(b) *Post*, 44. .

(c) These words do not seem to cover the case of a claim by

two persons against the company, where one is, and the other is not, a shareholder. See 7 Geo. 4, c. 46, s. 9, and 1 & 2 Vict. c. 96, s. 1, App. 13, 89.

Complete
Registration.

What acts may
be done.

8. May borrow money within the limitations prescribed by any "special authority,"— (a)
9. May declare dividends out of the profits,—
10. May hold general meetings periodically, and extraordinary meetings upon being duly summoned,—
11. May make bye-laws, (at a general meeting of shareholders specially summoned for that purpose), for the regulation of the shareholders, members, directors, and officers of the company: but the same must not be repugnant to the statute 7 & 8 Vict. c. 110, nor to the company's deed of settlement,—
12. May perform all other acts necessary for carrying into effect the purposes of the company, and in all respects as other partnerships are entitled to do ;

And the company are also required,

13. To appoint directors, not less than three, for a period not greater than five years, with or without eligibility to be re-elected at the expiration of the term, as may be prescribed by any deed of settlement or bye-law,—
14. And to appoint and remove one or more auditors, and such other officers as the deed of settlement may authorize,—

But these powers and privileges are subject to the provisions of the statute 7 & 8 Vict. c. 110, and to those of the deed of settlement, or any other special authority. (b)

(a) See 7 & 8 Vict. c. 110, s. 3, App. 166, for the construction of these words. (b) 7 & 8 Vict. c. 110, s. 25, App. 176.

CHAPTER V.

OF THE DUTIES AND REGULATION OF COMPANIES AFTER COMPLETE REGISTRATION ; — JUDGMENTS ; — CONTRIBUTION AMONG SHAREHOLDERS, &c.

THE subject of this chapter relates only to companies established and carried on under the 7 & 8 Vict. c. 110. Certain powers with which companies are invested by this statute, whilst provisionally or completely registered, have been already described. (a) But companies, having procured their certificate of complete registration, have certain other powers to exercise, duties to perform, and returns to make. They are likewise subject to provisions with respect to judgments against them, and contribution between shareholders. Amongst other matters are those affecting the transfer of shares, and the making of calls. These will be considered in subsequent chapters. The other subjects may be conveniently classed :

1. The continuous duties of companies as to registration and making returns,—
2. The qualifications and powers of directors,—
3. The duties, liabilities, and rights of shareholders,—

(a) *Ante*, 27.

4. Bye-laws,—
5. The capital stock of the company, and certificates of shares therein,—
6. The keeping of books, auditing of accounts, publication of reports, &c.,—
7. Contracts to be entered into by the company,—
8. Bills and notes to be given by the company,—
9. Judgments, executions, contribution.

SECT. I.—*Of the duties of Companies, with respect to Registration and Returns.*

Their duties with respect to Registration and Returns.

Throughout the continuance of companies completely registered, except any that may be incorporated by act of Parliament after such registration, and within a month from the date of any new or supplementary deed of settlement, the directors are to transmit to the registrar, a copy of the new deed, (a) together with a complete abstract of it, (to be approved by the registrar.) (b) Within six months after any change in the particulars required to be inserted in the schedule to the deed, (c) except as regards shareholders and their shares, the directors are also to transmit to the registrar returns of such particulars of change. The omission to perform this duty is an offence to be visited by a penalty of 20*l.* on every director. (d)

Periodical returns are also to be made. In January and

(a) As to the original deed, see *ante*, 24.

(c) *Ante*, 24.

(b) See "Instructions," as to this, App. 256.

(d) 7 & 8 Vict. c. 110, s. 19,

App. 170.

July every year, the directors are to make these two returns to the registrar :

Their duties with respect to Registration and Returns.

1. A return according to (a) schedule (E.), of the particulars of every transfer of shares made in the six months next after the complete registration of the company, and afterwards during every succeeding six months,—
2. A return according to (b) schedule (F.), of the particulars of the names and places of abode of persons who have ceased to be shareholders, or who have become such otherwise than by transfer, since the complete registration, or since the last return, and also of the changes in the shareholders' names by marriage, or otherwise.

The omission is made an offence on the part of every director, to be visited by a penalty of 20*l.* (c)

Any party to a transfer of a share may request the directors to make a return of it. This request they must forthwith comply with. If proof of such transfer and of the request, be made to the registrar, the party himself may make a return of it. In this case, the return is to be received, marked, and registered, as if made by the company. (d)

The effect of a non-return of the transfer will be hereafter shewn. (e)

There is also to be an annual registration. In the month of January in every year, every completely registered company, except such as may have been incorporated after complete registration, must return to the registrar

Annual Registration.

(a) 7 & 8 Vict. c. 110, s. 11, App. 171. See forms of these Returns, ib. 246.

(c) S. 11, App. 171.

(d) S. 12, ib.

(b) Ibid. App. 171. See forms of these returns, ib. 248.

(e) See Chapter on "Transfer of Shares," post.

Their duties
with respect to
Registration
and Returns.

the name and business of the company. (a) On the receipt of this return, the registrar is to give a certificate thereof. If within a further period of one month the return be not made, an offence is committed, and on conviction the company, (not each of the directors) are to pay a sum not exceeding 20*l.* The Board of Trade may, however, on the application of the company, appoint any other period of the year for making this return. (b)

In cases of provisional registration, as will have been seen, the returns are to be made by the promoters, or their solicitor. (c) But after a company have obtained complete registration, the directors are to make them, but one or more of the directors are to sign each return, which is also to be sealed with the company's seal. (d)

If the Board of Trade deem it expedient, they may regulate, from time to time, the form of returns, and the manner and time of making them, and alter and vary the schedules in the act, and dispense with returns and forms of returns therein prescribed. (e)

All returns, deeds, registers, and indexes may be inspected by any person at the Registrar's Office, on payment of a fee not exceeding a shilling for each inspection, and any person may obtain a copy or extract of any return or deed, certified by the registrar, paying a fee not exceeding sixpence a folio. The copy or extract is made evidence, without proof of the registrar's signature, or of the seal of office. (f)

(a) For a form of this Return,
see App. 249.

(b) Sect. 14, App. 172.

(c) *Ante*, 23.

(d) S. 16, App. 172.

(e) S. 17, App. 173.

(f) S. 18, *ib.* See latter part of
s. 15, *ib.* 172.

SECT. II.—*Of the qualifications and powers of the Directors.*

No person can be appointed a director, whether honorary or otherwise, or patron, or president, or office of the like description, unless at the time of appointment, or acting, he hold in his own right at least one share in the company's capital. An infringement of this rule is an offence for which the party is liable to forfeit a sum not exceeding 20%. The announcement of any person as director, &c. without his having consented, or acted, is an offence on the part of every director, knowingly concurring in such representation, and he is made liable to the like penalty. (a)

Qualifications
of Directors.

The disqualifications of directors are specific, and apply to contracts and shares. If a director be interested in any contract whatsoever proposed to be made on behalf of the company, during the time of his filling that capacity, he must not vote, or act, as director, with respect to such contract. And the terms of the contract must be submitted to the next general, or special meeting of the shareholders to be summoned for that purpose. And the contract will not have force until approved of by the majority of votes of shareholders at that meeting. But a policy of assurance, grant of annuity, or contract for the purchase of an article, or of service, being the proper business of the company, and made on like terms as any like contract with other customers, need not be so submitted and approved. So also, if a director cease to hold the prescribed number of shares, or become bankrupt or insolvent, or shall have suspended payment, or compro-

Disqualifica-
tions.

(a) 7 & 8 Vict. c. 110, s. 28, App. 179 ; and also s. 85.

Qualifications
of Directors.

mised with his creditors, or be declared a lunatic, then he ceases to be a director, and the office becomes vacant. (a)

Although a subsequent discovery be made of the disqualification of a director, or of a defect or error in his appointment, yet all his previous acts are made valid. (b)

With regard to the powers and duties (c) of directors, they are:—

Powers and
duties of
Directors.

1. To manage the company's affairs subject to the provisions of the act, and deed of settlement, and any bye-law, and to enter into all such contracts, (d) and do all such acts as the circumstances may require, —
2. To appoint the secretary, if any,—
3. To appoint clerks and servants,
4. To remove such secretary, clerks, and servants,—
5. To appoint other persons for special services, as the concerns of the company may require,—
6. To hold meetings periodically,—
7. To appoint a chairman to preside at all such meetings, and in his absence to appoint a chairman at each such meeting.

But subject to the provisions of the act, and the deed of settlement, or other special authority, and so as not to enable the shareholders to act in their own behalf in the ordinary management of the company's concerns, otherwise than by means of directors. But the board of directors cannot purchase shares in the capital of the company, nor sell any except such as may be forfeited for non-payment of calls, nor can they lend to any one of themselves,

(a) 7 & 8 Vict. c. 110, s. 29,
App. 179.

(b) S. 30, ib. 180.

(c) Other duties than those here mentioned will arise incidentally in the subsequent sec-

tions of this Chapter.

(d) All deeds and instruments bearing the company's seal must be signed by at least two directors. S. 46, App. 184.

or to any officer of the company, any of the company's money without the sanction of a general meeting of shareholders. (a) Powers and
duties of
Directors.

If any director, or other officer, wrongfully do, or omit, any act with intent to defraud, or falsify, or fraudulently mutilate, or make any erasure in, any books, &c., he becomes guilty of a misdemeanor. (b)

And for the better protecting of purchasers, it is a duty of the directors to state in the certificates of shares the date of the first complete registration of the company. If a director, or officer, knowingly make a false statement in that respect, he becomes guilty of a misdemeanor. (c)

SECT. III.—*Of the Rights of Shareholders.*

A shareholder does not become entitled to dividends, or to exercise the powers given to him by the act, until he has executed the deed of settlement, or some deed referring to it, nor until he has paid up all calls, nor until he has been registered by the registrar. (d) Rights of
Shareholders. But when these particulars have been complied with he becomes entitled,

1. To be present at all general meetings of the company,
2. To take part in the discussion thereat,
3. To vote (e) in the determination of any question thereat, in person, or by proxy, (f), unless the deed of settlement prohibit voting by proxy,

(a) 7 & 8 Vict. c. 110, s. 27, App. 179. standing first on the register of shareholders is the one entitled to vote, and to whom all notices must be given, s. 56, App. 186.

(b) S. 31, ib. 180

(c) S. 26, ib. 178.

(d) See *ante*, 33, as to registering a shareholder.

(e) In the case of joint proprietors of a share, the person

(f) A proxy is subject to a stamp duty of 2s. 6d. In the statute (7 Vict. c. 21), it is described as "Letter or Power of

Rights of
Shareholders.

4. To vote in the choice of directors, and of every auditor to be elected by the shareholders. (a)

But subject to the provisions of the act, and the deed of settlement, or other special authority. Until complete registration, and until the shareholder has been registered, he cannot sell or mortgage his shares. Every contract for so doing is made void. And every person entering into such contract forfeits a sum not exceeding 10*l.* (b)

SECT. IV.—Of the making of Bye-laws.

Bye-laws.

Bye-laws must be in writing, and have the company's common seal affixed to them. They are to be registered, and until that has been done they have no force. They are to be printed and circulated for the use of the shareholders, and a copy is to be given to every officer, and to each shareholder on request. (c)

In all proceedings for the enforcement of the bye-laws,

“Attorney, or other instrument made for the sole purpose of appointing or nominating a proxy to vote at any meeting of the proprietors or shareholders of or in any Joint Stock Company, or other company or society whose stock or funds are divided into shares, and transferable.” See the Schedule. A proxy is only available for one meeting, and any adjournment of it. The time of holding the meeting must be stated in it. The party making the proxy must not do so on unstamped paper, nor must the proxy himself vote under such unstamped authority,

subject to a penalty of 50*l.* So, likewise, the vote given thereunder is made “absolutely null and void.” 7 Vict. c. 21, ss. 6, 7.

(a) 7 & 8 Vict. c. 110, s. 26, App. 178. With respect to matters affecting the shares of shareholders, the mode of transfer, and the making of calls, see Chapters, *post*. And as to execution against them, and contribution amongst them, see sect. ix., on Judgments, &c., *post*, 44.

(b) S. 26. See sect. v., *post*, as to certificates of shares, and sect. vi. for powers of inspection, &c.

(c) 7 & 8 Vict. c. 110, s. 47, App. 184.

or penalties for the breach of them, the production of a written or printed copy, bearing the seal of the registrar, is made sufficient evidence of them. (a)

Bye-laws.

SECT. v.—*Of the Capital Stock of the Company, and Certificates of Shares therein.*

The directors are to keep a “register of shareholders,” and to enter therein the following particulars:—

Company's
Capital.
Certificates of
Shares.

1. The names and addresses of all persons or corporations being shareholders.
2. The number of shares to which such shareholders are respectively entitled, distinguishing each share by its number.
3. The amount of the instalments paid on such shares. (b)

Any shareholder may search the register gratis, and require a copy thereof, or of a part only, paying not more than 6d. for every hundred words. (c) So, likewise, on demand, and on payment of not more than 1s., he is to be furnished with a certificate of the proprietorship of his shares, specifying the share he may hold in the undertaking, and the amount paid up at the date of the certificate, to which the company's seal is to be affixed. The form of the certificate is contained in Schedule (I.) (d) It is made *prima facie* evidence of the shareholders' title. Although lost, the shareholder is not prevented from disposing of the share. (e)

If the certificate be worn out or damaged, the Board

(a) 7 & 8 Vict. c. 110, s. 48,
App. 184.

(b) S. 49, ib.

(c) S. 50, ib.

(d) S. 51, App. 184, 200.

(e) S. 52, App. 185.

Company's
Capital.
Certificates of
Shares.

of Directors may order it to be cancelled, and grant a new one. If lost or destroyed, then upon proof thereof, they may grant a new one. In either case the secretary is to enter the substituted certificate in the register of shareholders. The company may demand a shilling for each substituted certificate. (a)

SECT. VI.—*Of the keeping of Books, Auditing of Accounts, publication of Reports, &c.*

Accounts.

The directors are to provide written or printed copies of an index or abstract of the deed of settlement, approved by the registrar, a list of the shareholders, with the number of shares held by each, a list of the directors and officers, and a copy of the bye-laws sealed with the company's seal. Any shareholder, or person authorized by him in writing, may inspect the same. Refusal is made the subject of a penalty of 40s. (b)

The directors are also to cause the company's accounts to be kept in proper books. (c)

At least fourteen days before the delivery of the accounts to the auditors, the books are to be balanced, and a balance sheet made up. And before this is delivered to the auditors, three of the directors are to examine it, and sign it as so examined; when examined, the chairman of the directors is also to sign it, and then it is to be recorded in the company's books. (d) It is to be produced at all ordinary meetings of the shareholders. (e)

For fourteen days before an ordinary meeting, and one

(a) 7 & 8 Vict. c. 110, s. 53,
App. 185.

(b) S. 57, App. 166.

(c) S. 34, ib. 181.

(d) S. 35, ib.

(e) S. 36, ib.

month after, a shareholder may, subject to the provisions of the deed of settlement, or any bye-law, inspect the accounts, books, and balance sheet, and take copies or extracts. This inspection may be made by a shareholder at any other time if authorized in writing by three directors. (a) Accounts.

At a general meeting, annually, one or more auditors of the accounts are to be appointed, one at least by the shareholders, present in person, or by proxy. The auditors' names must be returned to the registrar. If a shareholder's auditor be not appointed, or if he die, or become incapable of acting, or decline to act, or if such return be not made, the Board of Trade may appoint one, on the application of a shareholder. In which event such auditor is to continue to act until the next general meeting, and his appointment is to be returned to and registered by the registrar. The Lords of the Treasury may direct the company to pay that auditor a salary, which he may recover from the company. (b) Auditors.

Twenty-eight days before the ordinary meeting at which it is intended to produce the balance sheet to the shareholders, the directors are to deliver to the auditors the half-yearly, or other periodical accounts, and such balance sheet, which the auditors are to examine. (c)

With respect to the powers of the auditors they may, throughout the year, inspect the company's accounts and books of registry, and may call for assistance from the company's servants, and have such documents as they may require. (d) Within fourteen days after receiving the balance sheet and accounts, the auditors are to confirm such accounts, and report generally thereon, or they may

(a) 7 & 8 Vict. c. 110, s. 37,

(c) S. 39, ib. 182.

App. 181.

(d) S. 40, ib.

(b) S. 38, ib.

Auditors. — report specially, and then deliver the accounts and balance sheet to the directors. (a)

Publication of Reports, &c. Ten days before the ordinary meeting, the directors, subject to the provisions in the deed of settlement or bye-laws, are to send a printed copy of the balance sheet and auditors' report, to every shareholder. And at such meeting they are to cause that report, together with their own report, to be read. (b)

Within fourteen days after such meeting, the directors are to return to the registrar a copy of the balance sheet and auditor's report, which he is to register or file with the other documents relating to the company. (c)

Minutes of Proceedings. Evidence.

With respect to authentication and evidence, it is directed that if the entry of the proceedings of any meeting of shareholders, or of directors, purport to be signed by the chairman presiding at such meeting, and be sealed with the company's seal, the book containing the entry is made *prima facie* evidence of the proceedings at the meeting, of the same having been duly convened, and of the persons making such entries, or orders, being shareholders or directors, and of the signature of the chairman. (d)

Inspection.

And, for inspection, the company's books, containing their proceedings, are to be kept at the principal place of business, and may be inspected by the shareholders; subject, however, to the provisions of the deed of settlement, or any bye-law. (e)

(a) 7 & 8 Vict. c 110, s. 41,
App. 182.

(b) S. 42, ib.

(c) S. 43, ib.

(d) 7 & 8 Vict. c. 110, s. 32,
App. 180.

(e) S. 33, ib. 181.

SECT. VII.—*Of Contracts to be entered into by the Company.*

For the purpose of regulating the company's contracts, certain requisites are to be observed. They must be in writing, and signed by two directors, and sealed with the company's seal, or signed by an officer of the company expressly authorized to do so by a resolution of the directors. Except as against the company, such contracts are void if any one of these requisites be omitted. But these provisions do not apply to contracts for the purchase of an article the consideration for which does not amount to more than 50*l.*, nor to contracts for any service the period of which does not exceed six months, and the consideration for which does not amount to more than 50*l.*, nor to bills of exchange, or promissory notes. With respect to all these contracts, except bills and notes, they may be entered into by a company's officer authorized by a general bye-law, and whether they are under seal or not, they are, immediately after being entered into, to be reported to the secretary of the company, who is to enter them in the company's books. If they be not reported and entered, the officer occasioning the default is made liable to repay to the company the amount of the consideration agreed to be paid by the company in respect of any such contract. (a)

Mode of
making
Contracts.

SECT. VIII.—*Of Bills of Exchange and Promissory Notes to be given by the Company.*

If the directors of a company be authorized by deed of settlement, or bye-law, to issue or accept bills of exchange

Bills of
Exchange
and Notes.

Bills of
Exchange
and Notes.

or promissory notes, then, with respect to the mode of doing so, and to the liability of the company thereon, those instruments must be made, or accepted, as the case may be, by and in the names of two directors, who must express them to be made or accepted on behalf of the company. They must then be countersigned by the secretary or other appointed officer. Every bill so made, or received for the company, may be indorsed in the company's name by an officer authorized to do so by deed of settlement or by-law. Immediately, after the making, accepting, or indorsing of any such bill, or note, the same is to be reported to the proper officer of the company, who is to enter the same in a book. If not reported and entered, the officer committing such default is liable to repay to the company the amount which the company shall pay, or be liable to pay, in respect of such bill or note. No secretary or officer, is to be personally liable upon these instruments, nor the directors, except in their character of shareholders. The company may sue, and be sued upon them as effectually as in the case of any contract entered into under their common seal. (a)

SECT. IX.—Judgments against the Company,—execution against Shareholders. Contribution.

Judgments.
Executions.

It will have been seen that an incident of the limited incorporation of companies under the 7 & 8 Vict. c. 110, is their suing and being sued in the name of the company. (b) Provisions are also made with the object of enforcing judgments against companies, and contribution between shareholders.

(a) 7 & 8 Vict. c. 110, s. 45, (b) *Ante*, 29.
App. 183.

Judgments,
Executions.

In all proceedings at law, or in equity, judgments, decrees, and orders are to be enforced against companies, —first, by execution issued thereon against the company's property; and secondly, in case, with due diligence, such execution is not effectual, then against the property of any shareholder for the time being, or any former shareholder, in his individual capacity, until the judgment, &c., be fully satisfied. With respect, however, to a former shareholder, he is not liable to this execution, unless he was a shareholder at the time when the contract for which the judgment was obtained was entered into, or became such during the time the contract was unexecuted or unsatisfied, or was a shareholder at the time the judgment, &c., was obtained. And no execution against a former shareholder can be issued after three years from his having ceased to be one. (a)

Contribution.

If the execution be satisfied by a shareholder, he is entitled to recover against the company the "loss, damages, costs, and charges," (b) which he may have sustained by reason of the execution, that is, the amount of the execution and his own expenses. He must endeavour to obtain the amount so paid from the property and effects of the company. But if he cannot, then he is entitled, in the same manner as in cases of contribution in ordinary partnerships, to contribution from the other shareholders against whom execution upon the judgment might also have been issued as already mentioned, for so much of the "loss," &c., as may remain unsatisfied. (c)

(a) 7 & 8 Vict. c. 110, s. 66, App. 189.

(b) S. 67. See the words "monies, damages, costs, and expenses," in s. 68, App. 190.

(c) 7 & 8 Vict. c. 110, s. 67,

App. 190. In Banking Companies, a particular mode of obtaining contribution, more precise than the above, is given by 7 & 8 Vict. c. 113, (App. 216), ss. 13, 14, 15.

Executions,
how obtained.

Where execution is issued against a shareholder, or against the company, at the instance of any shareholder, in satisfaction of any "monies, damages, costs and expenses," paid by him in any action against the company, it may be obtained by leave of the Court, or of a Judge, upon motion or summons for a rule to shew cause, without a suggestion or scire facias. The Court or Judge may inflict costs. If order made by a Judge, it may be discharged or varied by the Court, on application. But neither motion nor summons can be resorted to for the purpose of charging any shareholder, or former shareholder, until ten days' notice has been given to the person sought to be charged thereby. (a) Writs of execution to meet the above cases, are to be framed by the Courts, and they are to be enforced in like manner as other writs of execution.

(a) 7 & 8 Vict. c. 110, s. 68, App. 190.

CHAPTER VI.

RAILWAY COMPANIES.

THE present Chapter will comprise matters relating to

1. The formation of the company,—
2. The act incorporating them,—
3. Lands, the title to which is in dispute, and certain costs,—
4. Time of completion of works,—
5. Their duties and liabilities as carriers,—
6. Their liability to poor's rate,—
7. Remedies against them by mandamus and otherwise,—
8. General statutory provisions, or matters of Parliamentary regulation,—

Other subjects connected with railway companies, such as the transfer of shares, actions for calls, compensations, notice of action, and the construction generally of their acts of incorporation, will be treated of separately in a subsequent part of this work.

SECT. I.—*The Formation of the Company.*

These companies are never regulated by deeds of Formation. settlement, for the powers required to enable them to take possession of private property are extensive and com-

Formation.

pulsory, and such as can be granted by act of Parliament only. If established under a deed of settlement, some of their objects could be effected but by negotiation. The land wanted for the purposes of the company could not be obtained except by private bargain; which in many instances could never be made at all, or if made, then only by paying large and unreasonable sums; for these reasons resort must be had to acts of Parliament.

Before the 7 & 8 Vict. c. 110, (a) the mode of forming a railway company was by executing two provisional deeds, the one called a "Parliamentary contract," the other a "subscriber's agreement." (b) These were of service so long only as the requisite statute should not have been obtained. Under their provisions the persons associated together became a company, having for their object the formation of a railway, but until the statute had been procured, the company did not become a railway company.

But since the passing of the statute in question, a Railway Company must be registered, and after registration, have but limited powers to exercise until the requisite act of Parliament be obtained.

Before proceeding to make public the proposal to form a Railway Company, whether by way of "prospectus, hand-bill, or advertisement," the promoters must return to the Registrar of Joint Stock Companies the following particulars,—(c)

1. The proposed name of the intended company,—
2. The business or purpose of the company;—
3. The names of its promoters, together with their respective occupations, places of business, (if any), and places of residence.

(a) App. 164.

(b) See Forms, App. 278—285. These deeds are still required, see *post*, 51.

(c) 7 & 8 Vict. c. 110, s. 4, App. 167. See Forms of these Returns, App. 232.



So likewise, either before, or after the publishing of the prospectus, the following are also to be returned. (a) Formation.

4. The name of the street, &c. where the provisional place of business is situate,—
5. The names of the committee or promoters acting in the formation of the company, and their respective occupations, residences, &c., together with a written consent (b) of each promoter to become such, and also a written agreement of each promoter entered into with trustees for the company, to take one or more shares in the proposed scheme, which agreement is to be signed by the promoter, but which need not be stamped,—
6. The names, residences, &c. of the officers to the company,—
7. The names, residences, &c. of the subscribers to the company,—

And also, before it shall be circulated or made public,—

8. A copy of the prospectus, (c) or other document addressed to the public, or subscribers, relative to the formation of the company,—

And afterwards, from time to time, until the complete registration of the company,—

9. A return of a copy of every addition to, or change made in any of the above particulars. (d)

When at least the first three particulars have been registered, the promoters become entitled to a *certificate of provisional registration*. (e)

(a) 7 & 8 Vict. c. 110, s. 4, in this document, *ante*, 22, n.
 App. 167. See Forms, App. 233, (d) See *ante*, 21, n. as to a form of this return.

(b) See Form, App. 235.

(c) See as to "False Pretences," App. 168.

Formation.

These returns are to be made under a penalty, (a) but which the promoters will not be subject to, if they appoint a solicitor, and send a duplicate of the appointment to the registrar, signed by at least one promoter, together with a duplicate of the acceptance of such appointment, signed by the solicitor. (b) This appointment remains in force until a duplicate of the revocation, or of the resignation of it, signed as before, be returned to the registrar, or until the solicitor's decease. If such appointment be made, the solicitor is to make all the returns, and he is subject to the like penalty already mentioned, instead of the promoters, in case he fails to make them, with this addition, that he may be suspended from practice, or struck off the rolls, if he fraudulently omit to make a return of the particulars. (c) But his authority to make returns also ceases when the company has obtained a certificate of complete registration. (d)

A provisional certificate enures for a twelve month from its date. But it may be renewed for another period of the like extent, but no longer. (e) The company may exercise these powers under it,—

1. May assume the name of the intended company but coupled with the words "registered provisionally;"
2. May open subscription lists,—
3. May allot shares and receive deposits at a rate not exceeding ten shillings "for every one hundred pounds on the amount of every share," (f) and in addition thereto, such further deposit per 100*l.* as may be required by the standing orders of the Houses of Parliament,—

(a) A penalty of 20*l.* is imposed if the particulars be not registered within a month after they shall have been ascertained, *ib. s. 5.*

(b) For the requisite forms see

App. 239, 240.

(c) S. 6, App. 168.

(d) S. 16, *ib.* 172.

(e) 7 & 8 Vict. c. 110, s. 23, App. 175.

(f) See *ante*, 27, note.

Acts to be done whilst provisionally registered.

4. May perform such other acts as may be necessary for obtaining an act of Parliament.

Formation.

The company cannot make calls, or purchase, or contract for, or hold lands, nor enter into contracts for services, or for the execution of any works, or the supply of any stores, except such services and stores, or other things as are necessarily required for the establishing of the company, and except any purchase, or other contract, be made conditional on the completion of the company, and to take effect after the act of Parliament shall have been obtained, and also except contracts for services in making surveys and performing all other acts necessary for obtaining the act of Parliament. (a)

Acts to be done whilst provisionally registered.

Monies, in consideration of the allotment of shares, &c., must not be taken, nor any note, or scrip, or allotment issued, nor the existence of the company advertised, nor any contract whatsoever made by or on their behalf. These are acts prohibited to be done before provisional registration. The penalty is 25*l.* for every offence. (b)

In order to obtain a certificate of complete registration the Railway Company must have deposited within time, at the houses of Parliament, the deeds of partnership or subscription contracts, as required by the standing orders. (c) These deeds have been already alluded to. (d) They must now be executed before a certificate of complete registration can be granted; but they will have the same operation as formerly, of regulating the proceedings of the projectors in procuring their act of incorporation, subject, however, to the prohibitions before mentioned. A copy of each of the deeds, together with certificates (e) of the

Certificate of complete Registration.

(a) 7 & 8 Vict. c. 110, s. 23, App. 175.

(d) *Ante*, 48.

(b) *Ib.* s. 24, App. 175.

(e) See Instructions and Forms, App. 254.

(c) *Ib.* s. 9, App. 170.

Formation.Certificate of
complete
Registration.

receipt of the subscription contracts, plans, sections, and books of reference, at the Parliament Offices, is to be sent to the registrar, who will thereupon grant a certificate of complete registration.

This certificate will cease to have effect from the commencement of the act of Parliament so procured. "All the provisions and regulations of this act, which shall apply to such company, shall cease and determine, except so far as shall be otherwise provided by such act of incorporation." (a)

When the certificate of complete registration has been granted, the promoters

1. May use the name of the company, adding to it "registered,"—
2. May have a common seal with the company's name inscribed on it,—
3. May sue and be sued in the registered name in respect of any claim by or upon the company upon or by any person, whether by a member of the company or not,—(b)

And, conditionally upon obtaining the act of Parliament,

(a) S. 25, ib. 177. The words of this enactment suggest an observation of some practical moment. Formerly a company might retain many common law powers and privileges concurrently with those which they derived from their special act of Parliament—the act abrogating only such of the former as were inconsistent with its own express provisions. But, it seems, the Joint Stock Companies' Regulation Act annuls, *in limine*, many

common law powers, and restores them only on complete registration, and then only to other than Parliamentary companies. So that it will be necessary either to put such a construction on the words cited in the text as will have the effect of reviving the common law, or else to insert in the special act a clause saving the common law, so far as the express provisions of that act itself are not inconsistent with it.

(b) See note (c), *ante*, 29.

4. May enter into contracts for the execution of works, and for the supply of stores, or for any other necessary purpose of the company,—

Formation.

Certificate of
complete
Registration

But lands cannot be purchased and held, nor instalments or calls received from shareholders (beyond the sum or per centage necessary to be deposited in compliance with the standing orders of either house of Parliament, or such other sum as may be requisite for obtaining the act) nor money borrowed, nor dividends declared. (a)

All such acts, however, may be done, as are necessary to obtain the act for executing the proposed work. So, likewise, general meetings may be held periodically, as also extraordinary meetings. (b)

There is a power also given to companies completely registered, to issue certificates of shares, make bye-laws, appoint directors for a period not greater than five years, &c., which, however, does not seem applicable to Railway Companies, regulated as they are by subscription contracts and subscribers' agreements, for the distinction between these companies and other companies is, that whereas the former are not established until they have procured the requisite acts of Parliament, the latter become established the moment they have obtained certificates of complete registration. (c) It is observable, however, that the acts in question are not expressly prohibited, in the prohibitions already enumerated, as was probably intended to be the case. (d)

It may be here noticed, as a matter arising between the formation of the Railway Company, and the obtaining of its act of Parliament, that it often becomes expedient to make arrangements with parties to induce the withdrawal

Withdrawal of
opposition in
Parliament.

(a) 7 & 8 Vict. c. 110, s. 25, *seq.*, and *ante*, 48, 51.
App. 177.

(b) *Ibid*

(c) See Forms, App. 278, *et*

(d) 7 & 8 Vict. c. 110, s. 25,
App. 177.

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Withdrawal of
opposition in
Parliament.

of Parliamentary opposition. Upon this subject it may be stated that an agreement with a peer, or a member of the House of Commons, for the giving or withdrawal of his vote is illegal. (a) But arrangements, if made with reference to land affected by the proposed railway, are lawful, and may be enforced, even though the persons withdrawing opposition are members of the upper and lower houses of Parliament. And it is no answer in Equity, though it may be, in some instances, at Law, to say that the parties effecting such arrangements are mere projectors, or agents of projectors, of a company, and that the corporation not being at the time in existence, are not bound by such agreements. It is sufficient if they adopt the agreements, or receive the benefit of the consideration for which they were made. Lord Eldon expressed an opinion, that the withdrawal of opposition to a bill in Parliament might be a good consideration for a contract, and also recognised the right of an incorporated company to connect themselves with a contract made by the projectors of the company before the act of incorporation. (b)

Edwards v.
The Grand
Junction Rail-
way Company.

So, where a person acting on behalf of the subscribers to a railway, who were then soliciting a bill in Parliament, entered into a contract with the trustees of a road, whereby it was stipulated that in consideration of the trustees withdrawing their opposition in Parliament, and consenting to forego certain clauses which they had intended to press for insertion in the act, a formal instrument to the effect of the clauses should be executed under the seal of the company when incorporated, and the bill was accordingly allowed to pass unopposed and without the clauses; Lord Cottenham granted an injunction at the

(a) Lord Howden v. Simpson,
10 Ad. & Ell. 793.

(b) The Vauxhall Bridge Com-
pany v. Earl Spencer, 2 Mad. 356;

Jac. 64. See Fishmongers' Com-
pany v. Robertson, 5 M. & Gr.
131; 6 Scott's New Rep. 56.

suit of the trustees, to prevent the company from violating the provisions contained in the omitted clauses. (a)

There are two principal cases on this subject. In the first, (b) the Birkenhead and Chester Railway Company agreed with Sir Thomas Stanley as to fourteen acres of land, in the terms undermentioned. (c) A rival line, called the Chester and Birkenhead Railway Company was started, and both parties went to Parliament. In committee it was agreed that the merits of both lines should be referred to two members of the committee; and the solicitors for the rival companies signed the under-mentioned agreement. (d) The sanction of two members of

Formation.

Stanley v. The
Chester and
Birkenhead
Railway Com-
pany.

(a) *Edwards v. The Grand Junction Railway Company*, 1 Myl. & Cr. 650; 7 Sim. 337.

(b) *Stanley v. The Chester and Birkenhead Railway Company*, 3 Myl. & Cr. 773; 1 Railway cases, 58; 9 Sim. 264.

(c) "Now it is hereby agreed and fixed that in case the said act shall pass into law, the said company shall pay to the said Sir Thomas Stanley, the said sum of 20,000*l.* at the following times and in the following manner, that is to say, the sum of 5,000*l.* previous to the said company entering on the land for the purpose of commencing the formation of the said railway, and within three months from the day the said act of Parliament shall receive the royal assent, and the sum of 10,000*l.* within twelve months from the day of the first-mentioned payment, and the sum of 5000*l.* within twelve months,

from the day of payment of the said last before-mentioned part. And that on payment of the said last-mentioned sum of 5,000*l.*, and not before, the said Sir Thomas Stanley shall execute, with all proper parties, a conveyance of such of his property as shall be required for the said railway as delineated and marked out in the plan so deposited, and that, in the formation of the said railway, such conveniences as the said Sir Thomas Stanley shall require for communication with the land on each side, and for hunting purposes, shall be made; and in case of any difference on this point the same shall be left to his surveyor, and one to be appointed by the company, and of such third person as the two so named shall appoint, and the decision of any two of them shall be conclusive."

(d) "It is agreed by the under-

Formation.

Withdrawal of
opposition in
Parliament.

each company, and also of the plaintiff was subsequently obtained to this agreement. The Chester and Birkenhead Company's line was adopted, and incorporated by act of Parliament. Their line required sixteen acres of the plaintiff's land in a different place. The plaintiff filed a bill against the Chester and Birkenhead Company stating these facts, and seeking to compel them to keep the agreement entered into by him with the Birkenhead and Chester Company, and to restrain the Chester and Birkenhead Company from entering upon any lands belonging to him till after payment of the first instalment, which was then due; and from proceeding, after subsequent instalments became due, till such instalments should have been paid. The defendants demurred generally to the bill, but the Lord Chancellor overruled the demurrer, and said it was one of the grossest frauds he had ever seen attempted, and that the plaintiff was entitled to relief.

Lord Howden
v. Simpson.

In the second case, (*a*) there was an agreement under seal, between plaintiff and defendants. (*b*) The plaintiff

mentioned solicitors of the Chester and Birkenhead and Birkenhead and Chester Railways, for and on behalf of their respective clients, that the merits of the two lines shall be submitted to Lord Sandon and Mr. Wilson Patten, who are to decide which line shall be adopted, and what ought to be done for the accommodation of the different ferries by the line selected. It is the basis of the agreement that the shareholders of the rejected line are to be at liberty, if they think proper, to take shares in the other line; and further, that the adopted line is

to take the engagements entered into with the landowners by the rejected line."

(*a*) Lord Howden *v.* Simpson, 10 Ad. & Ell. 793.

(*b*) It recited, "that a company had been formed for making a railway; that the defendants were proprietors; that a bill had been introduced into Parliament, according to which the line would pass through plaintiff's estates and near his mansion, and that he was a dissentient and opposed the passing of the bill; that defendants had proposed that if he would withdraw his opposition,

declared in debt. The defendants pleaded that the railway, at the time of making the agreement, and according to the act, was intended to pass through lands of divers individuals; that the agreement was made privately and secretly by the parties thereto, without the consent or knowledge of the said individuals, and was concealed from them continually until the act was passed, and was not disclosed to, or known in Parliament, and was concealed from the Legislature during the passing of the act. The Court of Queen's Bench held this plea to be good, as shewing that the contract was a fraud on the Legislature. But the judgment was reversed in the Exchequer Chamber. (*a*)

Formation.

Withdrawal of
opposition in
Parliament.Lord Howden
v. Simpson.

and assent to the railway, they would endeavour to deviate the proposed line: and plaintiff agreed that on condition of the stipulations in the agreement being performed, he did thereby withdraw his opposition, and give his assent; and defendants covenanted that in case the then bill should be passed in the then session, they would, in six months after it received the royal assent, pay plaintiff 5000*l.* as compensation for the damage which his residence and estates would sustain from the railway passing according to the deviated line, exclusive of, and without prejudice to further compensation to plaintiff in the event of the deviated line not being ultimately adopted, and without prejudice to such further compensation for any damage, as in the agreement after mentioned."

(*a*) Lord Howden *v.* Simpson and Others, 10 Ad. & Ell. 793. The decision of the Exchequer Chamber was upheld by the House of Lords, on appeal. 3 Railway Cases, 294. On the ground, apparently, that the record did not distinctly shew that the parties, at the time of the contract, meant it to be concealed. But it seems to have been left undetermined whether, if such intention had been shewn, the plea would have been good. It was also held in the Exchequer Chamber that no fraud on the individual landholders appeared, it not being distinctly shewn that concealment from them was intended at the time of the contract; and it would seem that even if this had appeared there was still no fraud on the landholders. It was also pleaded that the company had abandoned the deviated

Formation.

Greenhalgh v.
Manchester
and Birmingham
Railway
Company.

In another case an agreement with respect to lands proposed to be taken was held to be vacated, under the peculiar circumstances attendant upon it; and the conduct of the party also formed a material feature in ascertaining the equities of the case. It appears there were two lines of railway projected, the first designed to pass through the centre of the plaintiff's lands, the second through only a small portion at one extremity. The projectors of the first line agreed to purchase a certain part of the plaintiff's land at a fixed price, and thereupon he agreed to assent to their proposed act, and he was accordingly returned as an assenting party. The same agreement provided that by giving notice to the plaintiff the projectors might vacate the agreement if they did not carry out their act. The projectors of the second line declined entering into a similar agreement with the plaintiff. By an arrangement between the two sets of projectors made at the recommendation of a committee of the House of Commons, an act was passed for incorporating the projectors of the two lines into one company for making a railway, which adopted as far as the lands of the plaintiff were affected, the line designed by the second set of projectors. The projectors of the first line gave a notice to the plaintiff determining the agreement. The consolidated company having given a notice to the plaintiff to treat for the part of his land required for the railway, the plaintiff filed his bill, insisting that some of the projectors of the first line being incorporated in the company, the company could not

line, and adopted another line altogether out of plaintiff's lands; that they had petitioned Parliament to be allowed to carry the railway along the new line, and were then making every exertion

in their power to procure an act for that purpose; and that if they should obtain such act no part of the railway would pass through plaintiff's lands. This was considered to be no answer.

take any portion of his land except upon the terms of the agreement. It was said, however, by the Vice Chancellor, that inasmuch as the line of railway sanctioned by Parliament, materially differed in extent and direction from that contemplated by the projectors of the first line, and the act applied for by them did not in fact pass, and the projectors of that line having determined the agreement by the notice, the plaintiff was not entitled to enforce the contract against the consolidated company. But it appears, from the decision of Lord Cottenham, on appeal, that the plaintiff had, by his conduct, led the company to believe that he had no intention to claim a performance of the agreement against them, and that therefore, he was not entitled to have the injunction prayed for. (a)

Formation.

Withdrawal of
opposition in
Parliament.Greenhalgh v.
Manchester
and Birming-
ham Railway
Company.

SECT. II.—*The act of Incorporation.*

The act of Parliament incorporates the company. (b) It also gives certain powers and privileges which vary according to the objects and works contemplated. From the time of the passing of a railway act, the company cease to be affected by the statute for the registration of companies. (c)

Act of
incorporat.on.

Hitherto each railway act contained all necessary provisions for the carrying out the objects of the company. But now, certain general acts called "Railway Clauses Consolidation," "Lands' Clauses Consolidation," and

(a) *Greenhalgh v. Manchester and Birmingham Railway Company*, 1 *Railway cases*, 68; 9 *Sim.* 416; 3 *Myl. & Cr.* 784.

(b) It is now called the "Special Act," in contradistinction to the general statutes called the

"Railway Clauses Consolidation," "Lands Clauses Consolidation," and "Companies' Clauses Consolidation" Acts, see *App.* 338, *et seq.*

(c) 7 & 8 *Vict. c.* 110, s. 25, *App.* 178.

Act of
incorporation.

“Company’s Clauses Consolidation” acts have been passed, which contain sets of provisions applicable to all Railway Companies incorporated after the time therein mentioned. (a) These will have the double effect of making the particular act required for a company shorter than it used to be, and of insuring greater uniformity in the requisite enactments. This section, or rather the whole of this chapter is intended not to apply to the companies so newly established, but to those which were incorporated previously. The new provisions of a general nature will be found under classes or heads in the several statutes above referred to. Nevertheless, a great portion of the chapter will be of use in considering the regulation and management of the newly established Railway Companies.

Railway acts
treated as
contracts.

Blakemore v.
Glamorgan-
shire Canal
Navigation.

Railway acts are regarded at law and in equity as contracts made by the Legislature, on behalf of every person interested in every thing to be done under them. Those who apply for them undertake that they shall do and submit to whatever the Legislature empowers and compels them to do, and that they shall do nothing else; that they shall do and shall forbear all that they are thereby required to do or forbear, as well with reference to the interests of the public as with reference to the interests of individuals. (b) It is upon this ground that applications

(a) App. 338, *et seq.*

(b) *Blakemore v. Glamorgan-shire Canal Navigation*, 1 Myl. & Keen, 154. See *Stourbridge Canal Company v. Wheeley*, 2 B. & Ad. 792; and see *Parker v. The Great Western Railway Company*, Law J. 1844, C. P. 105, where Tindal, C. J., said, in construing the act of Parliament

then in question,—“The language of this act of Parliament is to be treated as the language of the promoters of it; they ask the Legislature to confer great privileges upon them, and profess to give the public certain advantages in return. Acts passed under such circumstances should be construed strictly against the

are made to stay operations, when railways are in the course of formation. It was remarked by Lord Eldon, (a) "it may be of very little consequence to A. B. whether the canal is brought to his lands through the lands of C. D., or through those of E. F. Nevertheless, if the Legislature has said that the canal shall be brought to the lands of A. B. through the lands of E. F., and not of C. D., this Court would never permit the parties to bring the canal to the lands of A. B. from the lands of C. D. The parties are obliged to submit to the contract which the Legislature has made for them."

Act of
incorporation.

Railway acts
treated as
contracts.

In another case it was said by Alderson, B., (b) that these acts of Parliament ought to be treated as "conditional powers given by Parliament to take the land of the different proprietors through whose estates the works are to proceed." And his Lordship observed, "Each landholder, therefore, has a right to have the powers strictly and literally carried into effect as regards his own land, and has a right also to require that no variation shall be made to his prejudice in the carrying into effect the bargain between the undertakers and any one else. But he said he could not accede to the proposition, that where the contract, as far as regards the land of the complaining landowner, has been exactly performed, any variation made at a distant point, and with the consent of the landowner there, and producing no real injury to the complaining landowner, ought to be the ground for an injunction in a Court of Equity, to be granted at his application."

Lee v. Milner.

parties obtaining them, but liberally in favour of the public."

& K. 154.

(a) In *Blakemore v. Glamorganshire Canal Navigation*, 1 Myl.

(b) *Lee v. Milner*, 2 You. & Coll. 618.

Act of
incorporation.

How treated
when capital
insufficient.

If the termini of a railway be changed, and instead of proceeding to some great town, the railway were to terminate in an obscure village, an injunction might probably be granted. (a)

Again, if acts are obtained by railway companies, on the assurance given to the Legislature that the works can be completed for a certain specified sum, it seems that a Court of Equity would not allow them to proceed with the undertakings until they should have procured further Legislative authority.

This was the view taken of these acts by Lord Eldon. (b) Alderson, B., (c) concurred in this view, whether the not being able to complete "arose out of circumstances occurring after the passing of the act of Parliament, or from a failure to raise the sum contemplated by the act; for to take any man's land, where the whole work can never be performed, is clearly injurious to him, and a substantial breach of the condition on which the Legislature granted the right to do it."

In a recent case before Lord Cottenham he took occasion to observe that it is extremely important to watch over the interests of those whose property is affected by these companies; to take care that the company shall not, in any misrepresentation that they make, if they have made any, be permitted to exercise powers beyond those which the act of Parliament gives them, and to keep them

How treated
as to their
powers.

(a) See *Reg. v. Eastern Counties' Railway Company*, *post*, 64.

(b) *Blakemore v. Glamorgan-shire Canal Navigation*, 1 Myl. & Keen, 154, and see *Agar v. The Regent's Canal Company*, Cooper's Rep. 77.

(c) *Lee v. Milner*, 2 You. & Coll. 618. See *Mayor of King's Lynn v. Pemberton*, 1 Sw. 244. But also see observations on that case by Lord Cottenham, in *Salmon v. Randall*, 3 Myl. & Cr. 445.

most strictly within the powers of the act of Parliament. "The powers are so large—it may be necessary for the public—but they are so large and so injurious to the interests of individuals, that I think it is the duty of every Court to keep them most strictly within those powers; and if there be any reasonable doubt as to the extent of their powers, they must go elsewhere and get enlarged powers. (a)

Act of
incorporation.

How treated
as to their
powers.

If the companies go beyond the powers which the Legislature has given them, and in a mistaken exercise of these powers interfere with the property of individuals, a Court of Equity will interpose by injunction. So also if a deviation from the line marked out by Parliament be attempted. (b) And it may be added, that whenever the works authorized to be done have been completed, the Legislative powers are at an end; and the railway cannot be altered or enlarged. (c)

If relief be sought in cases of the description just given, the interference of a Court of Equity is obtained by injunction restraining the company from proceeding to execute their works, or from doing certain other things not warranted by the powers given to them by statute. But there does not appear to be any case where a Court of Equity has attempted to compel a company to do what they undertook by their act of Parliament to accomplish.

(a) *Webb v. The Manchester and Leeds Railway Company*, 4 Myl. & Cr. 120. And see Lord Cottenham's judgment in *Kemp v. The Brighton Railway Company*, 1 Railway Cases, 495, as also his observations in *Bell v. Hull and Selby Railway Company*, 1 Railway Cases, 637.

ment in *Lee v. Milner*, as to what deviation would be sufficiently important for the purposes of an injunction.

(c) *The River Dun Navigation Company v. The North Midland Railway Company*, 1 Railway Cases, 153. *Blakemore v. Glamorganshire Canal Navigation*, 1 Myl. & Keen, 154, 170.

(b) See Baron Alderson's judg-

Act of
incorporation.

Where, therefore, a line of railway is projected from one town to another, and the statute gives power accordingly, but the company proceed only part of the way, and shew by their course of conduct, that they have no intention of completing from point to point, the line as originally intended and authorized by the Legislature, there does not seem to be any power in a Court of Equity to enforce the completion of the undertaking. But the Court of Queen's Bench will award a mandamus for that purpose. (a)

SECT. III.—*Of Lands the title to which is in dispute, and of certain Costs.* (b)

Of lands to
which title is
in dispute.

Property required for railway purposes is often found to be involved in difficulties as to a legal title, which in some instances can never be removed, in others can be disposed of only after the lapse of a considerable time. In either event the undertaking might be injured by delay. To provide against this inconvenience, it is commonly enacted, that where there shall be a dispute as to title, the company may pay into Court the amount of the purchase-money, and thereupon, by force of the act of Parliament, the company's title becomes complete.

Payment of
money into
Court.

Accordingly, by a railway act it was enacted, that in case any question should arise as to the title of the lands, the party in possession at the time of the purchase should be deemed to be lawfully entitled, until the contrary

Ex parte
Grainge.

(a) *Reg. v. Eastern Counties Railway Company*, 2 Per. & Dav. 648; *Rex v. Proprietors of the Birmingham Canal Navigation*, 2 W. Bl. 708.

(b) See the general statutory provisions on this subject applicable to all Railway Acts passed in and after the Session of 1845, App. 426-7. 467-8.

should be shewn to the satisfaction of the Court; and further, that in case the proprietor or other party interested in the land, and entitled to receive the purchase-money, should be unable to make a good title, it should be lawful for the company to pay the money into Court, to the credit of the party interested, subject to the disposition of the Court, and thereupon the company's title should be deemed complete. Under this act the company having contracted to purchase a piece of land of the party in possession, and having entered into possession under the contract, objected to the title, and paid the money into Court to the credit of the party with whom they had so contracted. It was held that such party, upon his own affidavit of title, was entitled to payment of the money out of Court to his own absolute use. (a) This course was taken by Baron Alderson, although he said there were great objections to it, on the authority of certain orders stated to have been made by previous judges. (b) In a subsequent case, (c) in which an application was made on behalf of Lord Ellenborough, in the matter of the Birmingham and Gloucester Railway Act, there being no other evidence of title to the lands than Lord Ellenborough's affidavit, Baron Alderson took occasion to say, "I am bound by the authorities, though I do not comprehend them. The party may sell to the company lands in strict settlement, and then apply for the money out of Court."

Of lands to which title is in dispute.

Payment of money into Court.

Ex parte Grainge.

In some cases, however, where several persons are interested in the property proposed to be taken, an issue

(a) Ex parte Grainge, 3 You. & Coll. 62.

(b) By Alexander, C. B. In re Liverpool Dock Company. By Lord Gifford, M. R., in an anonymous case. By Lord Lyndhurst,

C. B., in Ex parte Povah, in the matter of the Hampstead Church Act.

(c) Note to 3rd Vol. You. & Coll. 66.

Of lands to which title is in dispute.

Ex parte Issauchaud.

will be directed to ascertain who are the proper parties and the proportionate value of each party's interest.

The petitioners were leaseholders of certain houses and lands for a long term of years, and had underlet them to a person who had been expelled for breach of covenant, and who had given up the lease, but had executed no deed of surrender. The company having agreed to purchase the premises of the petitioners, the under-lessee disputed their title to sell without taking a legal surrender, and claimed at all events, an equitable apportionment of the value of the lease. The purchase-money was, therefore, paid into Court under a section of a Railway Act, which enacted, that in case of disputed titles the purchase-money should be paid into Court, and such payment should "effectually vest the land, or the interest, or the several interests in the land, for or in respect of which the same should be paid, in the company." The Court was of opinion that under the terms of the section the whole interest in the premises vested in the company, notwithstanding the defective surrender; but an issue was directed to determine the question whether, when the contract was made with the company, the under-lessee had any interest in the premises, and if so, what was the proportionate value of such interest. (a)

If an act gives compensation, but directs that if the party to whom it may be awarded cannot make out a good title, the money is to be paid into the Bank of England, the party will not be entitled to a mandamus to compel them to do so, unless he distinctly shew to the Court that he can not make out a good title. (b)

Costs.

The act of Parliament usually imposes certain conditions

(a) Ex parte Issauchaud. In the matter of the Eastern Counties Railway Act, 3 You. & Coll.

721.

(b) Reg. v. The Deptford Pier Company, 1 Per. & Dav. 128.

with respect to costs attendant upon the purchase or taking of lands. Where, therefore, lands had been taken, and the company were made liable to the expenses of "all purchases" to be made by virtue of the act, those words were held to include the expenses of investing the money in the funds, previously to its being laid out in lands, to be settled to the like uses as the lands purchased by the company. (*a*)

Of lands to which title is in dispute.

Costs.

But where the Hull and Selby Railway Act enacted, that on the purchase of lands of incapacitated persons, the Court of Exchequer might order the reasonable costs attending the purchase, and also the costs of the investment of the purchase-money in government or real securities, and of the re-investment of the same securities in other lands, "together with the necessary costs, charges, and expenses of obtaining the proper orders, and of all other proceedings for such purposes, and for the payment of the dividends and interests of the government or real securities upon which such purchase-money may be invested, &c., to be paid by the company;"—Baron Alderson (*b*) held that the costs referred to were the costs of the *order* for payment of the dividends, not the costs of the payment of the dividends. (*c*)

Ex parte Athorpe.

In some cases costs will be directed to be paid out of

(*a*) Ex parte Bishop of Durham, 3 You. & Coll. 690; and see Ex parte Bishop of Ely, *ibid.* p. 691, note (*b*); and Ex parte Onslow, Re London and Birmingham Railway Act, 1 You. & Coll. 553. Addie's Charity v. London and Greenwich Railway Company, 3 Hare, 22. So likewise the Court will impose upon the Railway Company the costs of the Master's report as to the title

of lands to be settled to the like uses. Ex parte Marsh, in re Eastern Counties Railway Company, Jurist, 1841, p. 502.

(*b*) Ex parte Athorpe, in the matter of the Hull and Selby Railway Act, 3 You. & Coll. 396.

(*c*) The same point was decided by the Lord Chief Baron, April 15, 1839, upon the construction of the same act.

Of lands to
which title is
in dispute.

Costs.

the purchase-money. For instance, where a landowner contracted with a railway company to sell them a certain portion of his lands, and he died, and the legal estate in the lands in question descended to infants: it was considered that inasmuch as the vendor, knowing that the purchasers would take that portion of his lands, had suffered the legal estate therein to descend to infants, he had thereby occasioned the necessity for a suit, in order to procure a conveyance of the legal estate, and the costs of the suit were ordered to be defrayed out of the purchase money. (a)

Ex parte
Taylor.

And where by the London and Birmingham Railway Act, it was enacted, that the money to be paid for lands to be purchased by them, should be paid into the Bank until the same should, upon petition, be applied in the purchase of other lands, and in the mean time, should upon application to the Court, be invested in the funds, and that the costs attending such purchase should be paid by the company, a party applying to have the money invested in the funds was held not to be entitled to the costs of the application. (b) But where an act directed, that the purchase-money might be applied in the redemption of the land tax upon another part of the property remaining unsold, it was held that a tenant for life who had redeemed the land tax before the passing of the act, might be reimbursed out of the proceeds of the land sold by him to the company. The costs of the application were allowed to the tenant for life out of the purchase-money, though the act only expressly provided for such payment of costs when the money was to be laid out in the purchase of other lands to be settled to the like uses. (c)

Ex parte
Northwick.

(a) *The Midland Counties Railway Company v. Westcomb*, 2 Railway Cases, 211; 11 Sim. 57.

Coll. 229.

(c) *Ex parte Northwick*, 1 You. & Coll. 166.

(b) *Ex parte Taylor*, 1 You. &

SECT. IV.—*Time of Completion of Works.*

The works to be executed under a railway act must be completed within the time therein specified. If not, further time must be obtained from the Legislature. If, as was the case in *Thicknesse v. The Lancaster Canal Company*, (a) no time be limited by the statute under which the company is incorporated, the powers thereby conferred may, as far as regards Courts of law, be exercised at any time. But there may be circumstances in which, at the expiration of a certain period, a Court of Equity will interfere; if lands are to be taken, and the works authorized to be executed are not completed at a certain date, and during the interval the company have seen the owners of the lands make erections and improvements, and incur expenses on it, a Court of Equity may say that a party so lying by and suffering another to be misled by his inaction, should be prevented from continuing his works at that late period, and destroying that which would never have been done but for his own negligence.

Time of
completion of
works.

On the other hand, there may be cases in which the objects contemplated by the act of Parliament are such as to render it necessary to have a continuing power. A railway or a canal act requires a certain described work, as from point A. to point B., to be done; it may well consist with justice that when such work shall have been executed, the powers incident to that object shall cease. It is, however, different, where, from the very nature of the object contemplated, the powers given by statute must be exercised from time to time. As, for instance, where improvements in a particular town, or locality, are to be made

(a) 4 M. & W. 472.

Time of
completion of
works.

by, and under the direction of a body of persons nominated for that purpose. Accordingly, the commissioners under the local acts of Parliament for improving the town of Cambridge, have, upon the true construction of those acts, a continuing right to exercise, from time to time the power thereby vested in them, of taking property, and of referring the assessment of the price to a jury, so long as may be required for carrying into full effect the purposes contemplated by the acts. (a)

SECT V.—*Their duties and liabilities as Carriers.*

Their duties as
carriers.

Railway companies are carriers. Without the sanction of any clause in the act of incorporation they may become the carriers of passengers and goods. They are liable to the common law, except in so far as it may be altered by the Carriers' Act, 11 Geo. 4, and 1 Wm. 4, c. 68, or by any particular provision in their favour, inserted in their own private act of Parliament. Where, therefore, a railway act provided that "it should be lawful for the company to use and employ locomotive and other engines, or other moving power, and in carriages and waggons drawn or propelled thereby, to carry and convey upon the said railway all such passengers, cattle, goods, wares and merchandize, articles, matters, and things as should be offered to them for that purpose;"—It was said that "if the company choose to carry, and do not take care to accept goods with a limited responsibility, the common law duty is cast upon them; and having received horses to carry them from Liverpool to Birmingham, and safely deliver them, which they have not done, they are liable, as the accident

Palmer v. The
Grand Junction
Railway
Company.

(a) *Salmon v. Randall*, 3 Myl. & Cr. 439.

[which has happened] did not arise from the act of God, or the Queen's enemies, which are the exceptions in favour of carriers." (a)

Their duties as carriers.

As carriers, a railway company are placed in a different situation from carriers who are unincorporated. In the latter case they may charge what they like for the transmission of passengers and goods. In the former they are restrained by their act of Parliament, and cannot make charges inconsistent with the provisions contained in it. If any doubt ever existed upon this subject it has been removed in a recent case in which an action was brought against the Grand Junction Railway Company. (b) That Company were authorized by their act of Parliament to carry and convey upon the railway all such passengers, goods, merchandize, &c., as should be offered to them for that purpose, and to make such *reasonable charges* for such carriage and conveyance as they might from time to time determine on. The company were also authorized to fix the sums to be charged in respect of small parcels, not exceeding five hundred pounds weight each. By a subsequent act they were empowered to carry passengers and goods on other railways, and to make such reasonable charges for such carriage as they should determine on. And by another act, it was enacted, that the charges by the former acts authorized to be made for the carriage of passengers or goods, should be at all times charged *equally*, and after the same rate in respect of all passengers, goods, &c., conveyed or propelled by a like carriage or engine, passing on the same portion of the line, and under the same circumstances. The company published a list of rates for

Pickford v. The Grand Junction Railway Company.

Rates and charges.

(a) Palmer v. The Grand Junction Railway Company, 4 M. & W. 749; 7 Dowl. 232.

Junction Railway Company, 10 M. & W. 399. See the same case on another point, 8 M. & W.

(b) Pickford v. The Grand

372.

Their duties as carriers.

Pickford v. The Grand Junction Railway Company.

the carriage of merchandize, divided into seven classes, of which the lowest was 16s. and the highest 60s. per ton: and for boxes, bales, hampers, or other packages, when they contained parcels or other packages or things under one hundred and twelve pounds weight each, directed, consigned, or intended for different persons, or for more than one person, they imposed a charge of "1d. per pound weight." This last was held not a *reasonable* charge in the case of a package above five hundred pounds weight, made up by a carrier and directed to one person, although containing a number of parcels under one hundred and twelve pounds weight each, consigned or directed to different persons. The company also became carriers on the London and Birmingham line, and published a list of charges for the carriage of goods from Manchester to London, among which "Manchester packs," were charged 3s. 3d. per cwt.; or 65s. per ton. At the foot of this list was a notice, that "goods were brought to the station at Camden Town without extra charge," and that there was "no charge for booking or delivery in London." The company made an agreement with C. and H. that the latter should carry from the station at Camden Town, and deliver in London all such goods carried by the railway, and for so doing should receive 10s. per ton out of the entire charge of 65s. per ton: Under these circumstances, the charge of 65s. per ton, when made to any other persons who were ready to receive their goods at the station at Camden Town, was held to be both unreasonable and unequal.

Where Railway Acts contain provisions similar to those in the case just mentioned, the company will not be justified in making allowance to one carrier and refusing them to another, if the latter be willing to perform the same duties as the others, nor in making any distinction

between carriers and other members of the public. (a) Their duties as carriers. But it would seem that they are at liberty so far to make a distinction as to give credit to some and refuse it to other parties.

It has been stated, that a railway company are common carriers with regard to the goods which they convey, unless the act constituting them limit their liability. But they may abridge their liability, or make it more special, by acting under the provisions of the Carriers' Act, 11 Geo. 4, and 1 Wm. 4, c. 68.

This statute enacts, that no common carrier (b) by land, Carriers' Act. for hire, shall be liable for the loss or injury to any gold or silver coin, gold or silver in a manufactured or unmanufactured state, precious stones, jewellery, watches, clocks, time pieces, trinkets, bills, bank notes, orders, notes, or securities for payment of money, stamps, maps, writings, title deeds, paintings, engravings, pictures, gold or silver plate, or plated articles, glass, (c) china, silks, manufactured or unmanufactured, wrought up or not wrought up with other materials, furs, (d) or lace, contained in any parcel, when the value exceeds the sum of 10*l.*, unless at the time of delivery at the office, warehouse, or receiving house, (e) the value and nature of the article shall have been declared, and the increased charges, or an engagement to pay the same, be accepted by the person receiving the parcel. Common carriers, (f) on the delivery

(a) *Parker v. Great Western Railway Company*, Law J. 1844, C. P. 105. 2nd ed. 321.

(c) See *Owen v. Burnett*, 4 Tyr. 143; *Smith's M. L.* 262, 3rd ed.

(b) A common carrier has been defined to be one who undertakes, for hire or reward, to transport the goods of such as choose to employ him from place to place. Story on Bailments,

(d) See *Mayhew v. Nelson*, 6 C. & P. 59.

(e) See *Syms v. Chaplin*, 5 Ad. & Ell. 642.

(f) S. 2, *Smith's M. L.* 262, 3rd ed.

Their duties as
carriers.

Carriers' Act.

of such parcels exceeding the value of 10*l.*, and so declared, may demand an increased rate of charges, which is to be notified by a notice (a) in legible characters affixed in the office, and persons sending parcels are to be bound by such notice, without further proof of the same having come to their knowledge. If required, (b) they are to give a receipt for the parcel, not liable to a stamp duty, acknowledging the same to have been insured. If they refuse to do so when required, or if they omit to affix the proper notice, they are not entitled to the benefit of the act.

Carriers cannot, *by a notice*, limit their liability at common law, to answer for the loss of any articles, in respect whereof they are not entitled to the benefit of the act. (c) Every office of such carrier is deemed a receiving house. (d) Special contracts are not affected by the act. (e) Parties entitled to damages for parcels lost or injured, may recover extra charges for insurance. (f) Nor does the act protect common carriers from liability to answer for losses or injury, arising from the felonious acts of any of their servants,—nor any servant from liability to answer for the consequences of his own neglect or misconduct. (g) The value declared is not conclusive of the value of any parcel. (h) Money may be paid into Court in the same mode, and with the same effect as in any other action. (i)

By the custom of the realm, common carriers are bound to receive and carry the goods of the subject for a reasonable hire or reward, to take due care of them in

(a) See Form in *Owen v. Bur-*
nett, 4 Tyr. 134, n. (a)

(b) S. 3.

(c) S. 4.

(d) S. 5.

(e) S. 6.

(f) S. 7.

(g) S. 8.

(h) S. 9.

(i) S. 10, *Smith's M. L.* 263,
3rd ed.

their passage, to deliver them safely and in the same condition as when they were received, or, in default thereof, to make compensation to the owner for any loss or damage which happens while the goods are in their custody. (a)

Their duties as carriers.

Common carriers are not liable for a loss of the articles named in the statute, occasioned by the *gross negligence* of their servants not amounting to a *misfeasance*, if they have affixed such a notice as the act requires, the articles lost being of such a description as to require a declaration of value, and payment of increased charges, which their owner, however, neglects to make in respect of them. (b).

Assuming, then, that the railway company are not limited in their liability by their own act, they will be liable as common carriers, (subject, however, to the effect of adopting the provisions of the Carriers' Act before mentioned,) for all losses, except those occasioned by the act of God, or the king's enemies. (c) The expression, "act of God," (d) denotes natural accidents, such as lightning, earthquakes, and tempests, and not accidents arising from the negligence of man, or, as it has been otherwise put, all misfortunes and accidents arising from inevitable necessity, which human prudence could not foresee or prevent. (e)

The responsibility of a railway company as common carriers will commence as soon as the delivery of the goods to them is complete. It will become so on delivery to their servants at the railway office. But this delivery

(a) Broom's Maxims, 112.

(b) Hinton v. Dibbin, 2 Q. B. 646.

(c) Story on Bailments, 2nd ed. 318, 329. See Forward v. Pittard, 1 T. R. 33; Bell. Dict.

Scotch Law, 11.

(d) The maxim is, *actus dei nemini facit injuriam*, 2 Bl. Com. 122.

(e) *Ib.* 330.

Their duties as carriers.

must be coupled with an acceptance, actual or constructive, of the goods, on the part of the railway company. (a) If the company make use of a warehouse for the receipt of goods going by the railway, a deposit of the goods there is a mere accessory to the carriage, and the risk will commence by a delivery at that place. (b) The responsibility ceases as soon as the goods have arrived at their proper place of destination, that is, the particular house and place indicated by the address, unless there is some custom of trade, or some contract to the contrary.

It was formerly held that if a carrier received goods to be carried from A. to B., and thence to be forwarded by a distinct conveyance to C., as soon as the goods arrived at B., and were deposited in the carrier's warehouse there, his responsibility as carrier ceased; for that was the terminus of his duty as such, and he became, as to the goods, a mere warehouseman, undertaking for their further transportation. (c) But it would seem, that a railway company's responsibility extends to all lines in conjunction with their own. It is, however, a question for the jury what the contract was, whether to carry on their own line only, or beyond it.

Muschamp v. Lancaster and Preston Junction Railway Company.

A parcel was delivered at Lancaster, to the Lancaster and Preston Junction Railway Company, directed to a person in Derbyshire. The person who brought it to the station, offered to pay the carriage, but the book keeper said it had better be paid by the person to whom it was directed, on the receipt of it. The Lancaster and Preston Junction Railway Company were known to be proprietors of the line only as far as Preston, where the railway

(a) See Story on Bailments, 340, 2nd ed.

(b) Forward v. Pittard, 1 T. R. 27.

(c) Garside v. Trent and Mersey Navigation Company, 4 T. R. 581

unites with the North Union line, and that afterwards, with another, and so on into Derbyshire. The parcel having been lost after it was forwarded to Preston, it was held that the Lancaster and Preston Junction Railway Company were liable for its loss. Per Lord Abinger, "These railway companies, though separate in themselves, are in the habit, for their own advantage, of making contracts, of which this was one, to convey goods along the whole line to the ultimate terminus, each of them being the agents of the other to carry them forward, and each receiving their share of the profits from the last. The fact that, according to the agreement proved, the carriage was to be paid at the end of the journey, rather confirms the notion that the persons who were to carry the goods from Preston to their final destination were under the control of the defendants, who consequently exercised some influence and agency beyond the immediate terminus of their own railway." (a)

Their duties as carriers.

Muschamp v. Lancaster and Preston Junction Railway Company.

It will have been seen that, by the Carriers' Act, (b) no benefit is derived therefrom if the carriers fail to affix the requisite notice, and that it applies only to cases where the value of the goods exceeds 10*l.*, and to the descriptions of goods specified in the statute, and to cases where no special contract shall have been entered into.

Special contracts sometimes arise from the particular dealing between the parties, either generally or in the given case,—sometimes from the general course of trade or business,—and sometimes, and most usually from the public advertisements and notices given by carriers, stating the terms and limits of their responsibility. (c) With

(a) *Muschamp v. Lancaster and Preston Junction Railway Company*, 8 M. & W. 421.

(b) *Ante*, 74.

(c) *Story on Bailments*, 2nd ed. 252.

Their duties as carriers.

respect to these classes of cases, the limits and objects of this work will only admit of a few words being said upon the notices or advertisements resorted to by carriers, where the general Carriers' Act does not apply, and which will be applicable to railway companies becoming common carriers.

The general tenor of these notices is to declare that the carriers will not be responsible for any loss of goods beyond a certain value unless entered and paid for accordingly. But these notices, however public they may be, will have no effect except upon those to whom knowledge of it is directly or constructively brought home; (a) unlike, in this respect, cases within the Carriers' Act, which enacts that all persons "shall be bound by such notice," (therein prescribed) "without further proof of the same having come to their knowledge." (b) These notices will not exonerate carriers from losses by the malfeasance, misfeasance, or gross negligence of themselves or servants. The terms are uniformly construed so as not to exonerate them from losses so occasioned. (c) It may be added that, in cases of notice, the burthen of proof of negligence is on the party who sends the goods, and not of due diligence on the part of the carriers, which is contrary to the general rule where there is no notice. (d)

- (a) *Davis v. Willan*, 2 Stark. R. 279. *Gibbon v. Paynton*, 4 Burr. 2302. *Evans v. Soule*, 2 M. & S. 1. *Roskell v. Waterhouse*, 2 Stark. R. 462.
- (b) 11 Geo. 4, and 1 Wm. 4, c. 68, s. 2.
- (c) Story on Bailments, 2nd ed. 364.
- (d) *Ib.* 366. *Marsh v. Horne*, 5 B. & C. 322. *Riley v. Horne*, 5 Bing. 217.

SECT. VI.—*The Rating of Railways.*

Railways in like manner as canals, are liable to be assessed to the poor's rate. The principle of rating has been questioned in two cases, different however in their facts.

Poor's rate.

In the one case, (a) the question raised was, whether the company, being in occupation of its own railway, the rateable value of such occupation was to be taken only upon the amount of certain tolls which had been fixed under their statutes as payable generally by all carriers for the use of the way, but which were, in fact, never paid, or upon the amount of the general profits which the company received from the occupation so devoted to such carrying trade. The Court held that the company were rateable for their land, improved in value by the profits accruing from the railway, at an amount equal to the rent which a lessee would pay, making the same uses of the railway, as the company did, with the deduction of tenant's rates, &c., expense of repairs, and the other charges mentioned in 6 & 7 Wm. 4, c. 96, s. 1; that the last mentioned statute did not, in this respect, introduce any new principle of rating, that an estimate of the company's liability, founded only on the amount chargeable in respect of tolls, and excluding the receipts for carriage of passengers and goods, &c., was erroneous; that the land must be rated in any particular parish according to its actual value there, although such value might be owing in a great measure to station-houses and other works not within the parish; and that the rate in any particular

Reg. v. The
South Western
Railway
Company.

(a) Reg. v. The South Western Railway Company, 1 Q. B. 558.

Poor's rate.

parish was to be estimated by the amount of profit actually earned in that parish, and not by the proportion which the length of railway in that parish bore to its entire length.

In the preceding case it will be observed, that the company were in the sole and exclusive occupation of the railway, warehouses, stations, and landing-places, and being so, were solely and exclusively carrying on a large business as carriers thereon, but that no tolls were earned.

Reg. v. The
Grand Junction
Railway
Company.

But in the Grand Junction Railway case, (a) it appeared they exercised the trade of carriers on their own line, as well as on other lines of railroad connected therewith, and made profits by the fares and freights paid for the conveyance of passengers and goods. They also took tolls as authorized by acts of Parliament, from other parties exercising the trade of carriers along their own line. Such carrying trade was exercised by such other parties, who provided themselves, independently of the company, with locomotive power, carriages, fuel, &c., and stations, they, like the company, making profits of their trade, so carried on by them over the railway, and paying the tolls fixed by the company, under the acts of Parliament. A third class of carriers over the railway hired from the company locomotive engines, and the use of stations, &c.; they likewise made profits, and paid the tolls, besides a compensation for the use of the power, stations, &c., provided for them. Upon these facts the company were held to be rateable at an amount which a tenant from year to year might reasonably be expected to pay for the railway, &c., exclusive of the stations, (which

(a) Reg. v. The Grand Junction Railway Company, Law J. 1844, M. C. 94.

were rated separately) assuming him to have the same power of using the railway as the company, and to have the same privileges, *i. e.* upon the net annual value of the railway; and not upon an estimate of the gross produce of the land, which the company, if not carriers, or which a lessee of the tolls, rates and duties, of which account was directed to be kept by the acts of Parliament, would in fact have received as lessee, howsoever or by whomsoever the carrying business of the railway was conducted. It was further held that the rateable value of such occupation was properly calculated, by deducting from the gross receipts of the company, first, a sum per cent. for interest of the capital actually invested by them in moveable carrying stock; secondly, for tenant's profits and risks; thirdly, for depreciation of stock; fourthly, for working expenses; fifthly, for the rent of stations; sixthly, a mileage for renewing and reproducing. And that no deduction ought to be made in respect of good-will. (a)

Poor's rate.

SECT. VII.—*Remedies against Railway Companies.*

It has been already seen that a railway act is to be considered as a contract made with the public; and that in the execution of their powers, they cannot make distinction between carriers and other members of the public, but must yield to every one equal facilities at equal charges. But Equity will not interfere to make the fares on a railway proportionate to the distances, in cases where two passengers going different distances pass over the same space. The company may, if they choose,

Remedies
against
Railway
Companies.

(a) Reg. v. The Grand Junction Railway Company, Law J. 1844, M. C. 94.

Remedies.

charge a long passenger less than a short one for passing over a short space, provided the fare charged to the short passenger is within the scale of charges allowed by the act. (a)

Negligence.

In the conduct of their railway, and the management and running of their engines, the company must use proper care. It seems that an action would lie against them for any negligence productive of damage to an individual, as where sparks flew from an engine upon a stack of beans standing in a field adjoining a railway, and destroyed it. But to entitle a plaintiff to recover, he must either shew some carelessness by the company, or lay facts before the jury from which it may be inferred. (b)

Indictment.

A railway company, although a corporation aggregate, may be indicted by their corporate name for disobedience to an order of justices requiring them to execute works pursuant to a statute. (c) So likewise, for obstructing a highway, where they had built a wall across it, and had given another way to the public, which was not so convenient as the old way. (d)

But a railway company is not indictable for a nuisance, if the works are made and used according to the terms of their Parliamentary authority. By an act reciting that a railway between certain points would be of great public utility, and would materially assist the agricultural interest and the general traffic of the country, power was given to

(a) Attorney General *v.* The Birmingham and Derby Railway Company, 2 Railway Cases, 124.

(b) Aldridge *v.* The Great Western Railway Company, 3 M. & Gr. 515.

(c) If the indictment be preferred at Assizes or Sessions, where parties cannot appear by

attorney, the proper course is to remove it by certiorari into the Court of Q. B., and compel appearance by distress infinite. *Reg. v. Birmingham and Gloucester Railway Company*, 3 Q. B. 223; 9 C. & P. 469.

(d) *Reg. v. Scott and Others*, Law J. 1842, Q. B. 254.

a company to make such railway, according to a plan deposited with the clerk of the peace, from which they were not to deviate more than one hundred yards. By a subsequent act, the company were authorized to use locomotive engines upon the railway. The railway was made parallel and adjacent to an ancient highway, and in some places came within five yards of it. The engines on the railway frightened the horses of persons using the highway as a carriage road. On indictment against the company for a nuisance, it was held that the interference with the rights of the public must be taken to have been contemplated and sanctioned by the Legislature, since the words of the statute authorizing the use of the engines were unqualified, and the public benefit derived from the railway (whether it would have excused the alleged nuisance at common law or not), shewed at least that there was nothing unreasonable in a clause of an act of Parliament giving such unqualified authority. (*a*)

Remedies.

Indictment.

It will hereafter be shewn (*b*) that where compensation is refused by a railway company, a mandamus will issue to compel an assessment of it. In other respects, also, if a railway company will not comply with the provisions of their act of Parliament, the Court of Queen's Bench will in general compel by mandamus. As, however, interference by such a procedure is usually exercised only when inferior

Mandamus.

(*a*) *Rex v. Pease*, 4 B. & Ad. 30. In equity an injunction was granted to restrain a Railway Company from committing a nuisance from their ovens used in making coke, but, on appeal, the injunction was dissolved, on the ground that the nuisance was

cognizable at law, and not in equity. *Semple v. The London and Birmingham Railway Company*, 1 *Railway Cases*, 120.

(*b*) *Post*, Chapter on Compensations, where mandamus is again treated of.

Remedies.

Courts or incorporated bodies, refuse to proceed in some course prescribed by law, and not where there has been a misapprehension or error in that course, if it appear that a railway company are substantially complying with the terms of the particular instrument of incorporation, there will be no ground for granting a mandamus.

Reg. v. Eastern
Counties
Railway Com-
pany.

A company empowered by statute to make a railway from London to Norwich and Yarmouth, passing through Colchester, and required to set out any deviations from the Parliamentary plan before the 27th July, 1839, and to make compulsory purchases of land before the 27th July, 1840, had, for two or three years, proceeded with great activity to complete the line as far as Colchester, but on May 6th, 1839, had begun to carry on the line below Colchester. This course was approved of by the shareholders at large. The funds of the company were nearly exhausted; but it appearing doubtful whether the company had any *bonâ fide* intention of completing the entire line, the Court of Queen's Bench, at the instance of a small proportion of shareholders, and of a few landowners on the line, made absolute a rule for a mandamus to the company to set out their deviations, and make the purchases of land below Colchester. (a) So where a railway was made under the authority of an act of Parliament, by which the proprietors were incorporated, and it

(a) Reg. v. Eastern Counties Railway Company, 2 Per. & D. 648; 10 Ad. & Ell. 531. It was said by the Court that to carry a railway through a portion only of the described line, such as a third or a half, is a nominal, and not a real compliance with the act of Parliament authorizing the undertak-

ing. See Rex v. Birmingham Canal Company, 2 W. Bl. 708. Where, by a statute, trustees are authorized to make a road from one point to another, the making of the entire road is a condition precedent to any part becoming a highway repairable by the public. Rex v. Cumberworth, 3 B. & Ad. 108.

was provided that the company should have the beneficial enjoyment of the same; and the company, after making the railway, took up the rails and discontinued the way,— it was held that a mandamus would lie to compel the company to reinstate the railway, and lay the rails down again. (a) So a mandamus was issued commanding a railway company to make an arch by which the railway was carried over a street, of a certain height, according to the provisions of the act, (b) and to make the approaches to a bridge of the width required by the act. (c)

Remedies.

Rex v. Severn
and Wye
Railway Com-
pany.

The Court have, however, refused a mandamus to compel a railway company to alter a viaduct built over a turnpike road, so as to make it conformable with the provisions of the act, the prosecutors not having demanded that it should be made in the particular way required, although from time to time in the progress of the work they expressed their disapprobation of the manner in which the company were doing it. (d) The Court have also refused a mandamus to compel a railway company to convey along their line the goods of a certain carrier, there being no clause in the act requiring the carrying of all goods offered for conveyance, and this, although the company had agreed with certain other carriers to convey their goods exclusively; for if the applicant had any right, he had his remedy by action. (e) So where in an action brought against a company, in the name of the treasurer, the plaintiff obtained a verdict, but entered up his judg-

(a) *Rex v. Severn and Wye Railway Company*, 2 B. & A. 646.

(b) *Reg. v. Eastern Counties Railway Company*, 2 Q. B. 569.

(c) *Reg. v. Birmingham and Gloucester Railway Company*,

2 Q. B. 47.

(d) *Reg. v. Bristol and Exeter Railway Company*, 12 Law J. 1843; Q. B. 106.

(e) *Ex parte Robins*, 7 Dowl. 566.

Remedies.

ment, not against the treasurer but the company,—the Court refused a mandamus, commanding the company to pay the amount of the judgment,—for, as the plaintiff had entered up his judgment against the company, he might have his remedy by a writ of execution. (a)

SECT. VIII.—*General Statutory Provisions, or Matters of Parliamentary regulation.*

It is not contemplated, under this section, to treat of the several acts incorporating railway companies, but of those called general acts, which contain a variety of provisions for the better supervision and regulation of railways. (b)

With respect to companies established by acts of Parliament passed in and after the Session, 1844, the provisions appear to embrace the following objects,—1. The power of the Government to revise the scale of tolls, and to purchase railways. 2. An inspection previous to the opening of a railway.

1. *The power of the Government to revise the Scale of Tolls, and to purchase Railways.*

Power to revise tolls, and to purchase railways.

The powers here referred to apply to lines of “passenger railway.” This term means railways upon which one-third

(a) *Reg. v. Victoria Park Company*, 1 Q. B. 288. See further, the respective cases of *Rex v. Nottingham Old Waterworks Company*, 6 Ad. & Ell. 355. *Reg. v. Trustees of Swansea Harbour*, 8 Ad. & Ell. 439. *Reg. v. Deptford Pier Company*, ib. 910, and Chapter on “Compensations.”

(b) See 1 & 2 Vict. c. 98, App. 92; 3 & 4 Vict. c. 97, App. 111;

5 & 6 Vict. c. 55, App. 134; 7 & 8 Vict. c. 85, App. 154. Nor does the above section treat of the several classes of provisions of a uniform character, contained in certain general statutes, which provisions are to be considered as incorporated in every Railway Company's Act, passed in and after the Session, 1845, see App. 337, *et seq.*, and see *ante*, 59.

Power to revise
tolls, and to
purchase
railways.

or more of the gross annual value is derived from the conveyance of passengers by steam or other mechanical power. (a) The powers extend to any line made under any act obtained during the session, 1844, and in any future session. At the end of twenty-one years from the 1st of January, after the passing of any such act, if the clear annual profits divisible upon the paid up capital, upon an average of the three last years equal or exceed 10% per cent., the Lords of the Treasury, on giving three months' notice, may revise the scale of charges, and prescribe a new one, so as to keep the profits at 10% per cent. Except with the company's consent, the scale cannot be again revised for another twenty-one years. (b)

Whatever the rate of profit, the Lords of the Treasury, at the end of the term of twenty-one years, may purchase the railway, at twenty-five years' purchase of the divisible profits on an average of the last three years. If that average give less than ten per cent., the company may, in case of difference, insist upon the amount of purchase money being referred to arbitration. But this option to purchase the railway is not to be exercised, except with the company's consent, while the revised scale is in force. (c) Nor can the option of revision or purchase be applied to railways authorized by Parliament previously to 1844. No branch less than five miles long falls within the act. Nor can the option of purchase be exercised as to any branch without including the principal railway, if the company require it. (d)

The power of revision is coupled with an agreement to give a guarantee by the government that if the charges so revised do not realize ten per cent., the deficiency shall be

(a) 7 & 8 Vict. c. 85, s. 25,
App. 164.

(b) S. 1, ib. 154.

(c) S. 2, ib. 155.

(d) S. 3, ib.

Power to revise
tolls, and to
purchase
railways.

made up, (a) and notice of revision or purchase even cannot be given until a future Parliamentary authority shall have been obtained for giving the guarantee, or paying the purchase-money. (b)

For the purpose of ascertaining the state of the company's receipts during the last three years, the company are to keep accounts of the same receipts and payments. (c)

2. *Inspection previous to opening a Railway.*

Inspection of
railway.

No part of a railway can be opened for the conveyance of passengers until after a month's notice by the company to the Board of Trade of the intention to open it, nor until ten days after notice by the company to the Board of Trade that the railway has been completed and is ready for inspection. (d) If the officer appointed to inspect report that the railway is unsafe, the Board of Trade may postpone the opening from time to time. (e)

With respect to railway companies, the acts for which were obtained before, in, and after the session of 1844, (f) the statutory provisions relate to,—

1. Certain powers of supervision exercised by the Board of Trade,—
2. The making of certain returns to the Board of Trade,—
3. Certain special powers which may be exercised by railway companies, beyond what are contained in their several acts of Parliament,—
4. Certain matters of police,—
5. Miscellaneous provisions.

(a) 7 & 8 Vict. c. 85, s. 1, App. 155.

(b) S. 4, *ib.* 156.

(c) S. 5, *ib.*

(d) 5 & 6 Vict. c. 55, s. 4,

App. 134. A penalty of 20*l.* a day, whilst the railway is open without notice, s. 5.

(e) S. 6, *ib.* 135.

(f) See *ante*, 86.

1. *Certain powers of supervision exercised by the Board of Trade.*

Where two railway companies have rails in common, or a common terminus, and disagree as to their arrangements for conducting their joint traffic, the Board of Trade, on application, may decide the matters in dispute so far as they relate to the safety of the public. (a) So also with respect to laying down branch lines opening into the flanches of main lines, and to forming roads or railways across existing railways on a level, the Board of Trade may direct that such powers as are contained in the acts of the railway companies, shall be exercised subject to such conditions as they shall impose. (b)

Supervision by Board of Trade.

And where railways cross turnpike and other roads on the level, the Board of Trade may authorize a company to effect that object by bridges or archways at their expense, on application by the company, and hearing the several parties interested, provided the company's proposal does not involve any violation of existing rights without adequate compensation, and the Board of Trade may impose such conditions as they shall think fit. (c) So also they are to control companies in entering upon adjoining lands to repair accidents. (d)

Crossing levels.

In the several acts constituting railway companies, compulsory powers are given to purchase and take land which expire at the end of a certain time. The Board of Trade are authorized by general statute to certify, after the ex-

Additional lands.

(a) 5 & 6 Vict. c. 55, s. 11, App. 137. A penalty of 20*l.* a day is imposed in case of neglect or refusal to obey the order of the Board of Trade.

(b) 5 & 6 Vict. c. 55, s. 12, App. 137.

(c) S. 13, *ib.*

(d) S. 14, *ib.* 138, and *post*, 92.

Supervision
by Board of
Trade.

piration of that time, that the public safety requires additional land to be taken by a company for the purpose of widening embankments, &c. The effect of this certificate is to revive the compulsory powers contained in the expired acts. Before the company apply for a certificate they must give fourteen days' notice to the parties interested, who may, within that time be heard by the Board of Trade. If the application be refused, the company may be required to pay the parties' expenses. (a)

Gates at level
crossings.

By the railway acts gates at level crossings are required to be kept constantly closed. They are now to be (b) kept closed across the turnpike, or other road, instead of across the railway, except when carriages and cattle passing along the road shall have to cross the railway. But the Board of Trade have power to direct, if necessary for the public safety, that the gates shall be kept closed across the railway. So likewise they are empowered to determine disputes relating to the opening of ledges or flanches of railways, which duty was formerly required to be performed by justices in Quarter Sessions. (c)

Inspectors.

Persons in the capacity of inspectors of railways are appointed by the Board of Trade. They may at all reasonable times, enter upon and inspect the railway works. If obstructed, a justice may inflict a fine. (d)

Bye-laws.

Railway companies are empowered by their several statutes to make bye-laws to be observed by persons other than their own servants. No such bye-law will be of any effect until two months after a certified copy has been laid before the Board of Trade, unless before that time they

(a) 7 & 8 Vict. c. 55, s. 15,
App. 137.

(b) S. 9, ib. 136, repealing the
2 & 3 Vict. c. 45.

(c) 3 & 4 Vict. c. 97, ss. 18,
19, App. 115, 116.

(d) 3 & 4 Vict. c. 97, ss. 5, 6,
App. 112.

shall have approved of it. They may also disallow bye-laws, and if, when they so disallow, they shall be in force, they may prescribe a time at which they shall cease to be so. (a) These provisions repeal those on the same subject contained in the company's acts respectively, under which bye-laws were required to be approved by Courts of Quarter Sessions. (b)

Supervision
by Board of
Trade.

A general supervision is exercised by the Board of Trade in another way. If they find that the provisions in the company's own acts, or in the general statutes, are not complied with, or that the company are acting in a manner unauthorized, or in excess of their powers, they may certify the same to the law officers of the Crown, who may proceed for penalties, apply for injunctions, or otherwise. (c) But no certificate is to be granted until twenty-one days after notice to the company. Nor can any proceedings be taken except within a year after the commission of the offence. (d)

Prosecutions.

2. *The making of certain returns to the Board of Trade.*

The Board of Trade may call for returns from every company of the aggregate traffic, and of all accidents attended with personal injury, together with a table of the tolls taken on the railway. If the returns are not rendered within thirty days after being required, a penalty of 20% for every day afterwards is imposed. The making of a false return is a misdemeanor. (e) With respect to accidents a cumulative provision is made by which the company are within forty-eight hours after, to give notice thereof, to the

Returns to be
made to the
Board of
Trade.

(a) 3 & 4 Vict. c. 97, ss. 7, 8, App. 162.
9, App. 112, 113.

(d) *Ib.* s. 18.

(b) *Ib.* s. 10.

(e) 3 & 4 Vict. c. 97, ss. 3, 4,

(c) 7 & 8 Vict. c. 85, s. 17, App. 112.

Returns to be made to the Board of Trade.

Board of Trade. Omission to do so renders them liable to a penalty of 5*l.* a day. (a) So likewise the Board of Trade are empowered to call for returns of serious accidents, whether attended with personal injury or not, in any form and manner they may think necessary for their information with a view to the public safety. These returns are, however, made privileged communications. If not sent in fourteen days after being required, a penalty of 5*l.* a day is in like manner imposed. (b)

3. *Special powers which may be exercised by Railway Companies, beyond what are contained in their several acts of Parliament.*

Special powers to be exercised by Railway Companies.

In the event of accidents or slips happening, or being apprehended, railway companies may enter upon the adjoining lands to repair or prevent accidents, if authorized by the Board of Trade; but, in cases of necessity, the companies may do so in the first instance; in which event, however, they are to report it to the Board of Trade, within forty-eight hours after such entry, to whom it will be competent to certify that the exercise of such powers is not necessary for the public safety. The powers in question will then cease. If lands are entered upon, compensation is to be made in the same manner as in cases provided for in their own acts of Parliament. (c)

Although otherwise specified in their acts, they may now use carriages weighing more than four tons. (d)

4. *Matters of Police.*

For the punishment of persons guilty of misconduct on the railway, any officer of the company, or special constable

(a) 5 & 6 Vict. c. 55, s. 7, App. 135.

(b) *Ib.* s. 8.

(c) 5 & 6 Vict. c. 55, s. 14, App. 138.

(d) *Ib.* s. 16, *Ib.* 139.

ble (a) may seize and detain any servant of the company, or any person employed by other parties, who may be found drunk while employed upon the railway, or who may commit offence against the bye-laws, or who may negligently do, or omit to do, any act whereby the life or limb of any person might be injured or endangered, or whereby the passage of any engine or carriage might be obstructed. Such servant, as also any who may be aiding or assisting, is to be taken before a justice of the peace for the place where the occurrence shall have happened, without any other authority or warrant than the act of Parliament in question, when, if convicted, he may be imprisoned, with or without hard labour, for a term not exceeding two months, or may be fined a sum not exceeding 10*l.*, and in default of payment be imprisoned in like manner as already mentioned. (b) The justice, however, may, instead of deciding summarily, send the case to the Quarter Sessions, before which tribunal the term of imprisonment is enlarged to two years, and in the meanwhile commit to prison, or discharge on bail. (c) So likewise, any person, not being a servant, if guilty of an obstruction to any engine or carriage, or doing anything to endanger the safety of persons conveyed by them, or aiding or assisting in doing so, may be convicted of misdemeanor, and imprisoned, with or without hard labour, for a term not exceeding two years. (d) If the offence be committed in Scotland the sheriff of the county is invested with the same powers as a justice of the peace in this country. (e)

If a railway officer or agent be obstructed whilst in the

(a) See form of appointment of special constable, App. 296.

(b) 3 & 4 Vict. c. 97, s. 13, App. 114; 5 & 6 Vict. c. 55, s. 17, App. 139.

(c) 3 & 4 Vict. c. 97, s. 14, App. 114.

(d) *Ib.* s. 15, App. 115.

(e) 5 & 6 Vict. c. 55, s. 18, App. 140.

Matters of
Police.

execution of his duty, or if any person wilfully trespass upon the railway, and refuse, on request, to go away from it, a justice may inflict a fine of not more than 5*l.*, and in default of payment, imprison for a term not exceeding two months. (a)

5. *Miscellaneous Provisions.*

Miscellaneous
provisions.

Railway companies are to erect and maintain fences throughout their lines, in the same manner as if the fences had been ordered by justices to be made by virtue of the provisions contained in the company's acts of Parliament. (b)

They are to provide one cheap train daily, subject to a penalty of 20*l.* for every day of omission. (c) The Board of Trade may exercise a discretion with respect to the conditions imposed by the act relative to cheap trains. (d)

Additional facilities are to be rendered in the transmission of mails, (e) and the military and police forces, together with stores, are to be conveyed at certain charges. (f) So likewise, they are to allow lines of electrical telegraph to be established, which, when made by private parties, are to be opened to the use of the public. (g)

Loan notes.

Railway companies have occasionally borrowed money upon what are called "loan notes." Such as have been

(a) 3 & 4 Vict. c. 97, s. 16,
App. 115.

(b) 5 & 6 Vict. c. 55, s. 10,
App. 136.

(c) 7 & 8 Vict. c. 85, ss. 6, 7,
10, ib. 157, 158. The receipts
by these cheap trains are ex-
empted from tax, sect. 9.

(d) S. 8, ib.

(e) S. 11, ib.

(f) 5 & 6 Vict. c. 55, s. 20,
App. 141; 7 & 8 Vict. c. 85,
s. 12, ib. 159.

(g) 7 & 8 Vict. c. 85, ss. 13, 14,
ib. 160.

already issued are confirmed, and they may be renewed for any period not exceeding five years from the 9th of August, 1844, but they are prohibited for the future, under a penalty of a sum equal to the amount of each note, except when they are specially provided for by any particular railway act. (a) A register of loan notes is to be kept by the company's secretary, open to the inspection of any shareholder, or other person interested. (b)

Miscellaneous provisions.

A remedy is also given for the recovery of tithe rent charged on railway land. (c)

(a) 7 & 8 Vict. c. 85, ss. 19, 20, App. 162.

(b) *Ib.* s. 21, ib. 163.

(c) *Ib.* s. 22, ib.

CHAPTER VII.

OF COMPENSATION FOR LANDS TAKEN, AND INJURIES
DONE, BY RAILWAY COMPANIES.

WITHOUT the authority of an act of Parliament no man can deal with the property of another against his consent. Such a power is unknown to the common law. (a) The owner, if his consent is asked, may demand what price he pleases for that consent, because, having the power absolutely to refuse, he may refuse until his own terms are complied with. (b) But this right of a party to exact his own price proved an insurmountable obstacle in the way of accomplishing objects which, although intended for the benefit of the projectors, were also calculated to promote public advantage. Parliamentary authority therefore became necessary, by which means the price of lands and buildings required by a company might be ascertained. And as property may be injured which is not taken but adjoins only to a railway, it is also reasonable and just that any injury which can be shewn to have been done to it from the prosecution of the works, shall be fairly compensated to the party sustaining it. (c) An assessment by a jury is substituted for the arbitrary amount fixed by

(a) *Taylor v. Clemson*, 2 Q. B. cases, 177.
978, Law J. 1842, Exch. Ch. 447.

(b) Per Master of the Rolls,
Barnard v. Wallis, 2 Railway

(c) See the judgment in *Reg. v. The Eastern Counties Railway Company*, 2 Q. B. 359.

individuals whose property is sought to be used, and given for the purpose of remedying the consequential evil, by way of injury, arising to adjoining lands. This assessment is called a "compensation."

The matter or thing to be compensated for.

The statutes conferring these compulsory powers are regarded as contracts made by the Legislature on behalf of every person interested in every thing to be done under them, or as conditional powers given by Parliament to take the lands of the different proprietors through whose estates the works are to proceed. (*a*)

The subject, "compensation" may be considered with reference to

1. The property, or injury, for which compensation is to be given,—
2. The notice to take lands,—
3. The precept to the sheriff to summon a jury,—
4. Mandamus to assess compensation,—
5. The verdict and inquisition,—
6. Certiorari,—
7. Costs.

SECT. I.—*The property, or injury, for which compensation is to be given.*

The property to be taken by a company is invariably specified in the schedule to the act, and a time is specified after which their compulsory powers cease. (*b*) It is

(*a*) See *ante*, 60.

(*b*) Under special circumstances, however, they may take land, if authorized by certificate of the Board of Trade. This is a power conferred by a general act, see

ante, 89. It will be understood that this chapter relates to such railway companies only as were incorporated previously to the Session, 1845. As to all others, provisions applicable to railway

The matter or thing to be compensated for.

with respect to such property that directions are given to assess compensation for the value of land used. But there may be injury done to property other than that mentioned in the schedule. In these instances compensation cannot be obtained unless the statutory provisions so direct. In their absence the injured party must have recourse to an action. Or, it should seem, in such a case, if the statute do contain provisions for compensation, the party may exercise his option to bring an action, or ask for compensation.

Turner v. Sheffield and Rotherham Railway Company.

By a railway act, it was provided that nothing in the act contained should authorize the company to take, injure, or damage, for the purposes of the act, any house or building which was erected before the 30th of November, 1835, without the consent in writing of the owner or other person interested therein, other than such as were specified in the schedule to the act, unless the omission therefrom proceeded from mistake, &c. A subsequent clause contained provisions for settling all differences which might arise between the company, and the owners or occupiers of any lands, which should be taken, used, damaged, or injuriously affected by the execution of any of the powers granted by the act, and for the payment of satisfaction or compensation, as well for damages already sustained, as for future temporary, or perpetual, or any recurring damages. It was held that the company were liable, in an action on the case, to the reversioner of a house erected before the 30th of November, 1835, and not specified in the schedule, for damage done to it by the obstruction of

companies generally will be found in the "Lands' Clauses Consolidation" Acts, 8 Vict. c. 18, App. 413, and 8 Vict. c. 19, App. 450, under which an

assessment may be had either at the hands of an arbitrator or before a jury. But, nevertheless, a great part of this chapter will be applicable to the new companies.

its lights by a railway station erected by the company under the act, and by the dust, &c., drifted from the station and embankment into the house, and that the plaintiff was not bound to come in under the compensation clause. (a)

The matter or thing to be compensated for.

But it is said, if part of the injury sustained has been done under the powers of the company's act there is no remedy for it by action, but by mandamus to assess compensation for the injury. It becomes a question for the jury whether or not the party has suffered any injury, and if so, for what amount. (b)

A railway act gave power to divert rivers, watercourses, &c. A company had raised the level of a brook into which the sough of a coal mine had been accustomed to empty itself, and thereby caused the water of the brook to flow into the sough and inundate and stop the coal works. It was said by the company, in answer to an application for a mandamus, that they had, in consequence of the claimant's remonstrance, restored the brook to its former level, and that no damage had been done by the alteration, such stoppages having been frequently caused by floods before. But the Court were of opinion that it was for the jury to ascertain whether any damage had been done, and that the claimant's allegation that he was injured by the diverting (*i. e.* altering the level) of the brook, was sufficient to induce the Court to grant a mandamus. (c)

Rex v. North Midland Railway Company.

And where a party is entitled to an easement over lands purchased by a company, he cannot maintain trespass for

(a) *Turner v. The Sheffield and Rotherham Railway Company*, 10 M. & W. 425.

(b) *Rex v. North Midland Railway Company*, 2 Railway Cases, 1. *Thicknesse v. The Lancaster Canal Company*, 4 M. & W. 472.

See *Rex v. Hungerford Market Company*, 3 N. & M. 622, and *Fenton v. The Trent and Mersey Navigation Company*, 9 M. & W. 203.

(c) *Rex v. North Midland Railway Company*, 2 Railway Cases, 1.

The matter or thing to be compensated for.

acts done upon those lands to the prejudice of his easement. He ought, as soon as any damage is sustained, to claim compensation under the act. (a)

Where lands are taken they are, as already stated, mentioned in the schedule to the act. No difficulty can arise as to compensation with respect to such property so specified. But various instances have occurred of injury done to adjoining property, which have given rise to the several decisions now stated. And it will be observed, that the inclination of the Court is to give as wide an extension as possible to words in a statute where injury has been shewn to have happened.

Reg. v. Eastern Counties Railway Company.

Where the compensation clause contained the following words, viz. :—" And for settling all differences which may arise between the said company" and " persons interested in any lands which shall or may be taken, used, damaged, or injuriously affected by the execution" of the act ; effect was given to the words " injuriously affected," an injury having happened by lowering a road on which the land of the claimant abutted. (b)

Lowering adjoining road.

Bell v. The Hull and Selby Railway Company.

The Hull and Selby Railway Act provided that where any carriage road, "quay, wharf," &c. should be found necessary to be "cut through, raised, sunk, taken, or so much *injured* as to be impassable or inconvenient for passengers, &c. or for the transporting, conveying, landing, shipping, or depositing of any goods," the company should, before such cutting or other work should be done, "cause another good and sufficient road, quay, wharf, &c. to be set out and made instead thereof," &c. The plaintiff had a wharf on the river Humber, between which and the low

Intercepting a wharf.

(a) *Thicknesse v. The Lancaster Canal Company*, 4 M. & W. 472.

Railway Company, 2 Q. B. 347, Law J. 1842, Q. B. 66; 1 G. & Dav. 589.

(b) *Reg. v. Eastern Counties*

water mark the defendants constructed their railway, in the line prescribed by their act of Parliament, thereby rendering the wharf and the river inconvenient and dangerous. It was held that the plaintiff's wharf was thereby injured within the meaning of the section, which was not confined to an injury done bodily to the wharf itself: that he was entitled to have a new wharf constructed for him by the defendants, and was not bound to apply for compensation under another section, which empowered a sheriff's jury to assess the sum payable for any future temporary or perpetual or recurring damages, done or sustained by reason of the taking of land for the purposes of the act. (a)

The matter on thing to be compensated for.

The London Dock Company were empowered to take houses, &c., making compensation for "goodwill, improvements, or for any injury to be sustained by any persons interested in houses so taken. They were also authorized to level the ground, and to stop up all ways, and to provide such sluices, bridges, roads, &c., communicating with the docks and works, as they should think necessary. It was then enacted that if any person having an estate or interest not less than a tenancy from year to year in any house, &c.," should be injured in his said "estate or interest by the making of any such cut, sluice, bridge, road or other work," such person should be compensated. The company pulled down houses, and made a cut which intercepted several thoroughfares, and obliged those who had formerly used them to take circuitous routes. The tenants of a neighbouring public house demanded compensation, inasmuch as the pulling down of the premises, and the obstruction of access, had diminished the resort of persons to the house; and also, as the occupiers of the

Rex v. London Dock Company.

Intercepting thoroughfares.

(a) Bell v. The Hull and Selby Railway Company, 6 M. & W. 699.

The matter or thing to be compensated for.

Reg. v. London and Greenwich Railway Company.

Within fifty feet of the railway.

house were cut off from thoroughfares to the house formerly used, and thereby the value of the premises to sell or let as a public house or shop, but not as a private residence, were lessened. But the claimants were considered not entitled to compensation. (a)

The Greenwich Railway Company were empowered to take lands, &c. By section 45 if any person were applied to by them to sell any part of any house, warehouse, &c. in actual occupation, and should require the company to treat for the whole, and if they should not be willing to purchase the whole of such house, warehouse, &c., such person should not be obliged to sell part only. Section 47 enacted that, "if the owner, &c., of any house, manufactory, ground, or building, which should be situated within fifty feet of the railway, should give notice to the company to purchase his interest in such houses, manufactories, ground, or building, the company should treat for the purchase of his interest in the houses, manufactories, ground and buildings mentioned in such notice, and in case they should not agree, the compensation should be settled by a jury, whom the company might cause to be summoned. S. and Co. were lessees of premises, on which a vinegar manufactory, warehouses, &c., a principal dwelling-house and garden, and five smaller dwelling-houses stood, which premises were so situated that a straight line drawn parallel to the railway, at a distance of fifty feet, would divide the principal dwelling-house and the garden, but would pass between the rest of the premises and the railway. S. and Co. required the company to purchase their interest in the whole premises. The company refused, but offered to purchase the principal dwelling-house and

(a) Rex v. The London Dock Company, 5 Ad. & Ell. 163.

garden. It was held that the act did not oblige them to purchase more. (a)

The matter or thing to be compensated for.

The Blackwall Railway Act enabled the company to purchase lands, and required them to make compensation for damages. By section 50, if any person should be applied to by the company to sell part of a house, &c., in his actual occupation, and should offer to treat with them for the whole, and they should refuse, such person was not to be compellable to sell less than the whole. By section 51, if any dwelling-house, &c., situated within fifty feet of the railway, should be deteriorated by it, and the owner should require the company to purchase the same, they were required to treat for the purchase, compensation, &c.; proviso, that in no case should the company be compellable to purchase any portion of any dwelling-house, &c., which portion was situated at a greater distance than fifty feet from the railway: further proviso, that the company whenever called upon to take part of such dwelling-house, &c., might at their option take the whole, subject to payment of compensation, &c. The company were required to purchase a public house, forty-four feet in depth, the greater part of which was within fifty feet of the railway, but a portion comprising the bar and varying in depth from thirteen to sixteen feet, was more than fifty feet from the railway: and it was alleged that the premises were deteriorated by the railway, and that, if the former portion only were purchased, the residue would be useless to the owner. It was held that compensation was claimable for the whole, and that any house of which a very large proportion is within fifty feet, ought to be called a house within fifty feet. (b)

Walker v. The Blackwall Railway Company.

Within fifty feet of the railway.

(a) Reg. v. The London and Greenwich Railway Company, 3 Q. B. 166, Law J. 1842; Q. B.

187.

(b) Walker v. The Blackwall Railway Company, 3 Q. B. 744,

The matter or thing to be compensated for.

Reg. v. The London and Southampton Railway Company.

Tenant from year to year.

With respect to tenants from year to year, the London and Southampton Railway Act provided, that they should deliver up possession to the company at the expiration of six calendar months next after notice, whether such notice were given with reference to the commencement of the tenancy or not, and whether before or after the purchase of the lands by the company, or, at such time after the expiration of the notice as they should be required, and that where any tenant might be required to give up possession before the expiration of his term or interest, the company should make compensation for the value of his unexpired term or interest. On the 10th January, the company gave six months' notice to a tenant from year to year, whose holding began at Christmas. After the expiration of the notice, the tenant, who had refused to quit without compensation, was told by the company that possession would not be required till Christmas; the company did not take a conveyance of the reversion till the 25th of August. Of this case it was said by the Court, that the act of Parliament did not require two notices in the case of a tenancy from year to year; but the true construction was, that the company might either give the ordinary landlord's notice, ending with the current year of the tenancy, in which case no compensation would be due, or six months' notice under the act, to be given at any time, in which case the tenant would be entitled to compensa-

Law J. 1843; Q. B. 88. Per Curiam. "There is strong reason for holding the company to the rule of construing the words of parties most against themselves." In this case an error in judgment was committed by the sheriff, and it became necessary to apply for a mandamus to com-

pel the issuing of another precept. An application was made for the costs of this mandamus, but was refused, on the ground that the sheriff had made a mistake. Reg. on the Prosecution of Walker v. Sheriff of Middlesex, Law J. 1834, Q. B. 14.

tion for the value of the time between the expiration of the six months' notice, and the time when a regular landlord's notice would have expired. But in order to entitle the tenant to such compensation, the premises must be given up. If, as in this case, the company inform the tenant that he may hold them till the end of the current year, and he chooses so to do, the situation of the parties is the same as if a regular landlord's notice had been originally given, and the tenant is entitled to no compensation, because he has voluntarily retained the possession. It makes no difference that the company were not landlords when they gave the notice in January; that notice was undoubtedly meant to operate under the act, and would have done so but for the subsequent conduct of the parties. (a)

The matter or thing to be compensated for.

By the Liverpool and Manchester Railway Act compensation was directed to be made in certain cases, and "every tenant-at-will, lessee for a year, and other person in possession of lands, &c. through which the railway was intended to pass, not having any greater interest than as tenant-at-will, or lessee for a year," was to give up possession at six months' notice; but where such tenant was required to give up possession before the expiration of his term or interest, the company were to make compensation for the value of the unexpired term or interest. The company gave notice, as above, to a party whose lease had been several times renewed for terms of seven years, and whose landlord, at the time of the last renewal, had declined to renew for fourteen years, but assured the tenant that he would not be turned out at the end of the seven. The tenant afterwards laid out money in improvements. During the seven years the landlord sold his reversion to the

Rex v. The Liverpool and Manchester Railway Company.

Tenant at will.

(a) Reg. v. The London and Southampton Railway Company, 10 Ad. & Ell. 3; 2 Per. & Dav. 243.

The matter or thing to be compensated for.

Reg. v. The Hungerford Market Company.

Improvements.

company and died. In this case it was considered that the tenant had no interest for which the company were bound to make compensation. (a)

The Hungerford Market Act embraced all tenants for years, from year to year, or at will, and directed compensation to be given for any "loss, damage, or injury in respect of any interest whatsoever, for good will, improvements, tenants' fixtures, or otherwise." While the company were treating for the purchase of certain premises under the act, a person entered into an agreement to rent them for one year, and stipulated that if, with the owner's consent, he should hold beyond the year, he would quit at any quarter day, on receiving or giving three months' notice, that he would not underlet, or give up possession to any one, nor make any alteration without a written consent of his landlord; would keep all the glass entire, and so leave the same, together with all articles mentioned in a schedule, and all improvements or additions which he should make during his occupation, for the benefit of his landlord. The tenant occupied, with the consent of his landlord, for several years, while the above negotiations were proceeding. He afterwards received due notice to quit, and the purchase of the company was completed. He was held not to be entitled to compensation from the company in respect of improvements made during his occupation. (b)

Good will.

In another case arising under the same statute, a tenant from year to year was ejected by the company, but received a regular half-year's notice to quit. It appeared that she had been many years in possession, and that the tenancy

(a) *Rex v. The Liverpool and Manchester Railway Company*, 4 Ad. & Ell. 650; 6 N. & M.

(b) *Reg. v. The Hungerford Market Company*, 1 P. & Dav. 492.

was not likely to have been determined if the act had not passed. She was held entitled to compensation for the whole marketable interest which she had in the premises at the time when the act passed, and that the good will, though of premises on so uncertain a tenure, was protected by the act as an interest which would practically have been valuable as between the tenant and a purchaser, though it was not a legal interest as against the landlord. But it was otherwise where the tenancy was from year to year determinable at three months' notice ending with the year, and with a stipulation against under-letting without leave. (a)

The matter or thing to be compensated for.

The same statute provided compensation for persons "damaged or injured by or in the taking down of any of the messuages, or buildings to be taken down for the purposes of, or otherwise in the execution of the act." The company purchased a house not mentioned in the schedule, and in pulling it down injured the adjoining house. It was held, that the tenant of the adjoining house was not entitled to compensation by the process provided for by the act. (b) But where the statute enacted, that if at any time thereafter any person should sustain any damage in his lands, tenements, &c. by reason of the execution of any of the powers of that act, and for which a compensation was not thereinbefore provided, then and in every such case, such damages should be assessed by a jury as before directed with respect to such damages, &c. as were therein provided for,—a person whose property had been injured by the erection of the company's works, but which property was not mentioned in the schedule to the act, or book of reference, or marked in the maps or plans, was held to be

Injury to property not scheduled.

Rex v. The Nottingham Old Water Works Company.

(a) *Ex parte Farlow*, and *ex parte Wright and Others*, in the matter of the Hungerford Market

Company, 2 B. & Ad. 341, 348.

(b) *Rex v. Hungerford Market Company*, 3 Nev. & M. 622.

The matter or thing to be compensated for.

Rex v. The Leeds and Selby Railway Company.

Future injury.

entitled to compensation for the consequential injury thus occasioned. (a)

A railway company were empowered by statute to enter upon and use lands for the railway, and to purchase and hold lands; they were also bound to make such alterations as were necessary for the enjoyment of the railways then in use for a coal mine belonging to A.; over the works of which the railway was to pass: the act was not to give them the mines under any land purchased by them, but the mine owners might work them, doing no damage to the works of the company, or making good the same; the company were to compensate any party interested for any damage or inconvenience sustained by the execution of any of the works authorized by the act; such compensation to be assessed, if necessary, by a jury, which the company were required from time to time to summon, and which should assess compensation for damages already sustained, and for future, temporary, perpetual, or recurring damages. A. being owner of land over the said coal mine, and which land was leased to B., sold the land to the company, the coal mine not being taken into account. Afterwards B., in working the coal mine, damaged the railway, and was unable to work so profitably as he otherwise could, lest he should do further damage.—It was held, that B. was not entitled to compensation, either for the sum which it cost him to repair the damage done, or for the interruption to the working of his mine. (b)

A difficulty sometimes arises in assessing compensation where the statute directs the same to be given "for future

(a) Rex v. The Nottingham Old Water Works Company, 5 Nev. & M. 498.

(b) Rex v. The Leeds and Selby Railway Company, 3 Ad. & Ell. 683; 5 N. & M. 246.

temporary, or perpetual continuance of any recurring damages." It is said that the jury have no right to assess prospective damages except after an "example" of damage has already occurred. Unless the jury have an example to go by, they cannot fairly perform their duty. The cause of the damage must have existed in something more or less done or completed by the company. If there be a *permanent subsisting cause*, and the work occasioning the damage be incapable of beneficial alteration so as to obviate the evil, the jury have then, and then only, the power of computing the future damage. In such a case there is a permanent cause, the jury know how often the injury may accrue and what it is at the moment of inquiry, and from these data they have the power of making a contingent assessment of damages. "The case of *leakage* through the banks of the canal, has been put as an example, or the interruption of some watercourse; the effect of which can be collected from a bye-gone time, so as to afford some proper estimate with regard to future time. And it is in that case only, as it seems to me, that there is in general a power to assess future damages." (a)

The matter or thing to be compensated for.

Future injury.

If no such "example" of damage can be used by the jury at the time of assessment, the compensation or recompence will never be finally ascertained. It must be assessed, as it would seem, as often as any injury may happen. (b)

By an act of Parliament, the undertakers of the Aire and Calder Navigation were empowered to make (among other works) a navigable cut or canal from the river Calder, to communicate with the river at another point, and also to construct a railroad from such cut to the highway between Leeds and Wakefield; and for such purpose, to

Lee v. Milner.

(a) Per Parke, B., in *Lee v. Selby Railway Company*, 3 Aid. & Ell. 683; 5 N. & M. 246.

(b) *Ibid.* See *Rex v. Leeds and*

The matter or thing to be compensated for.

Lee v. Milner.

enter upon any lands, &c. making satisfaction as therein-after mentioned; and it was provided, that in case of any disputes or differences between the undertakers and the parties interested in the lands, &c., taken, used, damaged, or affected by the execution of any of the powers of the act, a jury should be summoned in manner therein directed, who should assess and ascertain the sum or sums of money to be paid for the purchase of such lands, &c., and also what other separate and distinct sum or sums of money should be paid by way of recompence either for the damages which should or might before that time have been sustained as aforesaid, *or for the future temporary or perpetual continuance of any recurring damages*, which should have been occasioned as aforesaid, and the cause or occasion of which should have been only in part obviated or repaired by the undertakers, and which could or would be no further obviated, repaired, or remedied by them. A dispute having arisen as to the value of a piece of land in which the contemplated railroad crossed the line of an existing railroad, a jury was summoned pursuant to the act, who assessed the value and damages as follows:— Value of the land 6*l.*, present damages nothing, future damages, 2,800*l.* It was held, first, that such part of the verdict as assessed the future damages, was void, for that in order to enable the jury under the act of Parliament, to make an assessment of future damages, the cause of injury must already exist in some work of the undertakers already done. (a)

(a) *Lee v. Milner*, 2 M. & W. 563; 3 N. & M. 802, in which 824. And see *Rex v. The West Riding of Yorkshire*, 1 Ad. & Ell. the same point arose under the same statute.

SECT. II.—*The Notice to take Lands.*

Possession of the lands described in the schedules of any Railway Act, is obtained by means of certain notices. Under the usual provisions the company give notice (*a*) to the party whose particular property is wanted. A schedule to be filled up by the party may accompany the notice. (*b*) Within a certain time he is to inform the company of the nature of his interest in that property, and what amount he is willing to take as the price of it. There are thus two notices—one by, the other to, the company. An agreement may now be come to, but if not, the act provides means by which the value of the land in question is to be ascertained; that is, the land mentioned in the notice by the company. The moment the company have given the notice, the relative situation of vendors and purchasers is constituted between the parties, and the value of the property, if the parties cannot agree, is to be fixed by a jury, to be summoned from the county or district within which the property is situated. (*c*)

Notice to take
lands.

The notice is deemed to be a declaration on the part of the company of an option, given to them by the statute, to purchase all the premises mentioned in the schedule. It was so considered, where an act incorporated the Hungerford Market Company, and authorized them to purchase certain scheduled hereditaments, and to give a notice to parties to send in their claims. It was held that, after giving the notice, the company could not abandon the purchase, though they offered to pay all reasonable costs incurred by an occupier in consequence,—and that

(*a*) See Form, App. 286.

(*b*) Ibid. 288.

(*c*) Per Lord Cottenham, in

Stone v. The Commercial Railway Company, 4 Myl. & Cr. 122.

Notice to take
lands.

the act obliged them, on his demand, to issue their warrant for summoning a jury, and the Court granted a mandamus accordingly. (a)

There may also be a notice emanating from the party and not the company. As where the act gives compensation for deterioration in the value of premises, by reason of the proximity of the railway. (b) In which case, if the notice be not attended to by the company, the party may request the sheriff to summon a jury. (c)

The company are bound by their notice, and when, in order to get the assessment of a jury of the amount to be paid for compensation, a precept is issued to the sheriff, for the purpose of summoning the jury, it must be consistent with the notice, in like manner as the proceeding before the jury must be in conformity with the precept.

Stone v. The
Commercial
Railway
Company.

A company required part of a yard belonging to the plaintiff. In the precept, which the defendants had issued to the sheriff for summoning a jury to assess the value, they had, by feet and inches, by reference to a plan, described, as being what they wanted, a part of a yard, which did not correspond with that for the purchase of which they had previously required the plaintiff to treat; for the description and reference in the precept excluded a portion of what had been described by reference to a plan in

(a) *Rex v. Hungerford Market Company*, 1 N. & M. 112; 4 B. & Ad. 327. "The Court came to a similar decision in *Rex v. The Market Street Company, Manchester*, which is not reported. That case was decided upon the general provisions of the act, and though the circumstances of the two cases are not precisely the same, yet in prin-

ciple they are alike." Per Parke, J. See *Stone v. Commercial Railway Company*, *ante*, 111.

(b) See Form of Inquisition before Sheriff, where such a notice had been given, App. 293.

(c) *Walker v. London and Blackwall Railway Company*, 3 Q. B. Rep. 744, Law J. 1843; Q. B. 88.

the notice to treat, and included a portion which was not referred to in the notice. The plaintiffs moved for an injunction to restrain the defendants from proceeding upon the precept, and upon any other precept for a similar purpose, and from entering upon the land referred to in the precept, and objected to the precept, on the ground that it did not correspond with the notice. It was said by the Lord Chancellor, "The act requires that all the company does shall be preceded by a notice—a notice of that which is to be the subject of inquiry before the jury; and if I were to hold that they might exclude from the consideration of the jury part of that which was comprised in the notice, it would be in the power of the company, after having given notice to take particular property, to subdivide that property into as many subjects of inquiry before the jury as they might think fit. I find no authority to subdivide the contract, as the company have done in this case, and that too, without any new notice to the party, who has no means of knowing what it is which is to be the subject of inquiry before the jury. If the company could do that, they would not be bound to complete their contract, and when the parties came before the jury, the owner might be told that it was not the intention of the company to take the opinion of the jury upon the value of that which was comprised in the notice, but upon the value of a small part of it only; for if they are not bound by the notice, they may take the jury's opinion upon any part of the land without any intimation to the owner as to what part that is to be. The proceeding before the jury must be consistent with the precept, and the precept must be consistent with the notice." (a)

Of the notice
to take lands.

(a) Stone v. Commercial Railway Company, 4 Myl. & Cr. 122. As an effect of the notice it may

be mentioned that, where tenants from year to year are in possession of property wanted for a

SECT. III.—*The Precept or Warrant to the Sheriff to Summon a Jury.*

Precept to
summon a jury.

The notice of the company's intention to take the lands and premises having been sent to the party interested, an agreement for the price of them may be come to. But if otherwise, the company are to issue their precept to the sheriff, either of their own accord, or upon demand of the claimant. (a) Or, if the company refuse to do so, on request, or neglect to do so, then, after the lapse of a specified time, the claimant may issue his precept to the sheriff to summon a jury. But this power of the claimant to issue a precept can only be exercised under express words given by the particular statute. (b)

The "precept" must be consistent with the "notice" in the description and particulars, whether by metes and bounds, or otherwise, of the property required. (c) After having sent the precept to the sheriff, it is usual to give notice to the claimant that a jury will be summoned for a particular day to try the matter in dispute. (d)

The statutes generally provide that all parties with

railway, and receive the usual notice, their interest in the premises is determined by operation of law. In such an event the rent due from the tenant must be apportioned. *Wainwright v. Ramsden*, 5 M. & W. 602; Bac. Ab. Rent. (M.) 2.

(a) See Form, App. 289.

(b) *Walker v. The London and Blackwall Railway Company*, 3 Q. B. 744, Law J. 1843, Q. B. 88. There the act provided that in cases of dispute between the

companies and parties claiming compensation, if the company did not, on request, issue their warrant for a jury within twenty-one days, the claimant might send a request to the sheriff to impanel a jury.

(c) *Stone v. The Commercial Railway Company*, 4 Myl. & Cr. 122. See *Rex v. The Hungerford Market Company*, 1 N. & M. 112; 4 B. & Ad. 327.

(d) See Form of Notice, App. 290.

whom the company shall have any dispute, shall, at their own costs, before the company shall be obliged to issue their precept for summoning a jury, enter into a bond to the company to prosecute their complaint, to bear and pay their proportion of the expenses of summoning the jury, and witnesses, and of taking the verdict, in case any part of such expenses shall fall on them. This bond must be given at the time the claimant requests the company to issue their precept. Where an application was made for a mandamus to compel the company to issue their precept, they objected, on shewing cause against the rule, that this bond had not been given. (a) But the Court overruled the objection, and granted the mandamus. If, however, it becomes necessary to apply for that writ, it would be prudent to offer beforehand, to enter into, or to tender to the company, the requisite bond.

Precept to
summon a jury.

SECT. IV.—*Mandamus.* (b)

If the company resist the making of any compensation, either absolutely, where the right to be compensated is clear; or by denial of any interest in the party claiming, which objection may arise to the person and also to the description of property said to be injured or taken,—the remedy is by application to the Court of Queen's Bench, who will grant a mandamus, commanding the company to take the necessary steps for the assessment of compensation.

Mandamus.

If it become necessary to apply for a mandamus, the party seeking to avail himself of that remedy, must have

(a) Reg. v. The Northern Union Railway Company, 8 Dowl. 329.

damus, Chapter on Railway Companies, *ante*, 83.

(b) See further as to Man-

Mandamus.

previously placed the company in the situation of having refused to give compensation. To do this he should make a distinct demand upon them, and should distinctly point out to them what it is they are required to do. (a) Unless there has been a refusal, the Court will not grant a mandamus. It is not, however, necessary that the word "refuse," or any equivalent to it should be used; but there should be enough to shew that the company withhold compliance with the request of the claimant, and distinctly determine not to do what is required. Mere delay in attending to the claim is not sufficient. (b)

It should, however, be borne in mind that the Court will not grant a mandamus to compel a company to proceed to an assessment of the value of land taken, if the parties interested in it do not apply within a reasonable time after the land has been taken by the company, especially if the parties have another remedy by ejectment. (c)

Two circumstances must concur to authorize the issuing of a mandamus; a specific legal right and the absence of an effectual remedy. But if it be doubtful whether there be a remedy, the Court will grant the writ. (d) And it is said to be no objection to the granting of a mandamus to do a particular act, that an indictment will also lie for the

(a) *Reg. v. The Bristol and Exeter Railway Company*, Law J. 1843, Q. B. 106; 4 Q. B. Rep. 162; 3 Gale & D. 384.

(b) *Rex v. Brecknock and Abergavenny Canal Company*, 3 Ad. & Ell. 217; 4 Nev. & M. 872. *Reg. v. Wilts and Berks Canal Company*, 3 Ad. & Ell. 477; 5 N. & M. 344. *Reg. v.*

Wilts and Berks Canal Company, 8 Dowl. 623. *Reg. v. Thames and Isis Navigation*, 8 Ad. & Ell. 901.

(c) *Rex v. The Stainforth, and Keadby Canal Company*, 1 M. & S. 32.

(d) *Rex v. Nottingham Old Water Works Company*, 1 Nev & P. 480.

omission to do that act. (a) Indictment is not, in some cases, an effectual remedy. Mandamus.

In the case of injury being done, if a mandamus be granted, the company may, in their return to it, deny that the damage, in respect of which compensation is claimed, was caused by their works, whereupon an issue will be directed, or they may contend that the injury is not one for which the act provides compensation. (b)

SECT. v.—*The Verdict of the Jury, and Inquisition.*

The inquiry in compensation cases is usually taken by the sheriff, or, if he is a shareholder in the company, then by the coroner. Where a claimant, and not the company, procures the inquisition to be had, it is no objection to the proceedings that one of the persons filling the office of sheriff (in Middlesex) is a shareholder in the company. The claimant has no means of knowing whether the sheriff is a shareholder or not, but the company have. But if, in such a case, the precept be addressed to the sheriff by the company, it will be objectionable. Any such objection is waived by appearing before the jury, and allowing the inquiry to proceed. (c) Verdict.

In general, lands are purchased by the company. Resort to a jury to assess compensation is only had where a price,

(a) *Rex v. Severn and Wye Railway Company*, 2 B. & A. 646; 2 M. & S. 80, where a mandamus went to compel a company to reinstate a railway. See this case observed upon by the Court, in *Reg. v. The Victoria Park Company*, 1 Q. B. 291, and see *Reg. v. The Bristol Dock Company*,

2 Q. B. 64.

(b) *Rex v. Eastern Counties Railway Company*, 2 Q. B. Rep. 347.

(c) *Corrigan v. The London and Blackwall Railway Company*, 5 M. & Gr. 219; 6 Scott's N. R. 241, Law J. 1843, C. P. 209.

Verdict.

or amount, cannot be agreed upon. The verdict of the jury, in such an event, if recorded at the sessions, as is sometimes directed, is a sufficient title,—a conveyance would be useless. (a)

If the verdict, however, be not recorded, parol evidence may be given of the finding of the jury, and of the grounds on which it proceeded. (b)

The verdict must be consistent with the “precept,”—as the latter must also be with the “notice.” (c)

Where the act directs that the verdict and judgment in compensation cases shall be “final and conclusive,” the Court will not grant a mandamus to the company to issue another precept, although the under-sheriff may have excluded from the jury one ground of damages, and the jury had also found a verdict against the evidence. (d)

An effect has been given to the verdict of a jury, and to the receipt of the money thereby awarded. They have been considered to constitute an “arrangement” with the company, with reference to particular objects, where the phraseology of the statute has allowed of such a construction.

An act gave compensation for damage sustained by

(a) See *Bruce v. Wilks*, 11 Ad. & Ell. 463. If a purchase takes place, the contract or assurance is frequently directed to be enrolled in the Court of Quarter Sessions at the company's expense, and copies made evidence. The vendor should in such a case require this to be done immediately after the execution of the contract, for a mandamus to enrol would, probably, not be granted after a lapse of a few years. See *Reg. v. Leeds and Liverpool Canal Com-*

pany, 11 Ad. & Ell. 316, where the period allowed to elapse was sixty-five years. And see *Rex v. The Commissioners under the Cocker-mouth Inclosure Act*, 1 B. & Ad. 378. See the new act, 8 Vict. c. 13, s. 50, App. 419.

(b) *Manning v. The Eastern Counties Railway Company*, 12 M. & W. 237.

(c) See *ante*.

(d) *Reg. v. The Eastern Counties Railway Company*, Law J. 1843, Q. B. 271.

reason of the severing or dividing of lands by the railway; and by its provisions the jury were to assess compensation, amongst other things, for or by reason of the severing and dividing the same from other lands : and by a subsequent clause, enacted that, where the owners of lands should in their arrangements with the company have received compensation for gates, bridges, &c., instead of the same being erected by the company for the facility of passing to or from either side of the severed lands, it should not be lawful for them to cross the railway from their lands so severed and divided, otherwise than by a bridge and to be erected by themselves. An owner of lands severed by the railway, preferred a claim for compensation, on the footing that there was to be a total separation of the land, without any communication being made, and received the amount assessed by a jury for such compensation. The verdict of the jury and receipt of the money were held to be an arrangement with the company, and that the party had no right afterwards to cross the railway for the purpose of the occupation of his lands, (a) and was in so doing a trespasser within the 3 & 4 Vict. c. 97, s. 16. (b)

If the proceedings have been regular, and the jury have awarded compensation, the company must pay the ascertained amount. It seems that an action of debt cannot be maintained by the claimant, where the act directs that the verdict awarding compensation shall be a record of the Quarter Sessions, but omits to provide a remedy for the recovery of the sum awarded. A writ of mandamus will, however, be granted, to compel the payment of that sum, if no other remedy be pointed out by the statute, or if it be doubtful whether another remedy

Verdict.

Manning v.
The Eastern
Counties Rail-
way Company.

(a) Manning v. The Eastern Counties Railway Company, 12 M. & W. 237.
(b) App. 111.

Verdict.

exists. (a) In a recent case, where a verdict of a jury was obtained before the sheriff of Middlesex, and recorded with the clerk of the peace for that county, an action of debt for the amount of compensation was sustained. (b)

Inquisition.

The verdict of the jury, when made up, is called an "Inquisition." (c)

Where the statute does not prescribe a regular form of inquisition, an enactment that the inquisition shall be kept among the records of sessions, and be a record, does not render it necessary to draw it up with the formality observed in setting out the judgment of an inferior Court. (d)

The rule applicable to all inferior jurisdictions that, unless sufficient appears upon the face of the proceedings themselves to show that the jurisdiction exists, such proceedings are altogether void, also applies to inquisitions taken by the sheriff in compensation cases. But in ascertaining whether there was jurisdiction, both the warrant or precept to the sheriff to hold the inquiry, and the inquisition itself, may be taken together. And where no particular form is prescribed by the statute, it will be sufficient if the jurisdiction is substantially made apparent upon the face of the warrant and inquisition taken together, or is to be inferred therefrom. (e)

(a) *Rex v. The Nottingham Old Water Works Company*, 1 Nev. & P. 480. See *Reg. v. Hull and Selby Railway Company*, Law J. 1844, Q. B. 257.

(b) *Corrigall v. London and Blackwall Railway Company*, 6 Scott's N. Rep. 241; 5 M. & Gr. 219, Law J. 1843, C. P. 209.

(c) See Forms App. 291.

(d) Per Littledale, J., in *Reg. v. The Trustees of Swansea Har-*

bour, 8 Ad. & Ell. 439. See provision in the new act, 8 Vict. c. 18, s. 50, Appendix, 419.

(e) *Taylor v. Clamson*, 2 Q. B. 978, Law J. 1842; Exch. Ch. 447. If a sheriff is empowered by private act of Parliament to take inquisition of the value of lands, giving notice to the owners, the notice must appear on the inquisition, otherwise the jurisdiction does not appear, and

Objections to the inquisition will not, in general, be given effect to, if made by the company or party putting in motion the proceedings upon which the inquisition is founded. (a)

Inquisition.

The trustees of a harbour were empowered to purchase lands, and it was enacted, that in case of difference between the trustees and any landholder as to compensation, and if the same could not be agreed for, or the landlord should refuse to treat, after twenty-one days' notice, the trustees might issue their warrant to the sheriff to summon a jury, who should appear before the justices at Quarter Sessions, and should there assess the compensation, and the justices should accordingly give judgment for the same. And that the verdict and judgment should be kept by the clerk of the peace among the records of sessions, and should be deemed records. The trustees offered money for certain lands, the landholder did not accept it, but desired that the amount might be settled by a jury. In the meantime, at their request, he consented that they should take possession, agreeing to pay him interest on the amount of the future compensation. The inquiry was held, and compensation assessed. An inquisition was drawn up, purporting to be taken at sessions under the statute, and stating that the trustees and landlord appearing by their counsel, the jurors, being sworn to inquire of the purchase-money of the lands (specified), and

Reg. v. The Trustees of the Swansea Harbour.

on *certiorari* all will be quashed. *R. v. Mayor of Liverpool*, Com. Dig. tit. Courts, (P.) 5.; 4 Burr. 2244: See judgment of Paterson, J. (5 Ad. & Ell. 579), who thought the "notice" ought to appear on the inquisition, not as the finding of the jury, but in the nature of a caption.

(a) *Reg. v. The Manchester and Leeds Railway Company*, 8 Ad. & Ell. 413. *Reg. v. The Committee-men for the South Holland Drainage*, *ibid.* 429. See *Rex v. Bagshaw*, 7 T. R. 363. *Reg. v. Trustees of the Swansea Harbour*, *post*, 121.

Inquisition.

recompense for damage, did assess and give a verdict for the sum of, &c., for the land, and the sum of, &c., for damage; whereupon the said Court did adjudge and order the said sums to be paid by the trustees. It was held, that the non-statement in the inquisition of any preliminary requisite to the taking of it (as twenty-one days' notice to treat) could not be insisted upon by the trustees, whose business it was to institute the proceedings. (a)

The inquisition, as already stated, cannot be objected to by the party who sets the proceedings in motion. It does not appear to be settled within what time the party whose land has been taken must raise any objection to it on his part. It was however, said by Coleridge, J., (b) that "whenever there has occurred a defect such as can never be remedied, the party interested may object as soon as the irremediable step is taken. Whenever a party interested in the regularity of these proceedings, sees that he cannot get his compensation, he may come forward with the objection. If any defect exist it must continue to the end of the proceedings. If the compensation be not properly awarded by the inquisition, it never can be properly awarded." In the instance referred to, it was held, that the objection might be taken before an order was made to pay the amount found by the inquisition.

The value of land, and the compensation for injury, are generally required by the statute to be assessed separately; but such provisions are directory only. The duty of the company is, at the time, to call upon the jury to make a separate assessment. (c)

(a) *Reg. v. The Trustees of the Swansea Harbour*, 8 Ad. & Ell. 439; S. C. 1 Per. & D. 512.

(b) *Rex v. Trustees of the Norwich and Watton Road*, 5 Ad. &

Ell. 580.

(c) *Corrigan v. The London and Blackwall Railway Company*, 6 Scott's N. Rep. 241; 5 M. & Gr. 219, Law J. 1843, C. P. 209.

So, where the Greenwich Railway Company wanted land in which a market-gardener had a term for years, and a jury summoned under the powers of the act (not being called upon by the company, or the claimant, to separate the value of the leasehold interest from the compensation for damages) gave a verdict for an *entire sum*, "as a satisfaction for all losses and damages;" it was held that the company could not treat this verdict as a nullity and require a new jury to be summoned. (a)

Inquisition.

In re London and Greenwich Railway Company.

But where there are several interests in the property in different individuals, the inquisition must assess the amount due to each person.

Several interests.

The trustees of a turnpike-road, under a local act, claiming to take certain premises on paying compensation to the parties interested, served a notice on a person, containing an offer of a sum as compensation for his individual third part in a term in the premises, with a warning, that in default of his acceptance, a jury would be summoned to assess compensation. They afterwards served him with a second notice, directed to him and several others interested in the premises, that, in pursuance of the local act, a jury would be sworn to assess the sums to be paid to the parties for their respective interests. Notices similar to the first were served on the other persons named in the second notice. The jury were summoned, and sworn to assess the sums to be paid for the respective estates, but found only the gross value of the premises. The inquisition stated that the jury found that sum to be the value to be paid to the parties for their estates, "according to their respective proportions therein," without apportioning it.

Rex v. The Trustees of the Norwich and Watton Road.

(a) In re London and Greenwich Railway Company, 4 Nev. & M. 458; 2 Ad. & Ell. 678.

Accord. *Corrigall v. London and Blackwall Railway Company*, 5 M. & Gr. 219.

Inquisition.

It appeared by affidavit that some of the parties were bare trustees. The Court considered the inquisition was bad for not apportioning the value among those who were interested, and also, it seems, for not setting out that the several parties had been served with notices to treat (a) although the fact appeared by affidavit. (b)

The inquisition need not state that the whole capital required by the statute has been subscribed.

Doe d. Payne
v. The Bristol
and Exeter
Railway
Company.

The Bristol and Exeter Railway Act enabled the Company, in case any person whose lands should be required for the purposes of the act, should for twenty-one days after notice in writing, given to him, neglect or refuse to treat, or should not agree with the company for the sale of his interest, to issue a warrant under their common seal or under the hands of three, at least, of the directors, to the sheriff of the county in which the lands should be, commanding him to summon and return a jury, who should inquire of, assess, and give a verdict for the amount of money to be paid for the purchase of such lands, and for compensation for damage thereto; and that the sheriff, should accordingly give judgment for such purchase-money &c., which should be binding and conclusive upon all persons, fourteen days' notice being given of the time and place of the inquiry. A subsequent clause of the act enacted, that the whole of the sums therein-mentioned as the probable expenses of making the railway, &c. should be subscribed for before any of the powers given by the act in relation to the compulsory taking of land for the purposes of the railway should be put in force. An inqui-

(a) See Reg. v. The Committeemen for the South Holland Drainage, 8 Ad. & Ell. 429; 1 Per. & D. 79, and Reg. v. The Trustees

of the Swansea Harbour, 1b. 439.

(b) Reg. v. The Trustees of the Norwich and Watton Road; 5 Ad. & Ell. 563; 1 Nev. & P. 32.

sition recited that notice had been given to the party that his lands were required by the company for the purposes of the act and that he had not within twenty-one days' afterwards agreed with the company for the sale of them; and also that fourteen days' notice had been given of the time and place of the inquiry before the sheriff. In ejectment by this party against the company for these lands, subsequently taken by them under the act, the Court held that the inquisition was sufficient in form, and that it need not set forth that the whole capital had been subscribed; but that if this were the fact, it should come by way of answer from the plaintiff. (a)

Inquisition.

SECT. VI.—*Certiorari to remove and quash Inquisitions.*

The writ of *certiorari* can be taken away by express words only. But the granting of the writ is a matter of discretion, notwithstanding there may be fatal defects on the face of the proceedings which are sought to be removed. (b)

Certiorari to remove inquisition.

Where the inquisition taken before the sheriff is defective it may be removed into the Court of Queen's Bench, and quashed. The conduct of the party applying will, however, be looked to when the writ is moved for. Nor will a *certiorari* be granted to bring up the inquisition, unless defects therein be positively sworn to. Thus where a statute directed that a railway company should not take lands unless set out in a schedule to the act, or

Reg. v The South Holland Drainage.

(a) Doe v. Payne v. The Bristol and Exeter Railway Company, 6 M. & W. 320.

Leeds Railway Company, 16 Ad. & Ell. 413; 3 Nev. & P. 439, and 1 Per. & Dav. 164.

(b) Reg. v. The Manchester and

Certiorari to
remove inquisition.

certified by justices to have been omitted by mistake, it was held not sufficient to shew that lands, which were the subject of the inquisition, were not in the schedule without negating the fact of the certificate. (a) Nor to assert generally, in addition to such statement, that the act did not authorize taking the land. Nor to allege further, that certain objections were made in a protest delivered before the taking of the inquisition, which were now in general terms sworn to be true.

Reg. v. The
Bristol and
Exeter Rail-
way Company.

Where the writ of *certiorari* has been taken away by the express words of a statute, the proceedings cannot be removed. But if they are not in pursuance of the act they are merely void. A *certiorari* was refused where a railway act directed that compensation for lands taken by the company, in certain cases, should be assessed by a special jury; that the deviation from the line of railway mentioned in the act, should not exceed a specified distance; and that no proceedings taken in pursuance of the act, should be removed by *certiorari*. (b)

Action of
trespass.

“If the company had jurisdiction, there can be no *certiorari*. It is said that if there be any violation of the provisions of the act, the proceedings become illegal and should be quashed. If this were so, there would be a *certiorari* in almost every case, for there would be almost always something to find fault with. But the parties applying are not without remedy, for they may bring trespass if the proceedings be void. It is argued that there will be a *prima facie* justification if the proceedings be not quashed. I doubt whether that would be so in any case,

(a) Reg. v. The Committeemen for the South Holland Drainage, 8 Ad. & Ell. 429; 1 Per. & Dav. 79.

(b) Reg. v. The Bristol and Exeter Railway Company, 11 Ad. & Ell. 202.

but clearly it would not be so where there has been a deviation from the line laid down." (a)

Certiorari to remove inquisition.

If the objection be to the form of the inquisition, a copy should be set out, or it should be sworn that the deponent could not procure a copy, and he should, in the latter case, swear positively on information and belief. It is not enough to swear that he "objects," that the inquisition does not contain certain requisites pointed out. (b) It is an almost invariable rule, that where a party applying for a *certiorari* fails from incompleteness in his affidavits, he will not have a *certiorari* granted to him upon fresh affidavits supplying the defect, as in the case of the defects above mentioned. Especially if he appears to have suffered no injury, or to have assented to the proceeding below.

With respect to the conduct of the party applying for the writ, the case of the South Holland Drainage may be referred to, in which land had been taken, and a *certiorari* to bring up the inquisition was applied for on the grounds, first, that the inquisition did not state such a notice to treat for compensation as was requisite under the act to give jurisdiction; secondly, that the jury had ordered a fence to be erected for the benefit of the applicant, in addition to a money compensation, instead of giving him the whole compensation in money; thirdly, that the applicant held in right of his wife, and that the tenure was copyhold, and no compensation was made to the wife or lord. The Court refused a *certiorari*, it appearing, on affidavit, that the applicant had consented to waive the notice, and re-

Reg. v. The South Holland Drainage.

Conduct of party.

(a) Per Littledale, J., *ib.*, 204. See further on the subject of *certiorari*, Corner's Crown Pr. 88, and see Reg. v. Lancaster and Preston Junction Railway Com-

pany, Law J. 1845, Q. B. 84.

(b) Reg. v. The Manchester and Leeds Railway Company, 8 Ad. Ell. 413; 3 Nev. & P. 439; 1 Per. & Dav. 164.

Certiorari to remove inquisition.

questioned that the jury might be summoned for a day too near to admit of proper notice under the act; that he had discussed the amount of compensation proper to be given, upon the supposition of the fence being erected, and he did not swear to his belief that the jury had awarded less money in consequence of the award as to the fence; and that, in the dispute respecting the land, he had not mentioned his wife's interest or the nature of the tenure, but had acted as if the property, was his own freehold. (a)

Reg. v. The Sheffield and Manchester Railway Company.

A distinction has been made between a total want of jurisdiction, where a clause for taking away the writ of *certiorari* has been held inapplicable, and a mere irregularity in the exercise of jurisdiction, in which case it does apply. The following is an instance of irregularity. A railway act directed that the purchase-money of lands taken by the company should be assessed by a jury impannelled by the sheriff or under-sheriff, or in case they should be interested, by certain other persons specified therein, to whom a warrant was to be issued by the company and by whom the jury and witnesses were to be sworn. It also provided that the verdict and judgment should be deposited with the clerk of the peace, and be deemed records to all intents and purposes: and that no proceeding taken in pursuance of the act, should be removed by *certiorari*. An inquisition was taken before two persons (namely, an assessor and a clerk of the under-sheriff, by whom the jury and witnesses were sworn) appointed *pro hac vice* by the sheriff, but not being any of the persons specially named in the act. The *certiorari* was refused. (b)

It will be sufficient to prevent the writ of *certiorari* from

(a) *Reg. v. The Commissioners for the South Holland Drainage*, 8 Ad. & Ell. 429; S. C. 1 Per. & Dav. 79.

(b) *Reg. v. The Sheffield and Manchester Railway Company*, 11 Ad. & Ell. 194; 3 Per. & D. 111.

issuing if it be taken away by one of two statutes, provided the other incorporates the provisions of the previous act. Accordingly, where a river navigation act provided that no proceeding to be taken in pursuance thereof should be removed by *certiorari*, and by a subsequent statute for improving the same navigation, it was enacted that all the powers, provisions, exemptions, rules, remedies, regulations, penalties, forfeitures, articles, matters and things whatsoever contained in the former act, should be in full force, and extend to and be applied and enforced as to that act, and the matters therein contained, in as full a manner to all intents and purposes as if therein re-enacted. These words were deemed sufficient to take away the *certiorari* on proceedings under the latter act. (a)

Certiorari.

Rex v. The West Riding of Yorkshire.

SECT. VII.—*Costs.*

The statutes conferring compulsory powers for taking land, provide for the payment of costs in cases where claims for compensation are litigated. These costs are usually taxed by the sheriff before whom the inquisition has been held. His powers of taxation are, of course, controlled by the particular provisions of the act under which the claim for compensation is made.

Costs.

The words of a statute giving costs were, "all the costs of summoning such jury and the expenses of witnesses, shall be defrayed by the said company." A rule was obtained, that all "such costs might be allowed as are usually given to the successful party in trials of civil causes in the Court of King's Bench." It appeared that the bill

Rex v. Gardiner.

(a) Rex v. The West Riding of Yorkshire, 1 Ad. & Ell. 563; 3 Nev. & M. 802. See Rex v. Fell, 1 B. & Ad. 380.

Costs.

of costs of the claimant's attorney for conducting the inquisition, including the fee of counsel, the expenses of certain surveys that had been made, and the expenses of the attorney in preparing the brief, attending the inquisition, and negotiating with the company, amounted to 346*l.* 7*s.* 4*d.* All those items were disallowed, and nothing more was allowed than the expense of summoning and attendance of the jurors and witnesses, and so much of the expense of the surveys as was incurred with a view to the trial, amounting altogether to 63*l.* 5*s.* It was said by Denman, C. J., "if there were any words which would at all justify our allowing the fee to counsel, and the costs of the attorney in conducting the inquiry, I should have no hesitation in giving them a liberal construction, and I think it very unjust that those costs are not provided for by the act of Parliament." The rule was, therefore, discharged. (a)

Reg. v Sheriff
of Warwick-
shire.

In the case of the Birmingham and Gloucester Railway Company, the act provided for summoning a jury, &c., and enacted (sec. 78) that "the party claiming compensation should be plaintiff, and have all such rights and privileges as plaintiffs in actions in law are entitled to." (b) Sect. 83 enacted, "that in every case in which the verdict of the jury shall be given for the same or a greater sum than shall have been previously offered by the company, all the costs of summoning such jury, and the expenses of witnesses shall be defrayed by the said company—if for a lower sum, then one moiety by each of the parties." Sect. 84, provided that parties requiring a jury to be sum-

(a) *Rex v. Gardiner*, 1 Nev. & P. 308; 6 Ad. & Ell. 112.

(b) These words are intended to regulate the general course of proceedings, to remove doubts concerning the right to begin,

and to show, in other respects, how the inquisition should be conducted. Per Denman, C. J., in *Rex v. Gardiner*, 6 Ad. & Ell. 117.

mentioned should give bond to pay their proportion of the Costs. War
 “costs and expenses of summoning and returning such jury, and taking such verdict, and of the summoning and attendance of witnesses,” in case any part of such costs and expenses should fall upon them. Where no offer had been made by the company, and a jury had been summoned, the above clauses, notwithstanding the provisions of sect. 78, were held not to entitle the claimant to the costs of the attorney’s letters and attendances, nor to the expenses of plans, &c., paid to the surveyors not called as witnesses. (a)

In another case, the statute enacted that “the costs and expenses of such notice or notices, precept or precepts, and of summoning and returning such jury and witnesses, and also of the said inquest, shall be paid by, &c.” The claimant’s attorney made out a bill as in the case of a common trial, containing charges for attendances, conferences, brief, &c., and an item as follows:—“22nd of January, attending this day at the Guildhall all day, when case heard, and compensation fixed at 720l.—3l. 3s. Paid the following witnesses for their attendance and loss of time in surveying, measuring, and valuing the property in question, and in attending as witnesses at the inquest.” The names of the witnesses, and sums paid, were then added. The justice, who had the power under the statute to allow, disallowed the costs contained in the bill. But the Court of King’s Bench granted a mandamus to compel the allowance of “the costs and expenses incurred in and about the inquest.” In this case, it was said by Denman, C. J., “The words ‘also the said inquest,’ must mean something besides that denoted by the preceding words, and I cannot draw any line: and I think they must mean Rex v. Justices of York.
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1136

(a) Reg. v. The Sheriff of Warwickshire, 2 Railway Cases, 661.

Costs.

all costs whatsoever; it is the case of a trial where one party obtains the verdict." And per Taunton, J., "With respect to the costs of surveyors, I should pause before saying that costs are to be allowed for them *quod* surveyors, but if they have been witnesses, they will be on the same footing as others." (a)

Corrigall v.
The London
and Blackwall
Railway
Company.

By the first act obtained by the Blackwall Railway Company, it was provided that if the jury gave the same, or a greater sum than the company had previously offered, the company should pay all the costs of the inquisition, if less than had been previously offered, that each party should pay half the costs, and that if, by reason of absence abroad, or any other disability, any person should have been prevented from treating with the company, the latter should pay the whole costs. A second act was silent as to costs. It was held that a party proceeding under the second act, in a case not falling within the classes mentioned in the first, was not entitled to costs. (b)

(a) *Rex v. The Justices of York*, 666.
1 Ad. & Ell. 828. See observations of Coleridge, J., on this case in *Reg. v. The Sheriff of Warwickshire*, 2 *Railway Cases*,

(b) *Corrigall v. The London and Blackwall Railway Company*, 5 M. & Gr. 219.

CHAPTER VIII.

JOINT STOCK BANKING COMPANIES BEFORE THE 7 & 8
VICT. c. 113.

THE Bank of England, (*a*) previously to 1836, possessed certain exclusive privileges of banking. In that year the 7 Geo. 4, c. 46, (*b*) was passed for the purpose of relieving the public from the restrictions imposed upon the business of bankers by an agreement which subsisted between the government and the Bank of England, and it enacts that the persons who enter into partnership for the purpose of carrying on the business of bankers, may do various things which, by the law previously existing, they were not allowed to do; and the act creates a number of liabilities which did not previously attach upon any persons, who might have been engaged in carrying on business from time to time, under the restrictions which were formerly imposed upon them; and it

Banking Com-
panies before
the 7 & 8 Vict,
c. 113.

(*a*) It is not intended in this compilation to treat of the Bank of England, which is a society incorporated by charter, and regulated by various acts of Parliament. A short history of the Bank of England will be found in the judgment of Tindal, C. J., in the *Bank of England v. Anderson*, 3 Bing. N. C. 589. So also,

with respect to the statutes now in progress through Parliament affecting Scotch and Irish Banking Companies, this work is necessarily silent; but they will be published in a Supplement as soon as they shall have been passed.

(*b*) App. 9.

Banking Companies before the 7 & 8 Vict. c. 113.

provides for various facilities to be given to creditors, various liabilities of persons who become connected with these concerns, to which they were not previously subject,— and it also provides certain other regulations which seem to have been intended as an exoneration from certain other liabilities, which, under other circumstances, might have subsisted. (a)

By the operation of the act in question a Joint Stock Banking Company become *quasi* a corporation, for it provides for the continuance of the partnership notwithstanding the change of partners. (b)

Banking companies consisting of more than six persons are deemed “trading companies” within the statute for facilitating the winding up “the affairs of Joint Stock Companies unable to meet their pecuniary engagements.” (c)

The recent statute, 7 & 8 Vict. c. 113, (d) has made further alterations with respect to Banking Companies, so that this subject must be considered with reference to such companies as were established before and after the 6th May, 1844, respectively.

The law relating to Banking Companies formed previously to the 6th May, 1844, may be considered under the following heads:

1. The formation of the Companies,—
2. Their powers and privileges,—
3. Their duties,—

(a) Per Master of the Rolls, in *Barker v. Buttress*, Law J. Ch. 1844, 58.

(b) *Steward v. Dunn*, Law J. 1844, Exch. 324; 1 Dowl. & L. 642. See 4 Dea. 200. See also *Harrison v. Timmins*, 4 M. & W. 510, as to a private act of Parlia-

ment. *Wilson v. Craven*, 8 M. & W. 584.

(c) 7 & 8 Vict. c. 113, s. 48, App. 226. *Ib.* c. 111, App. 200. The provisions of the statute referred to are comprised in a subsequent chapter.

(d) App. 213.

4. The mode of suing and being sued,—
5. Branch establishments,—
6. Judgments and executions,—
7. Set-off between companies and individual members,—
8. Dissolution,—

Banking Companies before the 7 & 8 Vict. c. 113.

SECT. I.—*The Formation of Banking Companies.*

These associations are constituted by deeds of settlement. As the persons interested are very numerous, the firm becomes an extended partnership; and as the objects are important and various, and requiring the application of large capital, it is manifest that much confusion and continual disputes would arise if a settled and previously understood mode of governance were not acted upon. So again, from the very number of the shareholders, it is apparent that the transactions of the company must be carried on by a few persons only, who act in pursuance of powers delegated to them by the body at large. The instrument devised for the purposes just mentioned is called a “Deed of Settlement,” sometimes a “Deed of Regulation.” The parties to it are the trustees, the directors or managers, and the shareholders, and it contains a variety of covenants and provisions for the disposition of the property and the management of the general concern. (a)

Formation.

Deeds of Settlement.

The effect of a deed of this description is, that all subscribers hold their property in the concern subject to its stipulations. So likewise with respect to the introduction of new members, that can be done only by observing the

(a) See outlines of Bank Deeds, App. 258—271.

Formation.Deeds of Settlement.

formalities prescribed by the deed, which usually points out the mode by which the seceding member must transfer his share in the partnership to the new member, and at what time, and whether by executing the original deed of settlement, or merely a covenant to abide by the provisions of such deed of settlement or otherwise, the new member shall be considered as having become a partner in the concern, and the old member as having ceased to belong to it.

It will, of course, be at once understood that these covenants, or series of agreements, between the respective shareholders, contained in the deed of settlement, are binding upon those parties only, and not upon persons having dealings with them. With respect to the latter, if they seek to proceed against any shareholder, they must, as hereafter shewn, first prosecute their rights against the public officer of the company. This peculiarity arises, together with certain other incidents, from the 7 Geo. 4, c. 46, and other statutes which regulate Joint Stock Banking Companies.

Banking Companies formed after the 6th May, 1844, become incorporated by virtue of letters patent, as will be shewn in the succeeding chapter. But those established before that date, under Deed of Settlement, subject to the regulations of the statutes referred to, may remain so constituted; or, if they desire to be invested with corporate powers, they may present a petition to her Majesty praying for letters patent. If, on complying with the provisions hereafter mentioned with respect to companies formed *after* the 6th May, the letters patent be granted, then they may carry on business as bankers according to the act 7 & 8 Viet. c. 113, but not otherwise. For this purpose a majority of the directors of a company, with the consent of three-fourths in number and value of the share-

holders at a general meeting, to be specially called, may resolve to make such alterations in the company's constitution as may be deemed necessary. The majority of directors may, if resolution be come to, execute a new deed of partnership on behalf of the company, (the execution by the shareholders being dispensed with). The company may then present such petition, with a copy of the resolution and of the new deed annexed. If letters patent be granted, the *then* shareholders become incorporated. The new deed will have the same effect as if it had been executed by all the shareholders. (a)

Formation.

SECT. II.—*The powers and privileges of Banking Companies.*

It has been already stated that previously to 1836, the Bank of England possessed certain exclusive privileges of Banking. In that year the Bank of England relinquished so much of those privileges as prohibited “any body politic or corporate, or any number of persons exceeding six, in England, acting in copartnership, from borrowing, owing or taking up any sum or sums of money on their bills or notes, payable on demand, or at any less time than six months, from the borrowing thereof.” (b) But this relinquishment was partial only and not entire, for it was enacted that the banking companies so permitted to be carried on should have the whole of their banking establishments, and carry on their business as bankers, at a distance *exceeding* sixty-five miles from London; and that every member of such copartnership should be responsible for the due payment of all bills and notes issued,

Powers and privileges.

(a) 7 & 8 Vict. c. 113, s. 45, (b) 7 Geo. 4, c. 46, s. 1, App. App. 224.

**Powers and
privileges.**

**Borrowing
upon their
bills, &c.**

**Bills payable
in London.**

and for all sums of money "borrowed, owed, or taken up" by the company of which such person should be a member; such person being a member at the time of the date of the bills or notes, or at the time of their maturity, or at the time of the borrowing, owing, or taking up of any money by the company upon bills or notes, or while any money on any bills or notes shall be owing or unpaid, or at the time of such money becoming due from the company. (a)

- In addition to the restrictions before mentioned, joint stock banks were prohibited from issuing or re-issuing in London, or at any place within sixty-five miles, any bill or note payable to bearer on demand, or any bank post bill, as also from drawing upon any partner or agent or other person, resident in London, or elsewhere within the prescribed distance, any bill of exchange payable on demand or being for a less amount than 50%. But the restriction did not extend to bills for 50% and upwards payable either in London or elsewhere at any period after date or after sight. (b)

The prohibition just stated, was, however, removed by the 2nd sect. 3 & 4 Wm. 4, c. 83, (c) which allowed joint stock banks to make their bills and notes payable in London by an agent, or to draw bills or notes upon such agent payable on demand or otherwise in London, and for any amount less than 50%.

Joint Stock Banks were not permitted "to borrow, owe, or take up" in London, or elsewhere, within the sixty-five miles, any money on their own bills or notes payable on demand, or at any less time than six months from the borrowing thereof, nor to make or issue any bills

(a) 7 Geo. 4, c. 46, s. 1, App.
10.

(b) *Ib.* s. 2, App. 11.
(c) App. 41.

or notes contrary to the provisions of the act 39 & 40 Geo. 3, c. 28, recited in the preamble of the 7 Geo. 4, c. 46, except as provided in the latter enactment. This however, did not prevent them from discounting in London or elsewhere any bills not drawn by or upon themselves or by or upon any person in their behalf. (a)

Powers and
privileges.

Under a subsequent statute, (b) a joint stock bank could not make or issue in London, or within sixty-five miles, bills or notes, "or engagements for the payment of money on demand, or upon which any person holding the same might obtain payment on demand;" but this was not to prevent a joint stock bank carrying on business at a greater distance than sixty-five miles, and not having a house of business or establishment as bankers in London or within the sixty-five miles, except as hereafter mentioned, "from making and issuing their bills and notes payable on demand or otherwise at the place at which the same should have been issued, being more than sixty-five miles from London, and also in London," nor from having an agent or agents in London, or at any other place at which such bills or notes should be made payable for the purpose of payment only, but no such bill or note could be for any sum less than five pounds, or be re-issued in London, or within sixty-five miles thereof.

Bills or notes
on demand.

And inasmuch as doubts had arisen as to the construction of the acts 39 & 40 Geo. 3, c. 28, and 7 Geo. 4, c. 46, and as to the extent of the exclusive privileges of the Bank of England, it was enacted that any partnership although consisting of more than six persons might carry on the trade or business of banking in London or within sixty-five miles, provided such partnership did not "borrow, owe, or

To borrow,
owe, or take
up, on bills or
notes.

(a) 7 Geo. 4, c. 46, s. 3, App.
11.

(b) 3 & 4 Wm. 4, c. 98, s. 2,
App. 42.

Powers and
privileges.

To borrow,
owe, or take
up, on bills or
notes.

take up" in England, any sum or sums of money on their bills or notes, payable on demand, or at any less time than six months from the borrowing thereof, during the continuance of the privileges granted by that act to the governor and company of the Bank of England." (a)

After the passing of this statute, great doubt was entertained as to what was meant by the words, "borrow, owe, or take up" on their bills or notes." A construction, had however, been previously given to these words by the courts of law. (b) An action was brought against the company of proprietors of the Manchester and Salford Water-works upon a bill of exchange for 200*l.*, accepted by them and payable three months after date. It was contended that this acceptance was an invasion of the privileges of the Bank of England. Per Abbott, C. J., "I am of opinion that this case falls within the provisions of the several acts of Parliament made for the protection of the Bank of England. The statute, by which the Bank was established as a company, contains a provision, 'that it shall not be lawful for any body corporate to *borrow, owe, or take up* any sum of money on their bills or notes payable at demand, or any less time than six months from the borrowing; that clause has been incorporated into all the subsequent acts relating to the Bank of England.' It seems to me, that by the fair interpretation of that statute, the words 'owe on a bill of exchange,' are applicable to those who are liable as acceptors, for such persons are debtors on the bill. (c)

(a) 3 & 4 Wm. 4, c. 98, s. 3, App. 43. Joint Stock Banking Companies for the purposes of deposit and otherwise, except as above mentioned, were therefore free to establish themselves in

the metropolis, and within the sixty-five miles.

(b) Broughton v. The Manchester Water Works Company, 3 B. & Ald. 1.

(c) See Wigan v. Fowler, 1

The question however, as to what is a "borrowing, owing, or taking up," was disposed of in the case of the *Bank of England v. Anderson*. (a) A bill in equity was filed by that company against the London and Westminster Bank, praying an injunction, and a "case," was sent to the Court of Common Pleas for their opinion, According to the judgment of the Court, the question was considered by them in this form: "Whether, under the words of the 3 & 4 Wm. 4, c. 98, s. 3, (b) a copartnership, consisting of more than six persons, and carrying on the trade or business of bankers within the distance of sixty-five miles from London, could by law in the course of such trade or business as bankers, accept a bill of exchange, payable at less than six months from the time of giving such acceptance."

Powers and privileges.

The Bank of England v. Anderson, in Equity.

The certificate of the Court of Common Pleas, containing their opinion—"that the acceptance by the London and Westminster Bank of the bill mentioned in the case was not lawful,"—having been transmitted to the Rolls' Court, the matter was again argued, (c) and it was contended on behalf of the Bank of England, not only that the acceptance was illegal as having been made in the course of a banking business, but that it would have been illegal, as having been made on the behalf of more than six persons in partnership together; even if not made in the course of a banking business, and an injunction to that extent was prayed.

Stark. N. P. 459. Perring v. Hammond, therein referred to.
 Dunston, Ry. & Moo. 426. Ex Dickenson v. Valpy, 10 B. & C.
 parte Randleston, Mont. & M. 86. 128.
 Slack v. The Highgate Archway (a) 3 Bing. N. C. 589.
 Company, 5 Taunt. 792. Harvey (b) App. 43.
 v. Kay, 9 B. & C. 356, and Magor (c) 2 Keen, 328.

Powers and
privileges.

The Bank of
England v.
Anderson, in
Equity.

It was said (a) by Lord Langdale, Master of the Rolls, "If the acceptance be illegal, the plaintiffs are entitled to be protected by injunction against a repetition of such illegal acts, but if the illegality depend not merely on the fact of acceptance, but, to some extent, upon the nature of the transaction, or of the circumstances in the course of which the acceptance was given, the injunction ought not to extend to all acceptances upon which the London and Westminster Bank may owe money, but only to such acceptances as are made or given in the course of the transactions, or under the circumstances upon which the illegality is to some extent dependant." Again, in the concluding part of his Lordship's judgment, "upon perusal of the Bank Acts, I think the object of the Legislature was, from time to time, to impose restrictions on persons carrying on the business of bankers; and on the present occasion, I do not think it necessary to give any opinion whether the words which have been used are or are not extensive enough to apply to transactions, not the transactions of bankers, or of bankers in the course of their banking business." His Lordship then granted an injunction to restrain the defendants, "in the course of their trade or business as bankers from accepting or causing to be accepted any bills or bill of exchange, payable on demand, or at any time less than six months from the time of the acceptance thereof."

In a subsequent case, upon an appeal from a decision of the Master of the Rolls, the extent of the privileges of the Bank of England was again contested, and carried before the House of Lords. (b)

(a) 2 Keen, 428.

England, 6 Bing. N. C. 415, in

(b) Booth, Bart., v. Bank of

the Rolls Court, 2 Keen, 466.

The London Joint Stock Bank, under circumstances which would have made it illegal in them as a company, and a violation of the rights and privileges of the Bank of England, to have accepted or issued the bills hereinafter mentioned, if drawn upon them, entered into an agreement with a bank in Canada to procure bills drawn by such bank upon George Pollard, the manager of the London Joint Stock Bank, but not a partner or shareholder therein, to be accepted by the said George Pollard, and to provide funds for the due payment of such bills, the money transactions arising therefrom being, in the account between the two banks, to be treated in all respects as transactions between the said two banks.

Powers and
privileges.

Booth v. Bank
of England,
(House of
Lords.)

Upon this state of facts the following questions were proposed by the House for the opinion of the judges:—

1st. Was the acceptance of such bills by the said George Pollard, in execution of the said agreement, lawful; regard being had to the acts in force respecting the Bank of England?

2nd. Would the acceptance of such bills be lawful, assuming that the London Joint Stock Bank at the time of such acceptances, had funds in their hands on account of the Bank in Canada, equal to the amount of the bills so accepted?

3rd. Would the acceptance of such bills be lawful, assuming that the London Joint Stock Bank had not at the time of such acceptances any funds in hand belonging to the bank in Canada, but that such bills were accepted on the credit of a contract by such bank to remit sufficient funds to the London Joint Stock Bank to meet such acceptances before the time at which the bills would become payable?

4th. Could the Bank of England maintain any action against the London Joint Stock Bank, founded upon such

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transactions, under either of the states of circumstances above supposed ?

Booth v. Bank
of England,
(House of
Lords.)

The unanimous opinion of the Judges, with the addition of that of the Lord Chancellor and Lord Brougham, was—

1. That the acceptance of such bills, in execution of such agreement, was unlawful, regard being had to the acts in force respecting the Bank of England ;

2. And would not have been lawful, even if the London Joint Stock Bank, at the time of such acceptances, had in their hands funds of the Canadian Bank equal to the amount of the bills ;

3. Nor if, without such funds in the hands of the London Joint Stock Bank, the bills had been accepted by G. P. on the credit of a contract by the Canadian Bank, to remit such funds to meet the acceptances ; and

4. That the Bank of England might maintain an action against the London Joint Stock Bank, founded on such transactions. (a)

Such was the state of the law as to the privileges of the Bank of England and the Joint Stock Banking Companies respectively. But on the 19th of July, 1844, a statute was passed to regulate the issue of Bank Notes, and for giving to the Bank of England certain privileges for a limited period. By this act (b), it is provided that after the day before mentioned, no banker, (c) shall draw, accept, make, or issue any bill, or promissory note, or engagement for the payment of money, payable to bearer on demand, or

(a) Booth and Others v. The Bank of England, 6 Bing. N. C. 415.

(b) 7 & 8 Vict. c. 32, s. 11, App. 145.

(c) The word "banker" in this statute applies to "corporations, societies, & partnerships," s. 28, App. 152.

“borrow, owe, or take up” any money on the bills or notes of such banker payable to bearer on demand. By a subsequent section, (a) banking companies, although exceeding six persons in number, either in London, or within sixty-five miles of it, may now draw, accept, or indorse bills of exchange, not payable to bearer on demand. But any banker carrying on business on the 6th May, 1844, and then issuing his own bank notes, under the authority of a license, may continue the issue of such notes to the extent and under the conditions hereafter stated. The right to continue to issue such notes will not be affected by any change in the company. But no partnership, or company, now consisting of six, or less than six persons, can issue bank notes after the number exceeds six. (b)

Powers and privileges.

If a banker become bankrupt, or cease to carry on business as a banker, or discontinue the issue of bank notes, either by agreement with the Bank of England, or otherwise, he can never resume the issue of notes. (c)

Provision as to issuing their own bank notes.

The amount to which a Banking Company may issue their notes is now limited, and it must not exceed their average circulation during twelve weeks preceding the 27th of April, 1844, as certified by the Commissioners of Stamps and Taxes. But the amount issued may vary, provided it does not exceed the average amount issued during four weeks as hereafter mentioned. (d)

If the prescribed average circulation be exceeded, the banker will forfeit a sum equal to the excess. (e)

(a) S. 26, App. 151. See 3 & 4 Wm. 4, c. 98, ante, 140.

(b) 7 & 8 Vict. c. 32, s. 11, App. 146.

(c) S. 12, ib.

(d) S. 13, App. 146. See ss. 14 & 16 as to banks united during

the twelve weeks before 27 April, 1844, and hereafter; and s. 15 as to publishing duplicate certificates, by the Commissioners of Stamps and Taxes, in the *London Gazette*.

(e) S. 17, App. 147.

**Powers and
privileges.**

**Weekly
accounts of
notes in
circulation.**

The Banking Companies issuing notes are to make returns. On some day in every week, the day to be fixed by the Commissioners of Stamps and Taxes, an account is to be sent to them of the amount of the bank notes in circulation on every day during the week ending the next preceding Saturday, and also an account of the average amount in circulation during the same week. And on completing the first period of four weeks, and so on completing each successive period of four weeks, the companies are to annex to such account the average amount of bank notes in circulation during the four weeks, and also the amount of bank notes which they are authorized to issue. Every account (*a*) is to be verified by the signature of the managing director or chief cashier. (*b*)

For the purpose of ascertaining the monthly average amount of bank notes in circulation, the aggregate of the amount in circulation on every business day during a complete period of four weeks, such period ending on a Saturday, is to be divided by the number of business days in the four weeks, and the average so ascertained is to be deemed the average for the four weeks. (*c*)

A separate license to authorize the issuing of notes must be taken out for each place where they are issued. But this does not extend to those Banking Companies which, on the 6th May, 1844, had taken out four licenses for more than four separate places. (*d*) Compensation is provided for such bankers, or Banking Companies, as may have entered, (or may hereafter,) into agreements with the Bank

(*a*) 7 & 8 Vict. c. 32, s. 18, App. 147. See form of account, App. 153.

(*b*) A penalty of 100*l.* is imposed if the account be not duly and properly rendered, or if

falsely rendered, *ib.*

(*c*) S. 19, App. 147.

(*d*) S. 22, App. 149. See the 9 Geo. 4 c. 23, for enabling bankers to issue unstamped notes, &c.

of England, for ceasing to issue their notes, and for issuing Bank of England notes. But the compensation itself will cease on the 1st August, 1856. (a)

Powers and privileges.

Inspection of books.

To insure the rendering of true accounts, a power is given to inspect the bankers' books, &c., and also to take extracts. A refusal to allow the same to be done subjects the company to a penalty of 100*l.* But this power to inspect cannot be exercised by the Commissioners of Stamps and Taxes without the consent of the Lords of the Treasury. (b)

SECT. III.—*The duties of Banking Companies.*

Before a Joint Stock Bank could issue bills or notes, or borrow, owe, or take up money upon them (c) it was necessary to make a return according to a prescribed form and containing certain particulars. (d) The return was required to be sent to the Stamp Office, there filed, and registered in a book. This book may be searched on payment of one shilling for every search. (e) The return was to be made out by one of the appointed public officers, who was to verify it by oath. A similar return is required to be made between the 28th of February and the 25th of March in every year. (f)

Returns to be made.

(a) 7 & 8 Vict. c. 32, ss. 23, 24, 25, App. 149—151.

11, Sched. (A), App. 19.

(e) *Ib.* App. 12.

(b) S. 20, *ib.* 148.

(f) *Ib.*, s. 5, App. 12. It is

(c) See the observations of Parke, B., on these words in *Fletcher v. Crobie*, 9 M. & W. 254.

not necessary to prove that the affidavit annexed to the return was made by the public officer. *Steward v. Dunn*, 1 Dowl. & L. 642, Law J. 1844, Exch. 324.

(d) 7 Geo. 4, c. 46, s. 4, App.

Their duties.

Returns to be made.

The secretary or other officer is also to make out on oath, as often as occasion may render necessary, and transmit to the Stamp Office, a further return (a) of the name of any person appointed a new or additional public officer, and of any person who shall have ceased to be a member of the company, and of any person who shall have become a member of it, either in addition to or in the place of any former member, and of the name of any new or additional town where their bills or notes are, or are intended to be issued, and where the same are to be made payable. (b) These returns are also to be filed and registered at the Stamp Office.

Certified copies.

A certified copy of these returns, under the hand of a commissioner of stamps and taxes, is made evidence of the appointment of the public officers named in the return, and also of the fact that all persons named therein as members of the company, were members of it at the date of such return. (c)

Effect on shareholder's liability.

The provisions relating to these returns are directory only, so that if made out of time, or if it do not appear on the face of them that the person before whom they were verified on oath was a justice of the peace, they are still admissible in evidence. (d) But the effect is different in respect of the shareholder's liability. Although a person may have ceased to be a member, yet his liability as a member will, it appears, continue so long as there shall not have been a further return to the Stamp Office, shewing that he does not belong to the company. Where, therefore, it appeared by the return, that A. was a share-

(a) 7 Geo. 4, c. 46, Schedule (B), App. 20.

(b) *Ibid.* s. 8, App. 13.

(c) *Ibid.* s. 6, App. 12. Any person may obtain a certified copy

on paying ten shillings, s. 7.

(d) *Bosanquet v. Woodford*, Law J. 1844, Q. B. 93. See *Steward v. Dunn*, 1 Dowl. & L. 642, Law J. 1844, Exch. 324.

holder up to November, 1838, and that he then agreed to assign his shares to B., who was appointed by the company a director in respect of those shares; that in February, 1839, the company indorsed bills to the petitioners; that no return had been made under the eighth section of 7 Geo. 4, c. 46, and that the deed of transfer between A. and B. was not executed till March, 1839, it was considered that A. continued a partner to the world until March, and therefore, liable, under the proviso in the first section, to pay the bills, and proof against A.'s estate was accordingly admitted. (a)

Then duties.
Returns to be made.

If a company desire to issue and re-issue notes, payable to bearer on demand, without being previously stamped, the same may be done on giving security by bond. A license for that purpose will then be granted. (b) Two of the directors or members of the company will be the obligors, together with the cashiers or accountants of the company, as the commissioners of stamps may require. Under the terms of the bond, the Banking Company are to make half-yearly returns within fourteen days after the 1st January and 1st July respectively in every year of the unstamped notes issued by them. (c)

Composition for stamp duties.

Account of notes issued.

(a) Ex parte Prescott, 1 Mont. & Ch. 611.

(b) 7 Geo. 4, c. 46, s. 16, App. 16, and see 9 Geo. 4, c. 23, s. 7, for the condition of the bond.

(c) The following is the title of the form in question:—"An account of the amount or value of all the unstamped promissory notes and bills of exchange drawn by a company or copartnership of bankers in [names the several places], carrying on business

under the firm of issued under the provisions of the 9th Geo. 4, c. 23, and in circulation on the Saturday in every week of the half-year ending on the day of one thousand eight hundred and together with the average amount or value thereof according to the said account." The return is to be verified by the oath or affirmation of the manager. The verification may be in this form:--

Their duties.

The commissioners may exercise a discretion as to renewing the bonds. (a) By a subsequent statute (b) other provisions are enacted with respect to the accounts, which are to be kept weekly, and to shew the average amount of notes in circulation at the end of each week.

Accounts of notes issued.

Quarterly returns.

At the expiration of each quarter, ending on the 1st of April, 1st of July, 1st of October, and 1st of January, in every year, a like account is to be made up of the average amount of notes in circulation in the preceding quarter. "Such accounts and returns" to be verified upon oath before a justice of the peace.

These two provisions are enacted with different objects. The former with the intention to give facility to banks, by enabling them to compound for their duties, and requiring for that purpose certain accounts to be rendered. The latter with the intention of compelling every bank whatsoever to make periodical returns, from which may be ascertained the amount of notes on demand in circulation at any given time. By the former statute (c) penalties are imposed upon the company of 500*l.* for every week the account shall be omitted to be made and returned, and another penalty of the like amount if the

Penalties.

"A. B., manager of the Banking Company, maketh oath and saith, that the foregoing is a just and true account, to the best of ~~the~~ knowledge and belief of this deponent, of the amount or value of all the unstamped promissory notes and bills of exchange in circulation on the Saturday in every week for the half-year preceding the day of one thousand eight hundred and together with

the average amount of such bills of exchange so in circulation according to such account.

"Sworn before me, this day of at in the county of

"Magistrate in and for the of ."

(a) 7 Geo. 4, c. 46, s. 16, App. 16. See 9 Geo. 4, c. 23.

(b) 3 & 4 Wm. 4, c. 83, App. 40.

(c) S. 16, App. 18.

account shall be false, and the further penalty of 100% on the officer or person preparing or signing such false account; and a false oath, in verifying the account, is made perjury. By the latter statute (a), if the weekly accounts be not kept, or the averages not prepared and delivered to the Stamp Office, or if the secretary or other person verifying any account or average, send a false account or average, the company will be subjected to the penalty of 500%, and the secretary or other person to that of 100%: a false oath, in verifying the accounts, is made perjury.

Their duties.

Accounts of notes issued.

It has, however, been thought expedient to amend the 3 & 4 Wm. 4, c. 83, and to require banking companies to render more frequent returns of the amount of their notes in circulation. So that now all banking companies, making and issuing promissory notes payable to bearer on demand, are required to keep accounts of the amount of notes in circulation "at the close of the business in each week," and, "at the end of every four weeks," to make up from such weekly accounts an account of the "average amount of such notes in circulation during such four weeks." Within seven days after the four weeks, the last mentioned account is to be delivered to the Stamp Office, after having been verified by oath or affirmation. If any such account be not kept, or not delivered, a penalty of 50% will be incurred (b).

Monthly returns.

From the returns so made, and from those rendered by the Bank of England, an account is to be prepared from time to time of the average aggregate amount of promissory notes payable to bearer on demand, which may have been in circulation in the United Kingdom during the

(a) App. 40.

(b) 4 & 5 Vict. c. 50, s. 1 & 2, App. 132.

Their duties.

preceding four weeks, distinguishing those issued by the Bank of England, by private banks, and by Joint Stock Banks in England and Wales, by the banks in Scotland, by the Bank of Ireland, and all other banks in Ireland; as also of the average amount of bullion in the Bank of England during the same period.

Annual return.

Within fifteen days after the 1st of January in every year, a return is to be made to the Commissioners of Stamps and Taxes, of the name, residence, and occupation, of every person being a member of the company, also the name of the firm, and of every place where the business is carried on, subject to a penalty of 50*l.* The commissioners are to publish a copy of this return, on the 1st of March in every year, in a newspaper circulating in the particular town or county (a).

SECT. IV.—*The mode of Suing and being Sued.*

Mode of suing and being sued.

For the greater facility of legal proceedings, Joint Stock Banking Companies are empowered to sue, and may be sued, in the name of a public officer. The statute 7 Geo. 4, c. 46, s. 9 (b), enacts, “ that all actions and suits, and also all petitions to found any commission of bankruptcy against any person or persons, who may be at any time indebted to any such copartnership carrying on business under the provisions of this act, and all proceedings at law or in equity under any commission of bankruptcy, and all other proceedings at law or in equity to be commenced or

Public officers.

(a) 7 & 8 Vict. c. 32, s. 21, App. 148.

(b) App. 13. See 7 & 8 Vict. c. 113, s. 47, App. 225; extending this privilege of suing to all

companies of more than six persons, established on the 6th May, 1844, within sixty-five miles of London.

instituted for or on behalf of any such copartnership, against any person or persons, bodies politic or corporate, or others, whether members of such copartnership or otherwise, for recovering any debts, or enforcing any claims or demands due to such copartnership, or any other matter relating to the concerns of such copartnership, (a) shall and lawfully may, from and after the passing of this act, be commenced or instituted, and prosecuted in the name of any one of the public officers nominated as aforesaid for the time being of such copartnership, as the nominal plaintiff or petitioner, for and on behalf of such copartnership." So also where an individual may have a cause of action or suit against the company, one of the public officers is to be sued as the nominal defendant.

Mode of suing
and being sued:

Public officers.

The object of this section seems to be to avoid the great inconvenience which might otherwise have arisen from the number of shareholders in the company; for, at law, it would be incumbent on a creditor who sued the company for recovery of a debt, to have named each individual member of the company as a defendant in the action. But this section provides that an action brought against the public officer shall be equivalent to one against all the individual members. It takes from the creditor the right to sue at law or in equity, an individual partner by name, but by suing the public officer the creditor virtually sues the entire firm, and a judgment procured against him is a judgment against the entire firm, and may be enforced against each member of it, and for that purpose the act requires the names of all the partners to be registered. (b)

The powers of suing contained in the statute in question

(a) These words do not appear to convey a power to the public officer to execute deeds, or to compound debts due to the com-

pany.
(b) Ex parte Wood, 1 Mont., Dea. & De Gex, 92, 98.

Mode of suing
and being sued.

were found insufficient. They were extended, as also those in the Irish statute, 6 Geo. 4, c. 42, (a) by the 1 & 2 Vict. c. 96, under which any person being, or having been a member of the company may, in respect of a demand which he may have, either solely or jointly, with any other person against the company, proceed against the public officer. So likewise, the public officer may proceed against any person being, or having been a member, either alone or jointly with any other person, for any demand, that the company may have against such member. (b)

Appointment
of public
officers, and
evidence.

It is conceived that a mandamus will lie to appoint a public officer. (c) The appointment of that officer may take place, and he may act previously to making the first returns required on the establishment of a banking company. (d) The mode and return of his appointment have been already mentioned. (e)

The return to the Stamp Office is not the only admissible evidence of his being a public officer. Parol evidence of the appointment may be given. (f)

After his appointment, he is presumed to continue public officer unless the contrary be shewn. (g) And

(a) As to s. 10 of this act, see *Hughes v. Thorp*, 5 M. & W. 656.

(b) 1 & 2 Vict. c. 96, App. 89. continued by 3 & 4 Vict. c. 111, App. 130. Since these acts a banking company is in the nature of a corporation; it is not an ordinary copartnership suing jointly, and so notice to one of its members is not notice to all. Per Parke, B. *Steward v. Dunn*, Law J. 1844, Exch. 324; 1 Dowl. & L. 642.

(c) See judgment of Exch. in *Steward v. Greaves*, 10 M. & W.

721.

(d) *Edwards v. Buchanan*, 3 B. & Ad 788.

(e) *Ante*, 147, 148, where a certified copy of the return is made evidence.

(f) *Edwards v. Buchanan*, 3 B. & Ad. 788. And see *Armitage v. Hamer*, ib. 793, where an objection was taken to a return, on the ground of insufficiency of description of public officers.

(g) *Steward v. Dunn*, 1 Dowl. & L. 642, Law J. 1844; Exch. 324. Where a defendant gave a

where a deed constituting a banking company, contained a stipulation that if the public officer should become bankrupt, he should be disqualified and his office become vacant; this was held to mean that he should cease to be public officer, not absolutely, but at the election of the company. (a)

Mode of suing
and being sued.

Public officers, if they sustain loss, damages, costs, or charges, by reason of any execution as hereafter mentioned, are entitled to reimbursement out of the company's funds, or, in failure thereof, to contribution from the other members of the copartnership as in ordinary cases. (b)

In actions brought by public officers, they must be specially described. Where a declaration described the plaintiff as one of the public officers of certain persons united in copartnership "for the purpose of carrying on the trade or business of bankers in England," according to the 7 Geo. 4, c. 46; and it also contained a count for work and labour done by the copartnership "as the bankers" of the defendant, and for commission due in respect thereof; it was held, on motion in arrest of judgment, that, looking at the whole record, it sufficiently appeared that the copartnership were carrying on business as bankers under the statute. (c) But such a declaration

cognovit in a suit by a public officer, and before judgment was entered, the officer was removed from his office, but his name as plaintiff on the record had not been altered, and judgment was signed in his name, and the defendant was arrested on a ca. sa. issued upon the judgment; the Court allowed the record and writ to be amended upon the application of the banking company,

who were the real plaintiffs, by the insertion of the name of the new public officer, nunc pro tunc, and refused to set aside the judgment on the ground of the irregularity. *Webb v. Taylor*, 1 Dowl. & L. 676.

(a) *Steward v. Dunn*. †

(b) 7 Geo. 4, c. 46, s. 14, App. 16.

(c) *Davidson v. Bower*, 4 M. & Gr. 626; Law J. 1843, C. P. 110.

Mode of suing
and being sued.

would be bad on special demurrer. It should state that the copartnership was carrying, or had carried on, the trade and business of bankers. (a)

A public officer, as he is a mere Parliamentary defendant, will not be allowed to plead that he ceased to be such before the action was commenced, without an affidavit of the fact, for in effect it is a plea in abatement, but does not give a better writ. If he become bankrupt, he cannot plead his bankruptcy to the whole action, but only so far as he himself is concerned. (b)

It was contended, in a case of bankruptcy, that as the 1 & 2 Vict. c. 96, makes no express mention of *commissions or fiats of bankruptcy*, (c) the public officer of a company was not authorized to sue out any fiat against a member of the company. But it was held to be otherwise, and that the two acts (7 Geo. 4, c. 46, and 1 & 2 Vict. c. 96) were to be taken together. (d)

(a) *Fletcher v. Crosbie*, 9 M. & W. 252; Law J. 1842, Exch. 16. See *Christie v. Peart*, 7 M. & W. 491; 9 Dowl. 291. *Spiller v. Johnson*, 6 M. & W. 570; 8 Dowl. 366, for other forms.

(b) *Wood v. Marston*, 7 Dowl. 865. *Steward v. Dunn*, 11 M. & W. 63; Law J. 1843, Exch. 213, and see *Needham v. Law*, 11 M. & W. 400; Law J. 1843, 316, where, in addition to pleas of fraud, &c., a plea that the defendant was not the public officer at the commencement of the suit, was refused to be allowed.

(c) See 7 Geo. 4, c. 46, s. 9, *ante*, 152, where proceedings in bankruptcy are expressly mentioned.

(d) *Ex parte George Hall*, 3 Dea. 405. There had been a decision in the Court of Queen's Bench on an act of Parliament, enabling a company to sue and be sued in the name of their secretary, and to commence *all actions and suits* in his name, as nominal plaintiff; that Court having held that this did not enable the secretary to petition on behalf of the company for a commission of bankruptcy against their debtor. It appears, however, that this decision proceeded upon the construction of a private act of Parliament, in which no mention was made of suing out a commission of bankruptcy. *Guthrie v. Fiske*, 3 B. & C. 178. It is said that the

So it was held in bankruptcy, that a creditor might sue out a fiat in bankruptcy against any one of the members, and not proceed in the first instance, against a public officer. It was said by the Court of Review, (a) that the creditor had a common law right to do so, and that the statute (b) had not taken away that right, for a common law right could only be taken away by express words (of which there were none) in the statute. But this has been further considered, and it has been held by the Court of Exchequer that the common law right was taken away by the statute, and that a creditor of a Joint Stock Bank, could not sue an individual member of the company for his debt, but must proceed against the public officer, at least where it appears that there is a public officer, and that he is within the jurisdiction. (c)

Mode of suing
and being sued.

SECT. v.—*Branch Establishments.*

Where a Joint Stock Banking Company has branch establishments, it is usual to appoint a local manager at each place, by whom the business there is conducted. If an instrument in the form of a bill of exchange, be drawn

Branch
establishments.

words in sec. 9 of 7 Geo. 4, c. 46, (*ante*, 152) viz. "all petitions to found any commissions of bankruptcy against any person or persons," "and all proceedings at law or in equity under any commission of bankruptcy," and the words "or petitioner, &c.," were introduced into that act, in consequence of the decision in *Guthrie v. Fiske*, which occurred two years previously. See Mr.

Deacon's note, vol. 3, Dea. 417.

(a) Ex parte Wood, 1 Mont., Dea. & De Gex, 92, 98.

(b) 7 Geo. 4, c. 46.

(c) *Steward v. Greaves*, 10 M. & W. 711; Law J. 1843, Exch. 213. See *Blewitt v. Gordon*, 1 Dowl. N. S. 815. There the act under which the company was instituted was different in its terms. See also *Beech v. Eyre*, 6 Scott's N. R. 327.

Branch establishments.

upon a Joint Stock Bank, by the manager of one of its branches, by order of the directors, it may be sued upon as a promissory note. (a) And it may be mentioned, that branch banks are considered as separate indorsees (if an indorsement be made at each bank) for the purposes of notice of dishonor of bills of exchange. (b) But if the manager of a branch bank take a promissory note from a debtor, in the name of such manager, the general manager of the whole company may nevertheless sue upon the note. (c)

SECT. VI.—*Judgments and Executions.*

Judgments and executions.

Decrees in Equity.

Judgments at law.

Where proceedings are had in equity against a public officer of a company, a decree will have the same effect upon the partnership property, and upon and against the persons and property of all the members of it, as if they were parties to and before the Court in such proceedings. The Court may enforce a decree against any particular member of the company. (d) So likewise by another provision in the statute, judgments against a public officer will have the like effect upon the property of the company and upon that of every member of it as if they had been recovered against the company. The bankruptcy, insolvency, or stopping payment of a public officer, in his individual capacity, does not affect the company (e).

Where there have been proceedings at law, and a judg-

(a) *Miller v. Thomson*, 3 M. & Gr. 576.

(b) *Clode v. Bayley*, Law J. 1844; Exch. 17.

(c) *Robertson v. Steward*, 1 M. & Gr. 511.

(d) 7 Geo. 4, c. 46, s. 11, App. 14. See *Hall v. Connell*, 3 You. & Coll. 707.

(e) 7 Geo. 4, c. 46, s. 12, App. 15.

ment has been recovered against a public officer, whether as plaintiff or defendant, execution may issue against any member "for the time being" of the company. If ineffectual against any such member, execution may go against any person who may have been a member "at the time the contract was entered into," or who may have become a member "at any time before the contract was executed," or against any person who may have been a member "at the time of the judgment obtained." Leave of the Court, must, however, be first obtained in all these cases, except where execution goes against any member for the time being (*a*). Notice of motion must also have been given to the person "sought to be charged." But no execution can issue after the expiration of three years from the time when any person ceased to be a member of the company (*b*).

Judgments and executions.

Execution against members.

The terms of the section in question give a much wider execution than is usually given, when plaintiffs can only recover against those who were partners at the time the contract was made. It was intended to give a remedy against those who, though not members of the copartnership at the time when the contracts were entered into or executed, had become members afterwards, before judgment was obtained on those contracts (*c*).

It does not appear to have been yet determined whether, under the preceding statute, more than one exe-

(*a*) See *Eardley v. Law*, and *Harwood v. Law*, *post*, 161, 162.

(*b*) 7 Geo. 4, c. 46, s. 13. See *Barker v. Buttress*, Law J. 1844, Ch. 58, where the effect of this limitation was sought to be evaded, and where it was held that the limitation of three years having expired before an applica-

tion to the Court of Equity, it was a complete bar to the claims of creditors against a testator's estate. See the Master of the Roll's judgment as to the operation of s. 13.

(*c*) *Fowler v. Rickerby*, 2 Man. & Gr. 760.

Judgments and
executions.

cution can issue at a time upon the same judgments, or whether separate concurrent writs may be issued against different persons who were members of the company at the time of the judgment, or whether subsequent writs of *scire facias* can issue, without its being shewn that previous ones have proved insufficient (a).

Scire facias.

It was formerly considered that wherever, by the provisions of an act of Parliament, a person, not a party to the record, was to be affected by a judgment, or where the judgment was to be such as would not be ordinarily warranted by the previous proceedings upon the record, the proper course was to enter a suggestion on the roll, so that the party to be affected might demur if the plaintiff did not set forth facts to bring the case within the act of Parliament, or traverse those facts if untrue. (b).

But it is now settled that the proper course for making persons parties to the judgment, is to proceed against them by *scire facias*, and not by suggestion (c).

The object of enacting that the public officer should be sued was to do away with the plea in abatement. The provisions are clear to that extent, as far as respects original actions. They have, however, been construed virtually to extend to actions of *scire facias* founded upon the judgments in the original actions. A declaration in *scire facias* set forth the writ, which recited a judgment recovered by the plaintiffs against M., one of the public officers for the

(a) See *Esdaile v. Lund*, Law J. 1844, Exch. 117; 1 Dowl. & L. 564.

(b) See *Bartlett v. Pentland*, 1 B. & Ad. 704.

(c) *Whittenbury v. Law*, 6 Bing. N. C. 345. *Bosanquet v. Ransford*, and *Paulet v. Nuttall*, 3 Per. & Dav. 298; 11 Ad. & Ell. 520.

In error, 12 Ad. & Ell. 813; 2 Q. B. 972. *Cross v. Law*, 6 M. & W. 217; 8 Dowl. 789. See *Williams v. Aspinal*, 7 Scott, 822. And see *Penoyer v. Brace*, 1 Lord Raym. 244; Salk. 319. *Queen v. Ford*, 2 Lord Raym. 768; 2 Saund. 6, in notis. *Buxton v. Mardin*, 1 T. R. 82.

time being of a certain banking copartnership, and which said M., had been duly nominated, &c., as such public officer, and was sued for and on behalf of the company; and that fifteen persons (by name) were, at the time of recovering such judgment, members of the copartnership. The writ directed the sheriff to summon such fifteen persons. The declaration set out the sheriff's return of *nihil* as to all the fifteen, and the appearance of twelve of the fifteen, and thereon the plaintiff prayed judgment against the twelve, without further noticing the three who did not appear. It was held on demurrer to the declaration, that this was, at most, an irregularity only, and that the non-joinder of their copartners could not be pleaded in abatement to a declaration in *scire facias*, on a judgment against the public officer (a).

Judgments and
executions.

Fowler v.
Rickerby.

The statute intended that the members "for the time being," should be first compelled to pay. Therefore to enable a creditor, who has obtained judgment against a public officer, to procure the leave of the Court to issue execution against any person who was a member of the company, when or before the contract was entered into, or when the judgment was obtained, it is necessary that he should shew some *bond fide* attempt made to recover from some member or members for the time being. In a case where a creditor had sued the registered officer, who was in a state of notorious insolvency, and had issued execution against him, to which there was a return of *nulla bona*, there being contradictory affidavits respecting the state of solvency of other members for the time being; it was held that the creditor was not entitled on these proceedings to obtain a *scire facias* against parties who had ceased to be

Eardley v.
Law.

(a) Fowler v. Rickerby, 2 Man. & Gr. 760.

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executions.

members. (a) And in *Cross v. Law*, (b) Alderson, B. said, "the object is that the Court may see there has been a *bonâ fide* attempt made to fix all those who are members at the time being, before any execution be allowed to issue against members who are not in that condition."

Harwood v.
Law.

Although in order to enforce against a member of the company a judgment recovered against a public officer, it is necessary to proceed by *scire facias* founded on such judgment, and which is in the nature of a fresh action, yet it would appear that if a public officer be also a member of the company, execution may go against him without resort being had to a *scire facias*. In an action against the defendant, as the public registered officer of the Imperial Bank of England, judgment having been obtained for the plaintiff, execution was issued against the defendant. Application was made to discharge him out of custody, on the ground that the execution could not issue without a previous *scire facias*. The defendant did not, in his affidavit in support of the rule, deny that he was a member of the company. It was said by the majority of the Court of Exchequer, that if a *scire facias* were necessary in this case, the greatest inconvenience would follow: for as the parties liable to the execution in the first instance are those only who are members of the copartnership at the time of the execution, and the *scire facias* would only establish that the defendant was such at the time of the judgment, no execution could issue against him until a fresh *scire facias* was issued, to shew that he was a member at the time execution issued: so that *scire facias* after *scire facias* would be necessary. The defendant, therefore, ought to have shewn by affidavit that

(a) *Eardley v. Law*, 12 Ad. & Ell. 802.

(b) 6 M. & W. 217.

he had, *bond fide*, and without fraud, ceased to be a member of the copartnership, in which case he would be no longer liable to be taken in execution; but that at present he appeared to be a party to the record, and a member of the company. Mr. Baron Parke, however, seems to have expressed a different opinion, and to have thought that the question whether he was a partner at the time when execution issued, *i. e.* when the *scire facias* issued should be submitted to a jury, and consequently that the defendant was entitled to be discharged out of custody. (a)

Judgments and
executions.

SECT. VII.—*Set off, between Company and individual Members.*

There were frequent cases of companies and their members having cross demands against each other; their mutual rights being of a two-fold character, the one that of partner, the other that of customer. But there was nothing to prevent a member, in such circumstances, from insisting upon the right to set off a demand on his part upon the company against any claim they might have against him. To remedy this inconvenience, and in order to make the transactions of a banking company more exact, it is provided that no claim or demand of any member, in respect of his share of the partnership property, shall be set off, either at law or in equity, against any demand which the company may have against the member, "on account of any other matter or thing whatsoever." (b) Accordingly, where the bankrupt was a member of a banking company,

Shareholder's
right to set off.

(a) *Harwood v. Law*, 7 M. & 91, and 3 & 4 Vict. c. 111, App. W. 203; 8 Dowl. 899. 130.

(b) 1 & 2 Vict. c. 96, s. 4, App.

Shareholder's
right to set off.

and also kept a banking account with them in the character of a customer ; it was held that the company could prove for the balance of the account, and that without taking the general partnership accounts. (a) This* arose on the petition of the public officer of the Commercial Bank of England : and the object was to establish a proof for the sum of £,137*l.* 17*s.* 8*d.* against the bankrupt's estate, on his banking account with them. The commissioners had rejected the proof.

Ex parte
Richard Law.

So also where two of three partners, against whom a joint fiat had issued, were members of a joint stock banking company, the firm of the three being jointly indebted to the banking company at the time of their bankruptcy ; it was held that the banking company could prove against the joint estate of the three. This was the petition of one of the public officers of the "Imperial Bank of England" at Manchester, for the proof of a debt. The three bankrupts had, previously to June, 1839, carried on the business of commission agents and merchants, in copartnership together, at Manchester, under the firm of William and Samuel Hague and Co., and during the same period Shadwell carried on the trade of a manufacturer and merchant at Manchester, in his own name, and on his sole account ; and from the month of June, 1839, to the date of the fiat, William and Samuel Hague carried on the business of commission agents in copartnership together at Manchester, on their own account, under the firm of William and Samuel Hague, and the two last named were respectively shareholders in the Imperial Bank, but William Shadwell was not the holder or owner of any share, nor in any manner interested therein. The fiat issued 27th of Sept. 1839, when the three bankrupts were indebted to the Im-

(a) Ex parte Davidson, Law J. 1842, p. 1, Ch. on Appeal.

perial Bank, in the sum of 2,377*l.* for their advances and for interest, which sum the petitioner applied to prove under the fiat against the joint estate of the three bankrupts, but the commissioners rejected the proof, on the ground that the two bankrupts, William Hague and Samuel Hague, were shareholders or partners in the banking company. The Court of Review, however, after alluding to the 1 & 2 Vict. c. 96, ss. 1 and 4, decided that the petitioner was entitled to prove against the joint estate of the three bankrupts. (a)

Shareholder's
right to set off.

SECT. VIII.—*Dissolution.*

A Joint Stock Banking Company may be dissolved as Dissolution. between the several shareholders, and yet subsist with reference to other parties for the purpose of winding up their affairs, and they remain entitled to the privileges of the 7 Geo. 4, c. 46, up to the last moment. (b) . A dissolution, to be binding upon all the shareholders, must be come to and decided upon, in conformity with the stipulations in that behalf contained in the deed of settlement. (c) The

(a) *Ex parte Richard Law*, 1 Mont., Dea. & De Gex, 16. And see *Ex parte Law*, 1 Mont. & Chitty, 590.

(b) *Davidson v. Cooper*, 11 M. & W. 778.

(c) See the case of the Northern and Central Bank of England, and the provisions of the deed respecting dissolution, and the facts which were held to be sufficient to prove an averment of dissolution between shareholders in *Lyon v. Haynes*. The resolution

to dissolve was substantially in this form :—“ 1. That, in conformity with the said requisition of the said J. H., this company is hereby dissolved. 2. That the winding up of the affairs of the company be entrusted to the present board of directors, with power to them to employ and pay for such assistance as may be necessary for that purpose; and any three of them may act as a quorum. 3. That the assets of the company be realised with all

Dissolution.

company then become *ipso facto* dissolved. But when the dissolution has been once declared, the members present at any meeting held for that purpose, have no legal authority to bind absent shareholders, unless it be expressly given, (a) even as to an arrangement for realizing the assets and discharging the liabilities of the company and dividing the surplus. But such an arrangement between the shareholders is expedient, for without it, any one of them might receive payment of the debts due to the company, and each shareholder would have to concur in the indorsing and disposing of the securities of the company, and in settling the engagements into which they may have entered during their partnership. (b)

convenient speed, and that such portion of them as may not be required to meet the engagements of the company, be divided amongst the shareholders rateably, and in proportion to the shares respectively held by them, in such dividends as the directors may from time to time deem fit; a dividend to be declared at least once in every six months. 4. That

a copy of these proceedings and resolutions be transmitted to each shareholder,—and henceforth no transfer of shares to parties not already shareholders, be permitted.”

(a) *Lyon v. Haynes*, 6 Scott's N. R. 371.

(b) *Tindal, C. J.'s judgment in Lyon v. Haynes.*

CHAPTER IX.

JOINT STOCK BANKING COMPANIES SINCE THE
7 & 8 VICT. c. 113.

BANKING Companies composed of more than six persons, formed under an agreement or covenant of copartnership entered into since the 6th May, 1844, inclusive, can only be established by virtue of letters patent to be granted under the provisions of the 7 & 8 Vict. c. 113. (*a*) But where companies of more than six persons were in the course of formation between that date, and were registered at the Stamp Office before the 4th July following, and on such last-mentioned day actually carried on business, although their instrument of copartnership was not executed until after the 6th May, 1844, a period of twelve months from the 5th September, 1844, is given during which they may carry on business as if the act had not passed. But, if at the expiration of that time, they do not procure letters patent under the act, they must close their banking business. (*b*)

These Joint Stock Banking Companies are deemed "trading companies" within the statute for "facilitating the winding up the affairs of Joint Stock Companies unable to meet their pecuniary engagements." (*c*)

(*a*) S. 1, App. 213.

(*c*) *Ib.* s. 48, App. 226. 7 & 8

(*b*) 7 & 8 Vict. c. 113, s. 44, App. 224.
Vict. c. 111, App. 200.

Incorporation and incidents.

With respect to these companies, composed of more than six persons and established since the 6th May, 1844, a variety of matters of constitution and regulation are prescribed by statute. They relate to the—

1. Incorporation of companies, and incidents,—
2. Memorials or returns of occasional changes amongst shareholders, &c.,—
3. Actions by and against the company and shareholders respectively, and executions,—
4. Contribution between shareholders,—
5. Transfer of shares,—
6. Making of calls,—
7. Forfeiture of shares,—
8. Bills and notes.

SECT. 1.—*Incorporation of Company and incidents.* *

Incorporation and incidents.

Previously to a banking company beginning to carry on the business of banking, they are to petition her Majesty for letters patent. The Petition must be signed by seven at least of the company, and contain these particulars,—(a)

1. The names and additions of all the partners of the company, and the name of the street, &c., or other place where each partner resides,—
2. The proposed name of the bank,—
3. The name of the street, or other local description of the places where the business is to be carried on,—
4. The proposed amount of capital, not being in any case less than 100,000*l.*, and the means by which it is to be raised,—

(a) 7 & 8 Vict. c. 113, s. 2, App. 213.

5. The amount of capital stock then paid up, and where and how invested,— Incorporation and incidents.
6. The proposed number of shares in the business,—
7. The amount of each share, not being less than 100*l.* each

The petition will be referred to the Board of Trade, and the letters patent will be granted, if they report that the statutory provisions have been complied with. (*a*)

The company's deed of settlement is to be prepared according to a form approved of by the Board of Trade. In addition to any other provisions contained therein, it must contain specific provisions for the following purposes,— Deed of settlement.

1. For holding ordinary general meetings of the company once at least in every year, at an appointed time and place,—
2. For holding extraordinary general meetings of the company, upon the requisition of nine shareholders or more, having in the whole at least twenty-one shares,—
3. For the management of the affairs of the company, and the election and qualification of the directors,—
4. For the retirement at least of one-fourth of the directors yearly, and for preventing the re-election of the retiring directors for twelve months,—
5. For preventing the company from purchasing any shares, or making advances of money, or securities for money, to any person on the security of shares,—
6. For the publication of the assets and liabilities of the company once every month,—

(*a*) 7 & 8 Vict. c. 113, s. 3, App. 213.

Incorporation
and incidents.

Deed of
settlement.

7. For the yearly audit of the accounts by two or more auditors chosen at a general meeting of the shareholders, and not being directors at the time,—
8. For the yearly communication of the auditors' report, and of a balance sheet, and profit and loss account, to every shareholder,—
9. For the appointment of a manager, or other officer to perform the duties of manager.

This deed is to be executed by at least half of the shareholders, not less than 10% being paid up on each share of 100%, and annexed to the petition. The provisions thereof, with such others as to her Majesty shall seem fit, are to be set forth in the letters patent. (*a*)

The company's business cannot be begun until all the shares have been subscribed for, nor until the deed has been executed by all the shareholders, nor until half the amount of each share has been paid up. Without leave from the Board of Trade, the company cannot repay any part of the money. (*b*)

The letters patent will make the shareholders signing the deed a "body politic and corporate," by the name specified therein. Perpetual succession, a common seal, power to purchase and hold lands of the annual value expressed in the letters, are the incidents arising from such incorporation. The term of incorporation is not to exceed twenty years. And the letters may be made subject to other provisions and stipulations. (*c*)

The incorporation, however, does not limit the shareholder's liability. Each is liable for the engagements of the whole. (*d*)

(*a*) 7 & 8 Vict. c. 113, s. 4,
App. 214.

(*b*) S. 5, App. 214.

(*c*) S. 6, *ib.*

(*d*) S. 7, App. 215.

Companies carrying on the business before the 6th May, 1844, may apply for letters patent. (a) To meet these cases, contracts made before incorporation may be enforced as if made after. No action or suit will abate by reason of the incorporation. At any time before execution, the corporate name may, on application, be entered on the record instead of that of the plaintiff or defendant representing the company before incorporation. If execution has been issued before such application, the execution may be had as if the company had not been incorporated. (b)

Incorporation
and incidents.

SECT. II.—*Memorials, or returns, of occasional changes amongst the Shareholders, &c.*

Within three months after obtaining letters patent, and before the commencement of business, a memorial is to be made out (c). It must shew the true title of the company, the names and places of abode of all the shareholders as they appear in the company's books, the names and places of abode of every director and manager, or other like officer, the name of every bank to be established by the company, and also the name of every town where the company's business is to be carried on. A new memorial of the same particulars is to be made every year between the 28th of February, and the 25th of March. These memorials are to be sent to the Stamp Office, where they are to be filed, and registered in a book. Inspection of the book may be had by any one on the payment of a shilling. The company themselves are to print, and keep affixed at

Memorials.

(a) 7 & 8 Vict. c. 113, s. 45,
App. 224; see *ante*, 136.

(b) S. 46, *ib.* 225.

(c) Form in Schedule (A.) App.
226.

Memorials.

their principal place of business, a list of the registered names and places of abode of all the shareholders (*a*).

A memorial is in like manner to be made out, as occasion may require, of changes in the directors and shareholders, and places of carrying on the business (*b*).

These memorials must be signed by the manager or one of the directors, and verified by the same person by making a declaration before a justice of the peace, or Master extraordinary in Chancery. If the declaration be false in any material particular, the person making it is guilty of a misdemeanor (*c*).

Copies of the memorials, certified by a Commissioner of Stamps, are made evidence (*d*), and may be obtained by any one on paying ten shillings for each copy (*e*).

Persons named in the memorial last delivered, and their legal representatives, are liable as existing shareholders to all legal proceedings under the act, and are entitled to be reimbursed "as such existing shareholders only" out of the company's funds "for all losses sustained in consequence thereof." This provision was intended to be that all present shareholders should remain liable until a fresh memorial of new ones had been returned and filed, but it falls short of an express enactment to this effect (*f*).

(*a*) 7 & 8 Vict. c. 113, s. 16,
App. 217.

(*b*) S. 17, ib. 218.

(*c*) S. 18, ib.

(*d*) S. 19, ib. 219.

(*e*) S. 20, ib.

(*f*) S. 21, ib. See 7 Geo. 4,
c. 46, s. 6, App. 12, and *Ex parte*
Prescott, *ante*, 149.

SECT. III.—*Actions by and against the Company and Shareholders respectively, and executions.*

A shareholder, either alone or jointly with another person, may sue the company, and *vice versa*, as if the cause of action had arisen with a stranger (a). Actions.
Executions.

Judgments, decrees, and orders, have the like effect against the property of the company, and also, subject to the after mentioned provisions against the persons and property of shareholders, as if every shareholder had been by name parties to such proceedings (b).

With respect to executions on judgments, &c., the plaintiff may issue the same against the company's property. If ineffectual, then he may have execution against the person and property of any shareholder; if still ineffectual, execution may go against the person and property of any person who was a shareholder when the cause of action arose against the company. But no person having ceased to be a shareholder, is liable to pay any debt for which he would not have been liable as a partner in case a suit had been originally brought against him for the same, or for which judgment shall have been obtained after three years from the time he ceased to be a shareholder (c).

SECT. IV.—*Contribution between Shareholders.*

In the case of execution going against a shareholder, he is entitled, if he pays it in the first instance, to be reimbursed out of the company's property. In default of such Contribution
between
shareholders.

(a) 7 & 8 Vict. c. 113, s. 8, (c) S. 10, App. 215. See *Barker v. Buttress, ante*, 159.

(b) S. 9, ib

Contribution.

reimbursement, he may sue the other shareholders for contribution. (a) Or, in the event of any execution against a shareholder, if, within fourteen days after the levying of it, he be not reimbursed, on demand, out of the company's property all such monies as he may have paid, he himself may have execution against the company's property, the amount being certified by a Master of the Court out of which the execution shall have issued. (b)

With respect to executions in the several cases before mentioned, leave of the Court, or a Judge, is to be previously obtained, and a suggestion or *scire facias* is no longer necessary. A power over costs is given. Writs of execution are to be prepared. An order made by a Judge may be discharged or varied by the Court. No motion or summons can be made or obtained until ten days' notice has been given to the shareholder. (c)

If a shareholder be not, by these means, fully repaid, so much as may remain, or the whole, if not any part repaid, is to be divided into as many equal parts as shares in the company's capital, except shares under forfeiture. Each shareholder is then to repay, on demand, his part to the first mentioned shareholder. If not repaid, the sum may be recovered by action against the shareholder making default. (d)

If any particular shareholder, by reason of his bankruptcy or insolvency, or any other cause, do not pay, that share, or amount, is in like manner to be divided into parts, (omitting shares under forfeiture and those in respect of which such default shall have happened,) and such shareholder is to repay, on demand, his part to the first share-

(a) 7 & 8 Vict. c. 113, s. 11,
App. 216.

(b) S. 12, ib.

(c) S. 13, ib.

(d) S. 14, ib. 217.

holder. If not repaid such further part, the sum may be Contribution. recovered by action. And so on until the person, if a former shareholder, shall be fully reimbursed the whole of the monies paid, or if a then shareholder, the whole except his own proportion. (a)

SECT. v.—*Transfer of Shares.*

Subject to the regulations of the statute, and to the Transfer of shares. provisions of the deed of settlement, a shareholder may transfer his shares by deed duly stamped stating the true consideration. (b) The transfer deed is to be delivered to the secretary, who is to enter a memorial of it in the “Register of Transfers,” and to indorse the entry on the transfer deed. (c) Until transfer deed has been delivered to the secretary the purchaser is not entitled to receive profits, or to vote. (d)

But no shareholder can transfer until he has paid all calls due on every share held by him. (e)

The directors may close the “Register of Transfers” for fourteen days before an ordinary meeting, giving seven days’ notice by advertisement in a newspaper as after mentioned. A transfer made during the fourteen days is to be considered, as between the company and purchaser, as having been made subsequently to the ordinary meeting. (f)

Where shares are transmitted in consequence of the

(a) 7 & 8 Vict. c. 113, s. 15, App. 217. ment, s. 23, App. 219.
(d) Ibid.

(b) Form in Schedule (C.) App. 228. (e) 7 & 8 Vict. c. 113, s. 24, App. 220.

(c) The sum of 2s. 6d. is to be paid for the entry and indorse- (f) S 25, ib

Transfer of
shares.

shareholder's decease, bankruptcy, &c., or by any other legal means than by transfer deed, the party claiming under such transmission, can neither receive profits, nor vote, until the transmission has been authenticated by a declaration in writing, (a) stating the manner in which and the party to whom the share shall have been transmitted, made and signed before a justice of the peace, or Master extraordinary in Chancery. The declaration is then to be left with the secretary, who is to enter the party's name in the register book of shareholders. (b)

If the transmission be by virtue of the marriage of a female shareholder, the declaration must contain a copy of the register of marriage, or other particulars of its celebration, and declare the identity of the wife with the holder of the share; if, by virtue of a will, or intestacy, the probate of the will, or letters of administration, or an official extract from it, must, together with the declaration, be produced to the secretary. The secretary is to make an entry of the declaration in the "Register of Transfers." (c)

Where shares are held jointly, all notices may be given to the shareholder whose name stands first on the register. (d) In cases of minors, lunatics, &c., the receipt of the guardian, or committee, is made sufficient. (e) The company are not bound to see to the execution of any

(a) "Or in such other manner as the directors shall require."

(b) 7 & 8 Vict. c. 113, s. 26, App. 220. The sum of 2s. 6d. may be charged for the entry.

(c) S. 27, ib.

(d) S. 28, App. 221. With respect to service of notices, writs, &c. upon the company, the same may be effected on the manager or a director, by

leaving it at the company's principal office, or, if the company have suspended or discontinued business, by personal service on one of those persons, or by leaving the same with some inmate at such manager's or director's place of abode, s. 43, App. 223.

(e) S. 29, ib. 221.

trusts. The receipt of a shareholder is enough, notwithstanding any trusts, and whether notice thereof has, or has not, been given to the company. Nor are they bound to see to the application of any money paid upon such receipt. (a)

Transfer of
shares.

SECT. VI.—*Making and enforcing Calls.*

The directors may make such calls as they think fit. Where an execution proceeds against a shareholder on a judgment against the company in the manner already stated, (b) the directors within twenty-one days after notice of payment by the shareholder, are to make calls for the purpose of reimbursement. (c)

Calls.

If shareholders fail to pay calls whenever made, they are chargeable with interest of 5*l.* per cent. to the time of actual payment. (d)

The payment of calls, with interest, may be enforced by action. (e) The declaration need not state special matter, but only that the defendant is a holder of one or more shares, and is indebted in the sum of money to which the calls amount, in respect of one call or more, &c. (f)

With respect to evidence at the trial, it will not be necessary to prove the appointment of the directors who made the call, or any matter except that the defendant was a holder of shares, that the call was made, and notice thereof given as directed by the act. (g) The production

(a) 7 & 8 Vict. c. 113, s. 30,
App. 221.

(b) *Ante*, 173.

(c) S. 31, App. 221.

(d) S. 32, *ib.*

(e) S. 33, *ib.*

(f) S. 34, *ib.* 222.

(g) S. 35, *ib.*

Calls.

of the register book is made sufficient evidence of the defendant being a shareholder, and of the number of his shares. (a)

SECT. VII.—*Forfeiture of Shares.*

Forfeiture of shares.

Whether calls be sued for or not, the shares may be declared forfeited after six months from the day appointed for payment. But the forfeiture does not relieve the shareholder from liability to pay calls made before the forfeiture. (b)

Before declaring a forfeiture, a notice of the intention to do so must be left at the shareholder's place of abode as it appears upon the register. If he is not within the United Kingdom, and the directors know that the shares have become transmitted otherwise than by transfer, as before mentioned, but a declaration of the transmission has not been registered, and so the address of the parties to whom the same have been transmitted is unknown to the directors, they are to give notice of such intention in the *London Gazette*. These several notices must be given twenty-one days before making the declaration of forfeiture. (c)

Nor will such forfeiture take effect so as to authorize the disposal of the share, until it has been confirmed at a general meeting, to be held two months from the day of giving notice of such intention. By an order at such meeting, or at any subsequent general meeting, the forfeited share may be directed to be disposed of. After the

(a) 7 & 8 Vict. c. 113, s. 36,
App. 222.

(b) S. 37, ib.
(c) S. 38, ib.

confirmation the directors are to sell the same either by auction, or private contract, within six months after the confirmation. Any shareholder may purchase forfeited shares. (a)

Forfeiture of
shares.

A declaration in writing, by a party not interested, before a justice, or Master extraordinary in Chancery, that the call was made, notice thereof given, default in payment committed, and the forfeiture declared and confirmed, is made evidence of such facts. The declaration, and receipt of a director, or manager for the price of the share, make a good title. The purchaser then becomes the holder of the share, discharged from all calls made prior to the purchase. A certificate of proprietorship is then to be delivered to the purchaser, who will not be bound to see to the application of the purchase-money, nor will his title be affected by any irregularity in the proceedings of sale. (b)

But no more shares of the defaulter are to be sold than will be sufficient to pay arrears and interest and expenses. If the money realized be more than sufficient the surplus, on demand, is to be paid to the defaulter. (c) But if calls and interest and expenses be paid before sale, the shares revert to the shareholder. (d)

SECT. VIII.—*Bills and Notes.*

Bills of exchange and promissory notes may be made, accepted, or indorsed, in any manner provided by the

Bills and
notes.

(a) 7 & 8 Vict. c. 113, s. 39,
App. 223.

(b) S. 40, ib.

(c) S. 41, ib.

(d) S. 42, ib.

Bills and
notes.

deed of partnership, so that they be signed by a manager, or a director, and be by him expressed to be done on behalf of the company. But no manager, or director is liable thereon to a greater extent, or in a different manner, than upon any other contract signed by him on the company's behalf. (a)

(a) 7 & 8 Vict. c. 113, s. 22, App. 219.

CHAPTER X.

MINING COMPANIES.

THESE companies, (a) except such as are formed for the working of mines on the cost book principle, (b) are within the Registration Act, and subject to the provisions contained therein. (c)

SECT. 1.—*Mining Companies described.*

The carrying on of mining operations by a set of persons is a partnership of a peculiar description. In trading concerns all property acquired, whether real or personal, becomes partnership property. But in mines the shares are assignable, and the death or bankruptcy of a holder of shares does not work a dissolution. And it has been doubted whether, if persons previously entitled, as tenants in common to mines, were to form a mining concern, the general principle of a partnership would apply to such a

Mining
Companies
described.

(a) This compilation does not pretend to treat of the Law of Mines, but merely of the formation and incidents of Joint Stock Mining Companies. See "Bain-

bridge on the Law of Mines," an able work, published in 1841.

(b) 7 & 8 Vict. c. 110, s. 63, App. 189. See *post*, 201.

(c) See *ante*, 7.

Mining
Companies
described.

case. (*a*) Lord Tenterden, (*b*) in speaking of a mining company, said, "The partnership, if any, is not strictly a trading partnership; it is one formed for the purpose of working a mine or species of real estate." In another case, (*c*) it was said by Littledale, J., that "a mining company is not a regular trading company." But in the last case in the books, (*d*) Baron Parke said that a mining concern was a trading concern. Lord Hardwicke, also, was of opinion that a colliery was to be considered in the nature of a trade. (*e*).

If mining property were treated as real estate there would be difficulties in the working of it. It is for the convenience of management, and of operations, that a mining concern is regarded as a species of trade. Where, as is generally the case, the owners of a mine are numerous, if each owner was to have a set of miners going down the shaft to work his part, it would be impossible to continue working the mine.

SECT. II.—*How formed.*

How formed.

The ordinary mode by which a Joint Stock Mining Company is formed is by taking a lease for a term of years from the freeholder. (*f*) This lease is assigned to certain persons as trustees for the particular company about to be

(*a*) *Fereday v. Wightwick*, 1 Russ. & Myl. 45; *Crawshay v. Maule*, 1 Swanst. 495,

(*b*) *Vice v. Lady Anson*, 7 B. & C. 411.

(*c*) *Dickinson v. Valpy*, 10 B. & C. 139.

(*d*) *Tredwen v. Bourne*, 6 M

& W. 461.

(*e*) *Jefferys v. Smith*, 1 Jac. & W. 298; *Story v. Lord Windsor*, 2 Atk. 630. See *Williams v. Attenborough*, *Turner & Russell*,

70. *Wren v. Kirton*, 8 Ves. 502.

(*f*) See Forms, App. 297.

established. A deed of partnership, called a deed of settlement, or a deed of regulation, is then prepared, and executed by the shareholders composing the company. An outline of this instrument is given elsewhere. (a) It contains, as will be seen, a variety of stipulations and covenants, under which the joint stock concern is managed. The particular amount of interest held in the concern is vouched by what is called a share certificate. If an apportionment of shares take place before the company be actually established, or before the execution of the deed of settlement, it is desirable that special conditions should be indorsed upon the certificate, as for instance, that the holder must thereafter execute a deed of settlement. (b) In general, these share certificates are afterwards taken to the company's office, there registered, and exchanged for others.

How formed.

SECT. III.—*What constitutes a partner in a Mining Company.*

A partner (c) in a mining company, is, by virtue of that relation, a general agent for his co-partners in all matters relating to the partnership, and he has all authorities necessary for carrying on the undertaking, and all such as are usually exercised by the partnership. Any restric-

What constitutes a partner.

(a) App. 304.

(b) See form of share certificate; App. 307, with conditions indorsed.

(c) Shareholders in Mining Companies, lying by and declining to advance money for the working of the mines, while other persons make such advances, are held

liable to forfeit their shares. And even where the shares were, in a manner unwarranted by the deed, declared to be forfeited, a bill in equity to obtain restoration of the shares was dismissed. *Prendergast v. Turton*, Law J. 1842, Ch. 22. On appeal, Lord Ch. Law J. 1844, Ch. 268.

What constitutes a partner.

tion, imposed by agreement among the partners, on the authority possessed by them, although operative as between the partners themselves, does not limit their authority as to third persons who acquire rights under its exercise, unless such persons knew of the restriction imposed. (a) But this authority of a co-partner is itself restricted, as will hereafter be seen, (b) for even though a person should be a partner in a mining company, he is, nevertheless, not liable on bills of exchange drawn, or accepted, by the directors or managers of the company, on the principle that they are not necessary for the purpose of carrying on a mining company. This is an incident in respect to which a mining company differs from an ordinary trading partnership.

A person may become partner in a mining company in three different ways,—1. By signing a deed of settlement or regulation of the nature already mentioned, (c) or an agreement for carrying on the concern,—2. By receipt of part of the profits of the concern,—3. By doing certain acts, or making certain admissions, from which a presumption of partnership may be made, or, in other words, by holding himself out to the world as a partner. Of this kind are acts of interference in the management of the company's affairs, the attending at meetings of the company, the contribution of money to the common fund, the admission that he is a holder of shares in the company, &c. With respect to the first mode, but little difficulty arises, for the deed, or agreement, if any, will shew whether a partnership really exists. If it does, as to the persons parties thereto, it will have the same effect of

(a) *Hawken v. Bourne*, 8 M. & W. 703. money borrowed, *post*, 198, &c.

(c) *Ante*, 183.

(b) *Post*, 194, and see as to

proving a partnership, if required for the purposes of a creditor, or third person. So also, as to the second, the proof of profits having been received will shew the person to be a partner. But the third mode is evidently one which depends on a variety of facts; most of which may be seen in the following cases.

What constitutes a partner.

An action was brought against the defendant as a shareholder in the Trewolvas Tin and Copper Mining Company, "to recover the price of coals, timber, candles, &c." furnished in 1838 and 1839 to the Trewolvas Mine in Cornwall, belonging to the company. It appeared that it was formed in the year 1837, the prospectus stating that the capital was to be 30,000*l.* in three thousand shares of 10*l.* each. The defendant, who resided at Liverpool, took one hundred shares, but altogether two thousand only were disposed of. (a) There were directors, a secretary and other officers, and an office in London, at which the business of the company was transacted. The mines belonging to the company were worked, and mineral raised and sold, but no profits were made by the concern. The goods in question were supplied on the order of the directors, and were necessary for the ordinary use of the mine. There was no evidence that the defendant had ever been at the mine, or attended any meetings of the company; but two letters, signed by him and several other shareholders, of the dates of November, 1837, and February, 1838, being requisitions to the directors for a meeting to remove one of their body, were put in. The verdict passed for the plaintiff. It seems, from what was said when the case was afterwards argued *in banc*, that the mere circumstance of the defendant being a shareholder would not have

Tredwen v. Bourne.

(a) See Pitchford v. Davis and other cases, *post*, with respect to the effect of the capital not being in amount, what was stipulated for in the Prospectus.

What constitutes a partner.

been sufficient authority to the directors to pledge his credit to the plaintiff. But his letters shewed that he knew the directors were acting in the management of the partnership, and that he was taking a personal interest in the concern; and, in this view, they were evidence for the jury that he authorized the directors to do what they did for his benefit. (a)

Harvey v. Kay.

In the case of the Cornwall and Devonshire Mining Company there was a deed under which it was established. Any shareholder desirous of transferring his shares was to give notice at the office of the company that he had agreed to sell his shares; and no person who purchased shares was to be deemed a proprietor until he executed the deed. The directors on notice of the transfer of any shares made in conformity to the rules of the company, were to cause the transfer to be registered in the books of the company. Every person by whom such shares were transferred was, immediately after such transfer was registered in the books of the company, to cease to be a proprietor. In an action in which the plaintiff sought to charge the defendant as a member of the company for goods sold, the letters of the defendant, in which he admitted himself to be a shareholder on the 30th March, 1826, were held to be proof of that fact, although it was not proved that he had ever executed the deed. And further, there being no proof of

(a) *Tredwen v. Bourne*, 6 M. & W. 461. In the preceding case, stress seems to have been laid upon the admission contained in the defendant's letters. *Vice v. Lady Anson* does not appear to have been alluded to, nor does the case of *Harvey v. Kay*, when *Tredwen v. Bourne* was argued. In *Vice v. Lady Anson*, as will

be seen, Lord Tenterden was of opinion that the statements and letters of the defendant that she was a shareholder in the concern were no evidence, by way of admission, of her partnership. That case was decided in 1827, and seems to have been unnoticed in *Harvey v. Kay*, which is a decision of the year 1829.

any actual transfer of the shares to a purchaser, or of the execution of the deed by him, an entry in the books of the company of a transfer to a purchaser on the 28th March, was held not to be evidence that the defendant had then ceased to be a partner, or, if it was *primâ facie* evidence of that fact, it was rebutted by the letters of the defendant of a subsequent date, admitting himself to be a partner. (a)

What constitutes a partner.

Where goods were supplied by the plaintiff for the purpose of working a mine, and he brought his action against the defendant, as one of the adventurers in the mining company, to recover the price of the goods, and it appeared that the plaintiff himself, when he furnished the goods, had no knowledge of the defendant as a shareholder; it was held that she was not a partner notwithstanding she had spoken and written of herself in private letters and society as being a shareholder. The defendant however, had never signed any deed, but had paid her deposits on her shares, and had received certificates in the following form. (b)

Vice v. Lady Anson.

It was said by Lord Tenterden, at *Nisi Prius*, that the plaintiff did not actually give credit to Lady Anson, and that she never held herself out to the world as a partner. If, therefore, she is chargeable, she can only be so on the

(a) *Harvey v. Kay*, 9 B. & C. 356. See *Alderson v. Clay*, 1 Stark. N. P. C. 405.

(b) "Wheal Concord Tin and Copper Mine Company, No. 133. These are to certify that the Viscountess Dowager Anson is the proprietor of the share or number 133, being one share of the Wheal Concord Mine, situate in the parish of St. Agnes, in the county of Cornwall, and that her name is duly registered in the

account book of the said mine, subject to the rules, regulations, and orders of the said company; and that the said Viscountess Dowager Anson, her executors, administrators, and assigns, are entitled to the profits and advantages of such share. By order of the directors. As witness my hand, this 14th day of June, in the year of our Lord, 1822. *Christopher Vaux*, Secretary to the said mine."

What constitutes a partner.

ground that she is really interested; and no mistaken supposition of her own that she was so would make her liable unless it were communicated to the plaintiff so as to mislead him. The partnership, if any, is not strictly a trading partnership; it is one formed for the purpose of working a mine or species of real estate, and the plaintiff's claim is for labour and goods employed in working that mine. An interest in a real estate can only pass by certain formalities, and it is clear that the certificates are not sufficient to pass it, nor would the registration in the account-book of the company, as mentioned in them, even if it were made, of which there is no proof, be so. (a)

Ellis v. Schmæck and Thomas.

Goods were sold and delivered to the Cornwall and Devonshire Mining Company. The defendants had received from the secretary of the company certificates of their having paid a deposit upon the amount of their purchase-money for certain shares in the concern, and had received papers called the "scrip" of the company, but they had not signed the partnership deed, and had transferred their scrip before the action was commenced. Both defendants were present at a meeting of the company, in August, 1825; but Thomas had not purchased his scrip until after a portion of the goods, for the price of which this action was brought, had been delivered. It was urged, that as the defendants had parted with their scrip, and had never signed the partnership deed, the action did not lie. There was, however, a verdict for the plaintiff, which was supported by the Court above, on the

(a) *Vice v. Lady Anson*, 7 B. & C. 409; 1 Man. & R. 113; *Lloyd & Welsby*, 19; *Moo. & M.* 96; 3 C. & P. 19. See observations of Tindal, C. J., in *Steigenberger v. Carr*, 3 M. & Gr. 191, that the

above case "did not undergo much discussion." See judgment of Maule, J. *ib.* 198. And see as to "account book," or "cost book," *post*, 201.

principle, as would appear from Mr. Justice Park's judgment; "that the defendants had attended all the meetings" of the company; (a) and the case was likened to that of *Perring v. Hone*. (b)

What constitutes a partner.

Two actions were brought against the defendant as a shareholder in the Trewolvas Mine, in the parish of St. Columb Major, in Cornwall, being what is termed a scrip mine, carried on for the benefit of several persons, by directors. The claim in both actions was for necessary goods supplied for working the mine, pursuant to the order of the purser or agent of the directors, which was proved to be the customary course in such concerns. The defendant had become a shareholder in the undertaking, at or about the time of its establishment, and had paid sums of money towards, and was in Cornwall during the working of the mine, and had attended meetings and interfered in the appointment of the directors. There was evidence that if he was a partner in the working of the mine, he had become so upon an agreement, of which the prospectus was offered as proof, that the directors were not to deal on credit. The plaintiffs were entirely ignorant that the defendant had anything to do with the concern. The defendant was held to be a partner with the directors, and liable for the goods supplied. Also, that an agreement made by him with the directors that they should not deal on credit, of which the party who supplied the goods knew nothing, did not exempt him from such liability. (c)

Hawken v. Bourne.

(a) *Ellis v. Schmäck and Thomas*, 5 Bing. 521; 3 M. & P. 220.

(b) *Post*, but see the observations on the case of *Perring v. Hone*, in *Fox v. Clifton*, *post*,

(c) *Hawken v. Bourne*, 8 M. &

W. 703. With respect to partnership, reference may also be made to *Dickenson v. Valpy*, *post*, 194, which is cited to support the principle that shareholders are not liable on bills of exchange given or accepted by a

What constitutes a partner.

Steigenberger
v. Carr.

An action was brought against the defendant as a shareholder in the "Minas Geraes Mining Company," to recover the sum of 489*l.* 19*s.* 3*d.*, the balance of the salary due to the plaintiff as a mining officer of the company, from November, 1837, to April, 1840. The company was formed in the year 1836. The prospectus, dated April 2nd, 1836, stated, "that the capital was to be 100,000*l.* in 5,000*l.* shares of 20*l.* each. Of this sum, it is not probable, that more than 10*l.* per share will be required, which is to be paid as follows:—3*l.* per share to Messrs. Barclay, Bevan, and Tritton, on the apportionment of the shares; 3*l.* in four months; 2*l.* in eight months, and 2*l.* in twelve months, from that date." The defendant, on the 7th of April, 1836, applied for and received fifty shares, and paid all the calls upon those shares, except the last. No act of Parliament for the incorporation of the company was obtained, and no deed of partnership was executed. By a written agreement between the directors of the company and J. C. Hocheder, dated April 21st, 1836, (not under seal), Hocheder surrendered to the company for 1000*l.* his conditional contract for the purchase of gold mines in the province of Minas Geraes, for the sum of 35,000*l.* Hocheder proceeded to the Brazils, as superintendent of the company's mines there. In August, 1837, the directors entered into an agreement with the plaintiff, under which he proceeded to the Brazils and was employed there by Hocheder, as the servant of the company in the mine. The directors went on with the concern till October, 1839. The defendant had more than once called at the company's office, and inquired into their proceedings, and he attended a general meeting of the

Mining Company, and where derived. See also Steigenberger certain facts are stated, from v. Carr which proof of partnership was

shareholders in December, 1839, (after the working of the mine had been given up,) at which ~~the~~ liabilities of the company both in Brazil and England, were stated by the directors. It was held that, as the defendant had the knowledge, or the means of knowledge, of the proceedings of the directors, the jury were justified in coming to the conclusion that he had sanctioned their acts, and in considering him liable in respect of a contract entered into by them with reference to the working of the mines. (a)

What constitutes a partner.

Steigenberger v. Carr.

So in another case, in order to fix a defendant as shareholder, the following evidence was deemed sufficient: On the 17th December, 1835, he attended a special meeting of the Anglo-American Gold Mining Association, which had been called by a circular, at the office of their solicitor. In the minute of that meeting, the names of the several shareholders were inserted, with the number of shares each person held placed opposite to his name, and amongst others, was the defendant's, with one share opposite to it. The business transacted at that meeting was of an important character, that of confirming the sale of one mine, and of empowering the directors to sell another; the sending out a new agent for the company, and the providing for payment of the bills forming the subject of the agreement, dated 24th of December, 1835, on which the action was brought. It was also in evidence that the minutes had been read to the assembled shareholders. There was no proof of his having signed any deed, or of his name being

Harrison v. Heathorn.

(a) *Steigenberger v. Carr*, 10 Law J., N. S. 253, C. P.; 3 M. & Gr. 191. A had entered into an agreement with B. for the purchase of these mines in the Brazils. A assigned to the company. A witness stated that mines in the Brazils were usually

transferred by an instrument in writing *by deed*. Held, that the transfer *in writing*, was evidence from which it might be assumed that the mines were duly conveyed, no proof having been given, that, by the Brazilian law, a deed *under seal* was required, *ib.*

What constitutes a partner.

Harrison v. Heathorn.

inserted in the share-book, nor was he present at the meeting of the 24th of December, when the agreement respecting the bills was entered into by the directors (a).

It appeared that at the meeting of the 17th of December, 1835, it was agreed that certain property should be sold by the directors, or that they should raise money by additional shares, to pay certain bills. The directors on the 24th of December, when the defendant was not present, entered into an agreement with the plaintiffs, under which they returned the bills. This agreement was sanctioned and adopted at a subsequent meeting of the shareholders at which also the defendant was not present. This was held sufficient evidence of assent on the part of the company, to bind even those who were not present at that meeting (b).

Fox v. Frith and Others.

By a deed dated 7th May, 1839, a company was formed, called the West Mining Association, of which the defendants were directors. The plaintiff, by an agreement dated 10th July, 1839, agreed to sell to this company one thousand shares in the Pennance Mills Mining Company, to be paid for by the sum of 1385*l.*, and by the delivering to him of two hundred scrip certificates of shares in the West Mining Association. The money was to be paid on the 1st August, 1841. Immediately on the execution of the agreement, two hundred scrip certificates were obtained by the plaintiff's agent, and entered in the register-book of the West Mining Association in the plaintiff's name. The defendants afterwards gave the plaintiff the following promissory note, dated 17th August, 1839. " We jointly promise to pay to J. F. (the plaintiff) 1285*l.*, on the 1st August, 1841, for value received in

(a) Harrison v. Heathorn, 6 C. P. 158, 282.
Scott's N. R. 735, Law J. 1843,

(b) Harrison v. Heathorn.

Pennance shares pursuant to annexed contract." This note was signed by all the defendants in their individual names. The deed of settlement of the West Mining Company, provided that holders of scrip certificates should not be considered as qualified proprietors; and that a certain proportion of the net profits of the year, should be divided amongst the shareholders and scrip certificate holders, in proportion to their several shares and interests. The plaintiff had not paid any instalment, nor signed the deed of settlement, but continued to be the holder of the scrip certificates. In an action upon the note, it was held that these facts did not shew a partnership between the plaintiff and defendants (*a*).

What constitutes a partner.

It may here be observed, that a party paying a deposit on shares, and afterwards signing the deed of partnership is to be considered as a partner from the time of his paying the deposit, and is liable for goods supplied after, but not before the date of such payment.

The defendants were shareholders in the Devon and Cornwall Mining Company, and the demand was for stationery furnished to their office in London. At a meeting held on April 7th, 1825, at which two of the defendants were present, it was agreed to establish the company, and all the defendants, except one Barber, were named directors. Letters were sent to all persons so named directors, announcing their appointment, and on the 16th April all the defendants, including Barber, paid an instalment upon the shares. The deed was not executed by the defendants till after the last of the goods supplied by the plaintiff had been delivered; but after that time, Barber, and all the other defendants, except one, who was otherwise fixed, signed it. Part of the goods were furnished on the 11th,

Lawler v. Kershaw.

(*a*) Fox v. Frith and Others, 10 M. & W. 131, Law J., 1842 Exch. 336.

What constitutes a partner.

Lawler v. Kershaw.

12th, and 13th of April, and the rest after the 16th. There was a verdict for the goods supplied after the 16th. Lord Tenterden, in putting the case to the jury, declined giving an opinion, whether the mere payment of his instalment, standing alone, was sufficient to constitute the defendant a partner; but connected such payment with his subsequent act of signing the deed.(a)

SECT. IV.—*What acts of an Agent will bind the Company.*

What acts of an agent will bind the company.

As already mentioned, (b) a member of a mining company is an agent for his co-members, so as to bind them in all contracts for things necessary for the purpose of carrying on the business of the concern. But this authority does not extend to the making or accepting of bills of exchange, nor to the borrowing of money. The presumption against this authority may, however, be rebutted.

Dickenson v. Valpy.

An action was brought by an indorsee of the instrument undermentioned. (c) The bill was indorsed for value, by Teague, to the plaintiff; and the defendant was sued for the amount, as a member of the Cornwall and Devonshire Mining Company. In order to show that he was a partner

(a) Lawler v. Kershaw, 1 Moo. & M. 93.

(b) *Ante*, 183.

(c) £300.

Redruth, March 30th, 1826.

Two months after date, pay to the order of Mr. Thomas Teague, three hundred pounds, value received as advised.

For the Cornwall and Devonshire Mining Company.

ROWLAND WILKS.

*To the Cornwall and Devonshire Mining Company,
Lombard-street, London.*

in that company, the plaintiff proved, that in the early part of the year 1825, certain persons associated themselves together for the forming of a company, for the purpose of working mines in Devonshire and Cornwall. On the 7th of April, in that year, a meeting of those persons was held, at which resolutions were passed that there should be a company formed, with a capital of one million, in shares of 50*l.* each; that mines in Cornwall should be purchased, and that there should be directors, a treasurer, a secretary, and other officers, and bankers to the company. These resolutions were advertised in the newspapers. A counting-house was taken in London for transacting the business of the company, clerks were engaged, a contract was entered into for the purchase of mines in Cornwall, an agent was employed to reside there, and some of the mines were actually worked. The defendant, on the 6th day of April, applied to the secretary of the company for thirty shares, and ten were appropriated to him. Upon these shares he paid to the bankers of the company an instalment of 5*l.* per share, and received in return certain printed receipts, called scrip receipts. He afterwards took these scrip receipts to the counting-house, where there was a meeting of the directors, and paid a second instalment of 10*l.* per share, and signed a deed. In July 1826, he attended a general meeting of the shareholders. The bill was drawn and accepted in London, though dated at Redruth, in pursuance of a resolution of the directors, which was entered in the book of the company, and in discharge of a claim by Teague on the company for an advance made by him; and was afterwards allowed in account to Wilks, the drawer. Lord Tenterden said that the mere circumstance of the defendant's having become a shareholder in a mining company did not in point of law, make him answerable for bills drawn or accepted by those

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who took upon themselves to manage the concern. Little-dale, J., observed, that the form of the bill was very unusual, not being a bill drawn by individuals upon others, but drawn for and accepted by a mining company. When the plaintiff, therefore, took this bill, he had notice on the face of it that it was not an ordinary bill of exchange. It was then incumbent on him to inquire whether the persons who drew and accepted this bill had authority, by such acts, to bind the defendant, the latter not appearing on the face of the bill to be a partner with those persons; and to prove at the trial that they had such authority. In the case of an ordinary trading partnership, the law implies that one partner has authority to bind another by drawing and accepting bills, because the drawing and accepting of bills is necessary for the purpose of carrying on a trading partnership; but it does not follow that it is necessary for the carrying on the business of a mining company. Evidence of the nature of the company ought to have been given, to show that, in order to carry into effect the purposes for which it was instituted, it was necessary that individual members should have the power of binding the others by drawing and accepting bills of exchange. In the absence of any such evidence, it is not competent to individual members of a mining company (which is not a regular trading company), to bind the rest by drawing or accepting bills. One of several persons jointly interested in a farm has no power to bind the others, by drawing or accepting bills, because it is not necessary for the purpose of carrying on the farming business, that bills should be drawn or accepted. (a) The object of persons concerned in such an undertaking is to sell the produce of the farm; and though, with a view to such sale, it may be

(a) *Greenslade v. Dower*, 7 B. & C. 635; 1 Man. & R. 640.

necessary to buy many things, in order to raise and put the produce in a saleable state, yet it is not necessary for that purpose that bills of exchange should be drawn. Even if that were necessary for the purpose of carrying on a mining concern, though not for the purpose of managing a farm, it was incumbent on the plaintiff, in this case, to have shown, either from the very nature of this company, that it was *necessary*, or, from the practice in other similar companies, that it was *usual*; for, if it were necessary or usual, it would be reasonable that the directors should have such a power, and the law would imply it. (a)

What acts of an agent will bind the company.

What has been said of the authority of a member applies equally to an agent of a mining company, although authorized by the trustees, or directors of the company, to draw bills.

A bill was drawn in the undermentioned form:—(b) The bill was countersigned by the secretary of the association. The defendant was one of the directors and shareholders of the Chilian and Peruvian Mining Association, and was sued upon the bill by plaintiff as indorsee. Bagnold and Andrews were the agents of the association, and managed the mines and general concerns in South

Ducarrey v. Gill.

(a) *Dickenson v. Valpy*, 10 B. & C. 128.

(b) “*Coquimbo*, Feb. 17, 1826

“Exchange for £390 13s. 4d. sterling, at 4s. 7d. exchange, at sixty days' sight of this our first bill of exchange (second and third of the same tenor and date not paid), pay unto *Jean Lerois*, or order, three hundred and ninety pounds sterling, for value received, and place the same, with or without further advice, to the accounts of the trustees of the

“*Chilian and Peruvian Mining Association.*”

THOMAS BAGNOLD.

JOSEPH ANDREWS.

To Messrs. Spooner, Attwood, & Co.,
Bankers, London.

What acts of an agent will bind the company.

America. They acted under a power of attorney given by three trustees only, who were also directors of the association, empowering them, amongst other things, to draw bills and borrow money for them and the other directors. The defendant was no party to the power of attorney, which appeared to have been given by the trustees, as such, under the sanction of a meeting of directors, at which three only were present, there being a general resolution of the directors, that no act should be binding on the rest unless four directors were present. It was shewn, however, that the agents were recognised and sent out under written instructions for their conduct, by a full meeting of directors. The bills were drawn at Coquimbo, to raise money for the necessary purposes of the association, and discounted there by Jean Lerois, the payee, with the plaintiff's money, the proceeds of a vessel of the plaintiff of which Lerois was supercargo; and this money was applied by Bagnold and Andrews to the purposes of the association. The agents had no funds, or other means than borrowing, to carry on the concerns of the association. Lord Tenterden held, that the defendant was not liable as the drawer, and even supposing the agents had authority to bind him, they had not done so, inasmuch, as they had drawn the bills in their own names and not as agents. Besides they acted under a power which gave no authority from the defendant, there being only three directors present at the meeting authorizing the trustees to give it. (a)

(a) *Ducarrey v. Gill, Moo. & M. 450; 4 C. & P. 121.* Lord Tenterden, however, thought the defendant liable as a partner, for money lent, on the ground that Bagnold and Andrews were at

Coquimbo as the agents of the association; they were totally without funds, and they borrowed this money for the purposes of the association, and applied it fairly. A verdict accordingly

So, likewise an agent has no implied authority, even in cases of sudden emergency, to raise money and pledge the credit of a mining concern for its repayment.

What acts of an agent will bind the company.

An action was brought by the plaintiffs, (bankers) to recover from the defendant, as one of the proprietors of the Trewolvas Mine, the balance of a loan of 400*l.* made by them to the agent appointed by the company of proprietors for the management of the mine. The extent of the authority conferred upon the agent by his appointment was, that he should conduct and carry on the affairs of the mine in the usual manner; there was no proof of express authority to borrow money from bankers for that purpose. The learned Judge who tried the cause, told the jury that they might infer an authority in the agent, not only to conduct the general business of the mine, but also, in cases of necessity to raise money for that purpose. But the Court said, that there was no authority to support that proposition, and that no such power exists, except in the cases of the master of a ship, and of the acceptor of a bill of exchange, who accepts the bill, to save the honour of the drawer, and that the agent of this mine had not the authority contended for. But whether he had or had not was a question for the jury. (*a*)

Hawtayne v. Bourne.

But both shareholders and agents have authority, in the absence of proof of a more limited authority, to bind all their partners by dealings on credit, for the purpose of

passed for the plaintiff. A rule for a new trial, however, was afterwards obtained, on the ground that the defendant was not liable on the money counts. But I cannot find what was the ultimate result—the case is not reported. This case appears to be overruled

by the one next cited, with respect to the right to recover money lent.

(*a*) Hawtayne (public officer of the Western District Banking Company) v. Bourne, 7 M. & W. 595.

What acts of an agent will bind the company.

Tredwen v. Bourne.

working the mines, if that appear to be necessary, or usual in the management of mines.

In an action brought against the defendant, as a shareholder in the Trewolvas Tin and Copper Mining Company, to recover the price of coals, timber, candles, &c., furnished to that mine in Cornwall, it appeared that the defendant resided at Liverpool, that the goods were supplied on the order of the directors, and were necessary for the ordinary use of the mine. The Court held, that the defendant was liable. (a)

“No point was made at the trial that this was such a partnership as could not deal on credit; if it had been, the plaintiff would probably have supplied evidence on that point, and a Cornish jury would probably have said it was the constant practice to purchase materials for mines on credit. If the defendant had shewn, that by this particular contract, the directors were only to deal with the actual fund put into their hands, and that they had no power to pledge the credit of the shareholders, that would have been a defence, because the plaintiff has not trusted to any representation of the defendant, or bargained personally with him.” (b)

So where an action was brought for the price of necessary goods supplied for working a mine, pursuant to an order of the purser, or agent of the directors, which was proved to be the customary course in such concerns, the defendant, a shareholder, was held liable. (c)

(a) Tredwen v. Bourne, 6 M. & W. 461. It should be observed, that in Mr. Baron Rolfe's judgment, facts were stated, bearing upon the point of the usual mode of dealing between the parties, which are not contained in any other part of the report. “The goods supplied were of daily use

in the mine—they were habitually furnished to the amount of 820*l.*, the accounts were regularly sent up to town and audited, and this was only the balance of the last invoice on the books.”

(b) Per Baron Parke, *ib.* 466.

(c) Hawken v. Bourne, *ante*, 189.

SECT. v — *Mining Concerns on the Cost Book principle.*

Partnerships formed for the working of mines on the cost book principle are exempted from the operation of the statute for registering Joint Stock Companies. (a)

On the cost
book principle

The "cost book" contains, it is said, the names of all the shareholders, and the number of shares held is set opposite to the name of each shareholder. If the meeting at which the working of the mine is resolved upon be held in Cornwall, the shareholders themselves sign the cost book. If not, the names of the shareholders, and numbers of shares, are entered therein by the purser of the mine as agent for the adventurers generally.

It is usual for the cost book to contain, in addition to the particulars just mentioned, the regulations by which the mining concern is to be carried on.

In another point of view, the cost book is the account of the purser, with the adventurers, or shareholders. He enters in it the receipt and expenditure of the mine during a given time, usually a month. A balance is then struck, and a meeting held at which the accounts are passed, and a call made, or a dividend paid, as the case may be. At these meetings, further resolutions, if necessary, are come to, relative to the working of the mine, appointment and salaries of officers, forfeiture of shares, suing defaulters, &c.

All transfers of shares must be entered in the cost book, the form of doing which is of the simplest character: such as, "A. B. has assigned to C. D. such and such a share for a valuable consideration." The seller and purchaser apply to the purser to make the transfer; he makes, the

(a) 7 & 8, Vict. c. 110, s. 63, App. 211.

On the cost
book principle.

memorandum in the book, and each party, or his agent, signs it. It is the purser's duty to see that the transfer is properly made. (a)

If the cost book contain regulations with respect to the non-payment of calls, they must be followed; if otherwise, there must be what is called a "purser's petition." This is filed by the purser on the equity side of the Vice-warden's Court, (b) against an individual shareholder or adventurer. This proceeding is not affected by the circumstance that the purser himself is a shareholder. He has merely to prove that the calls were properly made, the amount of them, and the balance due. Under certain circumstances he may obtain a decree to sell the defaulter's share in the mine; or, if that be unsaleable, to divide the amount amongst the remaining shareholders. The power to do this results from the "Convocation" Acts, by which the custom of the county is evidenced, and from the 6 & 7 Wm. 4, c. 106, s. 18. (c)

By the custom of the Stannaries, it is said, that persons supplying goods to, and all labourers on, the mine, have a right of hypothecation on the ores, materials, and machinery. Any such creditor may file his petition on the equity side of the Vice-warden's Court, either against the purser only, or against any or principal agent of the mine. He proves his debt, and obtains a decree for payment; or, in default of payment, the decree will direct a sale of the ore, materials, and machinery. Upon a decree of sale, the registrar of the Vice-warden's Court takes possession of the mine, and sells, distributing the proceeds amongst the several creditors.

(a) It is said that he frequently refuses to make it unless all "back costs" are previously paid up.

(b) See *post*, 204.

(c) App. 64, which applies also to goods supplied for the working of a mine.

SECT. VI.—*The Stannary Courts in Cornwall.*

The Stannary Courts in Cornwall, which were “ Courts by custom, confirmed by charter and act of Parliament,” (a) are now regulated by a recent statute, (b) which was passed for the better and more expeditious administration of justice, and for improving the practice and proceedings therein, and for enlarging their jurisdiction.

The Stannary
Courts in
Cornwall.

The preamble recites, that there has existed throughout the Stannaries of Cornwall a Court in which the vice-warden has in certain cases wherein “ tin,” or “ tinnerns,” or “ matters connected with tin,” are concerned, exercised original equitable jurisdiction—that there has existed a Court in each of the Stannaries, called the “ Steward’s Court,” in which the steward has exercised a “ common law jurisdiction in such like cases”—that such jurisdiction, as well as of the vice-warden as of the steward, has been confined to cases where “ tin or tinnerns” are concerned—that in late times, lead, copper, and other metals than tin have been discovered in that county, and over the matters connected with the working for, purifying, and smelting of which, such jurisdiction has not been considered to extend—that the persons working and interested in lead, copper, and other metals, are inconvenienced in their disputes in cases where such metals other than tin are concerned, and are put to great inconvenience in obtaining redress therein—that it is expedient to “ unite the Court of Equity of the vice-warden with the Courts of Common Law of the steward of the Stannaries, and to extend the jurisdiction of the Court to and over all metals and metallic

(a) See Preface to Pearce’s Laws and Customs of the Stannaries, ed. 1725, p. 6.

(b) 6 & 7 Wm. 4, c. 106, App. 58, amended by 2 & 3 Vict. c. 58, App. 104.

The Stannary
Courts in

minerals in the said Stannaries, and to and over all transactions connected therewith ;” and also “ to confirm, alter, and enlarge the powers of such Court in various particulars, and to make other provision than heretofore for the hearing of appeals and writs of error therefrom.”

The statute provides for the appointment of a “ vice-warden of the Stannaries,” who is the judge of the Court (after mentioned) having both a common law and an equity side, and which comprehends the Court heretofore the Court of the Vice-warden and the Courts heretofore the Courts of the Stannaries. He may be removed in the mode pointed out by the statute. (a)

Equitable
jurisdiction.

The original equitable jurisdiction heretofore administered by the vice-warden is to be exercised by that officer, and the same equitable jurisdiction is given to him in all matters relating to mines worked for lead, copper, or other metal, or metallic mineral within the county of Cornwall. (b)

(a) 6 & 7 Wm. 4, c. 106, ss. 1, 2, 3, App. 59.

(b) Ibid. s. 4. The existence of an original Court of equity of the Vice-warden of the Stannaries of Cornwall, cannot be questioned, since 6 & 7 Wm. 4, c. 106, but in the absence of conclusive precedents or solemn decisions to the contrary, the jurisdiction must conform to the first principles of equity as administered in the High Court of Chancery. Therefore in a case where ejectment lies for a mine, a petition to the Vice-warden for delivery of possession to the plaintiff, without alleging any impediment to a recovery in a Court of law, is bad

on demurrer. Nor will a petition lie for an account of mesne profits, merely because the subject is a mine, where it is not shewn that any difficulty exists in taking the account, or that such account may not be taken as conveniently at law as in equity. And where a party, out of possession of an estate, claims equitable relief, the right to which depends on the right of possession, he must recover possession at law, before he files a bill for the consequential relief.

With respect to tin bounds in Cornwall, it seems, that the interest of an owner therein is not a mere easement or incorporeal

All decrees, orders, &c., by the vice-warden may be reheard and varied by the vice-warden according to the practice of the Court, and the lord-warden shall have power on any appeal presented to him within the time limited by the practice of the Court, with the aid and assistance of three or more members of the judicial committee of the Privy Council, to affirm, alter, or reverse any decrees, orders, &c., and to dismiss such appeal with costs or otherwise: but the judgments pronounced by the lord-warden must be transmitted to the Court of the vice-warden, to be by such Court carried into effect, and are also subject to appeal to the House of Lords. (a) But there can be no appeal, nor will any appeal operate as a stay of proceedings, unless the appellant give security to pay costs of appeal if decided against him. (b)

The Stannary
Courts in
Cornwall.

The Courts of law of the respective Stannaries heretofore held before the stewards thereof are consolidated into one Court to be held before the vice-warden, who, as

Legal juris-
diction.

hereditament, but may be the subject of an action of ejectment, even where he is not in actual possession at the time of the wrongful entry of the defendant. Therefore, where a bound owner demised his bounds to A. B., for years, with liberty to work therein, and A. B., after working the mines for some years, discontinued, but left the machinery on the land with the intention of resuming the works at a future time; and after a discontinuance of nearly seven years, during which the bounds had been duly renewed and kept on foot according to custom; the defend-

ants having forcibly taken possession of the mines, removed the machinery, and worked the tin mines for their own benefit: it was held, that a petition by A. B. on the equity side of the Vice-warden's Court, praying for redelivery of possession by the defendants, and for an account of the produce of the mines, was bad on demurrer. *Vice v. Thomas*, on appeal to the Lord Warden of the Stannaries, Smirke's Report.

(a) 6 & 7 Wm. 4, c. 106, s. 5, App. 60.

(b) 2 & 3 Vict. c. 58, App. 104.

The Stannary
Courts in
Cornwall.

judge thereof, is to exercise the same common law jurisdiction, &c., as was formerly exercised by the stewards.(a)

Appeal.

The vice-warden is also to exercise the same common law jurisdiction and the same powers, &c., in all matters connected with lead, copper, or any other metal or metallic mineral within the county, in as full and ample a manner as if the same had been connected with tin or tin ore, or tin mine, or mine worked for tin; subject, however, to appeal therefrom to the lord-warden, who may receive appeals (the same to be lodged with his secretary at the duchy office) and who is empowered, being assisted by three or more members of the judicial committee of the Privy Council, to hear such appeals, and to affirm, alter, and reverse such judgments, orders, &c., in whole or in part, or to dismiss the appeals with costs or otherwise; but a record of every judgment pronounced by the lord-warden and signed by him is to be remitted to the Vice-warden's Court, which is to carry the same into effect. And also, upon an appeal from a judgment upon the verdict of a jury, the lord-warden, so aided and assisted as aforesaid, shall not reverse, alter, or inquire into the judgment, except only for error of law apparent upon the record; and every judgment of the lord-warden is made subject to an appeal to the House of Lords. (b) But there can be no appeal from the common law Court, nor will it operate as a stay of proceedings, unless the appellant give security for the satisfaction and due performance of the judgment, order, or sentence so appealed against, if the same be affirmed, and for payment of such costs of appeal as he may be ordered to pay. (c)

(a) 6 & 7 Wm. 4, c. 106, s. 6,
App. 60.

(c) 2 & 3 Vict. c. 58, s. 3,
App. 105.

(b) Ibid. s. 7, App. 60.

Any party to an action at law may apply for a new trial (*a*) to the vice-warden (*b*) who may grant it upon any of the grounds on which new trials are now granted by the Courts at Westminster, and upon such terms and conditions as by the vice-warden shall be thought reasonable; and if the vice-warden shall think that an impartial trial cannot be had in Cornwall he may direct the *nisi prius* record in any cause to be sent to the Judges of assize for the county of Devon, to try such cause, and after the trial to cause such record to be transmitted to the Court of the vice-warden, who is to proceed on the record as if the cause had been tried in his own Court: but the orders of the vice-warden upon such application for a new trial are subject to appeal as before provided as to other decrees, orders, &c. (*c*) But no appeal by reason of the vice-warden granting or refusing a new trial will be allowed on behalf of a

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Cornwall.

(*a*) Causes of suspending the judgment by granting a *new trial* are at present wholly extrinsic, arising from matter foreign to or *dehors* the record. Of this sort are want of notice of trial; or any flagrant misbehaviour of the party prevailing towards the jury, which may have influenced their verdict; or any gross misbehaviour of the jury among themselves; also, if it appears by the Judge's report, certified to the Court, that the jury have brought in a verdict without or contrary to evidence, so that he is reasonably dissatisfied therewith, or if they have given exorbitant damages, or if the Judge has misdirected the jury, so that they found an unjustifiable verdict; for these and other reasons

of the like kind, it is the practice of the Court to award a new or second trial. Bl. Com. vol. 3, 387. It was stated by Lord Tenterden that the application for a new trial was substituted for a bill of exceptions (*Bernasconi v. Farebrother*, 3 B. & Adol. 372), in which case it was held that the Court in granting a new trial could not limit the inquiry to be made on such trial, for that in cases where a bill of exceptions might be tendered, but an application for a new trial is made instead, the new trial must be granted *generally*.

(*b*) See 2 & 3 Vict. c. 58, s. 5, App. 106.

(*c*) 6 & 7 Wm. 4, c. 106, s. 8, App. 61.

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Courts in
Cornwall.

defendant where the damages found by the jury do not exceed 20*l.* (a)

If, from any cause, the vice-warden shall be unable to attend his Court at the time appointed, the registrar may open and adjourn it. A statement of the cause of absence is to be made by the vice-warden to the lord-warden, which will be considered by the council of the duchy, and if requisite, another person appointed temporarily to perform the duties of vice-warden. (b)

If any person be in custody for contempt of any decree or order of the vice-warden, when his Court is not sitting, he may be taken before the vice-warden or the registrar, who shall hear the defence, and may discharge the person altogether, or otherwise upon security, as the nature of the case may require. (c)

Witnesses.

Writs of subpoena may be served any where in England and Wales, and have the same effect as if served within the jurisdiction of the vice-warden; and in case the person served shall not appear according to the exigency of the writ, the vice-warden upon oath or affirmation to be taken in open Court, or affidavit, of the personal service of such writ, may transmit a certificate of such default under seal to the Court of Queen's Bench at Westminster; which Court may proceed against and punish by attachment or otherwise, the person so having made default. (d)

(a) 2 & 3 Viet. c. 58, s. 3, App. 105.

(b) Ibid. s. 7, App. 106.

(c) Ibid. s. 8, App. 107.

(d) 6 & 7 Wm. 4, c. 106, s. 9, App. 61. This section is similar to the 29th sect. of 4 & 5 Wm. 4, c. 62. By 5 Eliz. c. 2, "If any person or persons upon whom

any process out of any of the Courts of record shall be served, to testify or depose concerning any cause or matter depending in any of the same Courts, and having tendered unto him or them according to his or their countenance or calling, such reasonable sums of money for his or their

But the Court of Queen's Bench cannot proceed against any person, nor will he be liable to any action for having made default, unless it appear to the Court that a reasonable sum to defray expenses had been tendered to such person at the time when the writ of subpoena was served upon him. (a)

The Statutory
Courts in
Cornwall.

If the plaintiff or defendant remove his person, goods, or chattels out of the jurisdiction of the Vice-warden's Court, the superior Courts at Westminster, upon a certificate from the registrar, of the amount of final judgment obtained in any action or suit, (b) to issue a writ

costs and charges, as having regard to the distance of the place, is necessary to be allowed on that behalf, do not appear according to the tenor of the said process, having not a lawful and reasonable let or impediment to the contrary, that then the party making default to lose and forfeit for every such offence 10*l.*, and to yield such further recompence to the party grieved as by the discretion of the Judge of the Court out of which the said process shall be awarded, according to the loss and hindrance that the party which procured the said process shall sustain by reason of the non-appearance of the said witness or witnesses, the said several sums to be recovered by the party so grieved against the offender or offenders by action of debt, &c." Although the above statute gives a penalty, it is nevertheless more usual to proceed by attachment, or by action on the

case for non-attendance. Where a witness, regularly served with a subpoena, does not attend at the trial, the Court, upon affidavit disclosing a personal service of the subpoena ticket a reasonable time before the trial, and payment or tender of his reasonable expenses to the witness, will grant an attachment. But the motion should be made promptly, for the Court will not entertain it after a Term has elapsed. *Thorpe v. Graham*, 3 Bing. 223; 11 Moore, 55; *Chitty's Arch.* 4th Ed. 1050; and see 2 Tidd. 857. For further information on this subject see *Chitty's Arch.* 4th Ed. 294, *et seq.*; and the summary in *Chit. G. P. L.* 3rd vol. 828.

(a) 6 & 7 Wm. 4, c. 106, s. 10, App. 62.

(b) These words "or suit" seem to have been accidentally omitted from one part of the section alluded to (sect. 11, App. 62.) As the section at present stands, it

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Cornwall.

of execution to the sheriff of any county, &c., against the person or goods of the party against whom such final judgment shall have been obtained, in such manner as upon judgments obtained in any of the superior Courts at Westminster. (a)

So also if any rule of the Vice-warden's Court cannot be enforced by reason of the non-residence of any party within the jurisdiction, such rule may be made a rule of any one of the Courts at Westminster, and enforced accordingly. (b)

Neither the vice-warden, nor the Court of such vice-warden, is to exercise any authority except as provided by the act; and any person against whom proceedings shall be instituted may, after appearance, demur or plead to the jurisdiction of the Court; but no question as to the

might be doubted whether it sufficiently applied to suits, *eo nomine*, on the equity side of the Vice-warden's Court. The mistake seems to have arisen from having taken the 31st sect. of the Court of Lancaster Act, (4 & 5 Wm. 4, c. 62,) too closely as a precedent, for it is observable that the same omission is made in that statute. See Wordsworth's Rules of Court, 2 Ed. App. clxiv. Since this note was written to a former edition of this work, it has been decided that the Court of Queen's Bench cannot issue execution on a final decree on the equity side of the Vice-warden's Court, where a party has removed out of the jurisdiction of that Court, because the provision in question does not go far enough. *Harvey v. Gilbard*, 7 Dowl. 525.

(a) S. 11, App. 62. With respect to the above provision it may be remarked that the Courts have directed, upon a similar section in the Lancaster Court Act, that there must be an affidavit that the party has removed his person or his goods and chattels out of the jurisdiction, before they will grant a writ of execution to follow them elsewhere. *Duckworth v. Fogg*, 2 C., M. & R. 736; S. C., 4 Dowl. 396; and where it is sworn that the defendant has removed his person out of the jurisdiction, but nothing is said as to his goods, execution will be granted against his person only. *Lord v. Cuss*, 2 Ad. & Ell. 81.

(b) 6 & 7 Wm. 4, c. 106, s. 12, App. 62. This also is similar to the 32nd section of the Lancaster Court Act.

jurisdiction with respect to matters embraced in such proceedings to be hereafter raised unless such person shall, within fourteen days after appearance, demur or plead, by filing a statement of the grounds of demurrer or plea at the registrar's office, and serving a copy, &c. (a)

The Standard
Courts in
Cornwall.

The vice-warden is authorized to make rules and orders touching the practice and proceedings of the Court, including such as relate to the time for moving for new trials and rehearings of causes, to taxation of costs, and to practice, as to him may from time to time seem fit. (b)

The vice-warden may, in cases of equity brought before him, take the whole or any part of the evidence either *viva voce* on oath or affirmation before himself or before the registrar, or before persons duly authorized by him for administering oaths and taking affidavits, or on depositions taken before the registrar or commissioners appointed for that purpose, or otherwise, as he may from time to time direct by general rule. But the vice-warden may, on interlocutory matters, &c., receive evidence either in whole or in part on affidavits, and that either with or without further evidence *viva voce* or on depositions. (c)

The vice-warden may direct an issue of fact arising before him in any suit on the equity side of the Court to be tried by a jury, and to issue process to compel the attendance of jurors and witnesses for that purpose, and he is invested with necessary powers for trying the same and carrying the verdict into execution; and a new trial may be moved for before the vice-warden, who is to grant or refuse, according to the rules of the common law, and

(a) 6 & 7 Wm. 4, c. 106, s. 13, c. 58, s. 5, App. 106.
App. 62.

(c) 6 & 7 Wm. 4, c. 106, s. 15,
App. 63.

(b) S. 14, App. 63. 2 & 3 Vict. App. 63.

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Cornwall.

practice of the Courts of Westminster, in granting or refusing new trials. (a)

Power is given to the vice-warden to make orders, by way of injunction, though Court adjourned or not sitting, whether he be in Cornwall or elsewhere; and for the entering of pleadings, orders, &c., the Court is to be always open, except on certain holidays specified in the statute. (b)

Power to sell
shares in any
mine.

In case the vice-warden shall in any proceedings instituted for that purpose make any order for the payment of money in respect of the working or management of or the providing goods for any mine, and the person against whom the order is made, or any person in trust for him, shall have any share or interest in the mine, and does not pay the sum so ordered, the vice-warden may cause a sale of the share or interest, or so much as may be necessary to raise such sum and the costs attending the sale. (c)

After enacting that proceedings, &c., shall be stamped with the vice-warden's seal, it is provided that barristers and attornies, and solicitors of the superior Courts of law or equity at Westminster, may appear and plead in the Vice-warden's Court; but if any person, not being an attorney or solicitor of superior Courts, practise, he is to be deemed guilty of a contempt of Court, and liable to all penalties incident thereto. All the laws and statutes now in force concerning attornies or solicitors are extended to attornies and solicitors practising in the Vice-warden's Court. (d)

The Vice-warden's Court has jurisdiction throughout Cornwall, and is to be held at Truro, and is constituted a

(a) 6 & 7 Wm. 4, c. 106, s. 16,
App. 64. See *ante*, 207, and notes.
(b) S. 17, App. 64.

(c) S. 18, *ibid.*
(d) S. 20, *ibid.*

Court of Record, having similar privileges, &c., to those of the Courts of law at Westminster. (*a*),

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The head manager of every mine is to make a quarterly return to the vice-warden of the value in money of the respective metals, except tin and tin ore, sold at, or withdrawn from, any mine: an assessment of one farthing per pound is made thereon, as a contribution towards payment of salaries. (*b*)

If the head manager of any mine omit to make the return, or, on demand made, omit to pay the assessment, or wilfully make any false or incorrect return, he is liable to a penalty “not exceeding fifty pounds.” (*c*)

For the purpose of forming a jury, it is enacted, that the Jurors. clerk of the peace for Cornwall is to send to the vice-warden a copy of the juror’s book; the registrar is to summon forty-eight of the jurors one week before the first day of each sitting, but no person is required to serve more than once a year. The jurors may be ballotted for, and challenged for cause, as set forth in the statute, and if jurors shall not attend, the vice-warden may fine them. (*d*)

All jurisdictions, powers, and authorities, heretofore lawfully exercised by the vice-warden, or steward, or any judge of any of the Stannaries, are, in future, to be exercised by the vice-warden: so also as to penalties, oaths, proclamations, returns, bonds, recognizances, &c. (*e*)

(*a*) 6 & 7 Wm. 4, c. 106, s. 21, App. 65.

(*b*) S. 28, ib. 67.

(*c*) S. 31, App. 69. The words in italics ought to have been more certain. It is only where a penalty may be summarily inflicted by a magistrate, &c., that the amount should be left in any degree uncertain. In this case, it is appre-

hended, the penalty must be sued for by action of debt upon the statute, but there is no provision to that effect in the act.

(*d*) S. 32—35, App. 69, 70, and see the act consolidating the laws relating to jurors, 6 Geo. 4, c. 50, and see 2 & 3 Vict. c. 58, s. 2, App. 105.

(*e*) S. 41, App. 72.

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Courts in
Cornwall.

In cases where an impartial trial, or sufficient trial, cannot be had in the Vice-warden's Court, the proceedings may be removed by *certiorari* into the Court of Queen's Bench at Westminster. (a) And, finally, all acts, statutes, laws, customs, &c., at present in force in any of the Stannaries, are to remain and be saved except so far as they may be contrary or repugnant to the laws of the realm, or inconsistent with this statute. (b)

It may also be mentioned that in order to prevent workmen employed in mines from removing or concealing ore for the purpose of obtaining more wages than are of right due to them, it has been enacted, that if any person shall remove or conceal any ore, &c., he shall be deemed guilty of a felony. (c)

(a) 6 & 7 Wm. 4, c. 106, s. 42, App. 107. See a decision on this section in *Reg. v. Trevenner*, 2 Moo. & Rob. 476.

(b) S. 43, ib.

(c) 2 & 3 Vict. c. 58, s. 10,

CHAPTER XI.

CANAL COMPANIES.

A CANAL Company is like a railway company, a body of Described. persons incorporated by act of Parliament, and having powers and privileges which could in no other way be obtained. What has been said, therefore, in a preceding chapter of Railways, is, with respect to their formation and otherwise applicable to canals. The statute conferring the requisite powers contains provisions having reference to the peculiar objects and works of the company, and whatever construction may have been given to Railway Acts, may be used with respect to Canal Companies. (a)

Where a Canal is made in pursuance of an act of Parliament, the right of the company to toll is derived entirely from the statute, and is to be considered as if there was a bargain between them and the public, the terms of which are expressed in the statute: And the rule of construction is, that any ambiguity in the terms of the contract must operate against the company, and in favour of the public. The company therefore, can claim nothing which is not clearly given to them by their act. (b)

Formerly, there seems to have been no stipulation in canal acts that the works should be completed within a

(a) See *post*, for "Construction of Statutes," &c.

(b) *Stourbridge Canal Company v. Wheeley*, 2 B. & Ad. 792.

And see *Gildart v. Gladstone*, 11 East, 675. *Hall v. The Grantham Canal Navigation*, Law J. 1844, Exch. 283.

Described.

specified time; but now by the regulations of the House of Lords upon private bills, such a provision will not be dispensed with. Where no limitation of time has been prescribed by the statute, as in the case of the Lancaster Canal Company, (a) a Court of law will not intend that the powers conferred shall be exercised even within a reasonable time; so that the works, if not completed, may be resumed at any time. Although this is the legal view of such a case, it might be otherwise in a Court of Equity, on the ground of the lapse of time during which the company may have been in a state of inaction, and of the various dealings with property in the meanwhile, by parties whose lands were originally proposed to be taken, on the supposition—justified by nothing being done by the company during a course of years—that such lands would not be wanted, and the company's works would not be further proceeded with. (b)

There is one point in respect of which a canal differs from a railway company. In both instances the works projected between given places are required to be completed, and when completed, the powers given for that purpose cease. If further powers are wanted they must be obtained from the Legislature. But, in canal acts, there is a particular power, surviving the completion of the canal itself, which enables the company to make aqueducts, and to divert waters into it to feed it at different points, which they may do from time to time.

Where a canal is made, upon which tolls are taken, the company of proprietors are bound to keep it in a navigable state. In the absence of any provision on the subject in the particular act, their duties are confined to matters

(a) *Thicknesse v Lancaster Canal Company*, 4 M & W 472.

(b) See the case last cited.

relating to the navigation. They are not liable for the sewerage of the river, as to clear away weeds, which though injurious to adjoining lands, by "bringing back" the water, are of no detriment to the navigation. (a) Described.

A company were empowered to make and maintain a canal navigable by the public with boats and vessels, on payment of tolls. One of the clauses enacted that it should be lawful for the agents or servants of the company, if any boat should be sunk in the canal, and the owners should not weigh or draw it up, to cause it to be weighed or drawn up, and to detain it till the payment of expenses. This was held not to be an obligatory, but an enabling or a permissive clause, only; but that, although this was so, yet as the company made the canal for their profit, and opened it to the public upon the payment of tolls to the company, the common law imposed a duty upon them, not perhaps to repair the canal, or absolutely to free it from obstruction but to take reasonable care, so long as they keep it open for the public use of all who may choose to navigate it, that they may navigate without danger to their lives or property. (b) An indictment cannot be sustained against the owner of the boat for not removing it. (c)

With respect to shares, and various other subjects relating to canal companies, they will, as common to all companies, be hereafter considered.

(a) *The Parratt Navigation Company v. Barnaby, in Error*, 11 Ad. Company, *v. Robins*, 10 M. & W. & Ell. 241.
593.

(c) *Rex v. Watts*, 2 Esp. 675.

(b) *The Lancaster Canal Com-*

CHAPTER XII.

INSURANCE COMPANIES.

Described.

INSURANCE Companies transact business,—some exclusively, as to lives of persons ; others in respect to risks against fire exclusively : some are both fire and life offices ; and others are confined to the issuing of policies on marine subjects. In recent times, some of the companies have added to their ordinary business that of granting annuities and endowments, and the purchasing of reversionary interests.

Life insurance.

It is said (a) that life insurance companies are divided into three classes. The first consists of joint stock companies, which undertake to pay fixed sums upon the death of the individuals insuring with them, the profits made by such companies being wholly divided among the proprietors. Of this class are the Royal Exchange, the Sun, the Globe, &c. The second class are also joint stock companies, with proprietary bodies ; but instead of undertaking, like the former, to pay certain specific sums only upon the death of the insured, they allow the latter to participate to a certain extent, along with the proprietors, in the profits made by the business. The mode in which this sort of mixed companies allot the profit granted to the insured is not the same in all ; and in some

(a) M'Culloch's Com. Dict. 2nd ed. 708.

the principle on which the allotment is made is not disclosed. The Rock, Alliance, Guardian, Atlas, &c., belong to this mixed class. The third species of company is that which is formed on the basis of mutual assurance. In this sort of company there is no proprietary body distinct from the insured; the latter share among themselves the whole profits of the concern, after deducting the expenses of the management. The Equitable, the Amicable, the Norwich Life, &c., belong to this class.

Described.

Life insurance.

With respect to fire insurance companies, some are called contribution societies, (a) in which every person insured becomes a member or proprietor, participating in profit and loss; such as the Hand-in-Hand, Westminster, &c.; others insure at their own risk, and for their own profit, such as the Sun, the Phoenix, the British, &c. (b)

Fire insurance.

There are two insurance companies which were established under an act of Parliament, as well as a charter from the Crown—the “London Assurance,” and the “Royal Exchange,” incorporated in 1719. These companies originated under the Bubble Act, 6 Geo. 1, c. 18. “It is conceived,” says the statute, “that if two several and distinct corporations, with a competent joint stock to each of them belonging, and under proper conditions, restrictions and regulations, were erected and established,” merchants would consider it safer to insure with them than with private individuals. Charters were afterwards granted in pursuance of the statute, which, however, enacted a variety of provisions as to the two companies, which, it would seem, could not, by the mere prerogative

The Royal Exchange and the London Assurance.

(a) Montefiore, tit. Ins.

(b) See Farren on Insurance, 3; trading companies and mutual guarantee associations is discussed where the object of proprietary

Described.

of the Crown, have been granted. In consideration of the privileges thereby granted to these two corporations, it was stipulated by the act that each should contribute, "in order to discharge the debts and expenses of his Majesty's civil government," the sum of 300,000*l.*, which was to be redeemable within the period of thirty-one years, upon giving three years' notice. A capital stock not exceeding 1,500,000*l.* was to be raised by each company, in the mode pointed out by the act of Parliament, the shares in which were made personal estate, transferrable and devisable. The act contains two important provisions:—the first, under which no person "being a governor or director of one company, can be, at the same time, a governor or director of the other company, nor can any member of either of the corporations hold stock in both, on pain of forfeiture of the share that may have been purchased, one-half of it to go to the Crown, the other to the party giving information. (a) The second, by which it was enacted, that if at any time after the expiration of the thirty-one years, the Crown should judge the further continuance of these said two corporations to be hurtful or inconvenient to the public, "it should be lawful by letters patent, to revoke and make void the same corporations." (b)

1. *Insurance Companies formed previously to the 1st November, 1844.*

How formed.

These companies are established by and regulated under acts of Parliament, or charters, or under deeds of settlement. By these instruments the partnership between the

(a) 6 Geo. 1, c. 18, s. 14.

(b) *Ibid.* s. 16.

directors and shareholders is constituted and governed, and in some particulars, even with respect to third persons, the general principles of partnership are limited and restrained. But such an effect can only be given by act of Parliament or charter.

How formed.^{1, 2}

These associations have been very commonly carried on under deeds of settlement only;—sometimes with the assistance, in addition, of a short act of Parliament, giving facilities in suing and being sued. A deed of settlement, consists of a variety of minute and detailed regulations by which the general partnership amongst the shareholders is governed. (a)

It may be mentioned, that if false representations be made of the affairs of an insurance company, (for instance, in a prospectus, or circular) whereby a person is induced to effect an insurance with the company, an action on the case will lie against them, although no actual pecuniary damage may have been sustained beyond the payment of premiums. (b)

Such of these companies as were, before the 1st November, 1844, incorporated by act of Parliament, or charter, or privileged by letters patent, or established by deed of settlement, or any other instrument, were required within three months from that date, to return the following particulars,—

1. The name or style of the company,—
2. The purpose of the company,—
3. The principal or only place for carrying on its business.

Upon this return being made, the registrar of joint stock companies granted a “certificate of registration,” which;

(a) See Appendix, 311.

(b) Pontifex v. Bignold, 3 M. & Gr. 63.

How formed. however, does not carry with it any of the privileges conferred by the Act for the Registration of Joint Stock Companies, but is intended merely to shew that the company has been registered. (a)

Insurance companies existing before the 1st November, 1844, are in no other respect subject to the operation of that statute.

2. Insurance Companies formed after 1st November, 1844.

Before a new insurance company can be formed, certain steps are to be taken. These, as common to all new projects, have been already described. (b) Certificates of provisional and of complete registration, will be granted accordingly as there mentioned.

(a) 7 & 8 Vict. c. 110, s. 58, a penalty of 50*l* is imposed.
App. 186. On failure of registry (b) *Ante*, 6, 20.

CHAPTER XIII.

OF COMPANIES ILLEGAL IN THEIR OBJECTS OR
CONSTITUTION.

IF the object of a joint stock company was contrary to public policy, or manifestly tended to the common grievance of the subjects of the realm, the association would at all times have been dealt with as a nuisance at common law; or if the projectors of an association of which the ostensible object was legal, were making a fraudulent use of it, recourse might always have been had to the ordinary jurisdiction of the Courts for prevention and redress. But in the year 1719, the abuse of the joint stock form of association having been carried to the most ruinous lengths, (a) it was considered necessary to add greater stringency and summariness to the common law remedies; and the Act 6 Geo. 1, c. 18, generally known as the "Bubble Act," was passed, and continued in force till the year 1825, when it was repealed by the 6 Geo. 4, c. 91, the latter act reciting, in a preamble which has been ascribed to Lord

The Bubble
Act, 6 Geo. 1,
c. 18.

(a) See the account given in Mr. Collyer's *Treatise on Partnership of the History of the South Sea Company*, 2nd ed. p. 722: It is remarkable that similar disasters in France about the same period, arising out of the same rage for speculation, led to the

adoption of similar projects of legislation. The Chancellor d'Agnessau published a long memoir, *Sur le Commerce des Actions*, advocating in the very spirit of our Bubble Act the entire prohibition of transferrable stock.

The Bubble
Act, 6 Geo. 1,
c. 18.

Eldon; (a), that it was expedient that the several undertakings, practices, acts, matters, and things, which it had been the object of the former act to repress, should for the future be adjudged and dealt with according to the common law. But though the common law is thus restored in its integrity, yet as many questions, which are still capable of arising, have been brought into discussion in dealing with various provisions of the Bubble Act, and as it may be occasionally doubtful how far the cases adjudged, and especially some of the *obiter dicta* of the Judges, during the interval between 1719 and 1825, are to be taken as authoritative declarations of the actual law, it will be proper to proceed to a somewhat detailed examination of the act itself.

The 18th section, (b) which is the first that has any relation to the present subject, recites as follows: whereas it is notorious that *several undertakings or projects* of different kinds have at some time or times since the 24th June, 1718, been publicly contrived and practised, or attempted to be practised within the city of London and other parts of this kingdom, as also in Ireland and other his Majesty's dominions, *which manifestly tend to the common grievance, prejudice, and inconvenience of great numbers of your Majesty's subjects in their trade or commerce, and other their affairs*; and the persons who contrive or attempt *such dangerous and mischievous undertakings* or projects, under false pretences of public good, do presume, according to their own devices and schemes, to open books for public subscriptions; and draw in many unwary persons to subscribe therein towards raising great sums of money, whereupon the subscribers or claimants under them do pay small proportions thereof,

(a) See George on Joint Stock Companies, p. 80.

(b) App. 1.

and such proportions in the whole do amount to very large sums; *which dangerous and mischievous undertakings, or projects do relate to several fisheries and other affairs, wherein the trade, commerce, and welfare of your Majesty's subjects, or great numbers of them, are concerned or interested: And whereas in many cases the said undertakers or subscribers have since the said 24th June, 1718, presumed to act as if they were corporate bodies, and have pretended to make their shares in stocks transferable or assignable, without any legal authority, either by act of Parliament, or by any charter from the Crown for so doing, and in some cases the undertakers or subscribers, since the said 24th June, 1718, have acted or pretended to act under some charter or charters formerly granted by the Crown for some particular or special purposes therein expressed, but have used or endeavoured to use the same charters for raising joint stocks, and for making transfers or assignments, or pretended transfers or assignments for their own private lucre, which were never intended or designed by the same charters respectively, and in some cases the undertakers or subscribers since the said 24th June, 1718, have acted under some obsolete charter or charters, although the same became void or voidable by non-user or abuser, or for want of making lawful elections, which were necessary for the continuance thereof; and many other unwarrantable practices too many to enumerate, have been and daily are and may hereafter be contrived, set on foot, or proceeded upon, to the ruin and destruction of many of your Majesty's good subjects, if a timely remedy be not provided: And whereas it is become absolutely necessary that all public undertakings and attempts, tending to the common grievance, prejudice and inconvenience of your Majesty's subjects in general, or great numbers of them in their trade, commerce, or other*

The Bubble
Act, 6 Geo. 1,
c. 18.

lawful affairs, be effectually suppressed and restrained for the future by suitable and adequate punishments for that purpose to be ascertained and established." It is then enacted, that from and after the 24th June, 1720, all and every the *undertakings and attempts described as aforesaid*, and all *other* public undertakings and attempts *tending to the common grievance*, prejudice and inconvenience of his Majesty's subjects, or great numbers of them in their trade, commerce, or other lawful affairs, and all public subscriptions, receipts, payments, assignments, transfers, pretended assignments and transfers, and all other matters and things whatsoever for furthering, countenancing, or proceeding in any *such* undertaking or attempt, and more particularly the acting or presuming to act as a corporate body or bodies, the raising or pretending to raise transferable stock or stocks, the transferring or pretending to transfer or assign any share or shares in such stock or stocks without legal authority, either by act of Parliament, or by any charter from the Crown, &c., shall be deemed to be illegal and void. (a)

Under the 19th section *such* "undertakings," so tending to the "common grievance, prejudice, and inconvenience" of the public, the "making or taking of any subscriptions *for that purpose*," the "receiving or paying of any money upon *such* subscriptions," the "making or accepting of any assignment or transfer of any share upon any *such* subscription," and the taking any step whatsoever in furtherance of *any such unlawful undertaking*, and more particularly the "pretending to act as a corporate body, or to raise a transferable stock, or to make transfers or assignments of any shares therein, without legal authority," are to be deemed public nuisances, and to be dealt with

(a) Sect. 18, App. 2.

accordingly, and are to be also attended with the consequences of a *præmunire*.

The Bubble Act, 6 Geo. 1, c. 18.

The statute, contemplating that individuals might be injured by *such* undertakings, enacts, that "if any merchant or trader shall suffer any particular damage in his trade, commerce, or other lawful affairs, by means of any undertaking," already described, he may bring his action against the "persons, societies, or partnerships, or any of them engaged or interested" in the same, and if successful, may recover treble damages with full costs of suit; (a) and further, by sect. 21, brokers are made liable to a penalty of 500*l.* if they buy or sell shares in companies so formed.

The statute, it will be seen, furnishes several *indicia* of illegality. In ascertaining the actual state of the law on this subject, it will be convenient to follow the arrangements of the statute. The *indicia* of illegality in companies may therefore be considered in the following order: 1. Where the object of the company tends to a public nuisance. 2. Where the company is set on foot, not for the *bond fide* purpose of prosecuting its ostensible object, but as a means of raising money, or speculating in shares, for the private benefit of the projectors. 3. Where, though the object of the company is unobjectionable, and the intention of its projectors *bond fide*, yet fraudulent means are resorted to for the purpose of attracting subscribers, as by the false assumption of a corporate character, or of other immunities or privileges for the individual members.

1. It is scarcely possible to define the characteristics which will place a company in the category of public nuisances. The question of nuisance or no nuisance, when raised upon an indictment, seems to be one for the decision of a jury upon the particular circumstances of the

Public nuisance.

(a) S. 20. App. 3.

The Bubble Act, 6 Geo. 1, c. 13, and cases thereon.

Public nuisance,

Rex v. Webb. (1811.)

individual case. According to Bayley, J., in *Nockells v. Crosby*, (a) a scheme is not within the statute "unless it is formed for the purpose of carrying on some mischievous project or undertaking, and unless it can be predicated of it that it is likely to tend to the common grievance, prejudice, and inconvenience of his Majesty's subjects, or great numbers of them, in their trade, commerce, or other lawful affairs;" and in that case it was agreed that a Tontine Company, the funds of which were to be invested in the public securities, and not engaged in speculation, was not within the act. And again, Tindal, C. J., in the case of *Harrison v. Heathorn*, (b) said, that in order to support the objection of illegality, it is necessary either that the association should have been found by a jury to have been a nuisance in point of fact, or that the nature itself of the undertaking must be such as not to admit of any other conclusion in point of law. So in the case of the Birmingham Flour and Bread Company, (c) where a great number of persons at Birmingham (2,500), admitting of an extension to 20,000, covenanted by a deed of copartnership to raise a large capital (20,000*l.*), by small subscriptions of 1*l.* for each share, for the purpose of buying corn, grinding it, making bread, and dealing in and distributing flour or bread amongst the partners, under the name and firm of the "Birmingham Flour and Bread Company," and under the management of a committee, and covenanted that, no partner should hold more than twenty shares, unless the same should come to him by marriage, &c., or act of law; and that each member should weekly purchase of the copartnership a certain quantity of bread or flour, not exceeding 1*s.* in value for each share, as the committee should appoint: and that no partner should assign his

(a) 3 B. & C. 614.

(c) 14 East, 406.

(b) 6 Scott's N. R. 735.



share unless the assignee should enter into covenant with the other partners for the performance of all covenants in the original deed; and that the majority of partners at a public meeting might make bye-laws to bind the whole. On the trial of an indictment against the company for a public nuisance under the act, the jury found specially that the company was originally (during the high price of provisions) instituted from laudable motives, and for the purpose of more regularly supplying the town of Birmingham and the neighbourhood with flour and bread, and that the same was originally and still is beneficial to the inhabitants at large,—but is, (*i. e.* at the time of finding the special verdict, which does not include the time of the offence charged in the indictment) prejudicial to the bakers and millers of the town and neighbourhood in their trades. The Court gave judgment for the defendants, considering the case not to be a nuisance within the act.

The Bubble Act, 6 Geo. 1, c. 18, and cases thereon.

Public nuisance.

So in the case of *Pratt v. Hutchinson*, (*a*) which was an action of debt on bond, it was determined that there was no objection upon the statute, as for a public nuisance and grievance, to articles of agreement whereby fifty persons agreed to raise 200 shares at 210*l.* each, by small monthly subscriptions, for building houses for each other, with a stipulation for the members to employ certain tradesmen only in the building, with power to each member to sell his shares and transfer them in the books of the society, provided that the purchaser should be approved of at a meeting of the society, and should, on his admission, become a party to the original articles, for there is nothing illegal, *per se*, in the general object or in the mode of executing it.

Pratt v. Hutchinson, (1812).

In the same year in which *Pratt v. Hutchinson* was

The Bubble Act, 6 Geo. 1, c: 18, and cases thereon.

Public nuisance.

Brown v. Holt.

decided in the Court of King's Bench, but probably before it was reported, the Court of Common Pleas refused to determine whether the Golden Lane Brewery was a *nuisance* within the act, upon a motion to set aside a judgment confessed. (a) The brewery was an association of persons who had opened a subscription for shares, and had made them transferable. The Court seemed to doubt (says the reporter) whether it was not a question for a jury to consider *whether the association were in fact beneficial or not*, and referred to *Rex v. Dodd*, (b) and *Rex v. Webb*, (c) but would give no opinion upon it. They refused, however, in a matter of so great importance, considering how much property was at that time embarked in speculations of a like nature, to entertain the question upon this summary proceeding.

Bubble Companies.

Colt v. Wollaston, (1723).

2. We now come to the second class of cases to which the term "Bubble" Companies seems especially to apply. These have been already designated as companies set on foot, without any *bonâ fide* intention on the part of the promoters to apply themselves or the money subscribed to the prosecution of the ostensible purposes of the association. An instance of this description is supplied in the early case of *Colt v. Wollaston*, (d) where the project was to establish a company for the extraction of oil out of English radishes; and for the purpose of the manufacture, a certain estate was to be taken off the hands of the projector, and put under radish cultivation. By the sale of tickets, a sum of 57,200*l.* was raised, which the projector applied to his own purposes, and left in the hands of the subscribers his secret for the manufacture of oil, and the estate,

(a) *Brown v. Holt*, 4 Taunt.

587.

(b) *Post*, 233

(c) *Ante*, 228.

(d) 2 P Wms. 154, and see *Stent v. Balls*, 1b 217.

already mortgaged to twice its actual value: no radishes having ever been sown, or the invention put to a trial. In this case, the plaintiff, who had been one of the subscribers, having, in the words of the Master of the Rolls, got nothing for his money but a mere "bubble," or "moonshine," was held entitled to recover his deposit; and that without any special reference to the statute, but on the ordinary principles of equitable jurisdiction. So, in the case of *Green v. Barrett (a)*, where a prospectus was issued of a company, to be called the "Imperial Distillery Company," the capital to be 600,000*l.*, in shares of 50*l.* each, every subscriber to execute a deed of settlement within thirty days, or forfeit his subscription, and an act of Parliament, giving certain powers and privileges, to be applied for. The plaintiff subscribed for twenty shares, and paid deposit, and at a subsequent period filed his bill to recover it; the case made by him being, that no steps had been taken to obtain the act; that the directors were applying the money raised in a manner not authorized by the prospectus; that, in fact, the directors, at the time of issuing the prospectus, had no intention of carrying it out, but had issued shares for purposes of mere barter and speculation: and the defendants, by demurrer, admitting the statements of the bill, they were held to bring the company within the definition of a mere bubble; and a decree was made in the plaintiff's favour. Another instance of the same kind is furnished by the case of *Duvergier v. Fellowes (b)*, where the defendant being in possession of a patent process for distillation, the patent for which was, however, void, if transferred to more than five persons, covenanted with the plaintiff to pay him the

The Bubble Act, 6 Geo. 1, c. 18, and cases thereon.

Bubble Companies.

Green v. Barrett, (1826).

Duvergier Fellowes, (1828).

(a) 1 Sim. 45.

(b) 5 Bing 246 S. C. 5 Moo. & P. 403.

The Bubble Act 6 Geo. 1, c. 13, and cases thereon.

Bubble Companies.

sum of 10,000*l.*, on condition of his setting a company on foot for carrying on the process, and procuring subscribers for 9000 shares of 50*l.* each, to whom, upon payment of a deposit of one-third, the patent was to be transferred, the design thus being to raise a large sum of money by the sale of the shares, and to give nothing to the subscribers in return but a patent, which would be void immediately upon its coming into their hands. These, and all similar cases, present merely different shapes of fraud, with which the Courts have always been able to deal, under their ordinary jurisdiction. And the only effect of the Bubble Act was to supply, during the period of its existence, cumulative remedies.

3. The next class of cases present less uniformity of decision, and with respect to these, it may be doubted whether the absolute question of legality or illegality must not be considered to have rested upon somewhat different grounds, during the existence of the Bubble Act, from those which are embodied in the common law. The first sub-division, however, of this class of the *indicia* of illegality, is unaffected by this doubt: the false assumption of the corporate character being certainly as fatal to the validity of a company at common law, as under the statute: and that, not merely upon the ground of its being a usurpation of the royal prerogative, (which was probably the consideration which suggested the penalties of *præsumptio* as its appropriate punishment,) but also as amounting to a delusive and fraudulent pretence of the possession of the important privilege of limited liability for subscribers: the association, if incorporate, being dealt with only in its corporate capacity, and its creditors being consequently considered as dealing merely on the security of the corporate funds.

Pretence of Incorporation.

It is, however, the transferability of the shares in joint

stock companies that has given rise to the principal discussions under the statute, and has been the occasion of some expressions on the part of one or two Judges which have thrown doubts even on the common law, as applicable to this subject.

The Bubble Act, 6 Geo. 1, c. 18, and cases thereon.

Pretence of limited liability.

It must of course be admitted at once, that if the prospectus, or other official announcement of the projectors of a company, contains the allegation that a shareholder can by assignment get rid of his liability to the public under the ordinary law of partnership, such conduct is fraudulent and the association a nuisance, within the meaning both of the statute and the common law. This is the case of *Rex v. Dodd*, (a) where it appeared that the defendant, in 1807, had published two different schemes, one of them entitled, "Prospectus for the London Paper Manufacturing Company;" the other, "A Prospectus of the intended London Distillery Company, for making and rectifying genuine British spirits, cordials, and compounds." By the first of these it was proposed to raise by subscription 50,000*l.*, by 2,500 (b) transferable shares, of 50*l.* each, payable by instalments not exceeding 10*l.* per cent., the whole to be under a deed of trust or enrolment in Chancery, "by which no party (it was said) could be accountable for more than the sum subscribed under the regulations therein stipulated." The persons qualified to be chosen directors by the amount of their shares were to be taken in the rotation in which they subscribed. The great advantages of this scheme over other paper manufactories were extolled throughout the prospectus. The other scheme for a distillery company, which was also held forth in terms of extravagant praise to attract popular favour, proposed to raise 100,000*l.*, by 2,000 transferable shares of 50*l.* each,

Rex v. Dodd, (1808.)

(a) 9 East, 516.

have made a mistake in these

(b) The reporter 'appears to' figures.

The Bubble Act, 6 Geo. 1, c. 18, and cases thereon.

Pretence of limited liability.

Rex v. Dodd.

payable by instalments not exceeding 10% per cent., at twenty days' notice, to be in like manner under a deed of trust enrolled in Chancery, "*by which no party was to be accountable for more than the sum subscribed under the regulations stipulated therein.*" This also was to be under the management of directors properly qualified, to be nominated in rotation as they subscribed. Annexed to the former scheme was a supposed report to the directors of the London Distillery Company from the defendant, stating that he had begun in May or June, 1807, taking in 1*l.* subscriptions, and speaking of the large sums which would be required for the purchase of premises, &c., and naming different individuals, amongst others, himself, to be elected to the principal employment in the concern.

It was said by Lord Ellenborough: "Independent of the general tendency of schemes of the nature of the project now before us to occasion prejudice to the public, there is, besides, in this prospectus, a prominent feature of mischief, for it therein appears to be held out that no person is to be accountable beyond the amount of the share for which he shall subscribe, the conditions of which are to be included in a deed of trust to be enrolled. But this is a mischievous delusion, calculated to ensnare the unwary public. As to the subscribers themselves, indeed, they may stipulate with each other for this contracted responsibility; but as to the rest of the world, it is clear that each partner is liable to the whole amount of the debts contracted by the partnership."

So in the case of *Blundell v. Winsor*, (a) decided long subsequently to the repeal of the Bubble Act; it appeared that the plaintiff and defendant and several others had formed themselves into a company called the Anglo-

(a) 8 Sim. 601.

American Mining Association, and a deed was executed, containing among other provisions a stipulation "that it should be lawful for the shareholders at a meeting to be called for that purpose, at any time and from time to time to increase the capital to any amount that might be agreed upon, by creating an additional number of shares, and that the shares, as well original as additional, should and might be assigned and disposed of by deed or will or otherwise to any other person or persons at the discretion of the holders thereof;" and also that any special meeting of the shareholders, duly convened for that purpose, might declare the accounts of the company finally closed, and the assets fully administered, and the superintendent, trustee and treasurer, and all other parties released and discharged from all future liabilities and engagements, actions, suits, claims, and demands, under or by virtue, or by consequence of the deed, or of any other deed or engagement entered into by them in connexion with or reference to the affairs of the company; and that the superintendent trustee and treasurer, and all other parties should be released and discharged according to such resolution, and on the terms and under the modifications thereof." The deed containing such provisions as these was held to be on the face of it illegal, and the Court refused to interfere to settle the conflicting claims of various parties arising out of it. In the words of the Vice-Chancellor; "The deed held out to the public as an inducement to them to become partners, a false and fraudulent representation that they might continue partners in the undertaking just as long as they pleased, and then get rid of all the liability that they had incurred, by transferring their shares to some other person." (a)

The Bubble Act, 6 Geo. 1, c. 18, and cases thereon.

Pretence of limited liability.

Blundell v. Winsor, (1837.)

(a) In the case of *Walburn v. Lord Brougham*, it was, however, held that an announcement in *Ingilby*, 1 Myl. & K. 61, before

The Bubble
Act, 6 Geo. 1,
c. 13, and cases
thereon.

Pretence of
limited
liability.

Duvergier v.
Fellowes.

‘And, upon the same principle, an association will be illegal, if their prospectus, without containing any such express pretence of limited liability as in the cases just stated, puts forward any advertisement which by necessary implication will bear any such construction. In *Duvergier v. Fellowes*, (a) such was the construction put by Best, C. J. on the terms of the deed in that case, which declared the shares to be generally transferable. “When it is said the shares were to be transferable, that must mean that the assignee was to be placed in the precise situation that the assignor stood in before the assignment; that the assignee was to have all the rights of the assignor, and to take upon himself all his liability. Now the assignee can join in no action for a cause of action that accrued before the assignment: such rights of action must still remain in the assignor, who, notwithstanding he has retired from the company, will still remain liable for every debt contracted by the company before he ceased to be a member.” And again,—“The pretending to be possessed of transferable stock, is pretending to act as a corporation, and pretending to possess a privilege which does not belong to many corporations.” It is evident, from the observations of the Judges on this case in error, (b) that the rule thus laid down by C. J. Best is not maintainable in so general a

the prospectus of a company, that in all engagements to be entered into between the directors and the public, an express provision was to be contained that no shareholder was to be liable beyond the extent of his shares, was not liable to the objection in question, it being of course perfectly competent for any person to deal with the company on

these restricted terms, if he thought proper; while to those who might not choose to accede to such terms the clause in question would not apply.

(a) *Ante*, 231.

(b) And see also the observations of Tindal, C. J., in *Garrard v. Hardy*, and *Harrison v. Heathorn*, *post*, 242.

form; and, that the same construction would not now be put upon a bare declaration that the shares in a company were intended to be transferable at the will of the holder. But it is not the less certain that, if there should be circumstances in any particular case indicating that such was the conclusion which the directors of the company intended the public to draw from it, the observations of the C. J. would be held to apply, and the consequence of illegality would attach to the company as inevitably as if the false representation were made in express terms.

The Bubble Act, 6 Geo. 1, c. 13, and cases thereon.

But in some cases under the Bubble Act the rule was carried much further, it being held that, in the absence of any declaration either express or implied, on the part of the projectors of an association, that the subscribers could by mere transfer of their shares get rid of all liability incurred, the mere fact, that by the constitution of the company the shares were to be generally transferable, rendered it illegal.

Transferability.

Thus, where B. being employed by A. to purchase for him certain transferable shares in an unincorporated company, charged and received from him 25% beyond the market price of such shares at the time, it was held that an action would not lie to recover back this sum, the company being within the Bubble Act, and the parties *in pari delicto*. (a)

Buck v. Buck, (1808.)

It appeared that the defendant was employed by the plaintiff to purchase for him five shares in a company called the "British Ale Brewery." He purchased them, and they were transferred to the plaintiff. The highest premium upon shares in this company was then 5% each; but the defendant charged and received from the plaintiff the sum of 50% as the premium upon those he had pur-

(a) Buck v. Buck, 1 Camp. 547.

The Bubble Act, 6 Geo. 1, c. 18, and cases thereon.

Transferability.

chased; and it was contended that the excess above the real amount of the premium was money had and received to the plaintiff's use. It was shown in evidence that "The British Ale Brewery," was a public company neither incorporated by charter nor act of Parliament, that its stock was raised by public subscription, and its shares transferable. It does not appear in the report of the case whether any restriction, and if so, what, existed in exercising the power of transfer.

Rex v. Stratton,
(1809.)

So also it was held that an indictment could not be supported for a conspiracy to deprive a man of the office of secretary to an unincorporated joint stock company with transferable shares, for acting as secretary is an offence under the Bubble Act. (*a*)

This was a case of an indictment for a conspiracy to deprive one Thompson of the office of secretary to the Philanthropic Annuity Society; and to prosecute him without any reasonable or probable cause, for obtaining money upon false pretences. It appeared that the society was an unincorporated company with transferable shares; that there was a violent dispute amongst the subscribers as to the choice of secretary; that one party, headed by the defendants, cashiered the prosecutor; that he still went on collecting subscriptions, and that they indicted him for obtaining money upon false pretences, upon which he was acquitted. Lord Ellenborough said, "the society was certainly illegal; therefore to deprive an individual of an office in it cannot be treated as an injury. When the prosecutor was secretary to the society, instead of having an interest which the law would protect, he was guilty of a crime."

So in a case in equity, (*b*) it was intimated by Lord

(*a*) Rex v. Stratton, 1 Camp. 549, n.

(*b*) Ellison v. Bignold, 2 Jac. & W. 503.

Eldon, that a voluntary society for insurance, by way of mutual guarantee, was or was not illegal, according as the shares of the money paid up were or were not transferable generally to persons not members. In that case a bill had been filed by some persons on behalf of themselves and all others claiming an interest under a deed professing to form what is called a "National Association," being a sort of insurance company, governed by particular provisions. "The question of the legality of this instrument," it was said by the Court, "is one that it is necessary for the Court to consider well before it decides that it can interpose at all. The general scheme of the deed is to form a society for the purpose of insuring the property not of persons not belonging to it, but of those only who are members. Now as I have understood the law (I will not say that I am correct, but I believe that I am) when a number of persons undertake to insure each other, if the shares and interests in the money that has been paid up, be not assignable and transferable to any persons who are not members, the society is not illegal, but if there may be assignments and transfers of the shares, I have understood that that made it illegal." (a)

The Bubble Act, 6 Geo. 1, c. 18, and cases thereon.

Transferability,
Ellison v. Big-
nold,
(1821.)

So also in *Josephs v. Pebrer*, (b) which was an action of assumpsit for work and labour, and money expended in the purchase of shares in a concern called the "Equitable Loan Bank Company," where it appeared that the company professed to have a capital of 2,000,000*l.*, in shares of 50*l.* each; that a deposit of 1*l.* per share was required on the delivery of certificates (c) for shares to the holders; that

Josephs v.
Pebrer,
(1825.)

(a) The Court afterwards refused to interfere on another ground.

(b) 3 B. & C. 639; 5 D. & R. 542; 1 C. & P. 507.

(c) The following is a copy of the certificate:—

"No. 16 156 to 16 160 inclusive.

This certificate declares that the sum of 1*l.* having been paid as a deposit for each of the above mentioned shares of 50*l.* each, the holder

The Bubble Act, 6 Geo. 1, c. 13, and cases thereon.

Transferability.

Josephs v. Pebrer.
(1825.)

the shares were to be transferable without any restriction, and that the holders were to be subject to such regulations as might be contained in any act of Parliament passed for the government of the society, and in the meantime to such regulations as might be made by a committee of management; and no evidence was given as to the particular objects or tendency of the company; the Court held that, upon this evidence the company were to be considered illegal, and within the operation of the Bubble Act, as having transferable shares, and affecting to act as a body corporate without authority, by charter or act of Parliament; and that the plaintiff consequently could not maintain his action, as it arose out of an illegal transaction. The Judges who decided this case, treated the transferability of shares, at the mere option of the holder, as of itself indicative of illegality, and as tending to a public nuisance, by reason of the facilities it afforded to gaming and ruinous speculation.

Kempson v. Saunders.
(1826.)

Again, in *Kempson v. Saunders (a)*, where a company had been formed for the purpose of making a railway, the shares were intended to be generally transferable, but it was agreed that nothing should be done until an act of Parliament should have been obtained: it was held, that under the Bubble Act, this would have been an illegal company, on account of the transferability of the shares, but for the last proviso, that the act was to be obtained

of this certificate will be entitled to these five shares in the Equitable Loan Bank Company, with all the benefits and emoluments, but subject to the future payments on the shares, and all matters contained in any act of Parliament for the regulation of the company; and, in the meantime, to such conditions, regulations, and orders as the vice-presidents and directors, grounding (*query* 'forming') the present committee of management may direct."

Signed by two directors.

(a) 4 Bing. 5

before doing any thing. In the earlier case, however, of *Rex v. Webb*, above stated (a), a doubt was expressed by Lord Ellenborough, whether the mere raising transferable stock was in any case *per se* an offence against the act, unless it had relation to "some undertaking or project which had a tendency to the common grievance, prejudice and inconvenience, of his Majesty's subjects, or of great numbers of them." "The mischief," it was said, "intended to be remedied, arose from *such* undertakings and projects, and the suppression of *such* undertakings and projects, seems to be the great object of the act." And the better opinion seems to have been that, under the act, the general transferability of shares was not *per se* a substantive element of illegality, and that, in the case of a company, of which the beneficial character was established *aliunde*, the transferability of shares was not fatal to its legality; but that, in the absence of all evidence as to the actual character and effect of the company, the fact of transferability of shares was considered so objectionable, as opening a door to stock-jobbing, and gambling speculations, as to turn the scale against the company: hence the great stress laid, in several cases, upon the existence or non-existence of restrictive clauses or conditions, as affecting very materially the character of the stock, as a stock-jobbing fund, those stocks in which shares were transferable, without any limitation, being pronounced against, while those which were necessarily restricted to holders of a particular class, or such as subscribed to certain conditions, or were approved by the directors, being considered as thereby saved from the imputation of statutory illegality. Thus, in *Rex v. Webb* (b), the Chief

The Bubble Act, 6 Geo. 1, c. 18, and cases thereon

Transferability.

(a) *Ante*, 228.

(b) *Ante*, 228.

The Bubble Act, 6 Geo. 1, c. 18, and cases thereon.

Transferability.

Justice held that, in the qualified extent to which the shares were in that case made transferable, it could not be said that there had been *such* a raising of transferable stock, as to fall clearly within the scope of the act, the stock being made transferable to no one individual to a greater amount than 20*l.*, and the purchaser being obliged, in every case, to enter into covenants, and to comply with the condition of taking from the institution a weekly supply of bread and flour. So in *Pratt v. Hutchinson (a)*, it being an express condition of transfer, that the purchaser should be approved at a meeting of the society, and should, on his admission, become a party to the original articles, it was held, that such a limited power of transferring stock, was not within the mischief of the act.

Common Law. At common law, however, it appears that transferability of the stock, though totally unrestrained, forms no substantive objection to the constitution of the company. This must be considered as settled by the case of *Harrison v. Heathorn, (b)* where a plea framed in the very words of the Bubble Act was held, since the repeal of that act, to be no answer to a claim arising out of the relations of a company with a stock so constituted. And again, per Tindal, C. J., in *Garrard v. Hardey, (c)* "there is no authority for holding that the raising and transferring of stock is simply and *per se* without any indication of the mode by which it injures or defrauds the public an indictable offence at common law." And in the case of the *London Grand Junction Railway Company v. Freeman, (d)* in error, the observation was made from the Bench that the doctrine

(a) *Ante*, 229.

(b) 6 Scott. N. R. 735.

(c) *Ib.* 476.

(d) 2 Man. & Gr. 606.

laid down by Lord Tenterden in the case of *Josephs v. Pebrer*, (a) condemnatory of such transfer on grounds of general policy, was unnecessary for the decision of that case at the time; the Bubble Act being then in force, and the practice in question being contrary, at all events, to the provisions of that act, whatever might be the case under the common law. The facilities however which the unrestrained transfer of shares afford to gambling and ruinous speculations are not to be denied, especially while the company is still inchoate; and of course, the practice is still more objectionable in cases where acts of Parliament are necessary for the effectual prosecution of the undertaking, as in such cases it may, and often does happen, that shares, or more properly speaking scrip certificates, which are the mere evidence of a contingent right to shares, are bought and sold at considerable premiums, and the act of Parliament is, after all, never obtained. With reference to such practices as these, the observations of Lord Langdale, in the recent case of *Jackson v. Cocker*, (b) are very material. "Not only have such certificates been granted, but they have been bought and sold, and, as all of us must too well know, they have been made the means of gambling, bribery, and frauds of the most extensive character. Whether they are legal is a question which might deserve greater attention than it has received to-day, and I am by no means disposed to treat lightly the suggestions of Lord Tenterden in *Josephs v. Pebrer*." It was not, however, necessary to decide the point in that case, and the mischief of the practice has now received a considerable check from the recent act, 7 & 8 Vict. c. 110, (c) which attaches the character of illegality to

Common Law.

Transferability.

(a) *Ante*, 27.

(b) 4 Beav. 59.

(c) App. 164.

7 & 8 Vict
110.

several practices heretofore allowed ; but these affect not so much the legality of the company as the validity of certain acts on the part of the directors and shareholders. These have been already considered, (a) but, as will have been seen, they do not apply to companies requiring Parliamentary authority, or incorporation by charter, or letters patent.

(a) *Ante*, 20—46.

CHAPTER XIV.

LIABILITIES OF PERSONS UNDER PROVISIONAL AGREEMENTS AND PROSPECTUSES.

THE change in the law of Joint Stock Companies effected by the 7 & 8 Vict. c. 110, has been already pointed out. (a) With respect to companies formed before the 1st Nov., 1844, it is only imperative that certain particulars should be registered, for the purpose of mere registration, whilst it is left optional to avail themselves of the privileges of the statute by complying with certain requisites. (b) Although such option may have been exercised, yet the limited incorporation obtained by the certificate of complete registration, does not affect contracts previously made. Such being the case, it becomes necessary to inquire what are the liabilities of members of Joint Stock Companies, existing in their various forms before the statute began to operate.

One of the instruments referred to under which a company may have been created is a "provisional agreement," (c) which purports to contain the conditions upon which persons are to become shareholders, and the regulations under which, and objects for which, it is proposed to establish the company. In general, an instrument of

(a) *Ante*, 20.

(c) *Ante*, 18.

(b) *Ante*, 16.

this description is resorted to and acted upon during that interval only which precedes the execution of a deed of settlement, or the obtaining of an act of Parliament or charter. Sometimes a company has been known to be carried on, permanently, by means of a provisional agreement only. It happens, not unfrequently, that such instrument is nothing more than a "prospectus," and published accordingly.

It is intended to consider, in the present chapter, the several states of liability which arise whilst companies are managed under these instruments.

SECT. I.—*Liabilities of Provisional Directors and Managers to the Shareholders.*

Distinction between present and future partnership.

The leading principle on which the decisions have been come to affecting the liability of provisional directors to persons taking shares and paying deposits, is, that the provisional agreement, or prospectus, is the basis of a contract between the parties. (a) That contract is either that of a proposed or of an actual partnership. The question whether, under such an instrument, the partnership is to be considered as already formed, or only to be formed, must be determined by the language, objects, and apparent intention of the instrument. The state of liability will differ in the two cases put. Again, the contract is one upon condition; for the instrument contains certain stipulations between the parties. Now, if the conditions contained in the contract be unperformed, then the instrument will cease to be a contract, and, therefore, persons taking shares and paying deposits thereon, and doing no

(a) See the judgment of Tindal, C. J., *Fox v. Clifton*, *post*, 268.

other act will not be considered partners with the provisional directors. Another consequence proceeding from this state of things is, that the amount of deposits may be recovered from the directors, on the ground that the consideration on which it was paid has failed. So likewise, as a result of the same view, provisional directors only and not the shareholders, are liable for the expenses incurred previously to the establishment of a company. (a)

Distinction
between
present and
future part-
nership.

The difference between the case in which a person intends to become a partner in a trade or business to be afterwards carried on, provided certain things are done, and the case in which he intends joining an existing partnership, was observed upon in *Dickenson v. Valpy*. (b) If there is a contract to carry on any business by way of present partnership, between a certain definite number of persons, and the terms of that contract are unconditional or complete, the partners give to each other an implied authority to bind the rest to a certain extent. But if a person agree to become a partner at a future time with others, provided other persons agree to do the same, and advance stipulated portions of capital, or provided any other previous conditions be performed, he gives no authority at all to any other individual until all those conditions are performed. If any of the other intended partners, in the mean time enter into contracts, it seems to be clear that he is not bound by them, on the simple ground that he has never authorized them—always supposing that he has not held himself out, directly, or indirectly, to the party with whom the contracts are made, as having, in substance, given that authority. In those

(a) See next section, *post*, 257.

(b) 10 B. & C. 128; 5 Man. & R. 126. See *Howell v. Brodie*, 6 Bing. N. C. 44. *Fox v. Clif-*

ton; *Nockles v. Crosby*; *Meigh v. Clinton*; *Pitchford v. Davis*; *Bourne v. Freeth*, *post*.

**Distinction
between
present and
future part-
nership.**

cases in which a plaintiff has not been induced by the defendant's representation to give credit to him, but seeks to fix him, because he has really authorized the contract to be made, the plaintiff must shew that authority, and an authority upon condition not performed, is no authority at all. (a)

Bourne v. Freeth.

In order to form a company for distilling whisky, this prospectus was issued in May, 1825. "The conditions upon which this establishment is formed are, the concern will be divided into twenty shares of 100*l.* each, five of which to belong to A. B., the founder of the works; the other fifteen subscribers to pay in their subscriptions to M. and Co., bankers, Liverpool, in such proportions as may be called for; the concern to be under the management of a committee of three of the subscribers, to be chosen annually on the 10th of October; ten per cent. to be paid into the Bank on or before the 1st of June next." It was considered that the prospectus indicated that a company was about to be formed, not that one was actually formed—that it was in the contemplation of the parties who had subscribed their names to it, to establish a company on certain conditions. And it was accordingly held, that a person who subscribed his name to the prospectus, and who was present at a meeting of subscribers, when it was proposed to take certain premises for the purpose of carrying on the distillery, which were afterwards taken, and solicited others to become shareholders, but never paid his subscription, was not chargeable as a partner for goods supplied to the company. (b)

Deposits.

As a consequence of the distinction which has just been pointed out, every shareholder, who pays his deposit or

(a) Mr. Justice Parke, in *Dickenson v. Valpy*.

(b) *Bourne v. Freeth*, 9 B. & C. 632; 4 Man. & R. 512.

subscription, on a prospect that the scheme will continue, and does not act rendering himself liable to the expenses of attempting to bring it into operation, may, if it afterwards proves abortive, or is abandoned without any steps being taken towards carrying it into effect, recover from the projectors the whole of the money advanced by him, without the deduction of any part towards payment of the expenses incurred. (a)

Recovery of deposits.

In the case of the "British Metropolitan Tontine," a prospectus for establishing it, stated that the money subscribed was to be laid out at interest, and that at the expiration of a year every subscriber should receive a shareholder's ticket which would be saleable or transferable. After some subscriptions had been paid to the directors in whom the management of the concern was vested, but before any part of the money was laid out at interest, and before any shareholder's tickets had been delivered, the directors resolved to abandon the project. It was decided, that each subscriber, in an action for money had and received, might recover the full amount of his subscription from the directors, because, until the money had been laid out in execution of the proposed scheme, the shareholders did not become jointly interested in the funds of the concern, and consequently were not partners: and that the respective subscriptions were not subject to any deduction on account of expenses, for all the expenses incurred in endeavouring to bring an abortive scheme into actual operation must be borne by the original projectors, and not by those who advance their money on the faith of its going on. (b)

Nockels v. Crosby.

(a) See *Lawler v. Kershaw*, ante, 194, as to the effect of paying a deposit where a deed is subsequently executed.

(b) *Nockels v. Crosby*, 3 B. & C. 822, and see the "resolutions" in the report of this case.

Recovery of
deposits.

In the preceding case, Mr. Justice Bayley said, "the action to recover the deposits might have been maintained, even if the scheme were within the Bubble Act, for it proved abortive, and no transferable shares were ever created, and the period had not arrived at which it would have been within the operation of the statute."

Kempson v.
Saunders.

So a plaintiff was allowed to recover the price of shares under the following circumstances:—The defendant had sold to the plaintiff, at 3*l.* 5*s.* premium, twenty shares in a projected company for constructing a railway from Birmingham to Bristol, on each of which shares, a deposit of 2*l.* had been paid by the original holder, of whom they had been purchased by the defendant. The committee who had framed the project and issued the scrip, agreed that nothing should be done till the sanction of the Legislature were procured; they afterwards abandoned the project, and no act of Parliament for incorporating the company was ever obtained. The scheme having failed, the plaintiff brought his action for money had and received, on the ground of failure of consideration, and recovered a verdict. It was said by Best, C. J., "If the transaction in which the plaintiff engaged had been illegal, he could not have recovered this demand, the law on that head is clear and most beneficial in its consequences; but although the 6 Geo. 1, c. 18, renders illegal societies of the kind projected in this instance, there was nothing illegal in the transaction in which the plaintiff was concerned, because, at the meeting convened for the purpose of framing the project, it was agreed that nothing should be done till the sanction of the Legislature had been obtained. While things were in this state, the defendant, who was not an original subscriber, but had purchased these shares (which in fact were not saleable

till the company was formed) sold them to the plaintiff, but he sold a nothing, an alleged title of no value. (a) If he bought of another, he may sue the seller, and the seller the party from whom he purchased, till at last we come to the original projectors." (b)

Recovery of deposits.

Kempson v. Saunders.

And in equity, where a party has paid a deposit on a scheme, or bought a share in any undertaking, which turns out to be a mere bubble, he may sustain a bill to get a return of his money. But this proceeds upon the principle of fraud, and "it is no objection that parties have their remedy at law, and may bring an action for monies had and received for the plaintiff's own use, for in cases of fraud a Court of equity has concurrent jurisdiction with the common law." (c)

In equity.

And if a contract be founded on fraudulent misrepresentations, such as would, in a Court of law, be sufficient to support an action on the case, it may, in a Court of equity be rescinded, and the money paid under it recovered back. The fraud may consist in the misrepresentation of a fact material to the contract, where the truth of that is known to the one party and unknown to the other, and the misrepresentation is intentionally made with a view of procuring a more advantageous contract than the real facts, if truly stated, would have warranted. But a

(a) See *Perring v. Hone*, and *Fox v. Clifton*, *post*.

(b) *Kempson v. Saunders*, 4 Bing. 5; 12 Moore, 45. See 2 C. & P. 410, n., where it is said that in the case of *Watkins v. Huntley*, which was an action brought against a proprietor of shares in the Equitable Loan Bank Company, by a person to whom he had sold them, to re-

cover back the money paid, because the company had been dissolved; it was held, by Best, C. J., that the plaintiff was entitled to recover, on the ground that the consideration had failed; and recognised the case of *Kempson v. Saunders*.

(c) Per Master of the Rolls, in *Colt v. Wollaston*, 2 P. Wms. 154.

Recovery of
deposits.

party is not entitled to relief under these circumstances, if, after full knowledge of the truth, he has persisted in the contract previously made. (a)

Colt v.
Wollaston.

In the case of *Colt v. Wollaston*, (b) the plaintiffs brought their bill to be repaid the sums which they had paid to the defendants, as managers and projectors of a bubble, called the "Land Security and Oil Patent." The defendant Wollaston had invented a project for extracting oil out of English radishes, and got a patent for the sole exercise of this invention; and had bought an estate for 31,800*l.* called Sutton Marsh, in Lincolnshire, which was then in mortgage for 28,000*l.* In June, 1720, he made public this project, and assigned his oil patent to the defendant Arnold, in trust for all the contributors towards the project, which he divided into five thousand shares, valuing every share at 20*l.*, in order to raise 100,000*l.* As an encouragement and security for all the contributors, Wollaston conveyed his purchase of Sutton Marsh to the defendant Arnold and his heirs, in trust, in the first place, to pay off the 28,000*l.*, and afterwards to pay to himself (Wollaston) 57,200*l.*, in all 85,200*l.*; and as to the surplus which the estate would raise, it was to be for the benefit of the contributors; the project or bubble was to be called the "Land Security and Oil Patent," and was represented by the defendants to be a most advantageous project, without any hazard, there being land security given for the benefit of the contributors. The project failed, whereupon the contributors called upon the projectors for their money, which occasioned the projectors to advertise, that in six months' time, they would return the money

(a) *Lovell v. Hicks and Others*, 2 You. & Coll. 46. Small v v *Baillis*, 1b 217. *Attwood*, 1 Younge, 416, 460.

(b) 2 P. Wms. 154; see *Stent*

with interest; but afterwards this was refused. The Master of the Rolls decreed that the defendants should pay back to the plaintiffs their principal, interest, and costs. (a)

Recovery of
deposits.

So in another case (b) in which the plaintiff was a shareholder in, and the defendants were the directors of a company called "The Imperial Distillery Company." The bill stated that ten of the defendants caused a prospectus, dated 23rd of March, 1825, to be printed and distributed, which, after mentioning the capital of the company to be 600,000*l.* in 12,000 shares of 50*l.* each, the names of the trustees, directors, bankers, and other officers of the company, and enumerating the probable advantages to be derived, as well to the partakers in such scheme, as to the public in general, by means of such scheme, proceeded to declare that the affairs of the company were under the management of a board of directors; that a deed of settlement would be prepared forthwith, which must be executed within thirty days after it should be ready for that purpose; and that every person who should neglect to execute the same within that time, would forfeit all share and interest in the company; that the deed was to contain all such clauses and conditions as the standing counsel and solicitors to the company should deem necessary for carrying on the business of the company; that application was then intended to be made to Parliament for an act to enable the company to sue and be sued in

Green v.
Barrett.

(a). His Lordship also said, "cases of this nature have frequently met with relief in this Court, as in Aaron Hill's case, which was a patent for extracting oil out of beech, which was also divided into shares, and a security proposed and agreed to be made

of lands, which came out to be *terra incognita* betwixt the degrees of latitude, 50th and 57th; and in the principal case, the land after the 85,000*l.* was paid, seems to be worth as little as Aaron Hill's.^b

(b) Green v. Barrett, 1 Sim. 45.

Recovery of
deposits.

In equity.

Green v.
Barrett.

the names of its officers, and which deed of settlement, when settled and approved by the standing counsel and solicitors, and the act of Parliament, when passed, should be the deed of settlement and act of Parliament for managing the affairs of the company: that the shares would be forthwith allotted; and all communications were requested to be made to the directors. It also appeared that twenty shares in the proposed company had been allotted to the plaintiff in consequence of his application, upon each of which he paid a deposit of 5*l.* to the bankers of the company, for which 100*l.* they gave a receipt, in which they acknowledged it was received for the directors. It further appeared that the terms of the original prospectus had not been adhered to; that no act of Parliament had been attempted or was intended to be obtained for the regulation of the company; that a small part only of the 12,000 shares had been allotted to, or taken by any person or persons; that the deposits on all such of the shares as had been so allotted had not been paid; but that, nevertheless, the directors had proceeded to make extensive purchases, and to lay out various large sums of money, as if the whole of the proposed capital of 600,000*l.* had been actually raised. The Vice Chancellor, recognising the case of *Coit v. Wollaston*,^(a) held that the plaintiff was entitled to recover back from the defendants the 100*l.* he had paid; and considered that the prospectus for this undertaking was published, not with any intention to establish a company upon the principles there stated, but as a snare to persons who might unwarily become subscribers, and for the purpose of enabling the directors to make a profit by the sale of shares.

Blain v. Agar.

So, likewise, in the case of the "Royal Stannary or

(a) *Ante*, 252.

British Mining Association," (a) relief was granted to the plaintiffs, (five persons,) who filed their bill against the defendants as the directors of the company. In 1825, the defendants had issued a prospectus, which, after mentioning the capital of the company to be 500,000*l.* in shares of 50*l.* each, the names of the directors, trustees, bankers, and other officers, stated that the directors had then the opportunity of selecting in Wales, Devon, and Cornwall, several mines which were then being worked, and others in a state fit to make returns as soon as steam engines, &c. could be erected; and that they, therefore, calculated on obtaining almost immediate benefits for the adventurers in the undertaking. Upwards of 20,000 shares were applied for before May, 1825; but these applications were complied with to the extent of 6200 only, "the defendants (as stated in the bill) intending to keep the remainder for themselves, in case they could make a profit by the sale of them, and if not, to reject them." Deposits of 5*l.* per share were paid upon the 6200 shares. Some of the original shareholders afterwards transferred their shares to other persons, by which means the plaintiffs and others, in behalf of whom they sued, became in November, 1825, the holders of the 1690 shares. After the plaintiffs had become holders, they discovered that some of the persons named in the prospectus as directors, had never acted as such, but had always been strangers to the affairs of the company, and that such of the defendants as were named as directors in the prospectus had of their own sole assumed authority admitted the other defendants into the directorship. The defendants had taken mines and expended money in working them although only part of the shares had been disposed of. No deed for regulating the com-

Recovery of
deposits. _____

In equity.

Blain v. Agar.

(a) Blain v. Agar, 1 Sim. 37; 2 Sim. 289.

Recovery of
deposits.

In equity.

Blain v. Agar.

Lovell v.
Hicks.

pany's affairs had been prepared. The defendants refused to take upon themselves the 3800 shares they had reserved, or to pay the deposits thereon. The bill charged that the monies paid by the plaintiffs had been obtained by fraud and misrepresentation, and for a purpose which had failed and could not be carried into effect.

An agreement for the purchase of part of the profits of a patent, which turned out to be a mere bubble, was also set aside as having been obtained by fraud and misrepresentation, and so much of the purchase-money as had been paid under the agreement ordered to be repaid. (a) In this case the defendants were joint-owners of a patent for "an economical apparatus or machine, to be applied to the process of baking for the purpose of saving materials," and entered into an agreement with the plaintiff for the sale to him of a license to use the patent, within a limited range, in the neighbourhood of Birmingham. The plaintiff, who had paid his 3000*l.* under this agreement, brought his bill to have it set aside for fraud, alleging that the defendant Hicks had represented to him that by means of this apparatus, bread might be baked in the ordinary manner so as to save the spirit, and realize a large profit; that to give colour to these representations, Hicks had made various experiments before the plaintiff and others, which appeared to produce that result; that on the faith of these representations and experiments, the plaintiff had entered into the agreement in question, but that he had since found that the apparatus effected no saving in bread baked in the ordinary manner; and that in the experiments which had been made, Hicks had fraudulently and unknown to the plaintiff introduced a particular sort of ferment, and likewise spirits, by which means he had

(a) Lovell v. Hicks and Others, 2 You. & Coll. 46.

apparently succeeded in the undertaking, but had, in fact, grossly deceived the plaintiff. The bill charged the other defendants with being participators in the fraud.

Recovery of
deposits.

In equity.

So also, where A., B., and C., agreed for the purchase of certain mines for 10,000*l.* and to form a joint stock company for working them, and that the mines should be sold to the company for 25,000*l.*, of which 10,000*l.* should be paid to the proprietor, and the remainder divided amongst themselves and certain of their friends, whom they nominated to be directors and officers of the company. At a meeting of the persons so nominated, at which A., B., and C. were present, but before the company was established, it was resolved that the company should purchase the mines for 25,000*l.*, to be paid to F., and a conveyance was afterwards taken from F. to the trustees of the company, and the 25,000*l.* was paid out of the funds of the company, and distributed in the manner agreed upon. A suit having been instituted by some of the shareholders on behalf of themselves and the others, against the persons who had participated in the 15,000*l.*, the latter were decreed to refund what they had received. (a)

Hichens v.
Congreve.

SECT. II.—*Liabilities of Provisional Directors and Managers, not to the Shareholders, but to the World, on Contracts entered into by them for the purposes of the Company.*

The inquiry as to what constitutes a partner in a company, and in what instances the directors are to be

(a) Hichens v. Congreve, 4 Sim. 420; and see S. C. not S. P. 4 Russ. 562.

deemed agents, as the legal consequence of a partnership completely formed amongst the shareholders, does not arise in this place, but will be treated of in the following section. Here, it would appear to be necessary only to ascertain what circumstances may be considered sufficient to enable a party to enforce a contract entered into with persons who assume to be the managers of a company.

The first expenses to be borne by the directors.

With respect to the first expenses of a company not formed, but projected only, they cannot be thrown upon shareholders unless with their consent. If persons set a scheme a-foot, and assume to be the directors or managers, all the expenses incurred before the scheme is in actual operation, must, in the first instance, be borne by them. When it is in operation, the expenses and charges of management will be borne by the concern, "and then it may be fair that the preliminary expenses should be paid in the same way, for then the subscribers have the benefit of them." (a)

In all these cases, therefore, the provisional directors only are primarily liable for goods supplied to the company, and for other causes of action of the like nature. But this is upon the assumption that any person having taken shares in the concern upon the footing of the prospectus, has done no act to make himself a partner, such as attending meetings of the concern, or otherwise, for in that event, he will, of course, be liable as well as the directors, on contracts entered into by them. It was said by Baron Parke in a recent case, (b) that "the secretary

(a) Per Littledale, J., in *Nockels v. Crosby*, see *ante*, 249. And see *Handcock v. Hodgson*, 4 Bing. 269, where the directors of a company were held personally liable

to pay the purchase-money of some mines.

(b) *Pitchford v. Davis*, 5 M. & W. 2.

of the company who gives the order to the tradesman is the party primarily liable; the directors also, who give the order to the secretary, may be liable; a third party (meaning a shareholder) may become liable if it can be shewn that he has authorized the act of the directors in making the contract."

The first expenses to be borne by the directors.

The following cases may be stated on this subject:

The defendants were appointed directors of a joint stock company for supplying the town of Brighton with water, attended meetings of the directors, and accepted and paid the first instalment upon shares required to qualify them to act as directors. The resolutions entered into at the first formation of the company, and prospectus subsequently issued, stated that an act of Parliament would be applied for to regulate and establish the company. After the defendants had ceased to attend meetings of the company, the directors advertised for tenders for the excavation of reservoirs, and employed the plaintiff to do the necessary works. It was held, that the defendants (they having once accepted the office of directors, and not having since done any act to divest themselves of the responsibility attached to that character,) were liable to the plaintiff for the work done by him, although they were not actually parties to the contract, and although no act of Parliament for incorporating the company had been obtained. (a)

Doubleday v. Musket.

So, in another action for work and labour. The plaintiff was an engineer, who sued the defendant, as one of the directors of the Steam Washing Company, for a sum of £173*l.*, for a steam engine and other machinery erected on

Maudslay v. Le Blanc.

(a) *Doubleday v. Musket*, and *Lousada*, 4 M. & P. 750; 7 Bing. 110. See observations of Tindal, C. J. The defendants "are in the condition of partners who,

having quitted a business, allow their names to remain over a door, or otherwise hold themselves out to the world as responsible."

Work and
labour.

Maudslay v.
Le Blanc.

the premises of the company at Clapham. The defendant was a director in May, 1825, and it appeared that in June of that year an order, which had been given previously to the month of May, by a person named Tyrrell, for the machinery in question, was confirmed by the directors at a meeting which the defendant did not attend; but he attended at subsequent meetings, and also inspected the works while they were in progress. The defendant's name was in a printed paper, purporting to be a prospectus, issued by the company, one of the terms of which was that a deed should be executed by the members. It having been urged that the plaintiff should have shewn the defendant to have executed the deed, it was said by Bayley, J., "that the plaintiff was not bound to do so; that he should take it for granted that the defendant would never have continued to act as a director unless he had executed the deed: that he was liable as a partner: he was at the meetings of the directors, acting from time to time, and went to see the works in progress; and therefore it was impossible to say he was not liable." (a)

Money Penny
v. Hartland.

There are many cases in which works are done and expenses incurred, preparatory to the formation of a company, as for instance, where a committee has been formed and steps are taken under its orders, with the view of establishing a railway by act of Parliament. Before the act passes, it has been said, (b) that the surveyor and other persons employed look to the committee or body of adventurers who first employ them, but after the passing of the act it must be considered that they look to the company or persons made liable under the act. So that, in such a case, it becomes a question for the jury as to whom

(a) Maudslay v. Le Blanc, 2 C. Money Penny v. Hartland, 1 C. & P. 409.

(b) Per Lord Tenterden, in

credit was given. A similar opinion appears to have been expressed by Baron Alderson. (a) A railway had been proposed to be constructed from Nottingham to London. The plaintiff had been on the 3rd of June, 1838, appointed secretary to the local committee who were engaged in trying to form a company. The defendant became one of the committee in October, 1838, whilst the plaintiff's services continued. The company was never formed, and the projected railway was given up. Baron Alderson stated to the jury "that the members of the committee would be the persons liable to pay the salaries of the plaintiff unless he contracted only to be paid from some particular fund, and not to look to the committee for payment. The real question in the cause is whether the plaintiff agreed that he was not to look for payment from the members of the committee individually; but was only to be paid from the deposits and instalments in case the company should be formed." (b)

Work and
labour.Kerridge v.
Hesse.

With respect to provisional directors, it may be remarked that one cannot bind the others by bill of exchange in the absence of express authority to that effect.

Bills of
exchange.

The plaintiffs declared upon a bill of exchange for 500*l.*, dated 22nd October, 1833, drawn by William Clare upon, and accepted by the defendants, payable to the order of the drawer, and by him indorsed to the plaintiffs. Three of the defendants, E. M. Roberts, L. Roberts, and Clare pleaded that Clare did not indorse to the plaintiffs: the

Bramah v.
Roberts.

(a) *Kerridge v. Hesse*, 9 C. & P. 200.

(b) For cases on the liability of committee-men, or other persons managing clubs, or projecting works, see *Cullen v. The Duke of Queensberry*, 1 Brown's C. C. 101. *Eaton v. Bell*, 5 B. & Ald.

34. *Horsley v. Bell*, Amb. 770; *Brown's C. C.* 101. *Burlis v. Smith*, 7 Bing. 705. *Pink v. Scudamore*, 5 C. & P. 71. *Glenester v. Hunter*, ib. 62. *Wordsworth's Law of Clubs and other Societies*.

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exchange.

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remaining five defendants, Baker, J. Foster, G. H. Foster, Lyall, and Blakesly, pleaded that the defendants did not accept. The bill produced in evidence appeared to be drawn by Clare, and addressed to "Messrs. E. M. Roberts, James and G. H. Foster, F. Blakesly, and others, directors of the South Metropolitan Gas Light and Coke Company, No. 3, Crosby Square." The form of the acceptance was:—"Accepted for self and directors. *E. M. Roberts*, chairman." The bill was indorsed by Clare to the plaintiffs, and it was proved that this Clare was one of the acceptors, and one of the defendants in the capacity of acceptor: but no evidence was given by the plaintiffs of the constitution of the South Metropolitan Gas Light and Coke Company, or of any authority given by deed or otherwise, to any of the directors of the company, to bind the other directors, or to bind the company at large by the acceptance of bills of exchange. In May, 1830, 1*l.* per share had been paid to a banker, by sundry subscribers, as a deposit towards the formation of a company. An account had been opened with the banker in the name of the South Metropolitan Gas Light and Coke Company. There was a secretary to the company: all payments by the banker were made upon the signatures of the directors; and the defendants had paid various bills, accepted in the same form as the present. But two of the defendants, the Messrs. Foster, did not become directors till April, 1833; no bill of exchange had been accepted with their knowledge since that time, but all payments had been made in cash; no bill, in which the names of the Messrs. Foster were specified, and no bill drawn since the time at which they joined the concern, had been paid with their express authority; and as to the payments which they had sanctioned, those payments were confined to payments of acceptances given before they became partners on

account of goods furnished to, or work done for the company. It was observed by Tindal, C. J., "that upon the face of the bill, and without evidence to explain the actual relation of the parties to each other, it did not appear to be a bill of exchange accepted by one of the partners of an ordinary firm trading in partnership together, but a bill drawn upon the directors of a joint stock company, and accepted by the chairman for himself and the other directors. But the right of one director to draw a bill upon the rest, and still further the power of one director to accept a bill for himself and the others, so as to make those others liable, according to the case of *Dickinson v. Valpy*, (a) in the authority of which case we entirely concur, is not a right or power implied by law, like that which belongs to one member of an ordinary partnership in trade; it must depend upon the powers given by the charter, or deed, or agreement, under which the company are established and constituted, or some other agreement between the parties, whether a bill so drawn and accepted shall or shall not have that legal effect." (b)

Bills of
exchange.

Bramah v.
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SECT. III.—*Liabilities of Shareholders on contracts by the Provisional Directors or Managers; or what constitutes a Partner in a Company not incorporated, nor regulated by a Deed of Settlement.*

The liability of a shareholder to a third person on a contract made with directors would appear to depend upon two states of circumstances; the first relating to the partnership, whether a present or only a future one: the

(a) Which was the case of a shareholder, see *ante*, 194.

(b) *Bramah v. Roberts and Others*, 3 Bing. N. C. 963.

second, supposing a present partnership to be subsisting, relating to certain acts done, or admissions made, by the shareholder from which a partnership between himself and the directors, or company, is to be inferred.

1. *Of Prospectuses, or provisional agreements, shewing a present or a future partnership.*

What prospectuses shew present or future partnership.

The question whether under a prospectus, or provisional agreement, the partnership is to be considered as already formed, or only to be formed, must be determined by the language, objects, and apparent intention of the instrument. Observations, to which reference may be had, have been already made on this subject. (*a*) In illustration of those remarks, cases will now be given in order to prove the liability of shareholders to third persons.

Nockels v. Crosby.

In the case of the British Metropolitan Tontine, (*b*) a printed paper was circulated to the following effect;— “That to effect the objects of the scheme, it was proposed to receive subscriptions of 10s. a-week from each member for the period of one year, *vis.*, from the first of January, 1821 to the 1st of January, 1822, and that the total amount of such year’s subscription should be deemed a share, and all such shares form one capital or joint stock of the company with benefit of survivorship, that the amount of the subscriptions would be vested in the names of the trustees, and, from time to time, laid out in government or other securities, the net proceeds and interest of which would be equally divided among all surviving shareholders twice in every year; that members were to subscribe their names to the company’s rules and regulations at the time of

(*a*) *Ante*, 246.

(*b*) *Nockels v. Crosby*, 3 B. & C. 814.

opening their subscriptions, or at any subsequent convenient time, and to abide thereby; that the management of the company was vested in eight directors; and that at the expiration of the year, every subscriber would receive a shareholder's ticket, which would be saleable or transferable. This prospectus was, it seems, from what fell from the Court, considered to be a contract of future partnership.

What prospectuses shew present or future partnership.

So also was the following. (a) "The conditions upon which this establishment is formed are, the concern will be divided into twenty shares of 100*l.* each, five of which to belong to A. B., the founder of the works, the other fifteen subscribers to pay in their subscriptions to M. and Co., Bankers, Liverpool, in such proportions as may be called for. The concern to be under the management of a committee of three of the subscribers, to be chosen annually on the 10th of October; ten per cent. to be paid into the Bank on or before the 1st of June next." And it was said by Lord Tenterden, "The question whether the defendant held himself out to the world as a partner, depends entirely on the effect of the prospectus which he signed. That instrument indicates that a company was about to be formed, not that one was actually formed. It shews only that it was in the contemplation of the parties who had subscribed their names to it, to establish a company on certain conditions."

Bourne v. Freeth.

One of the defendants had been made president, and the other a vice president and one of the consulting council of the "British American Association for emigration and colonization," and both of them had attended three meetings and had subscribed their names to an agreement, stating, "We do agree to subscribe for the number of

Wood v. The Duke of Argyle.

a) Bourne v. Freeth, 9 B. & C. 632; 4 M. & R. 512.

What prospectuses shew present or future partnership.

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shares herein-mentioned, and to pay a deposit of 5*l.* per share, when shares to the amount of 50,000*l.* shall have been subscribed." The number of shares required had never been subscribed. In an action for work and labour the jury found there was no partnership. At the trial three questions were left to the jury: 1st, Whether there had been any direct contract between the plaintiff and defendants; 2nd, Whether there was any partnership formed of which the defendants were members; 3rd, Whether the defendants had held themselves out to the plaintiff as members of the association. The Court refused¹ to disturb the verdict. (*a*)

Meigh v. Clinton.

At a meeting of the inhabitants of a district the following instrument was handed about and signed by persons then present to the amount of 3250*l.*:—"At a meeting of, &c., it appearing from the estimates that to make a new line from A. to L., an expense of 4600*l.* will be involved, it was proposed that the necessary applications be made without delay, in order to raise funds to meet the expenses, and the gentlemen under-named have proposed to subscribe such sums for the purpose as are set opposite to their respective names, and which it is proposed to secure by mortgage on the tolls." It was held that this was a mere proposal, and not an agreement, and this, although a local act had been obtained in consequence of the list being so subscribed, and the road had been made. The defendant, who had signed the proposal, was held not

(*a*) Wood v. The Duke of Argyle, Law J. 1844, C. P. 96. See Lake v. the same, Law J. 1845; Q. B. 73, where it was held that if persons meet together for the purpose of forming an association for a purpose of public

utility, and hold meetings preliminary to its formation, the attendance of any one of such persons at such meetings is some evidence to go to a jury to fix him with the liability for expenses necessarily incurred.

liable for calls made upon it, although he had promised by parol to pay them. (a)

What prospectuses show present or future partnership.

In *Fox v. Clifton*, (b) there is another instance of a prospectus for a future and not a present partnership. "Imperial Distillery Company, Capital, 600,000*l.*; 12,000 shares, at 50*l.* each. [After stating the names of trustees, directors, auditors, bankers, counsel, solicitors, engineers, and secretary, together with an explanation of the merits of the scheme, the advertisement proceeded thus.] The affairs of the company are to be under the management of a board of directors; the capital to be 600,000*l.*, in 12,000 shares of 50*l.* each. A deed of settlement will be prepared forthwith, which must be executed within thirty days after the same shall be ready for that purpose; and every person who shall neglect to execute the same within that time will forfeit all share and interest in the company. The deed is to contain all such clauses and conditions as the standing counsel and solicitors to the company shall deem necessary for carrying on the business of the company, and for enforcing the observance and performance of the several rules and regulations to be contained therein, or in any bye-law that shall be from time to time made by the directors. Application is intended to be made to Parliament for an act to enable the company to sue and be sued in the name of one of their officers, and the said deed of settlement, when settled and approved by the standing counsel and solicitors, and the act of Parliament, when passed, shall be the deed of settlement and act of Parliament for managing the affairs of this company. The shares shall be forthwith allotted, and until offices are taken all communications are requested to be made to the directors at the City of London Tavern."

Fox v. Clifton and Others.

(a) *Meigh v. Clinton*, 3 Per. & Dav. 211; 11 Ad. & Ell. 418.

(b) 6 Bing. 776.

What prospectuses shew present or future partnership.

Fox v. Clifton and Others.

It was said by the Court of Common Pleas, upon this prospectus, that paying deposits under it must be taken to imply an assent to the terms of the advertisement; that is, an assent to become partners in a company raising a capital of 600,000*l.*, consisting of 12,000 shares, and to be governed by deed, which should contain the clauses and conditions to be agreed on in future; but that the prospectus implied nothing more, and that it could not be construed as an assent to the terms of a partnership already formed.

It seems then that a principal test of present partnership or not, is, whether the capital mentioned in the prospectus has been all subscribed; or, which is more at large, whether the conditions of the prospectus have been fulfilled. Or, the inquiry may be, do the circumstances disclosed on the face of the prospectus shew that, by the mere subscription for shares and payment of deposits, a right has accrued to the subscribers to share profits?

Capital not raised.

In the instance of the prospectus last set out, (a) instead of an allotment of 12,000 shares, the utmost that ever were allotted scarcely exceeded 7,500; out of that number no more than 2,300 ever paid the first instalment, not half the latter number paid the second instalment, and only sixty-five subscribers signed the deed. Under these circumstances, it was said by the Court that the subscribers were at liberty to say "this was not the trading company upon which we paid our deposit; neither the capital nor the number of shares bearing any reasonable proportion to the original plan and project." And this the more especially, because, by the terms of the advertisement, they were taught to expect that the utmost risk they encountered was the loss of all share and interest in the concern upon their refusal to execute the deed.

(a) Fox v. Clifton, 6 Bing. 776. Judgment of Tindal, C. J., p. 798.

So, also, where a project having been formed for the establishment of a company for the manufacturing of sugar from beet root, a prospectus was issued, stating the proposed capital to consist of 10,000 shares, of 25*l.* each. The directors began their works, and entered into contracts respecting them, and manufactured and sold some sugar; but only a small portion of the proposed capital was raised, and only 1,400 out of the 10,000 shares were taken. This prospectus appears to have been considered as an agreement for a future partnership when the specified capital should have been subscribed. It was said by the Court, that "where a prospectus is issued, and shares collected for a speculation to be carried on by means of a certain capital to be raised in a certain number of shares, a subscriber is not liable in the first instance, unless the terms of the prospectus in that respect are fulfilled." (a)

What prospectuses show present or future partnership.

Pitchford v. Davis.

Again, it was said by the Court in *Fox v. Clifton*, that, if the right to participate in the profits of a joint concern is to be taken, as undoubtedly it ought to be, as a test of a partnership, the subscribers (defendants in that action) were not entitled at any time to demand a share of profits, if profits had been made, inasmuch as they had never fulfilled the conditions upon which they subscribed. The matter had proceeded no further than that the subscribers had offered to become partners in a projected concern, and the concern proved abortive before the period at which the partnership was to commence; and, therefore, with respect to the agency of the directors, which is the legal consequence of a partnership completely formed, the directors proceeded to act before they had authority from the subscribers, for they began to act in the

Right to participate in profits.

(a) *Pitchford v. Davis*, 5 M. & W. 2. See *Whitehead v. Barron*, 2 Moo. & Rob. 248, *post*, 280.

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name of the whole before little more than half the capital was subscribed for, or half the shares were allotted.

2. *Under what circumstances is a Shareholder a Partner.*

The terms of a prospectus will frequently decide in a great degree, whether the shareholder be liable. If that instrument happens to be of a description falling within the principles and observations already mentioned, the shareholder is not liable; and the persons who may have contracted with the directors, must rest upon the security of such directors.

When, therefore, it is sought to fix a shareholder with liability upon a contract entered into by the directors of a company, carried on under a provisional agreement or prospectus, the party suing must shew that the instrument was one of present partnership, and connect the shareholder with it by facts of a direct or indirect character.

The following cases will shew what circumstances have been deemed from time to time sufficient to constitute a person a shareholder or partner:

Fox v. Clifton and Others.

The leading case is that of *Fox v. Clifton and others.* (a) Early in March, 1825, certain persons met together, and resolved that a company should be immediately formed, to be called "The Imperial Distillery Company." After a preliminary announcement of their intention by advertisement, on the 19th March a meeting was held at the London Tavern, at which directors, a clerk, and engineer, were appointed; and on the 23rd of March, a further advertisement appeared in the newspapers, containing the prospectus already set out and observed upon. (b) A meeting was held on the 23rd of March, at which 7000

(a) 6 Bing. 776; 4 M. & Payne, S. C. 676.

(b) *Ante*, 267.

shares were appropriated, and letters printed in blank were distributed by the secretary among the intended shareholders as applications for shares, in the undermentioned form:—(a)

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A list of the persons whom the secretary had so addressed was sent to the bankers. On the 8th of March, the defendants appeared at the bankers, with letters as above, paid the sums required, and took a scrip receipt in the following form:—(b)

Fox v. Clifton and Others.

The directors then took a counting-house in Mark Lane, and by the end of May took and fitted up a distillery in Buckinghamshire. A book was made up by the secretary of the names of all who had made payments upon their shares, including the defendants. The directors advertised for tenders in the business undertaken, and the plaintiff applied to the secretary, at the counting-house, to know of what persons the company consisted. On the 18th of July, the plaintiff entered into the contract, the subject of the action, and the work was done between the 2nd of August, 1835, and the 15th of July, 1836. The contract

(a) "SIR,—I request you will insert my name for shares of the Imperial Distillery Company, and I hereby agree to make the payment thereon when requested."

To which letters the secretary replied in the following form:

"SIR,—I am instructed by the directors of this company to inform you, that they have apportioned to you shares of 50*l.* each in the same, and I request you will pay the deposit of 5*l.* per share into the hands of Messrs. Bosanquet, Pitt, and Co., Lombard-street, on or before the 28th instant.

"W. LANE, Sec."

"No. 6726,6735.

(b) "London, 28th March, 1825."

"Received of the Directors of the Imperial Distillery Company the sum of fifty pounds.

"For Messrs. Bosanquet, Pitt, Anderson, and Co.

"£50.

P. STAINSBY."

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was a tender sent by the plaintiff addressed to the chairman and directors of the company in answer to their advertisement.

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and Others.*

The partnership deed mentioned in the advertisement, bore date the 30th of June, and from that time lay open on the table of the office. It was executed by about sixty-five persons in the early part of July; but by none of the defendants, except Plumer. Only 7490 shares were ever allotted; only 2293 persons paid the first deposit; 1106 the second, and no more than fifty or sixty the third. The defendants Clifton, Wickey, Levi, and Fennel did not pay the second or the third; and as early as the middle of May, Wickey and Levi had sold their scrip. On the 16th of July notice was published in the *London Gazette*, of the deed of settlement being ready for execution. On the 25th of July a letter was addressed by the secretary to the subscribers, stating that unless the deed were signed, and the second instalment of 5*l.* per share paid immediately, the shares unpaid for would be forfeited.

On the 12th of August the directors advertised that the deposits would become forfeited on all scrip, for which the deed of settlement was not signed, and the first call paid on or before the 23rd. And on the 27th of August another advertisement appeared, declaring that such deposits on the now outstanding scrip were forfeited for the use and benefit of the proprietors, and authorizing applications to be made for the shares so forfeited. On the second call being paid, the scrip receipt was given up and a fresh paper issued, denominated a share. That share paper was in the following form:—(a)

(a) "Imperial Distillery Company. Capital 600,000*l.* Shares 12,000, 50*l.* each, No. 635. This is to certify that John Smith, of London, hath paid the sum of 5*l.* upon the above-mentioned share in this company, and that he is entitled to the same share, subject to

A third call was made by the directors in the latter end of the year 1825, and shortly afterwards letters were written by the secretary to the defendants Green and Hartley, stating that unless they paid the third call, they would be taken to have abandoned all interest in the concern.

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The Court were of opinion, on these facts, that the defendants had not held themselves out to the world as shareholders or partners, observing, that "the holding one's self out to the world as a partner, as contradistinguished from the actual relation of partnership, imports at least the voluntary act of the party so holding himself out. It implies the lending of his name to the partnership, and is altogether incompatible with the want of knowledge that his name has been so used. Thus, in the ordinary instances of its occurrence, where a person allows his name to remain in a firm, either exposed to the public over a shop-door, or to be used in printed invoices or bills of parcels, or to be published in advertisements, the knowledge of the party that his name is used, and his assent thereto, is the very ground upon which he is estopped from disputing his liability as a partner."

The Court then considered the case with reference to the question, whether the defendants were partners with

Prospectus basis of con-

the future instalments to be made thereon, and to the laws and regulations of the company, as contained in the deed of settlement establishing the same; and also subject to such bye-laws and regulations as may be made by the directors of the company.

JOHN DUNSTAN, }
ROBERT STONE, } Directors.
W. ASTON, }

(Indorsed.)

" Second Instalment.

" Received the 18th of July, 1825, the sum of 5*l.*, the amount of the second call on the annexed shares.

" W. LANE, Secretary."

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the directors and other shareholders at the time the contract was made, and said, this "advertisement is the basis of the contract between the parties; it is upon the footing of this prospectus that the seven defendants had their shares allotted to them, and paid their deposits. If they are not partners under this agreement, they are not partners under any; for they neither exchanged their scrip-receipts for certificates of shares, nor executed the deed when prepared; nor paid a second call when made; nor appeared at any meeting; nor interfered with any concerns of the company; nor did any act subsequent to the making this contract; nor any act before, other than applying for shares and paying the deposit of 5*l.* per share, when they learnt from the letter of the secretary that a certain number of shares were appropriated to them. The paying of the deposits must undoubtedly be taken to imply an assent to the terms of the advertisement; that is, an assent to become partners in a company raising a capital of 600,000*l.*, consisting of 12,000 shares and to be governed by a deed which should contain the clauses and conditions to be agreed on in future; but we think it implies nothing more, and that it cannot be construed as an assent to the terms of a partnership already formed.

"Upon this first question, therefore, whether a partnership was actually formed, we think, if the right to participate in the profits of a joint concern is to be taken, as undoubtedly it ought to be, as a test of partnership, these defendants were not entitled at any time to demand a share of profits, if profits had been made; inasmuch as they had never fulfilled the conditions upon which they subscribed. We think the matter proceeded no further than that the defendants had offered to become partners in a projected concern, and that the concern proved abortive before the period at which the partnership was to

commence; and, therefore, with respect to the agency of the directors, which is the legal consequence of a partnership completely formed, we think the directors proceeded to act before they had authority from these defendants; for they began to act in the name of the whole, before little more than half the capital was subscribed for, or half the shares were allotted."

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A new trial was granted, and afterwards, when it again came before the Court in banc, they observed, with reference to one of the questions left to the jury on the second trial,—“they were told that, if any of the defendants ever had a right to become a shareholder in the concern, and had parted with such right before the contract entered into between the plaintiffs and the defendants, the verdict must pass for the defendants. (a) That it seemed to the Court, the scheme of this proposed partnership was such as to show it was not constructed upon the ordinary ground of a common partnership in trade. The persons who applied for shares never did so from motives of mutual confidence in each other's stability, skill, or integrity. They were perfect strangers to each other; proposing without any previous communication together, for the division amongst them of shares 12,000

(a) This assumes that a *right to transfer* the shares existed in the defendants. It is submitted that, if the shares were taken immediately on the formation of the company, they remained inalienable until the deed of settlement should have been prepared and executed, by which a restricted mode of transfer is always prescribed. Until then, and indeed even after the execution of the deed, unless effected in the

prescribed mode, no property passed by the transfer, because the same would come within the principles of the Bubble Act, which went to restrain the issuing of shares transferable without limitation or restriction. See *Kempson v. Saunders*, and *Watkins v. Huntley*, *ante*, 250; and Chapter on *Companies illegal in their objects or constitution*, *ante*, 223.

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in number. From the bare consideration of the number they never could expect that the persons who ultimately signed the deed, and became thereby partners together, would be the same individual persons who sent in proposals for shares. The case, therefore, appearing not to be governed by reference to the rules which restrain partners from parting with their shares in ordinary cases, without each other's consent; for, in this instance, the power of transferring the scrip to any one, cannot but have formed a part of the known original design. The Court was of opinion, that at the time the contract was entered into with the plaintiffs, Levi, the defendant alluded to, having previously parted with his shares, was not, and could not be, a shareholder.

Perring v.
Hone.

In *Perring and Others v. Hone*, (a) the plaintiffs sought to recover 2000*l.* on a promissory note given by the defendant and others to the plaintiff's firm. The defendant and other persons, parties to the note, in 1825, projected a joint stock company, to be called the "Imperial Distillery Company." Having occasion to borrow money for the purpose of the concern, these parties, in August, 1825, signed a joint and several promissory note for 2000*l.*, payable to the plaintiff's order. The 2000*l.* was advanced to the company in the defendant's presence, and paid into the bankers on account of the company. When the note became due, a moiety only was paid, and the note on which the action was brought was given for the residue. This latter note, as originally drawn, and when signed by the defendant and other members of the company, was joint, and not joint and several; and the secretary to the company afterwards, without the defendant's knowledge, interlined the words *jointly and severally* to make it con-

formable to the first note. An application by letter having been made to the defendant to pay his joint and several note, he returned for answer, that the communication should have his earliest attention. When the company was projected, the names of Sir John Perring and Mr. Shaw (one of the plaintiffs) along with many others, were entered in a book as some of the original subscribers to the undertaking, and certain scrip-receipts were issued to them by the directors, which scrip was afterwards sold by Sir John and Mr. Shaw before the execution of the company's deed, but which deed they never signed. The deed contained a provision that no member of the company should dispose of his share without notice to the directors of the name and address of the transferee. It was said by Chief Justice Best, "the plaintiffs, as partners in the concern, were precluded from suing the defendant. It has been contended that none were partners but they who signed the deed. But all who subscribed to the partnership fund, must be taken to have assented to the deed, an assent which the plaintiffs countenanced by afterwards attempting to dispose of their interest. Even if there had been nothing in the deed to bind them, they could only get rid of that interest by regular notice in the *Gazette*; but it was provided by the deed that notice should be given to the directors of the person to whom it was proposed by any of the members to make a transfer. Without such a provision, any person might hold a share as long as it was advantageous, and then dispose of it to a pauper, cheating the creditors and his co-contractors. But a party who has once engaged in a concern of this nature, cannot so easily divest himself of his liability."

Under what circumstances is a shareholder a partner.

Perring v. Hone.

The authority of this case is much weakened by the absence of the prospectus or advertisement under which the company was originated. It seems to be a mistake, if

Observations thereon.

Under what
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is a shareholder
a partner.

we may judge from other authorities, to say that in this case the plaintiffs were partners merely because they held scrip; for it might have been that they took the scrip on the understanding that a partnership was thereafter to be formed. It would have made no difference if money had been paid by way of deposit at the time of receiving the scrip; but the report does not disclose that fact. As to the observation that the plaintiffs could not get rid of their "liability," by selling the scrip, it may be observed that the plaintiffs had no property in the scrip for the purposes of transfer until they had signed the deed, and then only *sub modo*. If it were otherwise, the rule imposed by the Bubble Act would have been infringed, and the shares made transferable without restriction. (a) It may be also stated that the Court, in *Fox v. Clifton*, thought it necessary to observe upon the case of *Perring v. Hone*—"the great point, whether there was a partnership or not, does not appear to have been made the prominent subject of argument, but to have been rather assumed than disputed; for the advertisement or prospectus was not brought to the attention of the Court, nor is there any argument upon the terms of it. It is not incompatible with that determination that the Court might have held the proof of the partnership incomplete, if the same materials had been brought before them which are presented to us."

Pitchford v.
Davis.

In the case of the "United Kingdom Beet Root Sugar Association" a project had been formed in 1836 for the manufacture of sugar from beet root. By the prospectus the capital was to consist of 10,000 shares of 25*l.* each. In April, 1836, the defendant obtained shares, and paid deposit on them in June following. In the course of the

(a) See *Kempson v. Saunders*, *ante*, 250, and *Fox v. Clifton*, *ante*, 275.

same summer the company began to build their works with the knowledge of the defendant: and shortly afterwards a call was declared and paid. The action was brought for goods consisting of charcoal and lump alum, supplied by the plaintiffs to the directors, on the order of the secretary, for the use of the company, in December, 1836, and January, 1837. In 1837 sugar to the value of 500*l.* had been made and sold. The defendant was not shewn to have interfered in the management of the concern, but was proved to have been on one occasion at the manufactory, and to have said that he understood the nature of the works and the mode of manufacturing sugar. It was said by Baron Parke, "the defendant by taking shares in this speculation gives authority to the directors to bind him by their contracts, in the event of the proposed number of shares being disposed of, and the proposed capital obtained. The secretary who gives the order to the tradesman is the party primarily liable; the directors also, who give the order to the secretary, may be liable. A third party (shareholder) may become liable if it can be shewn that he has authorized the act of the directors in making the contract. But by proving the defendant to be an original subscriber, unless the proposed capital is raised, no such authority is shewn." And by Baron Alderson: "The authority given by the subscribers is a conditional one, depending on the terms of the prospectus being fulfilled. In this case that condition had not been fulfilled, and therefore the defendant is not bound by the contract of the directors; and the jury have found that he had not ratified the act of the directors, with a knowledge of that condition not having been performed."

Under what circumstances is a shareholder a partner.

Pitchford v. Davis.

Even though a shareholder be considered a partner, he will nevertheless not be liable to be sued for the price of

Under what
circumstances
is a shareholder
a partner.

Whitehead v.
Barron.

goods ordered by the company before he became a shareholder. And it will make no difference that the goods were delivered after he became a partner. (a)

An action was brought to recover 555*l.*, the price of iron boilers, delivered in October, 1836, to the "United Kingdom Patent Beet Root Sugar Association." The defendant applied for, in May, 1836, and paid deposit in June, 1836, on his shares. There was no evidence by whom, or when, the order for the boilers was given; but the prospectus, issued in May, described the apparatus as being then in a forward state, and announced that the directors had then made arrangements for commencing operations. Nor did it appear that the defendant had interfered in the concern, or had attended at the manufactory. No deed of settlement was drawn up. The other facts of the case were similar to those in *Pitchford v. Davis*, (b) which was relied on at the trial. Tindal, C. J., left two questions to the jury, 1st, Whether the defendant was ever a partner? 2ndly, Whether he was a partner at the time the order for the goods was given? And his Lordship requested them, in the first instance, to answer the second question, because if that were answered in the negative, the first question became immaterial; and he said, after stating the facts to the jury, the defendant could not be made liable for work done on the credit of others, merely because the order was completed and the goods delivered after his accession to the company. The jury found that the defendant was not a member of the company when the order for the goods was given, and there was accordingly a verdict for the defendant.

(a) *Whitehead v. Barron*, 2 Moo. & Rob. 248. (b) *Ante*, p. 278.

SECT. IV.—*Mutual Rights and Liabilities of Shareholders in Companies carried on under Provisional Agreement or Prospectuses.*

It has been shewn in what instances persons who obtain shares or scrip in a company not regulated by deed of settlement, or incorporated, are deemed partners in the concern. Wherever the existence of a partnership as to third persons is established, the presumption of law is that a partnership exists between the parties themselves. (a) Those shareholders who are deemed partners, have mutual rights and liabilities amongst themselves. Those who are not so considered, are, of course, mere strangers to the company, and have no rights as against, nor incur liabilities to, the shareholders who may have become partners. It is true, however, as already seen, (b) that such persons having taken shares, and paid deposits thereon, are entitled, under certain circumstances, to recover back such deposits, but that right to recover is as against the projectors of the company only, and on the ground of failure of consideration, or of fraud, and can only be enforced where there is no question of partnership actually formed.

As the concerns of the partnership are carried on under a provisional agreement or prospectus only, the rights and liabilities of the shareholders are, in most cases, left undefined. In others, they are provided for in a very imperfect manner. These instruments, as far as they go, however, are binding upon the shareholders. In other respects, the general law of partnership prevails. In the absence, then, of express stipulation between the shareholders, one cannot,

In what cases members of a company may sue each other

(a) *Peacock v. Peacock*, 2 Camp.

(b) *Aste*, p. 248-257.

In what cases members of a company may sue each other.

at law, sue the others in respect of partnership matters, nor compel the statement of an account. The remedy in these cases is in equity. But there may be, nevertheless, a separate right or contract as to which a shareholder may proceed at law against his fellows. (a) As, for instance, where a shareholder advances money to a director for the purposes of the company. In such a case, however, it is a question for the jury whether the money was advanced upon the credit of the company at large, or upon that of the director individually. In the former event, he would not be entitled to recover. (b)

A shareholder or partner in an intended undertaking, if he has subscribed an agreement to take measures to carry out the same, cannot discharge himself of liability, or repudiate the concern to which he may have thus pledged himself, except with the consent of all his associates, and if an act of Parliament have been passed for effectuating the purpose of the undertaking, by which certain obligations are created, such original subscriber is not exonerated from the liabilities imposed by the act by having, during the progress of the bill, renounced, before the committee, all further connection with the undertaking, and desired that his name might be, in consequence, omitted from the act. Nor can the circumstance of his name so being omitted have the effect of disengaging him.

Kidwelly Canal Company v. Raby.

This was the case in the *Kidwelly Canal Company v. Raby*. (c) There the defendant had been one of the original subscribers to the first proposals for the purpose

(a) Four persons, who had acted as directors of a proposed Railway Company, being sued for debts contracted on account of the concern, jointly retained an attorney to defend them on their personal responsibility. One of the four paid the attorney's bill.

He was held entitled to sue the others for contribution. *Edger v. Knapp*, 6 Scott's N. R. 707.

(b) *Colley v. Smith and Others*, 2 Moo. & R. 96. See *Attwood v. Small*, *post*, 288.

(c) 2 Price, 93.

of effecting the objects of the company, and to the intended measure of obtaining an act of Parliament, as the foundation of the undertaking; he had signed his name to a paper, purporting to be a list of subscribers to the plan. (a) The act was obtained in June, 1812. During the progress of the bill, which was opposed, the defendant having attended some of the meetings of the committee, expressed a wish at one of them, that his name might be withdrawn from the subscription, and his name was, therefore, not inserted in the act; he had attended various meetings as chairman, and had voted, and otherwise taken an active part there; but at a meeting of the committee of the House of Commons during the progress of the bill, the defendant, disapproving the proceedings, signified that he should withdraw his subscription, and desired that his name might not be inserted in the bill, to which the chairman of the committee assented; and when the act passed, his name was in fact omitted; he had attended a meeting of subscribers in November following, and seconded a motion for the appointment of a clerk.

In what cases members of a company may sue each other.

Kidwelly Canal Company v. Raby.

Persons who associate together and subscribe sums of money for the purpose of obtaining a bill in Parliament, are deemed partners in the undertaking. A subscriber therefore, who may have acted as their surveyor, cannot maintain an action for work done by him in that character on account of the partnership, against all, or any one of, the other subscribers. It was so held in a case, (b) where, in September, 1820, notices were given of an

Holmes v. Higgins.

(a) "22nd August, 1811.

"A list of subscribers to a fund for carrying into execution a plan for the improvement of the harbour of Kidwelly, and making proper communications therewith from the several collieries in the neighbourhood, by a canal, or railroads."

(b) Holmes v. Higgins, 1 B. & C. 74; 2 D. & R. 196. And see Brown v. Tapscott, 6 M. & W. 119.

In what cases members of a company may sue each other.

Holmes v. Higgins.

intended application to Parliament for leave to bring in a bill for making a railway from Womesley to the river Dun in the county of York. The notices were given by the plaintiff, describing himself as agent for the intended bill. In December, 1820, a subscription was commenced for the purpose of passing the bill and making the railway, and between that time and the 27th of January following, including the latter day, several persons subscribed to the undertaking, and, amongst others, the plaintiff subscribed for two shares of 50*l.* each, and the defendant for one. On the 27th of January, a solicitor to the business was appointed, and was directed to adopt such measures as might be necessary to obtain an act of Parliament during the ensuing session for the above purpose, and, on the same day, the plaintiff was appointed agent to the company of subscribers and assistant to the solicitor. These appointments were made at a meeting of the subscribers on the 27th of January, at which the defendant acted as chairman, as he had done at several other meetings, both before and after. A Bill was brought into Parliament the following session, and met with considerable opposition, and was ultimately withdrawn. The money sought to be recovered in the action was for business done and money paid by the plaintiff as agent to subscribers to the undertaking.

It will make no difference, so as to confer a right upon the plaintiff, where he holds an office, or does work for the company, that the shares are held by another party and not by himself, provided they are held for his benefit.

Goddard v. Hodges.

Accordingly, where a person named Fall became the holder of shares, for the benefit of the plaintiff, in a company to which the plaintiff was solicitor—the deposits and all the expenses on the shares being paid by the plaintiff—it was held that he could not recover from

a shareholder money laid out for the use of the company in advertizing and in journies, for he was the real, though Fall was the ostensible, partner. It appeared that the plaintiff, having represented to Fall that he could not hold shares, asked Fall to allow him to use his name, and added that he would pay the deposit. Fall never mentioned this arrangement, but believed it was suspected by the shareholders. Fall's name was registered, and he held the receipts for the advances on ten shares. The Court considered that Fall acted merely as agent to the plaintiff, and that the case was the same as if the plaintiff's own name had been registered in the company's books, and that the fact of concealing from the other shareholders who the real partner was, would not extricate the plaintiff from any disability otherwise accruing to him. (a)

In what cases members of a company may sue each other.

Where, however, the plaintiff entered into an express contract with a committee of individuals associated together for the purpose of obtaining an act of Parliament for making a turnpike-road, to do certain work for a specified sum, and he afterwards caused his name to be inserted in the list of subscribers for two shares; he was held not to be thereby precluded from recovering upon such express contract, but otherwise as to work done after he became a subscriber. (b) In this case the defendant made, on the 24th of October, an express contract with the plaintiff for the performance of certain work at a specified price, and on the 14th of November, the plaintiff, by taking two shares became a partner in the undertaking. Tindal, C. J., said, "The circumstance of the plaintiff then becoming a partner does not affect the express contract previously

Lucas v. Beach, Bt.

(a) Goddard v. Hodges, 1 C. & M. 33; 3 Tyr. 209.

& Gr. 417. And see Brown v. Tapscott, 6 M. & W. 119.

(b) Lucas v. Beach, Bt., 1 Man.

In what cases members of a company may sue each other.

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made with him, and he is, therefore, entitled to recover in respect of that contract. As regards, however, the further sum for which the jury found their verdict, as that was for work done subsequently to the 14th of November, and at a time when the plaintiff was a partner, the case falls within the principle of *Holmes v. Higgins* and *Goddard v. Hodges*." And accordingly he was not allowed to recover for work done after the 14th November.

Milburn v. Codd.

Where A., an attorney, and B., and C., had been members of a trading company, and after the dissolution of that company, B. and C. were sued by creditors of the company, and retained A. to defend the actions, in the course of doing which a bill of costs was incurred. It was held that A., as a member of the company, being jointly liable to contribute to the expense of defending those actions, could not maintain any action against B. and C.

Money Penny v. Hartland.

for his bill of costs. (a) So, if a surveyor for the building of a bridge is a shareholder, he can maintain no action for work and labour, being a partner, although he subscribe as architect and engineer. (b) The defendants were the committee of subscribers for building the Mythe Bridge across the Severn. The plaintiff brought his action for work and labour in making plans, estimates, and specifications for that work; he was engaged in this during the year 1823, by the committee. But on the 24th of March in that year, a private act of Parliament was passed for building this bridge, and from that time, the committee of subscribers ceased to manage the undertaking, it being, after that time, carried on by trustees, deriving authority from the statute. It was said by Lord Tenterden at

(a) *Milburn v. Codd*, 7 B. & 1 C. & P. 352. See *Kerridge v. Hesse*, 9 C. & P. 200.

(b) *Money Penny v. Hartland*,

the trial of this case, that before an act passes for such a work as this, the surveyor and other persons employed on it look to the committee or body of adventurers who first employ them, but after the passing of the act, it must be considered that they look to the company or persons made liable under the act; and his Lordship said he would leave it as a question for the jury, whether the credit was not given to the committee in case the proposed act did not pass, and to the company if it did.

In what cases members of a company may sue each other.

Money Penny v. Hartland.

If a person, who is the author of an invention, get persons to act as a committee, with intention of forming a joint stock company to carry it into effect, and he himself act as secretary to the committee, he cannot maintain an action against one of the committee for his services as such secretary, or for work done in furtherance of the scheme. (a)

Parkin v. Fry.

Nor will it make any difference in the right to sue that a bill has been given, and the action brought thereon, instead of for the original cause of action. Accordingly where the plaintiff was a shareholder, and drew bills for goods supplied to the company upon the directors, which were accepted by their secretary "for the directors," and the evidence was that the secretary had been authorized by them, to accept in their names, bills drawn by the plaintiff's brother; it was held that the plaintiff could not recover, for it was one partner drawing upon another. (b) So likewise with respect to a member of a company who was employed by them as their agent to sell goods for them, and received a commission of two per cent. for his trouble, and one per cent. *del credere* for guaranteeing the purchaser. Having sold goods on account of the company,

Neale v. Turton.

Teague v. Hubbard.

(a) Parkin v. Fry, 2 C. & P. 311.

(b) Neale v. Turton, 4 Bing. 149.

In what cases members of a company may sue each other.

Teague v. Hubbard.

he drew on the purchaser a bill of exchange payable to his, the drawer's own order, and after it had been accepted, he indorsed it to the actuary of the company, and the latter indorsed it to another member who was the managing director, and who purchased goods for the company, the company being then indebted to him in a larger sum than the amount of the bill. The acceptor became insolvent before the bill became due, but the drawer received from him ten shillings in the pound upon the amount of it by way of composition. It was held, that the indorsee being a member of the company, could not sue the drawer upon the bill, inasmuch as it was drawn by the latter on account of the company, and that he could not recover the sum received by the drawer on the bill, because that money must be taken to have been received by him in the character of a member of the company, and not on his own account. (a)

Attwood v. Small.

But where the directors of a projected joint stock company contracted, in their own names, with a shareholder for the purchase of a mine, and after the formation of the company, entered into further agreements with him respecting the purchase, with a clause exempting them from personal liability upon certain parts of the contract; it was held that the directors might be sued by the shareholder upon those parts of the contract to which the exemption did not apply. (b)

(a) Teague v. Hubbard, 8 B. & C. 345; 2 M. & R. 369.

(b) Attwood v. Small, 1 M. & R. 246.

CHAPTER XV.

RIGHTS AND LIABILITIES OF DIRECTORS AND SHAREHOLDERS
OF A COMPANY REGULATED BY DEED OF SETTLEMENT.

THE rights and liabilities of directors and shareholders resulting from the limited incorporation granted by the Letters Patent Act, 7 Wm. 4, and 1 Vict. c. 73, and the Registration Act, 7 & 8 Vict. c. 110, have been already described. (a) So their rights and liabilities where the companies are conducted under a provisional agreement or prospectus, have been treated of in the preceding chapter. (b) It is intended, in the present one, to consider companies established under deeds of settlement alone, or under those instruments with the assistance of a private act of Parliament enabling the company to sue and be sued in the name of a particular officer, apart from any new powers and regulations contained in the Registration Act, for it will have been seen that the compulsory provisions of that statute apply only to companies formed after 1st November, 1844, although pre-existing companies are at liberty to avail themselves of its provisions.

(a) *Ante*, 12, 27—46.(b) *Ante*, 245.

SECT. I.—Of the Constitution of the Company, Evidence of Partnership, Liabilities of Shareholders, Contracts.

Constitution of the company.

A deed of settlement as an instrument for the regulation and management of a Joint Stock Company has been already described. (a) When the deed has been executed by the shareholders they bind themselves to the adoption of such contracts, and to pursue such objects of business, whether foreign or not to the original contemplation of the company, as may be mentioned in the deed, or as may be resolved upon in pursuance of a power given by that instrument. Accordingly, it was said by Lord Eldon, "if six persons were joined in a partnership of Life Assurance, it seems clear that neither the majority, nor any select part of them, nor five out of the six, could engage that partnership in marine insurances, unless the contract of partnership expressly or impliedly gave that power, because, if this were otherwise, an individual by engaging in one specified concern might be implicated in any other concern whatever, however different in its nature, against his consent." (b)

Carlen v. Drury.

If the means of redress provided in the deed are not effectual between the shareholders, a Court of Equity will interfere. (c) As it purports to be a covenant binding the several shareholders together, it ought to be strictly pursued in all matters therein mentioned. The moment a neglect arises in this respect, a shareholder is entitled to take advantage of it. Therefore, where it was agreed, under a deed of settlement, that the directors should, without notice or summons, meet on such a day and hour

(a) *Ante*, 15.

(c) *Carlen v. Drury*, 1 Ves. &

(b) *Natusch v. Irving*, reported B. 154.
in App., Gow on Partnership.

as they should from time to time agree; it was held that a meeting on a day which had not been previously fixed or agreed to, and which was not held by adjournment, was not duly convened, and that a call made on the proprietors on that day could not, therefore, be enforced. (a) In such a case, if the directors, in whom the discretion rests to call meetings, do not exercise that discretion, a Court of Equity will treat it as a *casus omissus* in the deed, and compel the directors to appoint meetings. (b)

Constitution of
the company.

Moore v.
Hammond.

The constitution of a company cannot be altered unless there is a clear power to do so. If altered in a manner not in conformity with the provisions of the deed of settlement, the alteration is not binding.

By the deed of settlement of the British Iron Company, it was provided, "That the direction and management of the affairs of the company should be confided to sixteen directors, to be chosen from among the proprietors in the manner hereinafter mentioned, and also that no business should be transacted at any meeting of directors, unless seven directors be present at the commencement of the business, and when a division takes place upon the whole or any part of the business." By a subsequent clause, it was provided, "That for the better conduct and management of the affairs of the company, it should be lawful for a special general meeting called for the purpose, from time to time, to amend, alter, or annul, either wholly or in part, all or any of the clauses of the deed, or of the existing regulations and provisions of the company, and to make any new or other regulations or provisions in lieu thereof, or in addition thereto: and such new regulations and provisions, and such amendment, alterations or annullment, if

Smith v.
Goldsworthy.

(a) Moore v. Hammond, 6 B. & C. 456; 9 D. & R. 482, and see *post*, as to "Calls."
(b) Carlen v. Drury, 1 Ves. & B. 154.

Constitution of
the company.

Smith v.
Goldsworthy.

confirmed by a subsequent special general meeting, called for the purpose at a distance of not less than two weeks, nor more than four weeks from such preceding general meeting, should in such case, but not till then, be binding and conclusive upon the proprietors; provided always, that such amended or altered regulations and provisions did not extend to amend, alter, or annul all or any part of the regulations and provisions established and settled by those presents, for confining the individual responsibilities of each proprietor, as between himself or herself, and his or her co-proprietors, to the amount of his or her shares in the capital of the company for the time being." A subsequent clause also provided, "That the directors of the company should never consist of more or less than sixteen. It was held that it was competent to two special general meetings, duly convened and held, to alter the number of the directors and of the quorum. (a)

It was also provided by the same deed of settlement, "That the capital of the company should consist of the sum of 2,000,000*l.* sterling, divided into 20,000 shares of 100*l.* each, and should be raised from among the proprietors for the time being," in a manner therein mentioned. By resolutions subsequently passed and confirmed at meetings duly convened and holden in 1826, it was resolved, "That the capital to be raised for the purposes of the company should no longer consist of the sum of 2,000,000*l.* sterling, divided into 20,000 shares of 100*l.* each, as declared by the deed of settlement, but should be limited to the sum of 1,000,000*l.* sterling, and should be considered as divided into 20,000 shares of 50*l.* each." By resolutions in 1838, the resolutions of 1826 were rescinded,

(a) *Smith v. Goldsworthy*, Law J. 1843, Q. B. 192; 3 Gale & D. 448.

and the original amount of capital and shares was again restored. It was held, that the amount of capital and of the shares was part of the constitution of the company, and could not be altered by the above resolutions, not being a matter within the meaning of the clause above set out relating to the conduct and management of the affairs of the company. Also, that the effect of passing such resolutions was not to dissolve the company, but that the resolutions were simply inoperative and void; and that the shares were always in point of law 100% shares; and that neither the resolutions of 1826 nor 1838, were confirmed by the act of Parliament, [which had been obtained to enable the company to sue and be sued,] which recited that the affairs of the company had been carried on under the rules, &c. of the deed of settlement; as such rules, &c. had been since varied or altered by resolutions of the company made in pursuance of power for that purpose contained in the deed of settlement, and which resolutions had been indorsed thereon or subjoined thereto, and as the act could be taken to refer only to resolutions duly made, and to such also as had been indorsed upon the deed of settlement, or subjoined to it, which the pleadings did not shew to have been the case as regarded the resolutions in question.

Constitution of
the company.

Smith v.
Goldsworthy.

It was also held that if the effect of the resolutions of 1826 was to reduce the shares to 50%, still that the resolutions of 1838 restored them to their original value; and that the concurrence of the defendant in those resolutions was material, and did not require to be given by deed. (a)

Another instance that where arrangements made not in conformity with the deed or agreement establishing the company, without obtaining the consent of all the share-

(a) Smith v. Goldsworthy, Law J. 1843, Q. B. 192; 3 Gale & D. 448.

Constitution of
the company.

Davis v.
Hawkins.

holders, those who are not parties assenting to the new state of things, are not liable to the others, occurred in the case of the "British Ale Brewery."

In assumpsit, for goods sold and delivered, there was a verdict for the plaintiff, for 161*l.* 14*s.* 6*d.*, subject to the opinion of the Court on the following case reserved:—"In 1807, a number of persons, about 600, associated together as a company, and made subscriptions, which subscriptions were divided into shares of 50*l.* each, for the purpose of establishing a brewery for ale, &c., under the name of the British Brewery. The subscribers entered into a deed, which contained, among others, these provisions,—that the shares should be transferable, &c., the purchaser executing the deed and binding himself to observe the regulations, &c. contained therein; that a committee, to be appointed, should have power to make rules, orders, and bye-laws, subject to confirmation by a majority of the proprietors at a general meeting; that the conduct of the business of the brewery should be confided to two persons who should be styled brewers; and the trade should be carried on in their names, and they should be trustees for the company so far that the right of action for goods delivered should be in them, and their names should be used in all actions and contracts, &c., and in particular, all actions for ale or other articles delivered should be brought in their names, and with that view, all ale and other articles delivered should be considered as their property, and the bills of parcels should be in their names, &c.; that the directors for the time being should have power to regulate the general affairs and business of the company; that a general meeting of the members of the company should be holden every quarter. The defendant was an original subscriber, and still holds shares, and was for some time a director and executed the deed. At first, two persons

were appointed the brewers; but they having withdrawn, the directors recommended to the general quarterly meeting to appoint only one, and that the plaintiff should be appointed. The subscribers accordingly appointed the plaintiff the brewer, and he has continued such ever since. The plaintiff, in that capacity, delivered to the defendant, at different times, several quantities of ale, brewed for the company. No bills of parcels were delivered, but the deliveries, as they were made, were entered in a book kept by the defendant, upon which was inscribed "British Ale Brewery." The defendant paid money on account, from time to time, at the counting-house of the brewery, and to the collecting clerks, when they called, taking printed receipts, entitled "British Ale Brewery," and signed by the clerks who received the money. In some instances the receipts were expressed to be for Davis and Co. The plaintiff's name alone was entered in the books of the excise, and he was personally answerable for the duties; and all contracts for malt, hops, &c. were made by him in his own name. The plaintiff's name with the words "and Co." was upon the drays, harness, &c., and the draymen received their orders entirely from him. The action is brought with the consent of the committee." Upon these facts the Court were of opinion that a change had been made in the constitution of the company, which could not take place without the consent of the whole body of the subscribers, that there was such a substituted alteration in its constitution as required the assent of all, and that as it did not appear that the defendant acquiesced in or even knew of the alteration at the time of the purchase of the goods, the plaintiff was not entitled to recover. (a)

Constitution
of the company.

Davis v.
Hawkins.

(a) Davies v. Hawkins, 3 M. & S. 488.

Constitution of
the company.

So likewise, any change or fluctuation in the company may invalidate contracts entered into by them with third parties.

Where a bond had been given by the defendant's testator to the plaintiffs and several other persons, since deceased, governors of the Society of Musicians, "payable to them and their successors as governors," conditioned for the fidelity of one J. H. as their collector, and the society was afterwards incorporated,—it was held that the executors of the obligor were not liable, since, after the charter of incorporation, the society constituted a perfectly new body of persons in the eye of the law. (a) But a bond may be drawn to meet such a difficulty as has been pointed out. (b) So also where a bond was given to trustees to secure the faithful services of a clerk to the Globe Insurance Company, who were no corporation, it was held it might be put in suit by the trustees, for a breach of faithful service by the clerk committed at any time during his continuance in the service of the actual existing body of persons carrying on the same business, under the same name, notwithstanding any intermediate change of the original holders of the shares, by death or transfer,—the intention of the parties to the instrument being apparent to contract for such service to be performed to the company, as a fluctuating body, and the intervention of the trustees removing all legal and technical difficulties to such a contract made with, or suit instituted by the company themselves, as a natural body. (c)

- (a) *Dance v. Girdler*, 1 N. R. 400, and see *Bellair v. Ebsworth*, 34. 3 Camp. 53. *Parker v. Wise*, 6 M. & Sel. 239. Ex parte *Watson*, 19 Ves. 459. Ex parte *Kensington*, 2 V. & Bea. 79. Ex parte *Lloyd*, 1 Glyn & J. 389.
- (b) *Strange v. Lee*, 3 East, 484, 491. *Barclay v. Lucas*, 1 T. R. 291; n.
- (c) *Metcalf v. Bruin*, 12 East,

When a shareholder has executed the deed of settlement, he becomes a partner in the company, and cannot be released from his responsibilities and duties, as such, except with the consent of his associates. The signing of the deed is conclusive evidence of partnership. If, however, it is sought to make liable a shareholder who has not executed that instrument, proof must be given of other circumstances, in order to fix him with the character of a partner. (a) It will be evident, that in this respect shareholders in companies stand upon the same footing, whether the concern to which they belong is carried on under a deed of settlement, or under a provisional agreement only. The same evidence of partnership applies to each. The cases, therefore, which have been already pointed out, (b) may be referred to for this purpose.

Evidence of partnership.

Even though a society be conducted under a deed of settlement, a person may be proved to be a shareholder or partner by parol evidence without producing the deed: but wherever a shareholder has executed that instrument, notice to produce it ought to be given, for it is the most conclusive evidence on the subject. The fact of partnership may also be proved by the defendant's conduct and admissions. (c)

The plaintiffs, in an action (d) for goods sold and

Alderson v. Clay.

(a) In *Bird v. Aston*, not reported, but cited in *Fox v. Clifton*, 6 Bing. 786, it is said that the payment of a deposit and instalment had been held by Lord Tenterden sufficient to constitute a partnership, except as to one who purchased in the character of a broker. But see *ibid.* 788, where, in argument it was stated that in *Bird v. Aston*, there was a deed executed by all.

(b) *Dickenson v. Valpy*. *Tredwen v. Bourne*. *Harvey v. Kay*. *Lawler v. Kershaw*. *Ellis v. Schmæck*. *Vice v. Lady Anson*, &c. *ante*, 187, 188, 193, 194. And see sections 2 and 3 of the preceding chapter, p. 257, 263, *et seq.*

(c) See, however, *Harvey v. Kay*. *Vice v. Lady Anson*, *ante*, 186, 187.

(d) *Alderson and Another v.*

Evidence of
partnership.

delivered, were manufacturers of leaden pipes, and the defendant was a member of the Gosport and Forton Water Works Company. The plaintiffs proved, by oral evidence, that this company existed; that the defendant was a member of it; and that Nicholson, who was also a member, had given orders by letter to the plaintiffs to send the leaden pipes in question on account of the company. The defendant had attended several meetings of the society, and had acted as chairman; and the course of proceeding was for the clerk of the society to take minutes of the business that was transacted at each meeting, and afterwards to enter them in a book, which was submitted to the inspection of the society at the next meeting, when it was laid open on the table, and was accessible to all who attended the meeting. It appeared that the minutes had usually been taken by Sloper, the clerk to the society, and had been entered in the book from time to time by his clerk, who was called as a witness. It appeared also, that there was a deed of copartnership which was in the hands of Fisher, the then clerk; but this deed was not produced. It was proposed to read entries contained in the book, in order to shew that the order given by Nicholson had been authorized by the society; and, consequently to establish the defendant's liability. But this was objected to; and it was contended that the deed should have been produced. Lord Ellenborough, however, said, "it has been proved that the defendant was present at three meetings, and a witness has stated that the defendant is a proprietor: this evidence makes him privy to the acts of the society to which he belongs; and his partnership having been once

Clay, 1 Stark. N. P. C. 405. And see Harrison v. Heathorn, ante, 165, and Sheffield and Manchester

Railway Company v. Woodcock, 7 M. & W. 574.

established, a book containing the records of the society, and which it appears was open to the inspection of every member, (a) is evidence against him."

Evidence of partnership.

Shareholders, if the company have been established under the 7 Wm. 4, and 1 Vict. c. 73, are liable for the debts of the company to the extent only of the shares of which they may be holders, if the letters patent granted under that statute, limit the liability. In such a case, the fund or stock of the company is given credit to by persons who enter into contracts with them. Whereas in other companies the parties themselves who form the partnership are looked to and trusted. It may, therefore, be stated that the liability of a shareholder in a company managed under a deed of settlement only, is of the same character and extent, as in cases where the concern may happen to be carried on under provisional agreements. (b) Each is liable for all to the full extent of his private property. (c) This is a liability affecting trading partnerships, and is a consequence not confined to the law of this country, but extends generally throughout Europe. (d)

Liability of shareholders.

It is with reference to this unbounded liability that persons exercising proper caution have, when concerned in the formation of companies, desired to procure an act of Parliament or charter of incorporation. For it is by such means only, except by enrolment under the 7 Wm. 4, and 1 Vict. c. 73, that the liability in question can be restricted (e); and it is as to this point, that the

(a) See *Raggett v. Musgrave*, 2 C. & P. 556. *Wiltzie v. Adamson*, Phil. Ev. 375, 8th ed.

(b) *Ante*, p. 263.

(c) *Carlen v. Drury*, 1 Ves. & B. 154.

(d) Judgment of *Tindal, C. J.*, in *Fox v. Clifton*, 6 Bing. 776.

(e) Shareholders' liability is also unrestricted in companies formed under the new act (7 & 8 Vict. c. 110), for giving limited privileges to Joint Stock Companies. Also in Banking Companies, *ante*, 20, 170.

Liability of
shareholders.

world has been so much deceived by ignorant or designing projectors who, in their anxiety to secure success to their schemes, assure the public that each shareholder shall be liable to no greater extent than the amount subscribed for by him. Such a limited liability may, indeed, take place between the shareholders themselves, but not as against the rights of other parties upon contracts made with the company. This delusion has been exposed by the Courts. (a) In equity, it was said that such a regulation was "wholly nugatory as between the company and strangers;" and of no avail for the purpose of restricting the liability of the shareholders. (b)

If the deed be silent as to powers to be exercised by the directors, the shareholders will not be bound by the acts of the former, (c) unless the company be of a trading, or such other character as to make it necessary in order to carry on the ordinary business of the company, to do the acts, or enter into the contracts in respect of which the question of liability may have arisen. But what is *usual* may be considered as necessary. There may be an implied authority in directors to bind the company by certain of their contracts. But there is no such implied authority in directors to bind the company by bills of exchange. (d)

Bult v. Morell.

A bill of exchange was drawn by Richard Parker, addressed "To the directors of the Imperial Salt and Alkali Company," and accepted in the following form, "Accepted, payable at, &c., Richard Parker, manager. J. R., J. P., R. G., directors." The payee brought assumpsit against the three defendants, who were directors of this joint stock

(a) *Rex v. Dodd*, *ante*, 234.

(b) *Walburn v. Ingilby*, 2 M. & K. 61.

(c) See *ante*, 290.

(d) See *Dickenson v. Valpy*, *Ducarry v. Gill*, *Hawtayne v. Bourne*, *Tredwen v. Bourne*, *ante*, 194, *et seq.*

trading company, but did not sign the acceptance; J. R., and J. P., who were directors had signed; and Richard Parker. J. R., J. P., and Richard Parker suffered judgment to go by default. Richard Parker was a shareholder and officer of the company. The jury found that Richard Parker did not sign as acceptor, but only as "manager." It was held that the action could not be maintained against the defendants individually; nor against the five defendants, who were directors, and Richard Parker as shareholder; there being no implied authority in the directors to bind the company. (a)

Liability of
shareholders.

With respect to contracts entered into by the company, they are generally made by the directors. (b) If they sue upon any contract so made, they must take care to name proper plaintiffs, for where, on a trial, it appeared that there was another director, not named as plaintiff, who had become bankrupt, and had ceased and declined to act or attend at the board of directors when the contract was made, it was held, on non assumpsit, that the plaintiffs ought to have produced the deed in order to shew that they had authority in the character of directors to sue for the company, and also to shew that the office of director was determined by bankruptcy, or by voluntarily ceasing to act. (c)

Contracts by
Directors.

Phelps v. Lyle.

Contracts of a limited character are sometimes made by companies,—as where a stipulation is come to that the directors, or others entering into the engagement, shall

(a) *Bult and Others v. Morell and Others*, Law J. 1841, Q. B. 52; 12 Ad. & Ell. 745.

(b) See *Hall v. Bainbridge*, 1 M. & Gr. 42; where it was decided that covenant cannot be maintained against the chairman

of a board of directors upon a deed under the seal of a former chairman of the company, though sealed by him for and on behalf of the company.

(c) *Phelps and Others v. Lyle*, 10 Ad. & Ell. 113.

Contracts by
Directors.

Andrews v.
Ellison.

not be personally liable, but the funds of the society only. This frequently happens with insurance companies who, in their policies, often stipulate that the parties covenanting for the company shall not, either in their capacities of directors, or of shareholders, be liable for losses, except as provided by the deed of settlement. A policy of this kind will be considered as a covenant to entitle the insurer, in case of loss, to receive a remuneration out of the funds of the society, to the extent of such funds. The above interpretation was given to a policy under seal, by which three of the directors of a fire association admitted the plaintiff as a member of that society, upon the terms and conditions prescribed by the deed of settlement; and he subscribed a certain sum as the consideration money for one year's insurance. It was declared in the policy that the plaintiff should be entitled to a remuneration out of the society's funds, in case of loss by fire happening to any property therein specified, not exceeding the sums set against each article respectively. And it was further stipulated that neither of the directors who signed the policy, nor the plaintiff, nor the holder of it, should, as members of the society, be liable to any demand for loss, except under the articles establishing the society, and as was provided by the same. (a)

It may be mentioned that if a member of a joint stock company advance money to a director of a company, knowing that it will be applied in taking up a bill of exchange, which such director had become a party to for

(a) *Andrews v. Ellison*, 6 Moore, 199. See this case recognised in *Bedford v. Brutton*, 1 Bing. N. C. 408. In an action upon such a policy as above described, it is enough to aver in the declara-

tion, that the funds of the association are sufficient to satisfy the amount of the loss. *Andrews v. Ellison*. See *Alchorne v. Saville*, 6 Moore, 202.

the purposes of the company ; it will be a question for the jury whether the member advanced the money on the credit of the company at large, or on that of the director individually. This was the case of the " Patent Safety Cab Company." The defendants were four of the directors. The plaintiff was himself a member of the company. It appeared that before the advance of the money, the defendants had borrowed 1000*l.*, for the purposes of the company, of one Clarke, and that Clarke held a bill of exchange with their four names upon it. That security falling due, and the defendants having no funds of the company to take it up, one of the officers of the company, on behalf (as it was said) of the defendants, applied to the plaintiff to advance the amount, telling him it was to enable the present four defendants to take up the security in Clarke's hands, the directors deeming it inexpedient to make a call on the shareholders. The plaintiff agreed to advance the money, if the company would first discharge a bill due to him for saddlery which he had sold to the company. The plaintiff accordingly advanced the money to the officer ; and, thereupon, the amount of the saddlery bill was paid to the plaintiff, and the residue of the money advanced was applied to pay off the debt due to Clarke. It was proved that the plaintiff knew that the defendants had come under the liability of Clarke on behalf of the company. And the defendants put in evidence the partnership deed of the company (executed by themselves and by the plaintiff) by which it was (amongst other things) stipulated that the directors should contract for and on behalf of the company, and that they should not be individually liable for more than their respective shares in the capital of the company. (*a*)

Contracts by
Directors.

Colley
Smith.

(*a*) Colley *v.* Smith and Others, 2 Moo. & R. 96.

SECT. II.—*Of suing and being sued.*

When companies are established under deeds of settlement only (a) (which excludes banking companies, together with companies established under the 7 Wm. 4, and 1 Vict. c. 73, and 7 & 8 Vict. c. 110), all the shareholders must at law (b) sue and be sued, except when contracts have been entered into by and with the trustees of the company. To avoid this inconvenience, companies regulated by deed frequently obtain acts of Parliament for the mere purpose of suing and being sued in the name of a particular officer. The provisions of these statutes will, for greater convenience, be considered in the following chapter. (c)

SECT. III.—*Executions against unincorporated Companies.*

With respect to companies formed under, or availing themselves of the privileges of, the 7 & 8 Vict. c. 110, execution must be sued out in the manner therein directed. (d) But where a judgment has been obtained against any other company, the same being unincorporated, the creditor may seize in execution not only the property of the company, but also that of an individual member, as distinct and apart from his partnership property. (e)

- (a) Or provisional agreements.
 (b) As to "parties" in equity, see *post*.
 (c) *Post*, 315.
 (d) *Ante*, 45.
 (e) Per Lord Eldon, *Ex parte Ruffin*, 6 Ves. 119. *Bolton v. Puller*, 547, Judgment of Eyre,

C. J. Story on Partnership, 372. Additional remedies against companies are now given in the shape of proceedings in bankruptcy, by the 7 & 8 Vict. c. 111, App. 200. See Chapter on Bankruptcy of Companies, *post*. And see *post* with reference to executions

Execution
against part-
nership prop-
erty for
private debt.

Where, in proceeding upon a judgment obtained against an individual, it is sought to take in execution not only his separate property, but his aliquot portion of the property of an unincorporated company in which he is a shareholder, some difficulty would appear to arise. A company, being a large partnership, the individual share or amount of property of any one member cannot be ascertained until an account has been taken of profit and loss. At the time execution goes against an individual member's share in the company's property, it is possible that there may be nothing to take. If, at the time of the sheriff levying, the accounts have not been adjusted, he may be said to be in execution of a thing which at the time is not of any ascertained amount. If that account be rendered by the company, and shew the amount of interest possessed by the shareholder, then the difficulty is removed, and the sheriff has something to sell. But if the company decline to account, the only remedy is in equity, to compel them to do so, and the sheriff's officer must, in the meanwhile, remain in possession upon the company's premises. (a)

Where C. and H. were co-partners and a judgment was taken in execution, it was held by Holt, C. J., "that the sheriff must seize all, because the moieties are undivided, for if he seize but a moiety, and sell that, the other will have a right, to have a moiety of that moiety,—but he must seize the whole, and sell a moiety thereof undivided, and the vendee will be tenant in common with the other

Heydon v.
Heydon.

against companies absolutely incorporated, or having only certain privileges of incorporation.

don, in *Waters v. Taylor*, 2 Ves. & B. 301; and *post*, 307. And see *In Re Wait*, 1 Jac. & W. 608.

(a) See judgment of Lord El-

Execution
against part-
nership prop-
erty for
private debt.

Backhurst v.
Clinkard.

Jackey v.
Butler.

Fox v.
Hanbury.

Taylor v.
Fields.

partner." (a). But in another case, (b) where execution was issued against one of two partners, his Lordship said that though they had joint and undivided interests, yet only the share or part of the undivided portion, and no more, could be seized. Where two partners were in trade, and judgment was entered against one of them, a *fi. fa.* was issued, and all the goods, being undivided, were seized in execution, the Court, upon application by the other partner, held that the sheriff could not sell more than a moiety, for the property of the other moiety was not affected by the judgment nor by the execution. (c)

It was said by Lord Mansfield, (d) "if a creditor take out execution against one partner, as in *Salkeld*, (e) the vendee will be tenant in common;" and his Lordship cited the opinion of Lord Hardwicke, in the case of *Skipp v. Harwood*, (f) in the following terms: "if a creditor of one partner takes out execution against the partnership effects, he can only have the undivided share of his debtor, and must take it in the same manner the debtor himself had it, and subject to the rights of the other partner." In a subsequent case, it was held, that the separate creditor of a partner has no right against the joint property, farther than the separate interest of that partner, *viz.* his share upon a division of the surplus, subject to the accounts of the partnership; and the Court said, that, the joint property of an insolvent partnership, taken in execution

(a) *Heydon v. Heydon*, 1 Salk. 392; and see *Pope v. Haman*, Comb. 217. *Marriot v. Shaw*, Comyn. Rep. 277. *Eddie v. Davidson*, Dougl. 650.

(b) *Backhurst v. Clinkard*, 1 Show. 173.

(c) *Jackey v. Butler*, 2 Lord

Raym. 871.

(d) *Fox v. Hanbury*, Cowp. 449.

(e) *Heydon v. Heydon*, 1 Salk. 392.

(f) 1 Ves. 239, nom. *West v. Skipp*, S. C. 2 Swanst. 586.

for a separate debt, could not be held against the joint creditors. (a)

Execution against partnership property for private debt.

In *Ex parte Hamper*, (b) Lord Eldon stated, that an individual creditor getting execution, might lay hold of the joint effects at law, subject to an account ascertaining the specific interest in such joint effects; and in another case, (c) his Lordship inquiring how a sheriff executed a writ under a judgment against one partner, Mr. Cooke (*amicus curiæ*) stated, that, in practice, the sheriff executed the writ by making a bill of sale of the actual interest. Lord Eldon said, "if the Courts of law have followed Courts of equity in giving execution against partnership effects, I desire to have it understood, that they do not appear to me to adhere to the principle, when they suppose that the interest can be sold before it has been ascertained what is the subject of sale and purchase. According to the old law, I mean before Lord Mansfield's time, the sheriff, under an execution against partnership effects, took the undivided share of the debtor, without reference to the partnership account, and ascertaining what the sheriff ought to have sold. The Courts of law have now, however, repeatedly laid down that they will sell the actual interest of the partner, professing to execute the equities between the parties, but forgetting that a Court of equity ascertains previously what was to be sold. How could a Court of law ascertain what was the interest to be sold, and what the equities depending upon an account of all the concerns of the partners for years?"

Ex parte Hamper.

Waters v. Taylor.

In *Parker v. Pistor*, (d) which was a rule calling on the plaintiff to shew cause why the sheriffs of London should

Parker v. Pistor.

(a) *Taylor v. Fields*, 4 Ves. 396. & B. 300.

(b) 17 Ves. 407.

(d) 3 Bos. & P. 288.

(c) *Waters v. Taylor*, 2 Ves.

Execution
against part-
nership pro-
perty for
private debt.

not have time to return a writ of *fiery facias* until the first day of next Term, it appeared, the defendant was one of two partners, and the application was made on the part of several creditors of the partnership, and the object was to prevent the partnership goods from being sold until an account could be taken of the several claims upon this property. The Court were of opinion that there was no ground for their interposition; that it was a very plain case at law, and that all the difficulties were to be encountered in equity; that the safest line of conduct for the sheriff to pursue, was to put some person in possession of the defendant's share as vendee, leaving him and the parties interested to contest the matter in equity, where a bill might be filed, stating that he had taken possession of the property, and praying that it might not be disposed of until all claims were arranged.

Chapman v.
Koops.

In another case (a) a rule was granted, calling on the plaintiff to shew cause why it should not be referred to the prothonotary, to inquire if the defendant had any, and what interest, in the effects and premises seized by the sheriff under an execution at the suit of the plaintiff. It appeared that the defendant was one of twenty-six persons carrying on the straw paper manufactory, an undertaking for which a patent had been granted to five persons originally, and then an act had passed enabling them to multiply the shares. Under that act, the shares had been multiplied to twenty-six, and the defendant for a separate debt of his own of 9000*l.*, having been sued to execution, the sheriff had seized and put an officer into possession of the defendant's undivided interest in the manufactory. This application was made by the twenty-five other patentees, who stated that Koops was indebted to the con-

(a) Chapman v. Koops, 3 Bos. & P. 289.

cern in more than the amount of his share. Lord Alvanley, C. J., said, "Without the consent of all parties, the Court has no right to restrain the plaintiff from taking advantage of the execution which he has issued. When persons enter into partnership they must be aware that the separate concerns of each partner may in some cases introduce a variety of claims very inconvenient to the general partnership concern. By the law of England, the creditor of any one partner may take in execution that partner's interest in all the tangible property of the partnership, and will thereby become a tenant in common with the other partners. This the plaintiff has done, and we are desired to restrain his execution, because it is alleged that he stands in the shoes of a partner, who would not have a right to molest the other partners until all accounts between them had been settled. But if the other partners wish to take advantage of this circumstance, they ought to file a bill in equity against the vendee of the sheriff, or they may buy in the property when put up to sale. It has been said that the Court of King's Bench would suspend the plaintiff's execution until he consented to an account being taken before the Master; but I do not think we are authorized to take such a step in this case. Indeed, I can hardly conceive a case in which we should be authorized so to do." Per Chambre, J. "The short objection to this application is, that the Court cannot direct a partnership account to be taken without assuming a jurisdiction that does not belong to it."

Execution
against part-
nership prop-
erty for
private debt.

In an action on the case against the defendant, as sheriff of the county of Lancaster, for a false return of *nulla bona* to a writ of *feri facias*, sued out by the plaintiff against Thomas Cloughton, it appeared, the writ of *feri facias* was tested on the first day of Hilary Term, 1825; and it was proved that Mr. Cloughton had a one-third share in

Burton v.
Green.

Execution
against part-
nership pro-
perty for
private debt.

the Ashton Green colliery, which was in the county of Lancaster, and where there were goods and fixtures belonging jointly to him and his two partners, to more than three times the amount to be levied under this execution; and it was contended, on the part of the plaintiff, that the sheriff should have levied on this joint property to the extent of one-third. The defence attempted to be set up was, that partnership property could not be seized under a writ of *feri facias* sued out against one partner only. It was said by Lord Tenterden, C. J. "I am not quite satisfied as to the interest which the sheriff might have sold under the execution. There is great difficulty in making the sheriff a tenant in common with the partners." (a)

Holmes v.
Mentze.

Where the sheriff, in one case, conceived himself to be placed in difficulty in seizing partnership property, he applied to a Court of law under the Interpleader Act. The sheriff levied on the 17th February, and on the 18th was served with a notice by John Heap, informing him that Heap was interested as partner with Mentze in the goods seized, and that, upon a balance of the partnership account, Mentze would be found to have no property in the goods. The Court refused to grant relief, and said it was not a case within the act, and that the duty of the sheriff was to seize and sell such interest as the party had; but they thought the plaintiff ought to indemnify the sheriff, if he (the plaintiff) denied that Heap was a partner. (b)

(a) *Burton v. Green*, 3 C. & P. 306.

(b) *Holmes v. Mentze*, 4 Dowl. 300. On a subsequent day a

rule was granted, giving the sheriff time to return the writ until he was indemnified by the plaintiff.

CHAPTER XVI.

RIGHTS AND LIABILITIES OF DIRECTORS AND SHARE-
HOLDERS OF AN INCORPORATED COMPANY.

THE distinction between an ordinary joint stock company, whether established under a provisional agreement or a deed of settlement, and one which is incorporated, has been already pointed out. Incorporated companies.

A company may be *quasi* a corporation under the provisions of the 1 Vict. c. 73, as before mentioned. Under that statute privileges of a corporate character are bestowed, but a deed of settlement is also required. Whereas in ordinary instances, an act of Parliament incorporating a company is the only instrument of creation and regulation. If, pending the obtaining of the requisite act, a deed of settlement is resorted to, the latter instrument ceases to have any effect the moment the statute of incorporation has passed the Legislature. So also, it will have been seen what are the incidents of incorporation bestowed upon those companies which are formed under, or have availed themselves of the privileges of, the 7 & 8 Vict. c. 110. (a) It is proposed now to consider incorporated companies.

(a) *Ante*, 28. So likewise, with which are treated of separately, respect to Banking Companies, *ante*, 133.

Incorporated
companies.

Companies which have acquired the privileges of incorporation, are to be treated, at law and in equity, with reference to the objects of their creation, and to the express powers with which the Legislature may have invested them. (a) To that extent only is the general law of partnership superseded by the particular instrument of incorporation. But it is commonly the case, that authority is given to a company, when incorporated, to make bye-laws and regulations not inconsistent with the law of the land and the provisions of their act or charter. The effect of such a power is, that the shareholders are bound by a set of provisions and rules beyond those actually contained in the act of Parliament or charter. But this is so in matters of detail, arrangement, and regulation only. For it must not be supposed that even by unanimous consent of the members for the time being of such a corporation, can any internal regulation be made by means of which they are to obtain the benefits of their act, or charter, upon terms more favourable to themselves than those therein contemplated. Thus, if the amount of a share is stated in the act, &c. at 50%. by no private arrangement, even though unanimous, can the members effect a valid appropriation of the shares at a discount. The sum of 50%. must be actually paid to the corporation. And an innocent purchaser of a share so appropriated, can compel the original holder of it to make good the full nominal price of 50%. (b)

Society of
Practical
Science v.
Abbott.

So, if the act or charter prescribe as a condition precedent to the commencement of operations, that a certain

Reston v.
Grand Collier
Coal Com-
pany.

(a) See as to Railway Acts, ante, 60: Matters relating to the construction of acts of Parliament other than those mentioned in this chapter, will be found

noticed in a subsequent part of this work.

(b) Society of Practical Science v. Abbott, 2 Beav. 559.

number of shares be subscribed for, and the prescribed number not being made up, a private arrangement is made in pursuance of which the directors, or any other parties, become subscribers for the requisite additional shares, but nevertheless, upon a secret trust for the company, and upon the understanding that these latter shares are not to be paid up, it has been decided that such a secret trust and arrangement are altogether invalid and ineffectual, and the calls upon such shares must be made and enforced *pari passu* with those of any *bonâ fide* shareholder. (a)

Incorporated
companies.

The provisions of an act of Parliament must always be strictly pursued.

A gas light company was incorporated by act of Parliament, which provided that eighteen shareholders should be directors, and, as such, use the common seal, manage the affairs of the company, lay out money, purchase lands, &c., and make contracts for lighting and for the sale of materials. The company were empowered to make bye-laws under seal for their government, and for regulating the proceedings of the directors, officers, servants, &c. At a meeting of the company, a resolution (b) was passed, not under seal, that a remuneration should be allowed to every director for his attendance on courts, committees, &c. *viz.*, one guinea for each time. It was held, that a director who had attended courts, &c., could not maintain an action for payment according to the above resolution, because it was not a bye-law within the

Dunston v.
Imperial Gas
Company.

(a) *Preston v. Grand Collier Dock Company*, 2 Railway Cases, 335, and see *ibid.* 359, and 10 Sim. 519.

(b) See *Vaughton v. Brine*, 1 M. & Gr. 359, where it was held that a resolution of an unincorporated company for the ap-

pointment of their secretary was not "an agreement, or memorandum of an agreement," requiring a stamp. See *Lucas v. Beach*, 1 M. & Gr. 417, on the same point, recognised in *Beeching v. Westbrook*, 8 M. & W. 411.

Incorporated
companies.

statute. (a) Nor was it, it may be added, a contract, if such could have been available, to pay the directors, or any of them, for their attendances; and the directors could not be considered as servants of the company, and as such, entitled to remuneration for their labour according to its value.

But, on the other hand, if a resolution passed by a company is not of itself to be operative, but is only to be the foundation of an act or deed of the company, it will be sufficient if the latter be under seal. It may also be mentioned, that it will be presumed that all the forms required by the act of Parliament have been complied with, and that it will lie upon the party seeking to avail of the contrary, to shew the default affirmatively.

Clarke v.
Imperial Gas
Company.

In an action against the same company as in the last case, it appeared that they were empowered to make orders under seal, at their meetings, for the government of the company, and for regulating the proceedings of the directors; that no power was expressly given by the act to grant annuities; that at a general meeting, a committee, previously appointed for certain purposes, reported that it was expedient that the clerk should be invited to retire upon a pension; that such proposal had been made to him, which he had accepted: that the meeting voted that the report should be received and entered upon the minutes, and that the directors should carry into effect the committee's recommendation, but no order to this effect was made under seal. The directors, by deed, in the name of the company, granted an annuity to the clerk, and they put the corporate seal to it. It was held that the seal was properly affixed, and that no order of the company under seal was^d necessary to authorize^r the granting of the

(a) *Dunston and Another v. The Imperial Gas Light and Coke Company*, 3 B. & Ad. 125.

annuity. (a) The act also prescribed that nothing should be done at any special general meeting but the business for which it was called, and certain forms were required for calling it. On a special case stated, it did not appear that those forms had been gone through, and the company who were sued on the above deed, alleged this irregularity in answer; but the Court said it lay upon the company to give strict proof of the default, and this not being done, a possibility appearing that the forms might have been complied with, the Court would not presume the contrary.

Incorporated
Companies.

If a shareholder has advanced money to procure an act of Parliament for a company, and the act provides that the expense of obtaining it shall be paid out of the monies to be subscribed by virtue of the act, in preference to all other payments whatsoever, he may recover such money by action the moment the company become possessed of the subscriptions so made. (b)

Trespass will lie against an incorporated company for an act done by their agent within the scope of his authority. (c)

SECT. II.— *Of Suing and being Sued.* (d)

With regard to incorporated companies, the act of Parliament, or charter, often prescribes that the partner-
 Mode of suing
 and being sued.

(a) *Clarke v. The Imperial Gas Light and Coke Company*, 4 B. & Ad. 315.

(b) *Carden v. General Cemetery Company*, 5 Bing. N. C. 253; 7 Dowl. 275.

(c) *Maund v. The Monmouthshire Canal Company*, 4 M. & Gr. 452.

(d) Some of the instances about to be given in this section apply to companies established under deeds of settlement only, but having the assistance of private acts to enable them to sue. They are placed here for greater convenience. See *ante*, 304.

Mode of suing
and being sued.

secretary or clerk, as the case may be. If no specific direction on this subject is given by the statute or charter, the company sue and are sued in their corporate name, that is, the name by which they are called in the instrument of incorporation. The persons whose names are thus used do not incur personal liability. The facility required is against the funds of the company as a body. When an action has been prosecuted to judgment against an incorporated company, execution must be levied upon the property or funds of the concern.

Where an act directed that actions, in respect of claims upon the company, should be brought against the treasurer, but that his effects should not be taken in execution, a mandamus was granted, commanding the directors to pay the amount of the judgment. (a) On another occasion against the same company, the provision of the statute being that all costs incurred by the treasurer in prosecuting or defending any action for the company were to be defrayed out of the monies applicable to the purposes of the act; two actions between the treasurer and C., in one of which the former was plaintiff, and in the other defendant, were referred to an arbitrator, who awarded against the treasurer in both, with costs. The damages and costs being unpaid, an attachment was moved for against the treasurer; but the Court held that he had not rendered himself personally liable by submitting to an order of reference, and refused the attachment; but they granted a mandamus to the treasurer and directors to pay the sums awarded. (b) But where an action is brought and judgment recovered against a company, the Court

(a) *Rex v. St. Katherine's Dock Company*, 1 Nev. & M. 121; 4 B. & Ad. 360. See this case recognised in *Reg. v. The Victoria*

Park Company, 1 Q. B. 288.

(b) *Corpe v. Glyn*, 3 B. & Ad. 801.

will not grant a mandamus commanding the company to pay the debt. The plaintiff will be left to his ordinary remedy by execution. (a)

Mode of suing
and being sued

Under the powers given by certain acts of Parliament, a director of the West Cork Mining Company was sued and judgment recovered, in an action on a contract for work and labour, &c. done for the company. The provisions as to suits were these:—"All actions, suits, and proceedings, whether at law or in equity, or otherwise, to be commenced, instituted, and prosecuted or carried on by or on behalf of the said company, against any person or persons, body or bodies politic or corporate, whether such person or persons, body or bodies politic or corporate, is or are or then shall be a member or members of the said company or not, shall and lawfully may be commenced, instituted, and prosecuted, or carried on in the name of the person who shall be for the time being the managing director of the said company, or in the name of any one director, for the time being, of the said company, as the nominal plaintiff or party proceeding for and on behalf of the said company; and that all actions, suits, and proceedings, whether at law or in equity, or otherwise, to be commenced, instituted, and prosecuted, or carried on against the said company by or on behalf of any person or persons, body or bodies politic or corporate, whether such person or persons, body or bodies politic or corporate is or are or shall then be a member or members of the said company or not, shall and lawfully may be commenced, instituted, and prosecuted, or carried on against the person who shall be for the time being such managing director, or against any one director, for the time being, of the said company, as the nominal defendant or party proceeded

Harrison v.
Timmins.

(a) Reg v. The Victoria Park Company, 1 Q. B. 288.

Mode of suing
and being sued.

Harrison v.
Timmins.

against for and on behalf of the said company." It was held that these provisions made the company a *quasi* corporation, with the privilege to sue and be sued by a mere name, with an exemption of personal liability on the part of its members, and a liability of all joint stock property whenever acquired. (a)

The character in which the officer or person is sued, must distinctly appear upon the proceedings. And the cause of action should be stated in the pleadings to have accrued to or against the principals, or company of individuals whom he represents for this purpose. But if the statute provide not only that he shall be the nominal plaintiff, but also that the cause of action shall be vested in him in trust, the declaration must be framed accordingly. (b)

Soulby v.
Smith.

The West India Dock Act, 39 Geo. 3, c. 69, provides, that twenty-one persons shall be directors of the affairs of the company, and that all suits for any cause of action against the company shall be brought against the treasurer. The declaration stated that, by order of the Court of Directors, the defendant put up goods to sale, subject to certain conditions, and that in consideration that the plaintiffs, at the request of the directors, had promised them to perform the conditions of sale, they the directors promised to perform the same on their part. The declaration then alleged a breach of the conditions by the directors, and concluded that the plaintiffs brought their suit against the treasurer according to the statute. At the trial it appeared that the goods had been put up and sold by order of the directors, on account of the company. Held, first, that there was no variance between the

(a) Harrison v. Timmins, 4 M. & W. 510; 7 Dowl. 28. See
Bartlett v. Pentland, 1 B. & Ad.

declaration which charged the *directors*, and the evidence which showed that the contract was the *company's*; and, secondly, on motion in arrest of judgment, that the declaration was sufficient, because the contract alleged was, in legal effect, a contract by the company, for breach of which an action was maintainable against the treasurer, (a)

Mode of suing
and being sued.

The provisions of an act enabling a company to sue and be sued, if properly framed, will embrace every proceeding whatsoever, whether at law, or in equity, whether in bankruptcy or in criminal matters, and not only in connexion with third parties, but also between the several members of the company (b). Where the statute authorized all suits on behalf of the company, "against any person or persons, body or bodies, politic or corporate, to be prosecuted in the name of the chairman; and in all proceedings in which it would have been before necessary to state the names of the partners, it was made sufficient to state the name of the chairman only; it was held that suits in equity could not be commenced by the chairman against one of the partners without making the others parties (c). So, likewise a clause in an act, providing that all proceedings, whether at law, or in equity, by the company against any person, whether a member of the company or not, should be instituted and carried on in the name of the chairman, or of one of the directors, as the

Macmahon v.
Upton.

(a) *Soulby and Another v. Smith*, 3 B. & Ad. 929. The plaintiff had been nonsuited on a former trial, when the action was brought against the defendant without describing him as a treasurer of the West India Dock Company, on the ground that a judgment against him in such an

action would make him personally liable.

(b) See the enactments on this subject with respect to banking companies, *ante*, 152.

(c) *Macmahon v. Upton*, 2 Sim. 473. But see *post*, as to "Parties."

Mode of suing
and being sued.

nominated plaintiff, does not apply to a case in which directors appropriated to their own use part of the joint stock, by charging the company with a much larger sum, as the price of property purchased by them, than was actually paid (a).

*Williams v.
Beaumont.*

Where, in the case of an insurance company, the act of incorporation enacted, that "all actions and suits commenced or instituted, by or on behalf of the said society, for recovering any debts, or enforcing any claims or demands, now due, or which may hereafter become due, or arise to the said society, &c., shall be commenced or instituted, and prosecuted in the name of the chairman or secretary of the said society, as the nominal plaintiff," these words were considered large enough to empower the chairman to sue on behalf of the company, in order to recover damages for a libel reflecting upon the trading character of the company (b).

*Lawrence v.
Wynne.*

A local act, for enabling a company to sue and be sued in the name of their secretary, contained a clause enacting that it should not be lawful for the company to increase their capital, or extend their works, beyond the sum of 5000*l.*, otherwise so much of the privileges given by the act, as referred to the power of suing in the name of the secretary, should be void. By a subsequent act, for enabling the company to raise a larger sum of money, the above clause was repealed; and the company were empowered at a general meeting to direct that all their debts for the time being should be apportioned among the shareholders, and paid by them at such time and place, to such persons, and in such manner as the general meeting should order; and the secretary was authorized to sue the share-

(a) *Hichens v. Congreve*, 4 Russ. 562.

(b) *Williams v. Beaumont*, 3 Mo. & Sc. 705; 10 Bing. 260.

holders for such sums, or the part thereof remaining unpaid: It was held, that an action might be maintained by the secretary against a shareholder for his proportion of debts incurred by the company in extending their works and increasing their capital, before the passing of the latter act of Parliament. (a)

Mode of suing
and being sued.

The Monmouthshire Iron and Coal Company were empowered by statute to sue and be sued in the name of any one of their directors, or their secretary, and to raise money for carrying on their works. An action, in the name of the secretary, was brought against the defendant for calls, upon a deed of settlement to which the defendant was a party. On demurrer to the declaration, it was argued for the defendant that the statute only enabled the secretary to sue where the question was one in which the whole of the company were concerned on the one part, and third persons, or strangers, on the other, and that it never was intended to enable the company to sue, in the name of the secretary, one of its own members, for an instalment of the capital secured by a deed in which each of the proprietors had covenanted with certain trustees to make due payment of the instalments. The words of the statute were, however, held sufficiently large to comprehend this case. Amongst others were the following; "any covenants which have been already entered into with the said company, or with any persons in trust for the said company, or with any persons for the use of the said company," which were considered "necessarily to include within them the covenant made by the defendant with the trustees in the deed of settlement for the benefit of the company." (b)

Skinner v.
Lambert.

(a) *Lawrence v. Wynn*, 5 M. & Gr. 477, Law J. 1842, C. P. W. 355. 237. See *Hughes v. Thorpe*,

(b) *Skinner v. Lambert*, 4 M. & W. 656. To an action

Mode of suing
and being sued.

Unless the power to sue contained in the statute be clear in shewing that the company must be sued in the first instance, a creditor may at once sue a shareholder instead of the particular officer indicated by the statute.

Beech v. Eyre.

An act enabled the Patent Rolling and Compressing Iron Company to purchase certain patents, and to sue and be sued. In all actions against the company, "it shall be sufficient to state the name of the secretary, or some one of the directors, or where there shall be no secretary, or director, then the name of some one of the shareholders for the time being of the company, as the nominal defendant representing the company in such proceedings." The act contained further provisions for the reimbursement, &c. of shareholders, who might be sued, "in any other manner than under the powers and authorities thereinbefore given;" and also enacted "that nothing therein contained should extend to incorporate the company, or to relieve or discharge the company, or any of the shareholders thereof, from any responsibility, duty, contract, or obligation whatever, to which by law they then were, or at any time thereafter might be subject or liable, either as between such company and other parties, or as between the company and any of the individual shareholders thereof and others, or as between themselves, or in any manner whatever." It was held that a creditor had the option to proceed against any shareholder. (a)

against one of the members of a joint stock company, which was, by a private act of Parliament, empowered to sue and be sued in the name of its secretary, or one of the directors, the defendant pleaded that he was a member of the company, but not the secretary or a director, and that the

promise, &c., was made by him jointly with the other members of the company, and not otherwise. Held not an issuable plea. *Blewitt v. Gordon*, Law J. 1842, Q. B. 201.

(a) *Beech v. Eyre*, 6 Scott's N. Rep. 327, Law J. 1843. C. P. 140.

If the treasurer, secretary, or other officer, nominated for the purposes now under consideration, has been changed since the contract was made, an action upon it may nevertheless be supported in the name of the late officer. By the deed of partnership of the "St. Patrick Assurance Company," the members for themselves and their executors respectively covenanted with C. P., the secretary, to pay certain deposits upon their respective shares. To an action of covenant brought by C. P. on this deed, against the executrix of a deceased member of the company, for the amount of the deposits demanded after the death of that member, the defendant pleaded that, before the commencement of the suit, C. P. ceased to be the secretary, and R. H. was duly appointed in his stead; and that R. H. was the secretary at the time of the action brought,—that by 5 Geo. 4, c. 160, the company were empowered to sue in the name of the secretary, and therefore, R. H. should have brought the action. On demurrer, this plea was deemed insufficient, and the action properly brought in the name of C. P., the covenantee in the deed. (a)

Mode of suing
and being sued.

Pentland v.
Gibson.

SECT. III.—*Executions.*

When a judgment has been recovered against an incorporated company execution is levied upon the partnership property; for the action is against the company as a corporate body, and the shareholders are restricted in their liability by provisions to the effect that the company's funds only shall be chargeable, or by an enactment that each shareholder shall not be liable for the debts of the

Executions.

(a) Pentland v Gibson, 1 Meek & Nap. 311 (Irish).

Executions.

concern to a greater amount than the shares he may happen to hold. (a)

But the particular statute frequently provides that execution may also issue against shareholders, and prescribes the order of execution, referring, in this respect, to the shareholders for the time being, or at the time of the contract being made. In such a case the order in which the execution is prescribed must be followed.

Bradley v.
Eyre.

The act of Parliament of the Patent Rolling and Compressing Iron Company before-mentioned gave execution "against all or any of the shareholders for the time being," and if such execution were ineffectual, then against "any person who was a shareholder at the time the contract was entered into," "provided, that no person having ceased to be a shareholder should be liable to the payment of any debt for which he would not have been liable as a partner," and the act was not to be construed to enable any party to a suit to recover from any individual shareholder, any other or greater sum than might have been recovered if the act had not been passed. It was held, that execution must first issue against those persons who were shareholders at the time it was issued, provided they were shareholders at the time of the contract, and would have been liable to the plaintiff, if the action had been brought against them instead of the nominal defendant. (b)

Scire facias.

If the particular statute enabling a company to sue and be sued, directs that execution may not only proceed against the company, but against individual shareholders, before the latter can be affected by the judgment, a *scire facias* must be first sued out to make them parties to the judgment. A mere motion to the Court will not suffice.

(a) See *ante*, 304, as to executions against unincorporated companies.

(b) *Bradley v. Eyre*, 11 M. & W. 432, Law J. 1843, Exch. 450.

The statute 4 & 5 Vict. c. 89, enables the "Patent Rolling and Compressing Iron Company" to sue and be sued in the name of their secretary, and enacts, that every judgment, &c. shall and may be lawfully executed against, and have the like effect upon, the personal estate of every individual shareholder, as if he had been by name a party to the proceedings; provided that no execution against any person being, or having ceased to be, a shareholder, shall be issued without leave first granted by the Court in which the judgment, &c. shall have been obtained, upon a motion in open Court, and after notice of such motion given to the person to be charged. It was held that such execution could not be issued against an individual shareholder merely on motion, but that there must be a previous *scire facias*. (a)

Executions.

Scire facias.Clowes v.
Brettell.

It is a rule of law that no matter can be pleaded to a *scire facias* which might have been set up as a defence to the original action. (b) It is said that the rule applies only to parties or privies,—a plea, therefore, that no memorial of the names, residences, &c. of the directors and secretary had ever been enrolled, is bad, as setting up a defence that might have been pleaded to the original action. (c) But a defendant may plead that, at the time of the contract, he was not a shareholder, although he had been at the

(a) Clowes v. Brettell, 10 M. & W. 506, Law J. 1843, Exch. 8, and see Wingfield v. Barton, 2 Dowl. (N. S.) 355, and Winfield v. Peel, Law J. 1843, Q. B. 102, on same statute, and Bosanquet v. Ransford, on the Banking Act, 7 Geo. 4, c. 46, ante, 160. With respect to companies formed under the 7 & 8 Vict. c. 110, no

suggestion or *scire facias* is necessary, but only the leave of a Court or a Judge, ante, 46. The same observation applies to the new banking companies, ante, 174.

(b) Phillipson v. Earl of Egremont, Law J. 1845, Q. B. 25.

(c) Bradley v. Urquhart, 11 M. & W. 456.

Executions.

time the *scire facias* issued. (a) The issuing of a *scire facias* without leave of the Court, is a mere irregularity, and cannot be pleaded in bar to the action. (b)

(a) *Bradley v. Eyre*, 11 M. & W. 432. See *Clowes v. Brettell*, ib. 461, Law J. 1843, Exch. 302, where it was said a plaintiff's remedy was not against the funds of the company only, but that there was a right of action against

the individual shareholders.

(b) *Bradley v. Warburg*, 11 M. & W. 452. It is too late to move to set aside the *scire facias* on the above ground, after plea and demurrer to it argued. *Bradley v. Urquhart*, ib. 583.

CHAPTER XVII.

OF THE ACTS OF PARLIAMENT UNDER WHICH JOINT STOCK
COMPANIES ARE ESTABLISHED.

Acts of Parliament relating to joint stock companies are public and private. Of the former description are the statutes affecting joint stock banking companies, the Letters Patent Act, 7 Wm. 4, and 1 Vict. c. 73, and the Act for the Registration of Joint Stock Companies. These contain general provisions applicable to all companies established thereunder, but also contemplate the existence of a deed of settlement for each company. These public acts have already been considered: (a) they do not appear to call for further notice in this place. Construction.

Private acts relate to the several joint stock companies for which they are obtained. Each statute applies to a particular company, and contains various and minute provisions for their government, so that a deed of settlement becomes unnecessary. These acts are instruments of incorporation. There are, however, other private acts affording facilities to companies to sue and be sued, which being limited in their objects, also contemplate the existence of a deed of settlement, and do not have the effect of incorporating the partnerships. (b) It is pro-

(a) *Ante*, 10, 20, 133, 180.

(b) These have been already considered so far as relates to the

facility of suing and being sued, *ante*, 315.

Construction.

posed to consider the cases upon the construction of these private acts. Some of them have already been noticed. (a) The others relate,—

1. To construction in general,—
2. To particular instances,—
3. Notice of action,—
4. Limitation of action.

SECT. I.—*Construction in general.*

With respect to those private acts of Parliament which confer great powers—such as railway and canal acts—it has been already shewn that they are to be treated either as “contracts made by the Legislature on behalf of every person interested in everything to be done under them,” or as “conditional powers given by Parliament to take the land of the different proprietors through whose estates the works are to proceed.” (b)

Private acts of Parliament, which relate to one particular thing, are, it is said, to be interpreted literally. (c) This, however, cannot exclude all regard to the general intention appearing from the preamble (d) and other parts of a private act. It has been observed, “that whatever rules

(a) *Ante*, 98—110, with respect to compensations.

(b) See *ante*, 59, and chapter on *Compensations*. And *Rex v. Cumberworth*, 3 B. & Ad. 108, and the subsequent case of *Rex v. Cumberworth*, 1 N. & P. 197. *Rex v. Edge Lane*, 6 Nev. & M. 81.

(c) 2 Mod. 57. See *Burton's Comp.* 208, 3rd edit.

(d) See 7 Bac. Abr. 451; 3 M.

& Sel. 66; 4 M. & Sel. 239, as to how far the enacting words of statutes may be restrained by the preamble. And see 1 Bl. Com. 87; 7 Bac. Abr. 451, as to the construction of statutes in general. The title of a statute, though not properly a part of it, is often made use of in argument. See 8 T. R. 156; 2 B. & C. 37; 3 B. & C. 15, 17, 18, *ibid.* 183.

have been established relating to the exposition of deeds, must be applicable, so far as they are founded upon the universal principles of criticism, to all contracts and laws which profess to be written in the ordinary language of men, and that the same rules must be applicable, so far as concerns the description and incidents of the subject-matter, more especially to such of those contracts and laws as differ from deeds of conveyance only in the absence of some formalities and in the greater solemnity of their sanction.”

In the construction of an act of Parliament words should be taken in their ordinary sense, unless a different intention can clearly be collected from the other parts of the statute, or unless such construction would lead to some unreasonable result, or be inconsistent with, or contrary to, the declared or implied intention of the framers of the law, in which case the grammatical sense of the words may be extended or modified. (a) Again, it is a rule that one section is not to be considered as repealing or destroying another, if it be possible that they can be so construed that both may stand together. (b)

Ambiguous words, or words which will admit of different meanings in an act of Parliament obtained by a company, are to be construed against the company, and in favour of the public.

“If the words will fairly admit of different meanings, it will be right to adopt that which is more favourable to the interest of the public, and against that of the company, because the company, in bargaining with the public, ought to take care to express distinctly what payments they are

(a) See judgment of Parke, J., in *Bennett v. Daniell*, 10 B. & C. 506. *Rex v. Pease*, 1 N. & M. 690.

(b) See the rule in *Stevens v. Duckworth*, by Atkyns, B. Har- dres, 343-4.

Construction.

to receive, and because the public ought not to be charged unless it be clear that it was so intended." (a)

**Barrett v. The
Stockton and
Darlington
Railway
Company.**

Where, therefore, an act contained a clause authorizing a railway company to demand a rate not exceeding four pence per ton per mile on all coals carried along the railway,—and a subsequent clause, directing that, for all coals shipped for exportation, a rate not exceeding one half-penny per ton per mile should be charged, it was held, that the second clause was to be read as an exception ingrafted upon the first; and also that coals shipped for London were coals shipped for exportation. (b)

**Priestley v.
Foulds.**

So, likewise, where a company were authorized to make a canal which would interfere with an ancient drain. By one section of their statute, the company were required to make a drain on each side of the canal, and parallel therewith, in lieu of part of the ancient drain which would be destroyed. By another section, the company were required to make such arches, drains, &c., over, under, by the side of, or into the canal, and the trenches, streams, and water courses communicating therewith, and the towing paths on the sides thereof, of such depth, breadth, and dimensions, as should be sufficient to convey the water clear from the lands adjoining, or lying near the canal, without obstructing or impounding the same: and to support, maintain, cleanse,

(a) Per Lord Ellenborough, in *Gildart v. Gladstone*, 11 East, 675 (an action for dock dues). See judgment of Lord Tenterden, in *the Dock Company at Kingston-upon-Hull v. Browne*, 2 B. & Ad. 58; and the judgment of Bayley, J., in *Leeds v. Liverpool Canal Company v. Hustler*, 1 B. & C. 424, and of Holroyd, J., in *Britain v. The Crowsford Canal*

Company, 3 B. & A. 141, and of Tindal, C. J., in *Parker v. Great Western Railway Company*, ante, 60. Also see the *Portsmouth Floating Bridge Company v. Nance*, 6 Scott's N. Rep. 823.

(b) *Barrett v. The Stockton and Darlington Railway Company*, 2 M. & Gr. 134. In *Error*, 3 M. & Gr. 956.

and keep in repair all such arches, drains, &c. It was held Construction.
 that the drains made in pursuance of the former section, in lieu of the ancient drain, were to be cleansed by the company, as well as those mentioned in the latter section; and that a summary remedy given by the latter section in case of non-repair by the company, was applicable to a default in cleansing the drains made in lieu of the ancient drain. (a)

SECT. II.—*Particular Instances of Construction.*

Where a water company were empowered by a private act of Parliament to dig and break up the soil and pavement of any of the roads, highways, footways, common streets, lanes, alleys, passages, and public places, within a certain district; and by a proviso in a subsequent section, they were not to enter into any private lands without consent of the proprietor, it was held that, without reference to the proviso, they were not authorized to enter plaintiff's field, through which a public footway ran, without his consent. (b) Particular
Instances.

Scales v. Pickering.

Statutes frequently use the terms "owners," and "proprietors," as indicating the parties whose interests are affected. These words have no strict meaning. A Court of law will not confine them so as to embrace "owners of the inheritance" only, but will extend them to "all persons having any estate or interest in the land," who may sustain loss or damage by reason of lands being taken and used, Owners and
Proprietors.

(a) *Priestley v. Foulds*, 2 M. & Gr. 175. See *Stourbridges Canal Company v. Wheeley*, 2 B. & Ad. 792. *Barrett v. The Stockton and Darlington Railway Company*, 2 M. & Gr. 134; and see judgment of Maule, J., in *Priestley v. Foulds*, 2 M. & Gr. 196.
 (b) *Scales v. Pickering*, 1 Mo. & P. 195; 4 Bing. 448.

Construction.

Lister v.
Lobley.

Particular
instances.

The Northam
Bridge Com-
pany v. The
London and
Southampton
Railway
Company.

Turnpike road.

Such was the construction, where a local act empowered trustees to take and use lands for the purpose of making a road—making or tendering satisfaction to the “owners or proprietors” of private lands. (a) These words “owner and proprietor” are not legal terms, but words of common parlance. By “owner” is not necessarily meant a tenant in fee simple, but the word is commonly used to express, generally, a person who receives beneficial returns from the land. The tenant in fee simple may have scarcely any beneficial interest in the land. The same observations apply to the term “proprietors.” (b)

Another instance of effect given to a word or phrase, arose as to a “turnpike road.” The 70th and 71st sections of the London and Southampton Railway Act provide for the crossing by the railway of roads not being turnpike roads. By the 72nd section it is enacted, that in all cases where the railway shall cross any turnpike road, such turnpike road shall be raised or sunk by and at the expense of the company so as the same shall pass over the said railway, or that the said railway shall pass over the said turnpike road. The railway being proposed to cross the Northam Bridge Road in the mode pointed out by the 70th and 71st sections, the plaintiffs filed their bill, insisting that the road was a turnpike road, and praying to restrain the railway company from crossing over or using the same until they should have complied with the 72nd section. On a motion for an injunction, the Vice Chancellor being of opinion that the road was not a turnpike road, and therefore not within the 72nd section, refused the motion, but on the application of the plaintiffs directed a case for the opinion of a Court of law upon the question.

(a) Lister v. Lobley, 6 Nev. & M. 340.

(b) Ibid. Judgment of Little-
dale, J.

A case was accordingly stated for the opinion of the Court of Exchequer, and a certificate returned by the Judges of that Court, stating that the Northam Bridge Road was a turnpike road. (a) It appears from a report of the case in the Exchequer, the Court determined that a road on which toll-gates were by law erected, and tolls taken thereat, was a turnpike road within the meaning of the 72nd section. (b)

Construction.

Particular instances.

A railway act provided that it should not be lawful for the Railway Company to make or establish any *public* station, yards, wharfs, &c., or other buildings and conveniences for the depositing, receiving, loading passengers, cattle, &c., upon the estate of R. G., without his consent. On demurrer, it was held, that the word "public" did not necessarily override the whole sentence, and that if it did, then that from the subsequent clauses, every convenience connected with the railway, must be considered as for the public use. (c)

Public.

By a railway act it was enacted, that if the company should be desirous of purchasing part of any house, garden, yard, &c., and the owner should signify his inclination to sell the whole of such house, &c., he should not be compelled to sell to the company part only, or less than the whole; it was held, that a yard for the bonding of foreign timber, in which there was a deal shed, and two buildings containing saw pits, was not a yard within the meaning of the enactment. (d)

Yard

(a) *The Northam Bridge Company v. The London and Southampton Railway Company*, 1 Railway Cases, 653

(b) 6 M. & W. 428. Where a private act gives the trustees of a navigation power to sue for tolls, "by action of debt, or on

the case," assumpsit will lie. *Corbet v Carpmael*, 2 N. & M. 834.

(c) *Gordon v The Cheltenham and Great Western Union Railway Company*, 5 Beav. 229.

(d) *Stone v Commercial Railway Company*, 9 Sim. 621.

Construction.

Particular instances.

If under a private act, the business of a company is to be carried on by a particular number of directors, the provision is merely directory, and, it would seem, does not prevent them, if in fact a smaller number, from maintaining an action for calls. (*a*)

Doe d Robins
v. Warwick
Canal Com-
pany.

So where under a local act, proprietors of land were authorized to "contract for, sell, and convey" their lands to a canal company, such "contracts, agreements, sales, exchanges, conveyances, and assurances" were to be valid to all intents and purposes, were to be enrolled with the clerk of the peace, and copies thereof to be evidence; and upon payment of the sum agreed on for the purchase of lands, such lands were to be vested in the canal company; it was held that a conveyance of land must be in writing. (*b*)

Conveyance in
writing.

The Earl of
Harborough v.
Shardlow.

A similar decision was come to in a case where a canal act enacted, in one clause, that after any land should have been set out and ascertained for making the canal, &c., it should be lawful for all persons seised or possessed of or interested in such lands, to contract for, sell, and convey them to the canal company, and that all such contracts, sales, and assurances, should be valid and effectual in law, and all such contracts, &c., should be made at the expense of the company, and enrolled with the clerk of the peace, and copies thereof, signed by the clerk of the peace, should be evidence. A subsequent clause enacted, that upon payment of such sum or sums of money as should be contracted or agreed for between the parties, or determined and adjusted by the commissioners, or assessed by a jury, in manner thereinbefore mentioned, the lands should be vested in the company. It was held that by reference to the former clause, the contract, in order to vest the lands

(*a*) Thames Haven and Dock
Railway Company v. Rose, 4 M.
& Gr. 552, Law J. 1842, C. P. 90.

(*b*) Doe d. Robins v. Warwick
Canal Company, 2 Bing. N. C.
483.

in the company, must be in writing; and that, therefore, proof of payment by the company, for particular lands identified in evidence, was not sufficient proof of title in the company. (a)

Construction.

By a canal act, 30 Geo. 2, c. 32, s. 7, the owners of certain works, called the Pentyrch Works, were entitled to all the surplus water, or such as was not wanted for the purposes of the canal. By a subsequent act, 36 Geo. 3, c. 69, the canal company were required to finish the canal, and all the works and extension of the same, within the space of two years, and were restricted from making any alterations in the canal after the expiration of that time. After the two years, the company erected an engine for the purpose of forcing up the water into the canal, by which the quantity of water was increased, and the company were enabled to pass down a greater number of barges than could have been passed down before the erection of the engine. It was held that as this had the effect of diminishing the quantity of surplus water, it was an injury to the owners of the Pentyrch Works for which they were entitled to recover damages. The act also provided, for the purpose of better securing the surplus water for the benefit of the Pentyrch Works, that the lock which should be made below and nearest the Pentyrch Works, should always be kept in good and sufficient repair by the canal company, for the purpose of preventing leakage or waste of water. The canal company constructed a notch for the purpose of conveying water below the lock directed to be kept in repair. It was held (*Parke, B. dub.*), that the company had no right to pass any water below the lock, though necessary to the lower part of the canal, except where it was necessarily passed by barges being lowered

Blakemore v. The Glamorgan-shire Canal Company.

(a) *The Earl of Harborough v. Shardlow*, 7 M. & W. 87.

Construction. through the lock, and that the notch was not authorized by the act. (a)

Painter v. Liverpool Oil Gas Light Company.

Warrant without summons.

By an act establishing a gas company, it was enacted, that if any person should refuse or neglect, for ten days' after demand, to pay any rent due from him to the company for the supply of gas, such rent should be recovered by the company, or their clerk, by warrant of any justice of the peace for the town, &c. And it should be lawful for the company, or their clerk, or any person acting under their authority with such warrant, to levy the sum so due by distress and sale of the goods of the party so neglecting or refusing to pay, &c." It was held that a warrant so issued by a justice, without previously summoning and hearing the party to be distrained upon, was illegal, though a summons and hearing were not in terms required by the act. Where a magistrate grants a warrant in the nature of an execution, he is bound first to summon and hear the parties, unless the statute under which he acts clearly renders the discharge of that function ministerial only, or in some other manner dispenses with the summons and hearing. (b)

Rex v. Morris. A company were incorporated by statute, and empowered to make a railway through certain districts. By section 5, they were directed to form new roads in lieu of any existing ones that might be injured by their railway. Section 70, empowered proprietors of lands, mines, &c., to make railways through their own lands, and those of other persons consenting, and across and along any road or roads to communicate with the principal railway, and no reference was made to any former limitation of powers. It was

(a) *Blakemore v. The Glamorganshire Canal Company*, 10 C. M. & R. 133

(b) *Painter v. Liverpool Oil Gas Light Company*, 3 Ad. & El. 433. See *Rex v. Hughes*, ib. 425.

nevertheless determined that the power in this clause was not absolutely given, but must be subject to the provisions of section 5, as to the condition of leaving space enough, independent of the railways, for the public to pass. (a) Construction.

An embankment company were, by an act of Parliament, empowered to make a road, and to erect turnpikes upon or across "any lanes, or ways leading, or that might thereafter lead out of the same," and to take tolls at such turnpikes. By subsequent acts, another company were empowered to make a railway, and it was enacted that all persons should have free liberty to use the same, with carriages properly constructed, upon payment only of such rates and tolls as should be demanded by the railway company, not exceeding the sums mentioned in that act. Rowe v. Shilson.

The railway was afterwards made, and it crossed the embankment company's road. It was held, first, that the railway, though made and opened to the public by act of Parliament, was "a way" within the meaning of the first mentioned act; secondly, that the clause in favour of the public in the railway act, did not take away the vested right of the embankment company to their tolls; and, consequently, that they might take toll of persons crossing their road upon the railway. (b) Way.

Under the Grand Junction Railway Act, certain property was cut through. Section 183 enacts, that it "shall be lawful for the respective owners and occupiers of lands through which the said railway shall be made, and their respective servants and workmen (except in cases in which the said company shall, at their own expense, have made communications from the land on the one side of the said railway to the land on the other side thereof, according to Tolls.

The Grand Junction Railway Company v. White.

(a) *Rex v. Morris*, 1 B. & Ad. 441. ther, 4 B. & Ad. 726; 3 Nev. & M. 734

(b) *Rowe v. Shilson and Ano-*

Construction.Passing across
railway.

any agreement with any owner or occupier thereof, or according to the provisions of this act) at all times, for the purpose of occupying the same land, and without payment of any toll, to pass and repass, and to lead and conduct any horse, mule, or ass, cow, or other cattle, sheep, swine, or other beast, directly (but not otherwise) over and across such part (and such part only) of the said railway as shall be made in or upon their respective lands, provided, that by so doing, or by consequence thereof, the passage upon or along the said railway be not in any way hindered or obstructed, or the same or the works connected therewith be not in any way damaged."

The effect of this clause was held to be that the occupier of the land for the time being (not the occupiers of the land previously) had a right of passing across the railway from one part of his close to another, provided he did not do so in such a manner as to impede the traffic upon it; and, provided also that the company had not made a communication; that in order to compel them to do what might be necessary for that purpose, this right to cross was given until a communication should have been made by the company; and that the occupier was not bound to go before a justice of the peace under a certain section of the statute, in order to compel the company to make such communications. (a)

Clarence
Railway Com-
pany v. Great
North of Eng-
land Junction
Railway
Company.

A railway act empowered the company to make and maintain their railway over certain lands to a specified point. Sect. 4, enacted that nothing in that statute should authorize the company to enter upon, take or damage any lands without the consent of the owner and occupier. Sects. 16 and 17 empowered the company to contract with

(a) The Grand Junction Rail- No. 243, Exch. E. T. 1841; 8 M.
way Company v. White, Jurist, & W. 214.

landowners for the purchase of land, and for grants of way-leave. Sect. 18, contained a clause of arbitration in case any person willing to grant or demise such way-leave, should not agree with the company as to terms. Sect. 43 enacted that, "in every case in which" the said railway "shall cross any other railway," the communication between them shall, if the company and the owners of such other railway "do not agree about the same," be made in such manner as shall be directed by two engineers acting as arbitrators, and that the company shall make satisfaction (to be ascertained in the manner before pointed out) for temporary, permanent or recurring injury to be occasioned by such crossing. No regulation was made as to the manner in which, and times when, carriages on the first-mentioned railway should cross the other. The Court held that sect. 43 did not clearly introduce a compulsory power in the case where a railway was to be crossed, and therefore, that the provision of sect. 4, must be taken to govern this clause, and make consent necessary. Although it should be impossible, without so crossing, to carry the first-mentioned railway to the point specified in the act. (a)

Construction.

Consent of owner.

A section of a railway statute enacted, that the lands to be taken for the line of the railway should not exceed twenty-two yards in breadth, except where a greater breadth should be necessary for waiting places, embankments, cuttings, &c. ; and the 59th section provided, that the company, in making the railway and other works, should not deviate from the line delineated on the plan deposited with the clerk of the peace, in pursuance of the act, with or without consent of the owners or

*Doe d. Payne
v. The Bristol
and Exeter
Railway
Company.*

(a) *The Clarence Railway Company v. The Great North of England Junction Railway Company,* 4 Q. B. Rep. 46.

Construction.

Deviation.

The Dun
Navigation
Company v.
The North
Midland Rail-
way Company.

occupiers of the lands, more than 100 yards, and that no deviation should extend into the lands or property of any person not mentioned in the book of reference to the plan, unless omitted by mistake; and the company were empowered to make such deviations in the section as might be necessary in consequence thereof. It was held that this clause only prohibited the company from making the substituted line of the railway itself at a greater distance than 100 yards from the line delineated in the plan; but that it did not prevent them from taking lands at a greater distance from it than the 100 yards, for the purpose of embankments, cuttings, &c., the intention of the act being to give the company the same incidental powers with respect to the deviated line as they had with respect to the original line; and, also, that a party whose lands were so taken, could not object that the company had taken, for the same purpose, lands of another person not mentioned in the book of reference. (a) So, in another case a company were authorized to deviate to the extent of 100 yards from the line laid down in their map, provided such deviation was made within two years from the passing of the act, and which two years would expire on the 4th of July, 1838. In January, 1837, a deviation in the line, within the prescribed limits, was made. A subsequent act, passed in May, 1837, enacted, that the time limited by the first act, for the compulsory purchase of lands, should be enlarged for the term of one year, but provided that no deviation from the line laid down should be made after the expiration of the period by the first act limited. The company subsequently to the 4th of July, 1838, gave notice to certain owners of lands on the line, to which they

(a) Doe d. Payne v. The Bristol and Exeter Railway Company, 6 M. & W. 320.

had deviated in January, 1837, of their intention to take the lands under the powers given by the act. The Lord Chancellor considered that as the company had, previous to the expiration of the two years limited by the first act, and previous also to the passing of the second act, deviated within the authorized limits from the line laid down in the map, the second act must be construed to give them an enlarged period of one year in which to exercise the power of taking the land in the line to which they had so deviated. (a)

Construction.

A railway act provided that, where any part of any road should be cut through, taken, &c., the company should first make another road instead thereof, as convenient for passengers and carriages as the former road, and that, where such was turnpike, "the substituted road, if temporary, should be set out and made, and the principal road should be restored, within six calendar months after commencement of the operation;" and that, where any bridge should be erected for carrying any turnpike road over the railway, "the road over such bridge" should not be less than fifteen feet wide. On application for a mandamus, it was held that the company were bound to make the approaches as wide as the turnpike road had been; and that it was no answer to say that the approaches, though of less width, were as convenient to the public as they could be made in execution of the powers of the act, and as convenient to the public as the original road had been; nor that the company could not now widen the approaches without taking and purchasing more land; that their compulsory powers of purchasing had expired before they were called upon to widen; and that they had

Reg. v. The Birmingham and Gloucester Railway Company.

Width of road.

(a) The River Dun Navigation Railway Company, 1 Railway Company v. The North Midland Cases, 135.

Construction.

not then, nor have since had, the power to take or purchase land for such purpose. (a)

The Attorney
General v. The
London and
Southampton
Railway
Company.

By the Southampton Railway Act, it was enacted, that it should be lawful for the company, according to the provisions and subject to the restrictions of the act, to construct in, upon, across, under, or over any lands, streets, roads, rivers, &c. such bridges, arches, piers, &c., as they should think proper; that where any bridge should be erected for carrying the railway over or across any road, the span of the arch should be formed so as to leave a clear and open space, under every arch, of not less than fifteen feet; that in all cases in which any road should be found necessary to be cut through, diverted, taken, or so much injured as to be impassable for passengers or carriages, the company should, before any road should be so cut through, &c., cause a sufficient carriage or horse-road, as the case might require, to be made instead thereof, as convenient for passengers and carriages as the road to be cut through, &c., or as near thereto as might be, and should cause the same to be put into good order where the former road could not be more easily restored; and when the road cut through, &c., should be a turnpike road, the substituted road, if temporary, should be set out and made as aforesaid, and the principal road should be restored within six months; and the railway, where it

Bridge.

(a) Reg. v. The Birmingham and Gloucester Railway Company, 2 Q. B. 47, and Reg. v. The Manchester and Leeds Railway Company, 3 Q. B. 528, is to the same effect, but the judgment in that case has been reversed in error, 3 Gale & D. 269; and see Rex v. The Regent's Canal Company, cited 1 Railway

Cases, 323, where the Canal Company were indicted and convicted under similar circumstances for not making a bridge of the same width as the road had been. And see Reg. v. The London and Birmingham Railway Company, 1 Railway Cases, 317. Reg. v. Scott, Law J. 1842, Q. B. 254.

should cross such turnpike road, should be constructed and kept in repair so as to prevent, as far as practicable, any obstruction to the passage along the road. It was held that the company, in carrying a bridge over a turnpike road, might erect the piers upon the road, and were not bound to leave more than a clear open space of fifteen feet under each arch, notwithstanding the original width of the road would be considerably lessened thereby (a).

Construction.

The Manchester and Leeds Railway Act enables the company to make a railway in a prescribed course. The 34th section, reciting that the railway is to be carried across the Air and Calder Navigation, at the three specified places, requires the company to erect bridges at such three crossings, and prescribes the dimensions of such bridges. The 38th section provides, that the company shall, during the progress of constructing such bridges, leave an open uninterrupted navigable waterway, of a specified height and extent, and imposes penalties on non-compliance with its provisions. The 42nd and 44th sections, provide that the railway company shall not make any bridge over the navigation, and generally shall not interfere therewith, otherwise than as provided for by the act. The 94th section empowers the company, subject to the restrictions imposed by the act, to make and maintain the railway, and to construct in, under, upon, across, or over any hills, valleys, roads, rivers, canals, brooks, or streams, or other works, such embankments, bridges, aqueducts, and conduits, either temporary or permanent, and to erect and construct such buildings, engines, machinery, apparatus, and other works and conveniences for the purposes

Priestley v.
The Manches-
ter and Leeds
Railway
Company.

Bridge.

(a) The Attorney General v. The London and Southampton Railway Company, 9 Sim. 78. But see the observations of the

Court on this case, in Reg. v. The Birmingham and Gloucester Railway Company, 2 Q. B. 62.

Construction.

Priestley v.
The Manches-
ter and Leeds
Railway
Company.

Bridge.

of the act, as the company shall think proper. By an agreement, however, between the navigation and railway companies, and afterwards embodied in an act of Parliament, the line of the railway was changed, by which change the navigation was crossed only once by the railway, and only one bridge required. The railway company had introduced into the above agreement a clause, enabling them to erect temporary bridges across the navigation, but which was struck out by the navigation company. The railway company having commenced the building of the permanent bridge, erected a temporary bridge adjoining to the permanent bridge, which was used partly for building that bridge and partly for conveying earth and materials across the river. On the application of the navigation company, an injunction was granted *ex parte*, restraining the erecting of a temporary bridge across the navigation, or of anything impeding the navigation in a manner not authorized by the act. Alderson, B., dissolved the injunction, and held that subject to the restrictions of the act, the 94th section ought to be liberally carried into effect; that the railway company had the power of erecting such a temporary bridge, the power being exercised reasonably and *bonâ fide*; that in construing such power, with a view to its reasonable and *bonâ fide* exercise, regard must be had to the peculiar purpose for which the permanent bridge was designed; that the temporary bridge, being of the dimensions specified in the 34th section, and a navigable waterway being left as required by the 38th section, the same was lawfully erected under the 94th section for the *bonâ fide* purpose of building the permanent bridge; that the temporary bridge, being erected and used for a lawful purpose, might also be used for other purposes for which alone it could not have been erected; and that subject to the restrictions of the act, the company, acting *bonâ fide*,

were constituted the judges of the mode of executing their works (a).

SECT. III.—*Notice of Action.*

The statutes generally prescribe that notice of action shall be given where it is intended to proceed “in respect of anything done, or omitted to be done, in pursuance of the act.” A thing is to be considered as done “in pursuance of the act,” when the person who does it is acting honestly and *bond fide*, either under the powers which the act gives, or in discharge of the duties which it imposes. Though he may erroneously exceed the powers the act gives, or inadequately discharge the duties, yet if he acts *bond fide* in order to execute such powers, or to discharge such duties, he is to be considered as acting in pursuance of the act, and is to be entitled to the protection conferred upon persons whilst so acting. (b)

Notice of
action.

Where acts are done which assume the shape of negligence, or impropriety in giving orders, they would seem to come within the meaning of the words “in pursuance of the act.”

An act of Parliament, by which a company was established for making and maintaining certain docks and basins, authorized the appointment of a dock-master, who was to have power to direct the mooring, unmooring, moving, and removing of all vessels into or being in the

Smith v. Shaw.

(a) *Priestley v. The Manchester and Leeds Railway Company*, 2 Railway Cases, 134.

(b) *Gaby v. The Wilts and Berks Canal Company*, 3 M. & Sel. 580. *Theobald v. Crichmore*,

1 B. & A. 227. *Parton v. Williams*, 3 B. & A. 330. See judgment of Mr. Justice Bayley. *Smith v. Shaw*, 10 B. & C. 284. *Graves v. Arnold*, 3 Camp. 242.

Notice of
action.

Smith v. Shaw.

docks, and to have the control over the space of one hundred yards of the entrance into the docks, so far as related to the transporting of vessels coming in or going out; and the company were to be sued in the name of their treasurer; and if any action should be brought against any person "for any thing done in pursuance of the act," such action should be commenced within six calendar months after the fact committed. An action having been brought against the treasurer for an injury done to a vessel (within one hundred yards of the entrance of the docks) by reason of improper directions having been given by the dock-master in transporting her into the docks, the giving of such directions was held to be a thing done in pursuance of the act of Parliament, and that the action ought, therefore, to have been brought within six calendar months after such directions had been given. (a). In another case, the ground of complaint was, that the West India Dock Company had wrongfully prevented the plaintiffs, as brokers or agents, from landing goods from ships in the docks, and delivering them to the owners; and the question was, whether the 39 Geo. 3, c. 69, s. 185, which required fourteen days' notice before any action was brought against the company for "any thing done in pursuance or under colour" of the act, was a bar to the action, no notice having been given. The Court held it was. (b)

Wallace v.
Smith.

(a) Smith v. Shaw, 10 B. & C. 277.

(b) Wallace v. Smith, 5 East, 115. Lord Ellenborough expressed a doubt whether a clause of the above description applied to actions of assumpsit. The following cases as to "notice of action" may be referred to: Edge v. Parker, 8 B. & C. 697; 3 M. & R. 365. Carruthers v.

Payne, 5 Bing. 270; 2 Mo. & P. 429. Waterhouse v. Keen, 4 B. & C. 200; 6 D. & R. 257. Cook v. Clark, 10 Bing. 19; 3 Mo. & Sc. 371. Butler v. Ford, 1 C. & M. 662; 3 Tyr. 677. Fletcher v. Greenwell, 1 C., M. & R. 754. Cane v. Chapman, 5 Ad. & Ell. 647. Wedge v. Berkely, 6 Ad. & Ell. 663.

Notice of
action.

Cases may occur of mere non-feazance: and if the particular statute be framed, with respect to notices of action, in the ordinary way, the question will arise whether an act omitted to be done comes within the statutory provision. The case of *Wallace v. Smith*, just quoted, is of this sort. Another case occurred, where an action of trover had been brought against the treasurer of the West India Dock Company, for refusing to deliver articles deposited in their docks. The provision of their act, relative to this subject, was as already stated in the preceding case. The Court thought the treasurer was entitled to notice, notwithstanding he had taken a bond of indemnity from other parties at the time of refusing to deliver. (a) It was, however, observed by Mr. Justice Bayley, in a subsequent case, (b) that it was "not necessary to go the length of *Sellick v. Smith*, nor to say whether a mere non-feazance would be *an act done* within this and similar statutes."

Sellick v.
Smith.

An instance of another class may be given. Where a company are empowered to do certain things under their statute, and a provision of the nature alluded to is introduced, it will extend to such things only as are within the act. So that if a railway company become common carriers, that is, carriers not in the way prescribed by their statute, they will not be entitled to the notice of action mentioned therein.

The Grand Junction Railway Company are empowered to make a railway from Warrington to Birmingham. By section 154 of their act, they are empowered to receive certain tonnage rates "for all articles, matters, or things, carried or conveyed on the railway;" by section 156, the

Palmer v. The
Grand Junction
Railway
Company.

(a) *Sellick v. Smith*, 2 C. & P. 282; 11 Moore, 459, and note (b) 5 Bing. 280.

(b) *Smith v. Shaw*, 10 B. & C. 287; 5 M. & R. 234.

Notice of
action.

Palmer v. The
Grand Junction
Railway
Company.

company are empowered to become carriers themselves, and are authorized, if they shall think proper, to use engines, &c., to carry and convey upon the railway all such passengers, cattle, goods, wares, and merchandise, articles, matters, and things as shall be offered to them for that purpose, upon certain reasonable charges;" by the 214th section, "no action, suit, or information, nor any other proceeding of what nature soever, shall be brought, commenced, or prosecuted against any person for anything done or omitted to be done in pursuance of the act, or in the execution of the powers or authorities, or any of the orders made, given, or directed in, by, or under the act, unless fourteen days' previous notice in writing shall be given by the parties intending to commence or prosecute such action, &c., nor unless such action, &c., shall be brought within three months" and by the 215th section power to tender amends is given. Under the 156th section, the company became carriers themselves. In an action against the company (alleging them to be owners and proprietors of the railway) for not safely carrying and conveying some horses in their carriages on the railway, whereby one was killed and others were injured, it was held, that a breach of their duty in the character of common carriers, was not a thing omitted to be done in pursuance of the act, or in the execution of the powers or authorities given by it. (a)

Carpue v. The
London and
Brighton Rail-
way Company.

So also by the London and Brighton Railway Act, where the provision was that "no action, suit, or information, nor any other proceeding, of what nature soever, shall be brought, commenced, or prosecuted, against any person for any thing done, or omitted to be done, in pursuance of this act, or in execution of the powers or

(a) Palmer v. The Grand Junction Railway Company, 4 M. & W. 749.

authorities, or any of the orders made, given, or directed in, by, or under this act, unless twenty-one days' previous notice in writing shall be given by the party intending to commence and prosecute such action, &c., to the intended defendant, nor unless such action, &c., shall be brought or commenced within, &c." The company had themselves become carriers upon the line. In an action against the company, as owners and proprietors of the railway, for not safely carrying and conveying the plaintiff in one of their carriages upon the railway, whereby the plaintiff was much wounded and injured; it was held that they were not entitled to notice of action as for a thing done, or omitted to be done, in pursuance of the act. (a)

Notice of
action.

*Carpue v. The
London and
Brighton Rail-
way Company.*

In one other case, which it may be useful to state, it was held, that a company, although incorporated, will be entitled to notice, although the provision on that subject would seem to extend to persons only, and this, notwithstanding, that in other parts of the statute, the word "person" cannot include the company, as where it is put in opposition to the word "company." Such was the case in an action against the Croydon Railway Company, for obstructing a road which the plaintiff claimed a right to use. The defendants who had done the act in question in pursuance of the statute 5 Wm. 4, c. 10, objected that they had not received the notice of action enjoined by sect. 179, which enacts, "that no action, suit, or information, nor any other proceeding, of what nature soever, shall be brought, commenced, or prosecuted against any *person*, for anything done, or omitted to be done, in pursuance of this act, or in the execution of the powers or authorities or any of the orders made, given, or directed in, by or under this act, unless twenty days' previous

*Boyd v. The
Croydon Rail-
way Company.*

(a) *Carpue v. The London and Brighton Railway Company*, Law Jour. 1844, Q. B. 133.

Notice of
action.

notice in writing shall be given by the party intending to commence and prosecute such action, suit, information, or other proceeding to the intended defendant." The Interpretation clause provided, "that where in this act any words shall be used importing the singular number or the masculine gender only, such words shall be understood to include several matters as well as one matter, several persons as well as one person, and females as well as males." (a)

SECT. IV.—*Limitation of Action.*

Limitation of
action.

The time within which actions must be brought is regulated by a particular provision in each statute. In some cases the limitation begins from the time of the "thing done or acted," or the "fact committed," and in others from the time when the "cause of action" arose.

Gillon v.
Boddington.

By a private act of Parliament, it was enacted, that the defendants (the London Dock Company) should be sued within "six calendar months after the fact committed." Lord Tenterden held, (b) that the limitation ran from the time of the consequential injury happening, and not from the doing of the act which caused that consequential injury. (c)

Lloyd v.
Wigney.

But where an act is done which produces an immediate injury, or an injury which happens within the prescribed limitation, then the date of limitation must, even though

(a) *Boyd v. The Croydon Railway Company*, 4 Bing. N. C. 69; 6 Dowl. 721.

(b) *Recognising Roberts v. Reed*, 16 East, 215.

(c) *Gillon v. Boddington*, 1 C. & P. 541. See *Sutton v. Clarke*, 6 Taunt. 29; 1 Marsh. 429. *Rex*

v. Justices of Staffordshire, 3 East, 152, and note (b), 6 Taunt. 40. And see *Boothby v. Morton*, 3 B. & B. 239; 7 Moore, 51, which, however, was an action of trespass. *Gaby v. The Wilts and Berks Canal Company*, 3 M. & Sel. 580.

the injury be a continuing one, commence from the day when it first happened. Limitation of action.

By the Brighton Improvement Act, actions for any injury done by the commissioners under the act are to be brought within six months after "the matter or thing done." The defendants, proceeding under that act to dig a sewer, cracked the walls of the plaintiff's house. The plaintiff's right of action was held to be limited to six months after the day on which the crack was occasioned, and did not continue for as long a time as the crack continued. It appeared that the act done, and the cracking of the wall, both happened within the six months. (a) Lloyd v. Wigney.

Some of the acts, however, prescribe a limitation, not only from the time of the thing done, or fact committed, but also from the "continuation of damage."

A person who was entitled by act of Parliament to all the surplus water and such as was not necessary for the purposes of a canal, brought an action against the canal company for an illegal abstraction of water, and alleged in his declaration continuing acts of commission and omission from an antecedent period, by which he was deprived of the water for nine weeks in the year 1825, and for seventeen weeks in the year 1826. It was held, that the company were within the protection of the limitation clause, which enacts, that any action for any thing done in pursuance of the act, shall be brought within six calendar months next after the fact committed, unless there be a continuation of damage; and also, that there had been no continuation of damage, inasmuch as there was a cessation of injury, although the cause from which the injury proceeded was continuing. (b) Blakemore v. The Glamorganshire Canal Company.

(a) Lloyd v. Wigney, 6 Bing. shire Canal Company, 3 Y. & J. 489. 60.

(b) Blakemore v. Glamorgan-

Limitation of
action.

Lord Oakley
v. Kensington
Canal Com-
pany.

So where the acts of Parliament, enabling a company to make and maintain a canal navigation, and to take lands for that purpose, making satisfaction, provided that the company should not take any garden-ground without the consent of the respective owners and occupiers, and that any action to be brought for any thing done in pursuance of those acts should be commenced within six calendar months next after the fact committed; or if there should be a continuance of damage, then within six calendar months next after the committing of such damage should have ceased. The company wishing to take garden-ground for the purpose of sloping the banks of the canal, told the occupier, a tenant, that they had obtained the consent of the owner's agent, without which the tenant would not have given them permission; but the statement was not true. They then paid him a sum which he demanded on account of a former transaction, after which they entered and sloped away the ground. The land in consequence was thenceforth overflowed by the Thames at every high tide. For this damage the landlord sued the company, but not before six calendar months after the ground was taken, and the tide let in. The injury thus done was held to be one for which an action should have been brought within six calendar months after the taking away of the land, and that the defendants were within the protection of the limiting clause, inasmuch as the act complained of was really done for the purpose contemplated by the statutes, though in the prosecution of that purpose the defendants had been guilty of a misrepresentation amounting to bad faith towards the occupier. (a)

(a) *Oakley (Lord) v. Kensington Canal Company*, 5 B. & Ad. 138. But see *Reg. v. Eastern Counties Railway Company*, 2 *Railway Cases*, 750, and *ib.* 1 G.

& *Dav.* 592, where Lord Denman said, "it was not very satisfactory to hear that case cited, as he was afraid they had there given effect to fraud."

It has been said that some statutes date the limitation from the time when the "cause of action" arose. If it arose on one day and continued for a certain period, a right of action would accrue for every day's continuance. For this reason the period of continuance cannot be taken as a whole with reference to the assessment of damages. So that if a person commences his action at the last possible moment for saving the limitation, he can receive damages only for such portion of the period as he may have actually covered.

Limitation of
action.

The Hungerford Market Company, acting under their act of Parliament, caused an obstruction, which began on the 3rd of April and ended on the 2nd of July, 1833. The statute provided, that "no action shall be brought against any person for any thing done in pursuance of the act, or the powers thereby given, until twenty-eight days' notice shall have been given in writing to the defendants, signed by the attorney of the plaintiff, specifying the cause of action, or after tender of amends, or after six months after the cause of action shall have arisen." The action was commenced on the 30th of December, 1833. It was contended that no cause of action arose to the plaintiff within six months of the 30th of December, except the causes on the 1st and 2nd of July. And the Court was of this opinion, and said, "that though the cause of action began in April, each successive day gave a new cause of action, and though it may be inconvenient to put a plaintiff to sue in such a case, *de die in diem*, we can put no other construction on this clause of the statute. The plaintiff can recover damages for two days only." (a)

Wilkes v.
Hungerford
Market Com-
pany.

A canal act directed that all actions for any thing done in pursuance thereof should be commenced within six months

(a) Wilkes v. The Hungerford Market Company, 2 Bing. N. C. 281.

Limitation of
action.

Fraser v. The
Swansea Canal
Company.

next after the fact committed, or, in case of a continuation of damage, then within six months next after the doing of such damage, should have ceased. Collieries, machinery, barges, &c., had been mortgaged by C. to F., to secure the repayment of certain monies, with a proviso that, in case of default, F. should stand possessed of all the mortgaged property, in trust to levy out of the same so much as should be due to him. F. died, and the plaintiff took out administration, after which the mortgagor, who had remained in possession, made default, but was not dispossessed, and afterwards made a demise of the property to another party, of which transaction the plaintiff was not proved to have had any knowledge. The mortgagor's lessee took possession, and put his name upon the barges. These, and a quantity of coals, the produce of the collieries, were afterwards seized by the company for rates due from the mortgagor's lessee, and sold. The administrator commenced an action of trover against the company for the goods, more than six months after the seizure, but within six months of the sale. It was held that the action was in time, since the plaintiff, who was out of possession, had no cause of action till the goods were sold. (a)

(a) Fraser v. The Swansea Canal Company, 1 Ad. & Ell. 354. See Jenkins v. Cooke, ib. 372.

CHAPTER XVIII.

OF SHARES, TRANSFERS, AND CERTAIN INCIDENTS.

SECT. I.—*The quality or nature of Shares.*

A SHARE is a certain part, or definite amount of interest, in a particular company. That company must be established before any share can be said to exist. Where, therefore, it is proposed to form a railway company, and scrip are issued between the time of the announcement, and that of obtaining the act of Parliament, they are not shares, because until the requisite statute has been procured, the company are not established. The "scrip" are merely instruments which will entitle the persons who may have executed the "subscription contract" (a) at the time of obtaining them, to have shares given to them by the company after the act has been procured. But they convey no property by assignment. In practice, however, they are commonly bought and sold, quite irrespective of this state of the law. (b) But the act alone constitutes shares, and makes them transferable. The "scrip" are evidence merely of the right to obtain shares, and some-

Shares
described.

(a) See Form, App. 278.

(b) It was in evidence in *Jackson v. Cocker*, 4 Beav. 59, that by the custom of brokers and persons dealing with such cer-

tificates or scrip, a purchaser contracted no liability towards the vendor, unless there were a special contract.

Shares
described.

times, to distinguish them from the real title to shares, are called "scrip-certificates." (a) When the act has been obtained these scrip are usually taken to the company's office, and if not immediately exchanged for proper share certificates, a memorandum in the undermentioned form is given to the holder. (b) But a transfer of scrip or shares from an original subscriber to the undertaking, made before the formation of a register of proprietors pursuant to the act, but after the passing of the act, is good, although the transferrer may never have been registered as a proprietor. (c)

The particular statute prescribes the amount of capital, and divides it into a certain number of shares, and directs that there shall be a registration of the shareholders. This registration, which takes place immediately after the statute has been obtained, is an important step. It is a calling in of the floating scrip. In one case, (d) a number of scrip-shares were fabricated and issued before the act of Parliament was procured, so that afterwards, when the registration was to take place, it was found that a greater number of shares were in the market than constituted the amount of capital by the statute. The difficulty was to register the real scrip-shares. An action was brought against the company for non-registration of some of them,

Daly v.
Thompson.

(a) Judgment of Lord Langdale, in *Jackson v. Cocker*, 4 Beav. 59.

(b) "Memorandum—That the undersigned has received of scrip-certificates of _____ for _____ shares in the _____ Railway Company, for which certificates of shares under the common seal of the company, will be delivered on or after the _____ day of _____ 1844,

on receipt of this memorandum."

(c) *Sheffield and Manchester Railway Company v. Woodcock*, 7 M. & W. 574. See *post*, 362, as to the transfer of shares in companies formed under the 7 & 8 Vict. c. 110.

(d) *Daly v. Thompson*, secretary of the Anti-Dry Rot Company, 10 M & W. 309.

and it was objected that the register being full, and the company having no power to add to the number of shares, the action would not lie, and the plaintiff was nonsuited. The Court, however, set it aside, because the register might have been improperly filled. It was suggested by the Court that to sustain the action, the plaintiff ought to shew his title to have those shares registered, and to deduce a good title from the original subscriber and his assignees. (a)

Shares described.

A contract relating to the sale of railway shares need not be in writing; (b) for they are neither an interest in land, nor goods and merchandises, within the Statute of Frauds.

Shares have sometimes been held to be real, but more generally, personal property. In the present day, when a company are incorporated, it is usual to insert an express provision that they shall be deemed personal property, as where the act declares that the shares "shall be deemed personal estate and shall be transmissible as such," in which case, although the profits arise out of land, the shares are personal property, and pass to the assignees on the bankruptcy of a proprietor. (c) If no such provision, however, is made, the question then arises whether the shares are real or personal estate. But where the company are unincorporated, and merely regulated by deed of settlement, shares therein are considered personal estate. It is a general principle in equity that all property,

Whether shares are real or personal estate.

(a) The cause does not appear to have been tried a second time.

(b) *Humble v. Mitchell*, 11 Ad. & Ell. 205. 2 *Railway Cases*, 70, *Bradley v. Holdsworth*, 3 M. & W. 422. *Hibblewhite v. Macmorine*, 6 M. & W. 214. *Duncuft v. Albrecht*, 12 Sim. 189.

And shares in a joint stock company are not joint stock within the Stock Jobbing Act (7 Geo. 2, c. 8). *Hewitt v. Price*, 4 M. & Gr. 355, *Law J.* 1842, C. P. 292.

(c) In *Re Dilworth*, 1 Dea. & Ch. 411. See *Bradley v. Holdsworth*, 3 M. & W. 422.

Whether
shares are real
or personal
estate.

whatever its nature, purchased with partnership capital for the purposes of the partnership trade, continues to be partnership capital, and to have to every intent the quality of personal estate. (a)

With respect to shares in incorporated companies where the Legislature, or the Crown, in the case of a charter, is silent as to their quality, there seems to be a principle recognised by the Courts, upon which the result will always turn as to the shares being real or personal estate. Lands may be vested in a joint stock company as a corporation, and not in the individual shareholders of such company, or they may be vested in the shareholders, and the management only in the corporation. If a joint stock company purchase property, each individual shareholder has an interest in it, but the moment the company become a corporation, the corporation has the property in trust for the individuals.

New River
Company.

An instance of the property vesting in the shareholders is found in the case of the New River Company. That was established by statute, 3 Jac. 1, c. 18. By virtue of that act, the City of London had a mere right to cut *alieno solo*; the property in the land was reserved to the owner. It was under that act that the powers of the City were regulated, and the shares held. Another act relating to the New River, is 4 Jac. 1, c. 12. It seems only to give the City a liberty to erect a trunk or vault. Sir Hugh Middleton obtained a conveyance from the City of the right which the Legislature had conferred upon them. He commenced making the cut, and died, and the right became vested in a variety of persons. The proprietors have since been incorporated. It appears, however, that the form of the New River Company's act of incorporation,

(a) Phillips v. Phillips, 1 Myl. & K. 649.

and of its charter, and of the original conveyance to Sir Hugh Middleton, was applicable to real property only. The land was not vested in the corporation of London at all, but in the individuals. (a) The corporation was incidental to the purposes of management only, and was not seised of the land. Or, in other words, the individual corporators had the property. The corporation had only the management of it. Lord Hardwicke expressly puts it upon that ground. "They have the legal right, they may bring an ejectment for so much land covered with water: and the only difference between the shareholders of the king's half, and the others, is, that the corporation of management have, as to these shares, perhaps, the legal estate in them, the equitable estate being in the individual proprietors." (b) The corporation of London took no estate, but only a power; the effect of which would be to vest the real property in the individual members. (c) Accordingly, it has been decided, that the New River shares are real estate. (d)

Whether shares are real or personal estate.

In one case, (in which, however, the company were not incorporated,) (e) relative to the shares in the River Avon Navigation, it was said by the Master of the Rolls, that "wherever a perpetual inheritance is granted, which arises out of lands, or is, in any degree, connected with, or, as it is emphatically expressed by Lord Coke, "exerciseable within it," it is that sort of property the law

River Avon Navigation.

(a) Per Lord Abinger, in *Bligh v. Brent*, 2 You. & Coll. 288.

(b) *Townsend v. Ash*, 3 Atk. 338. See judgment of Alderson, B., in *Bligh v. Brent*, 2 You. & Coll. 295.

(c) Per Parke, B., in *Bligh v. Brent*.

(d) *Townsend v. Ash*, 3 Atk. 336. *Drybutter v. Bartholomew*, 2 P. Wms. 127. And see *Lord Stafford v. Buckley*, 2 Ves. Sen. 182. *Lord Sandys v. Sibthorpe*, 2 Dick. 545.

(e) *Buckeridge v. Ingram*, 2 Ves. 652.

Whether
shares are real
or personal
estate.

denominates real, and cannot pass by a will without three witnesses."

Of both these cases, it may be remarked, that the property given to the companies was real property, which they were to manage for the good of all. They had no power of converting it into any other sort of property, but they were to keep it, and make a profit of it as real property. And, further, the shares were transferable to the shareholders and their *heirs*.

Vauxhall
Bridge Com-
pany.

The shares in the "Vauxhall Bridge Company," (a corporation,) were held by Sir John Leach to be real estate, and not within the provision of the Bankrupt Laws with respect to the order and disposition of chattels. (a) In this case the decision appears to have been erroneous, for the act of incorporation contained a clause making the shares personal estate; but it was overlooked, and the decision proceeded as if no such clause had been enacted. In a subsequent case, the Court came to the contrary conclusion on the ground of the express words of the act. (b)

Bligh v. Brent.

On the other hand, it is said that when lands are vested in the company as a corporation, the shareholder is a mere trader, and the land or the chattels are only the instruments (and those varying and temporary instruments,) whereby the joint stock of money is made to produce profit; that it is the surplus profit alone which is divisible among the individual corporators; and the case has been put of a subscription, not by the individual corporators, but by strangers, who had collected the money, and put it in the management of a corporate body having particular privileges, and had, after giving them power to vest the

(a) *Ex parte The Vauxhall Bridge Company*, 1 Glyn & Jam. 101. See *Howse v. Chapman*, 4 Ves. 542. (b) See the *Lancaster Canal Company*, Mont. & Bl. 24.

money at their pleasure, stipulated to receive the profits; could it be contended that the nature of the property of the subscribers depended on the mode of management by the independent body? And, therefore, it is said that, in ascertaining whether shares are realty or personalty, regard should be had to the intention of the Legislature, or the Crown, as shewn in the instrument of incorporation, and to the mode in which the shares have been treated since the formation of the company, whether as passing to the heirs, or to the executors, administrators, and assigns, as in the instance of the "Chelsea Water Works Company."

Whether
shares are realty
or personal
estate.

Bligh v. Brent.

In that case the effect of the instrument of incorporation was thus stated by Baron Alderson:—"In the first place, there is a corporation to whose management the joint stock of money subscribed by its individual corporators is entrusted. They have power of vesting it at their pleasure in real estate, or in personal estate, limited only as to amount, and of altering from time to time the species of property which they may choose to hold; and, in order to give them greater facilities and advantages, certain powers are entrusted to the undertakers by the Legislature, and that even before they were constituted a body corporate, of laying down pipes, and thereby occupying land for the purposes of their undertaking. These powers render the use of joint stock by the body corporate more profitable, but they form no part of the joint stock itself; and one decided test is this, that they belong inalienably to the corporation, whereas all the joint stock is capable expressly of being sold, exchanged, varied, or disposed of at the pleasure of the corporate body." Accordingly the shares in the "Chelsea Water Works Company," are personal estate. (a)

(a) Bligh v. Brent, 2 You. & Vallance, 3 Mont. & Ayr. 224. Coll. 266. And see ex parte 2 Dea. 354. Humble v. Mitchell,

SECT. II.—*Transfer by Act inter partes.*

Transfer
inter partes.

The transfer of shares is regulated, with respect to new joint stock companies, by the 7 & 8 Vict. c. 110. (a) In other companies, the mode of assignment depends upon the particular rules or regulations contained in the instrument by which they are established.

1. *Transfer, as directed by the 7 & 8 Vict. c. 110.*

Shares in a new company cannot be transferred until they have obtained a certificate of complete registration, (b) nor until the shareholders themselves have been registered. They may then be sold by deed, duly stamped, stating the full amount of pecuniary consideration for the sale, and according to a prescribed form. (c) It follows that there can be no transfer or sale of shares during provisional registration. In fact, every contract for so doing is made void. (d)

The directors of the company are to enter a memorial of the transfer in the "Register of Transfers," indorsing

11 Ad. & Ell. 205; 3 Per. & D. 141; 2 Railway Cases, 70. There had been a previous decision, the same way, with respect to the same company, the evidence in which consisted of the act 8 Geo. 1, which gave the company certain powers; a copy of the charter of incorporation, 9 Geo. 1; copies of the transfers of shares to the testator: and the depositions of Mr. Stainsby, a director of the company, and of Mr. Bligh, their secretary, as to

the nature and mode of transfer of shares. *Weekley v. Weekley*, 2 You. & Coll. 281. Shares in a Gas Company were held to be personal estate. *Ex parte Mercer*, 2 Dea. 337.

(a) Except as to new Banking Companies. See *ante*, 175.

(b) 7 & 8 Vict. c. 110, ss. 26, 54, App. 178, 185. See *ante*, 38.

(c) Schedule K. App. 200.

(d) 7 & 8 Vict. c. 110, s. 26, App. 178.

Transfer
inter partes.

such entry on the deed of transfer. (a) Until the transfer deed has been produced at the company's office for the purpose of having the memorial made, the purchaser will not be entitled to receive profits, or exercise the right to vote. (b) But if, at the time of transfer, the seller has not paid all calls on every share held by him, he cannot transfer any share unless a provision to the contrary be contained in the company's deed of settlement. (c)

A party to a transfer may request the directors to make a return of it to the registrar of joint stock companies, which they must forthwith comply with. (d) This is cumulative upon the provisions under which the directors are required to make returns every January and July, of changes amongst the shareholders. (e) Or, on proof to the registrar's satisfaction of the transfer, and of the request above mentioned, having been made, the party himself may make a return, and thus obtain registration. (f)

Until the return has been made, either by the company or the party himself, the latter cannot receive profits, or in any way act as a shareholder. (g) On the contrary, the seller remains liable up to the time of making, or rather registering the return, for the company's debts, and to the reimbursement of damages, costs, &c. (h)

2.—*Transfer, as directed by the particular act of Incorporation or Deed of Settlement.*

In common cases of partnership a partner is precluded from assigning his interest to a stranger, so as to make the

(a) They may charge 1s. for each entry and indorsement.

(b) 7 & 8 Vict. c. 110, s. 54, App. 185.

(c) *Ib.*

(d) *Ib.* s. 12, App. 171.

(e) *Ante*, 32.

(f) S. 12, App. 171.

(g) S. 13, *ib.*

(h) *Ib.*, see *ante*, 45.

Transfer
inter partes.

latter a partner, except with the consent of his co-partners. This principle, of course, applies to all joint stock companies, whatsoever. But as it imposes a difficulty in the way of large partnerships, in which, from the amount of capital required, and extensive objects contemplated, a large number of persons must join—the consent of all being necessary for the admission of a new partner—certain instruments are resorted to for the purpose of dispensing with the ordinary rule. These are acts of Parliament and charters, and deeds of settlement.

When an act of Parliament incorporates a company, the effect of it is to perpetuate the body called the “corporation;” but the individual members of it, who, in contemplation of law, are quite distinct from the corporate body, may be changed as often as the holders of shares shall so desire, provided the regulations prescribed for the transfer of shares are duly observed. So, also, with respect to a company incorporated by charter. By such means the difficulty as to the consent of all the partners, before a new one can be introduced, is removed. So with respect to companies regulated by deed of settlement only. That instrument contains clauses, pointing out in express terms, what must be done in transferring shares, (a) the object of which is to insure the approbation of the managers or directors, before a new party is admitted, and is in accordance with the provisions of the Bubble Act, which is opposed to the creation of shares or stock transferable without restriction. These regulations must be strictly followed, otherwise the shares may be considered as remaining in the order and disposition of the transferror.

(a) See Forms of Clauses, App. 269, and of a share certificate, App. 271, and of transfer deed, in

Hare v. Waring, *post*, 368, and App. 269.

Any other mode of transfer will not constitute an equitable mortgage. (a)

Transfer
inter partes.

Where the act incorporating a company, provides, as it usually does, that the transfer of shares shall be in writing, duly stamped, under the hands and seals of both parties, and the clause afterwards calls the instrument a "deed or conveyance," and a "deed of sale or transfer;" such transfer must, in order to satisfy the statute, be by *deed*: and, therefore, an instrument of transfer of shares, executed by the proprietor of such shares, with the name of the purchaser in blank, and handed over by him to the plaintiff, by whom on the sale of such shares to the defendant, the defendant's name was inserted as the purchaser, is void. (b) But the conduct of the vendee may be such as to estop him from setting up the invalidity of the transfer to him. (c) And like any other deed, the instrument of transfer cannot, after execution, be altered by substituting the name of another vendee. A deed of transfer was executed by A. the seller, with the name of B. inserted as the purchaser. Before any execution of the deed by B., it was arranged that C., instead of B., should be the purchaser; whereupon the name of B. being struck out, and that of C. substituted, A. re-executed the altered deed. This deed (d) was held to be so far complete as between

Hibblewhite v.
MacMorine.

London and
Brighton Rail-
way Company
v. Fairclough.

(a) *Ex parte Lancaster Canal Company, post.*

(b) *Hibblewhite v. MacMorine*, 6 M. & W. 200; 8 Dowl. 802; 2 Railway Cases, 51. See *London and Brighton Railway Company, v. Fairclough*, 2 M. & Gr. 700, note (c).

(c) *Sheffield and Manchester Railway Company v Woodcock*,

2 Railway Cases, 522; 7 M. & W. 574. See *Cheltenham Railway Company v. Daniell*, 6 Jurist, 577.

(d) *London and Brighton Railway Company v. Fairclough*, 2 M. & Gr. 674. *Quære*, whether it might have been shown that B.'s name had been inserted by *mistake*?

Transfer
inter partes.

Humble v.
Langton.

A. and B. that it could not operate as a conveyance to C. without a new stamp. (a)

Where shares in a railway company are sold after incorporation, the vendor should take care to get the transaction completed, which cannot be said to be the case until the vendee's name has been registered by the company in lieu of the vendor's. For it is only from that time the vendor's liability to calls will cease. And although he may have paid any calls made after having entered into the contract of sale, yet the vendor cannot call upon his vendee to pay them, for, in such a case, the law does not imply an undertaking by the vendee to indemnify the vendor against subsequent calls. Upon making the contract of sale, therefore, the parties should stipulate expressly upon this subject. The facts giving rise to the decision of this point of law were, that on the 20th February, 1838, the plaintiff entered into a contract with the defendant, through their respective brokers, for the sale of thirty shares in the Bristol and Exeter Railway at £75. per share, and the usual contract notes passed between the parties, no time being mentioned for the com-

(a) By a deed of settlement shares were made transferable, and the directors were empowered to regulate the transfer, and to require, in respect of such transfer, a covenant from the transferee to observe the company's regulations as to holders of shares. The directors prescribed a form of transfer under seal, by which the shareholder conveyed his shares to the transferee to hold subject to the regulations and covenants contained in and resolved upon. pursuant to the deed of settle-

ment, and the transferee covenanted with the party conveying, and also separately with trustees on behalf of the company, to abide by and perform all the said regulations, &c. Held, that such transfer required an *ad valorem* stamp only, and not an additional stamp under stat. 55 Geo. 3, c. 184, sch. part 1, tit. "Conveyance," as containing matter besides that which was "incident to the sale and conveyance of the property sold." *Wolsley v. Cox*, 2 Q. B. 320, Law J. 1842; Q. B. 9.

pletion of the purchase. On the 3rd March, the defendant wrote to the plaintiff's brokers, requesting them to "dispatch the thirty Bristol and Exeter *shares* forthwith," and they replied the same day, "we herewith send your transfer of thirty Bristol and Exeter shares in blank." The purchase money was paid. Calls were subsequently made on these shares, and they not being registered in the name of the defendant, and the plaintiff remaining the apparent owner of them, he was compelled to pay the calls. (a)

Transfer
inter partes.

Another instance may be given, shewing that the vendor must complete the transfer in every respect, and that if he fail to do so, he must refund the price of the shares. The plaintiff contracted to buy of the defendant shares in a Joint Stock Company, the deed of which provided, that the assent of the directors to a transfer should be necessary, in order to complete the title of the purchaser. The plaintiff's broker made out the transfers, and procured the signature of the defendant to them; and the plaintiff paid the price contracted to be given for the shares. The directors, however, in consequence of some dispute with the defendant refused to assent. It was held that it was the duty of the defendant to procure the assent of the directors, and to do all that was necessary to invest the plaintiff with the property in the shares; that on his failure to do this, an action for money had and received might be maintained by him against the defendant, to recover the price he had paid for the shares; and that the return of the transfer was collateral to the contract of purchase, and not a condition precedent to the plaintiff's right to recover the purchase money. (b)

Leeman v.
Lloyd.

(a) *Humble v. Langston*, 7 M. & W. 517. *son v. Lloyd*, Law J. 1845, Q. B. 165.

(b) *Leeman v. Lloyd*. Wilkin-

Transfer
inter partes.

Contracts respecting the sale of shares may be enforced in equity by decree directing specific performance. (a) So, at law, actions lie for not accepting shares agreed to be bought, and for not transferring shares agreed to be sold. In suing for not accepting shares, the title of the plaintiff may be put in question in two ways; by denying that he was proprietor of the shares, and by alleging that he had not tendered proper certificates of shares.

Hare v.
Waring.

The assignees of a bankrupt brought an action against the defendant for the non-acceptance of shares in the Great Western Railway, which the bankrupt, before his bankruptcy, had contracted to sell to the defendant, and to convey to him on a day subsequent to the bankruptcy,—the defendant pleaded that the plaintiffs were not proprietors of the shares, and that they did not tender certificates of them to the defendant. In order to prove their proprietorship of the shares, the plaintiffs put in their transfer book kept by the Great Western Railway Company under their act (6 & 7 Wm. 4, c. 107) (b) in which

(a) *Duncuft v. Albrecht*, 12 Sim. 189.

(b) The act contained the two following sections:—

Sect. 147. "The said company shall and are hereby required, at the first or some subsequent general meeting, and afterwards from time to time as occasion may require, to cause the names of the several corporations, and the names and additions of the several persons who shall then be, or who shall from time to time thereafter become entitled to shares in the said undertaking, with the number of shares with which they are respectively entitled to, and the amount of the subscriptions paid thereon, and also the proper number by which every share shall be distinguished, to be fairly and distinctly entered in a book to be kept by the said company, and after such entry made to cause their common seal to be affixed thereto; and the said company shall from time to time cause a certificate or ticket, with the common seal of the said company affixed thereto, to be delivered to every such proprietor on demand, specifying the share or shares to which he is entitled in the said undertaking, such proprietor paying to the said

the plaintiffs were entered as transférées. As to the certificates tendered by the plaintiffs to the defendant, it

Transfer
inter partes.
Hare v.
Waring.

company the sum of 2s. 6d. and no more, for every such certificate or ticket, and such certificate or ticket shall be admitted in all Courts whatsoever as *prima facie* evidence of the title of such respective proprietors, their successors, executors, administrators, and assigns, to the share or shares therein specified, but the want of such certificate or ticket shall not hinder or prevent the proprietor of any of the said shares from selling or disposing thereof; and such certificate or ticket may be in the words or to the effect following, (that is to say),

“ *The Great Western Railway Company.*

“ Number

“ These are to certify that A. B., of _____, is the proprietor of the share (or shares) number _____, of the ‘ Great Western Railway Company,’ subject to the rules, regulations, and orders of the said company. Given under the common seal of the said company, the _____ day of _____, in the year of our Lord _____.”

Sect. 158. “ It shall be lawful for the several proprietors of shares in the said undertaking, and their respective executors, administrators, and successors, to sell and dispose of any shares to which they shall be entitled therein, subject to the rules and conditions herein-mentioned, and the form and conveyance of such shares may be in the following words, or to the like effect, varying the names and descriptions of the contracting parties as the case may require (that is to say):—I, A. B. of _____, in consideration of the sum of _____ paid to me by C. D. of _____, do hereby assign, and transfer to the said C. D. _____ shares, numbered _____, of and in the undertaking called ‘ The Great Western Railway ;’ to hold unto the said C. D., his executors, administrators, and assigns, (or successors and assigns,) subject to the several conditions on which I held the same immediately before the execution hereof: and I, the said C. D. do hereby agree to accept and take the said share, subject to the conditions aforesaid. As witness our hands and seals, the _____ day of _____. And on every such sale, the deed or conveyance (being executed by the seller and purchaser) shall be kept by the said company, or by some secretary or clerk of the said company, who shall enter in some book to be kept for that purpose, a memorial of such transfer and sale, and indorse the entry of such memorial on such said deed of sale or transfer, for which entry and indorsement the sum of 2s. 6d., and no more, shall be paid to the said company; and the said company, or some secretary or clerk as aforesaid, is hereby required to make such entry or memorial

Form of
transfer.

Transfer
inter partes.

appeared they did not contain the names of the plaintiffs as original proprietors, nor had they any indorsement of transfer to them.

Hare v.
Waring.

It was said by the Court that there was no evidence of title in the plaintiffs as proprietors, for the act of Parliament did not make the transfer book evidence of title. And with respect to the tender of share certificates, the Court thought they were not proper certificates within the meaning of the allegation in the declaration. The contract was there stated to be a contract on the part of the bankrupt to cause the shares to be conveyed to the defendant on or before the 31st day of March, and it was alleged that the plaintiffs tendered certificates of these shares according to the act of Parliament. That in order to ascertain whether the certificates were proper instruments, the act must be looked to, and upon the construction of the two sections already quoted, that to be proper certificates they ought to shew the title of *the party who is to convey*; and, therefore, that the tender ought to have been either of certificates in the names of the assignees themselves, or in the names of the original proprietors, with indorsements upon them of the transfer to the assignees: whereas there was no proof of any conveyance from the person in whose name the certificates

accordingly, and, *on demand*, to make an indorsement of such transfer on the back of the certificate of each share so sold, and deliver the same to the purchaser for his security, for which indorsement no more than 2s. 6d. shall be paid; and each indorsement being signed by such secretary or clerk, shall be considered in every respect *the same as a new certificate*, and until such memorial shall have been made and entered as before directed, the seller thereof shall be held and remain liable for all future calls, and the purchaser shall have no part or share of the profits of the said undertaking, nor any interest in respect of such shares paid to him, nor any vote in respect thereof, as a proprietor of the said undertaking."

were so as to connect that person's name with the assignees. The certificates would be *prima facie* evidence of somebody else, not the assignees, being entitled to the shares, and there was no proof of the assignees deriving the title from that party by assignment, even assuming that to be sufficient. The true meaning of the contract was, that the party should convey and deliver certificates, shewing, either on the face of them or from the indorsements, that the title was in the person conveying. (a)

Transfer
inter partes.
— — —

Where a contract for the sale of shares has been broken by the vendee, the vendor may resell the shares, and sue the vendee for damages. But such resale must be effected within a reasonable time after the breach of contract. What is, or is not, a reasonable time may be shewn (although it will not be conclusive evidence) by the rulers of the Stock Exchange of the place where the contract was made. Accordingly, in an action for the non-acceptance of railway shares, which by the contract (made at Liverpool through brokers) were to be delivered in a reasonable time, a written rule of the Liverpool Stock Exchange, stated to be acted upon by all the Liverpool brokers—"that the seller of shares was in all cases entitled to seven days to complete his contract by delivery, the time to be computed from the day on which he was acquainted with the name of his transferee"—was held admissible on an issue whether the plaintiff within a reasonable time was ready and willing and offered to transfer the shares; although it was not proved that either

Stewart v.
Cauty.

(a) *Hare and Another v. Waring*, 3 M. & W. 362. As to time of repudiation of shares, under a contract of sale, see *Barned v. Hamilton*, Law J. 1841, C. P. 287. There, the Court held that

the jury were right in giving as damages the difference between the contract price and the price which the shares fetched on resale.

Transfer
inter partes.

of the parties, or their brokers, was a member of the Liverpool Stock Exchange. The Court also held that, the proper measure of damages was the difference of the prices of the shares on the day when they ought to have been accepted, and on the day when they were resold by the vendor, such resale being within a reasonable time. (a)

Stephens v.
De Medina.

Where it becomes necessary to bring an action for not transferring shares, the declaration must aver that the plaintiff tendered a conveyance to the vendor. It is not sufficient to state, that the vendor was requested by the plaintiff to transfer the shares, and that the plaintiff was always ready and willing to accept them. But it is sufficient to aver, that the plaintiff was always ready and willing to pay for the shares, and not necessary to aver an actual tender of the money. (b)

The dividends to arise from railway shares may be demised by deed at a rent certain. (c)

SECT. III.—*Transfer by operation of Law.*

Transfer by
operation of
law.

This may be by the bankruptcy, death, or marriage of the shareholder.

1. *By Bankruptcy.*

If a shareholder become bankrupt his shares pass to his assignees, (d) unless they have been deposited with or

(a) *Stewart v. Cauty*, 8 M. & W. 160. See *Barned v. Hamilton*, ante, 371, note.

(b) *Stephens v. De Medina*, Law J. 1843; Q. B. 120, 3 Gale & D. 110. See *Pickford v. The*

Grand Junction Railway Company, 8 M. & W. 372.

(c) *Beckett v. Bradley*, Law J. C. P. 1845, 3.

(d) And in such an event, if the shareholder be also a director,

equitably assigned to third parties. The inquiry therefore relates to "shares in the order and disposition of the shareholder at the time of his bankruptcy," "notice of deposit, or mortgage of shares," and whether the purchase of shares constitutes a sufficient trading to support a fiat in bankruptcy.

Transfer by operation of law.

Bankruptcy.

Shares remain in the order and disposition of the transferor, unless the mode of transfer pointed out by an act of Parliament is strictly followed. The ordinary mode of transfer will not, in such a case, constitute an equitable mortgage. And this rule holds, notwithstanding the statute expressly relates to transfers between third parties only, in instances where the company are the transferees. (a)

Ex parte Lancaster Canal Company.

Dilworth and his partners, bankers in the county of Lancaster, became treasurers to the "Lancaster Canal Company," and entered into a bond in the penalty of 20,000*l.* for the purpose of indemnifying the company against any loss which might arise in consequence of their failing properly to account. In addition to this bond, Dilworth, who at that time was holder of 345 shares, transferred 300 shares to the company, and at the same time executed a trust deed, by which the company undertook to pay the dividends of the shares to Dilworth, until there should be some default in the accounts of the treasurers; and in case of any default they were to have the power of selling the shares to the extent of making good

he ceases to be qualified for that office. But a mere mortgage of his shares does not work a disqualification. *Cumming v. Prescott*, 2 You. & Coll. 488. See *ante*, 35, as to directors of companies formed under 7 & 8 Vict. c. 110. A shareholder is not liable

to the Bankrupt Laws in that character only: *Ex parte Bell*, 15 Ves. 357.

(a) *Ex parte Lancaster Canal Company*, 1 Dea. & Ch. 411; *Mont. & Bli.* 94. See *ex parte Masterman*, *post*, 379.

Transfer by
operation of
law.

Bankruptcy.

Ex parte Lan-
caster Canal
Company.

the deficiency. By the provision of the act of Parliament, for the transfer of shares, a certain course was to be pursued; a particular form of instrument was to be executed, which was set out in the statute. It was provided that a duplicate should also be executed, and that that duplicate should be lodged with the committee, or with the clerk of the committee, and should be entered in a book: and that until these forms had been complied with, the party was not to be entitled to receive any profits of the shares, or to act as a proprietor. There was a further provision that the names of the proprietors should be entered in a book to be kept for that purpose by the clerk of the concern. Lord Lyndhurst decided that the shares were in Dilworth's order and disposition, resting his judgment principally upon the fact that the provisions of the act had not been complied with, notwithstanding an instrument of transfer had been executed, and that Dilworth was entitled to receive dividends and vote as a proprietor.

Ex parte
Vallance.

In another case, the question of "order and disposition" arose where share certificates of a gas company, possessed of copyhold estate, were deposited by the owner, without notice to the company. It appeared that the shares had been entered in the company's books, in the name of the bankrupt, as proprietor, and that he continued the registered owner of the shares, to the date of the fiat; that no notice of the deposit of the certificates, or of any claim of lien by the petitioners, was given to the company before the bankruptcy. But it was contended that such notice was unnecessary, first, because the shares were not personal chattels within the meaning of the statute; and secondly, that, if they were, the bankrupt had, by depositing the certificates, placed the shares beyond his order and disposition, inasmuch as the deed of partnership provided that the certificates delivered to the proprietors should be

vouchers of their respective titles to the shares. The company were established by deed, to which the bankrupt was one of the original parties, and by a clause in the deed it was provided that all the property purchased by the directors for the benefit of the company should as between the proprietors, and their respective real and personal representatives be considered as personal estate. The shares were held to be in the order and disposition of the bankrupt. (a)

Transfer by operation of law.

Bankruptcy.

So, also, where, by the rules of a joint stock company, principals only could become subscribers. The petitioner purchased shares in the name of the bankrupt, who verbally declared that he held them as trustee for the petitioner, and the certificates of the shares were kept in the possession of the petitioner, but no notice was given to the company of the trust, nor did the bankrupt sign a written declaration of trust, until seven days before the fiat was issued. (b)

Ex parte Ord.

If a person hold shares for another, they will be treated as the property of the former. Therefore, where shares in an insurance company stood in the name of a bankrupt, who was, on all occasions, the only apparent owner, and had possession of the certificates of the shares, but the shares belonged to another person, in whose favour there existed a secret declaration of trust, the shares were considered in the order and disposition of the bankrupt. (c)

Ex parte Watkins.

The above was a "special case," argued before the

(a) *Ex parte Vallance*, 3 Mont. & Ayr. 224; 2 Dea. 354.

(b) *Ex parte Ord*, 1 Dea. & Ch. 166.

(c) *Ex parte Watkins*, 2 Mont. & Ayr. 348. Reversing the deci-

sion of the Court of Review, 1 Mont. & Ayr. 689. See *ex parte Harrison*, 3 Mont. & Ayr. 506, but which was distinguished from *ex parte Watkins*.

Transfer by
operation of
law.

Bankruptcy.

Ex parte
Watkins.

Lords Commissioners in Chancery, 28th July, 1835. It appeared that in 1827, Watkins was the holder of two shares in the Economic Assurance Company, which then stood in the company's books in his name. Watkins, in June, 1827, purchased through the agency and assistance of Allen, then one of the directors of the company, and as such described in the certificate, after set forth, six other shares in the said company, numbered respectively 73, 128, 170, 171, 168 and 169, at 250*l.* per share. By the rules and regulations of the Economic Assurance, no person, except a director, (which Watkins was not) is capable of holding in his own name more than two shares. Many persons are, however, beneficially interested in more than two shares, by having the additional shares entered in the books of the company, in the names of other persons. Many additional shares are so held by different persons. Watkins requested the bankrupt, Kidder, to allow two of the six additional shares to stand in his name in the books of the company, in trust for him, to which Kidder assented, and two of the six additional shares, numbers 73 and 128, were accordingly entered in the books of the company, in the name of Kidder. Watkins paid the whole of the purchase-money for the two shares, numbers 73 and 128, as well as for the other four, hereinbefore mentioned, and all expenses attending on the purchase thereof. The only evidence which the holders of shares have of their right to such shares, besides the entry in the register and books of the company, is a certificate under the hands of three of the trustees of the company. (a)

(a) In the following form :—

Economic Life Assurance Society.

“ This is to certify that John Kidder is the holder of one share, numbered as under, of and in the temporary capital of the Economic Life Assurance Society, in London, as appears by the register in the

Immediately after the two shares, (numbers 73 and 128,) had been entered in the books in the name of Kidder, and on the same day, Kidder executed and delivered to Watkins a declaration of trust. (a)

Transfer by operation of law.

Bankruptcy.

Kidder, down to the time of the issuing against him of the fiat hereinafter mentioned, always had the certificates in his own possession, and always received the dividends on the two shares, numbers 73 and 128, and was always treated by the company as the real owner thereof, and all notices of meetings, and other transactions of the company, were directed to Kidder, and he attended such meetings of the shareholders, and voted as one of the registered shareholders; it was well known to L. B. Allen, who was then a director, and to J. Naylor, who was then the actuary of the company, that the two shares, though held by Kidder, were the property of G. P. Watkins; but beyond such knowledge of L. B. Allen and J. Naylor, the company never received any information that Kidder was possessed of the two shares in trust for Watkins, or otherwise than the owner thereof. On the 3rd March, 1834, a fiat issued against Kidder, under which he was

Ex parte Watkins.

office; and the said John Kidder is entitled to all advantages arising from the said shares, subject to the several conditions and stipulations of the agreement of settlement establishing the society.

Witness our hands,

No. 73.

Entered.

John Naylor, Actuary.

L. B. ALLEN,
THOMAS PENN,
JOHN KNOWLES, } Trustees.

(a) In the following terms:—

“ I, John Kidder, of, &c., do hereby declare that the two shares, numbers standing in my name in the Economic Life Assurance Office, were purchased and paid for by George Price Watkins, with his own moneys, and for his own sole benefit, and that my name is only made use of in trust for him, his executors, administrators, and assigns; and I do hereby engage to assign the said shares to him, or to whom he shall appoint, at his expense, whenever required.”

Transfer by
operation of
law.

duly declared a bankrupt. On the 21st of June, 1834, Watkins presented his petition to the Court of Review, praying that the assignees under the fiat might join with the directors of the Economic Insurance Office, in assigning to him, or such person as he should direct, the interest in the shares. The assignees under the fiat claimed such interest, on the ground that the shares, and all rights to the proceeds thereof, were at the time of the bankruptcy, in the possession, order, and disposition of Kidder, as reputed owner.

2. Notice of deposit, or equitable Mortgage of Shares.

Bankruptcy—
notice of
deposit or
mortgage.

Ex parte
Bignold.

Upon the subject of notice, it may be observed, that the cases place the necessity for it on two grounds: first, that the equitable transfer of choses in action is incomplete without notice; secondly, that without notice, personal property is in the order and disposition of the bankrupt. In respect to shares in companies this notice is more particularly necessary, because the bankrupt's name is upon the books as owner, so that he is apparent owner, and may procure credit on the assumption that the property is his. (a)

In matters of bankruptcy validity is given to all *bond fide* proceedings and transactions by or with a bankrupt previous to the issuing of a fiat, notwithstanding a prior act of bankruptcy may have been committed, provided the party dealing with the bankrupt had not notice at the time, of the act of bankruptcy. Accordingly, where a policy of insurance was deposited before any act of bankruptcy, but notice of the deposit was not given to the

(a) Ex parte Bignold, 3 Mont. & Ayr. 477.

office until after an act of bankruptcy, but before the fiat, the deposit was supported. (a)

Transfer by
operation of
law.

In order to take shares out of the order and disposition of a bankrupt shareholder where he has deposited or mortgaged them, notice thereof must be given to the company. In general the notice must be express, but it may be implied where all the parties are partners in the company, the shares of which are deposited, the transaction itself being sufficient notice. As in the case where the bankrupt (Raikes) was one of the directors of the Guardian Assurance Company. Messrs. Deacon and Williams, bankers, held shares in the company, and the latter partner was auditor of the company. Raikes being indebted to Deacon and Co., deposited his shares with them. No notice of the deposit was given to the company. (b)

Bankruptcy—
notice of
deposit or
mortgage.

Ex parte
Waithman.

The notice will be sufficient, although the assignment of shares be informal, and the company, on that ground, refuse to recognise the mortgagee's title.

A petition by an equitable mortgagee to the Court of Bankruptcy, stated that in February, 1831, Litt, by indenture assigned to the petitioners 150 shares of the Crown Life Assurance Company, then standing in the name of Litt in the books of the company, subject to redemption. This deed was prepared by one of a firm who were solicitors to the company. The petitioners gave the usual notice to the company of this indenture, and the transfer, and an entry was made thereof in the ledgers of the company's books. A fiat issued against the bankrupt in June, 1831. On application to the company by the petitioners,

Ex parte
Masterman.

(a) In the matter of Styan, Mont. & Ayr. 364. See Duncan v. Chamberlayne, 11 Sim. 123.

(b) Ex parte Waithman, 1

Transfer by
operation of
law.

Bankruptcy—
notice of
deposit or
mortgage.

they were informed that the transfer had not been made in pursuance of certain clauses in the deed of settlement of the company, so as to give the petitioners a right to the shares, and that a new or further transfer in proper form was necessary to entitle them to the shares. The clause in question* directed that the company and directors should not be bound by any trust or mortgage, and that the *cestuis que trust* or mortgagees should have no rights but through the trustee or mortgagor; and that no person was to be allowed to sell any shares without the consent of the weekly board, and that no shares should be transferred but by a deed in writing in a form prescribed, and that in case of the bankruptcy of the proprietor his assignee was to be proprietor for all purposes. Litt, the bankrupt, was a director, and opposite his name and shares, in one of the books, was written in pencil, "*Not to be transferred. See Haddan & Co.'s notice of 23rd February, 1831.*" The bankrupt was held not to be the reputed owner. (a)

The private knowledge of a director, or of the actuary of a company, cannot operate as notice, so as to prevent reputed ownership. (b) Nor, where one person is secretary to two societies, will his knowledge of a transaction, as secretary to one society, be notice to the other. A person named Bignold, was secretary both of a life assurance company and of a fire insurance society, and it was, therefore, contended he must have had notice, as secretary of the fire insurance society, of the deposit made with him

Ex parte
Bignold.

(a) *Ex parte Masterman*, 2 Mont. & Ayr. 209. The case was distinguished from *ex parte the Lancaster Canal Company*, *ante*, 373, in the circumstance that there was no collusion or fraud, or secret understanding that the bankrupt

was to be held out as a reputed owner. In the case last cited, there had not been an entry of the transfer in any book.

(b) By the Lords Commissioners in *ex parte Watkins*, 2 Mont. & Ayr. 348.

as secretary of the life insurance company; but it was said, a distinction must be drawn between the knowledge of Bignold and notice to the company itself. If Bignold's interference, as secretary of the fire insurance society had been necessary, either for receiving dividends, or for any other purpose, then it might have been said that the knowledge of Bignold, such as it was, was sufficient to prevent reputed ownership; but there is nothing in the deed, or in the rules of the fire insurance society, making the interference of the secretary necessary; and as there actually were two secretaries, Bignold's interference would not be indispensable in any event. It was, therefore, held, that notice had not been given. (a)

Transfer by
operation of
law.

Where a bankrupt pledges shares in a company, which belonged to his wife before marriage, notice must be given before the act of bankruptcy, or they will be in the reputed ownership. (b)

Notice of lien
upon shares.

And as against a subsequent purchaser for valuable consideration without notice, the lien of a mortgagee of shares will be lost, unless he give notice of his incumbrance to the company. (c)

By a clause in the deed of settlement of a banking company, it was provided that the company should have a lien on the shares of proprietors, being customers, and indebted to the Bank, and that no shares should be transferred without the consent of the directors. An abstract of these provisions was indorsed on the certificate of every share. It was held, that shares in the possession of a proprietor, who was indebted to the Bank, and had become a bank-

Ex parte
Plant.

(a) Ex parte Bignold, 3 Mont. & Ayr. 697. a.
& Ayr. 477. (c) Cumming v. Prescott, 2
(b) Ex parte Spencer, 3 Mont. You. & Coll. 488.

rupt, were subject to the lien of the company, and were not in the bankrupt's reputed ownership. (a)

3. *Transfer by Death or Marriage of the Holder.*

Transfer by death or marriage of the holder.

In ordinary partnerships, even for a term certain, the death of one partner *ipso facto* dissolves the partnership, unless there are express stipulations to the contrary. (b) The same effect arises in joint stock companies, unless the deed of settlement, as it usually does, provides for a different state of things. In incorporated companies, the body subsisting as a corporation, no such technical result arises; the same corporate body survives, notwithstanding any changes amongst the shareholders. But with respect to shareholders in banking companies who become such by reason of the deaths, marriages, &c., of former shareholders, certain statutable regulations are prescribed, as already stated. (c)

Probate.

It may be here mentioned, that where shares are personal estate, and the railway or other work runs through different dioceses, some difficulty may arise as to probate.

Ex parte Horne.

Where a canal passed through parishes in the diocese of Worcester, and other parishes in the diocese of Lichfield and Coventry,—and it appeared the transfers of shares were filed at the public office of the company, in the diocese of Lichfield and Coventry, where the dividends were

(a) Ex parte Plant, 4 Dea. & Ch. 160. And see 1 Ves. 348; 2 Sim. & Stu. 292.

(b) Crawford v. Hamilton, 3 Madd. 254, and see Story on Partnership, 450. In some cases, on the death of a registered shareholder, the shares pass to the executors, who must continue to

pay the calls made. Fyler v. Fyler, 2 Railway Cases, 813, 873. See Weald of Kent Canal Company v. Robinson, 5 Taunt. 801. Pentland v. Gibson, 1 Alcock & Nap. 311, (Irish).

(c) 7 & 8 Vict. c. 113, s. 38, ante, 176.

also paid, and books of account kept,—it was held that for the purposes of probate, the right of a shareholder to a share of the profits, being personal property, might be considered as locally situate in the diocese of Lichfield and Coventry, and that a probate granted by the Consistorial Court of the bishop of that diocese was sufficient (a).

Transfer by death, &c. of the holder.

A mandamus has been granted against a canal company, to compel them to make an entry of the probate of a deceased proprietor, and to register the name and place of abode of his executrix, as the proprietor of one share in the profits of the navigation belonging to the deceased at the time of his death (b).

Rex v. Worcester Canal Company.

4. *The act of Trading in Shares.*

The mere purchase of shares in a joint stock company, will not necessarily constitute a trading within the Bankrupt Laws. But it will be otherwise, if a shareholder execute the deed (c) of settlement, for he then declares himself a partner in the business regulated by that instrument. The inquiry in all these cases seems to be whether the bankrupt when he took his shares, intended *bonâ fide* to follow the particular business of the company in which he held shares, or did he take them in order to become a bankrupt? A creditor petitioned to annul a fiat, on the ground that the bankrupt was not a trader. The evidence of the trading was, that the bankrupt had purchased ten shares in the Shropshire Joint Stock Banking Company;

Bankruptcy—act of trading as shareholder.

Ex parte Brundrett.

(a) Ex parte Horne, 7 B. & C. 632; 1 M. & Ry. 529. And see Smith v. Stafford, 2 Wils. 166.

(b) Rex v. The Worcester Canal Company, 1 M. & Ry. 529. S. C. nom. Ex parte Horne, 7 B. & C. 632, but not reported as to this

point.

(c) Ex parte George Hall, 3 Dea. 456, in which case a person being a shareholder and one of the managers of the Northern and Central Bank of England, was held to be a trader.

Bankruptcy—
act of trading
as shareholder.

Ex parte
Brundrett.

this Bank had existed four months; the bankrupt had purchased seven shares on the 29th September, 1836, and executed the partnership deed on the 14th October, 1836; and a witness stated that he had transacted business with the Bank, and that it carried on business as bankers usually do. The bankrupt, in his balance sheet, valued these shares at 70%. The fiat issued on the 29th October, 1836, in which the bankrupt was described as of his place of residence in London, "banker," where he was not known in that character, but only in that of a private gentleman. It was held by the Court of Review, that this was insufficient, and they annulled the fiat (*a*)

But where a party held shares in a Joint Stock Banking Company for two years, and received successively two years' dividends thereon, this was deemed a sufficient trading as a banker (*b*).

SECT. v.—*Distringas upon Shares.*

Distringas
upon shares.

The property in shares, in all companies, is now made more available by statutory provisions. Wherever a judgment has been obtained against any person who is a shareholder in a company, the shares standing in his name, in his own right, or in the name of any person in trust for him, may be charged with the payment of the amount of the judgment. (*c*) To do this, a Judge's order must be procured. (*d*) The effect of such an order will be

(*a*) Ex parte Brundrett, 2 Dea. 219.

(*b*) Ex parte Wyndham, 1 Mont., Dea. & De Gex, 146, and see Ex parte Marston, 4 Dea. 191. With respect to proving against the estate of a bankrupt shareholder,

see ex parte Snape, 4 Dea. 164, 1 Mont. & Ch. 697, and the cases, ante, 372.

(*c*) 1 & 2 Vict. c. 110, s. 14, App. 99.

(*d*) See Forms, ib.

Distringas
upon shares.

to entitle the judgment creditor to all such remedies as he would have been entitled to if such charge had been made in his favour by the judgment debtor. (a) But the operation of the order will not commence until after six months from its date. This proceeding is, in the first instance, *ex parte*, and without any notice to the judgment creditor, and is an order to shew cause only; but it immediately restrains the company from permitting any transfer of the shares until the order shall have been made absolute, or discharged. If, notwithstanding notice of such order, a transfer be permitted, pending the first order, the company or party so permitting become liable to the judgment creditor to the amount of the property charged, or so much as may be sufficient to satisfy the judgment. Nor will any disposition of the judgment debtor, in the mean time, be of any effect as against the judgment creditor. (b) Unless sufficient cause to the contrary be shewn within a specified time, the order, on proof of notice to the judgment debtor, will be made absolute. (c) The Judge has power to discharge or vary the order, and to award costs. The benefit of this charge will be deemed to be relinquished if the judgment creditor take in execution the person of the debtor. (d) So, in the event of an insolvent petitioner having any shares, the Insolvent Court may order all persons, whose consent may be necessary,

(a) 1 & 2 Vict. c. 110, s. 14, App. 99. 3 & 4 Vict. c. 82, s. 1, App. 109.

(b) 1 & 2 Vict. c. 110, s. 15, App. 99.

(c) A Judge at Chambers, and not the Court, has authority to make the order. If he makes an absolute order, the Court has

power to set it aside, if wrongly made, but if he only makes an order *nisi*, the Court has no authority to entertain the question, although the Judge may express his desire to refer it to the Court. *Brown v. Bamford*, 9 M. & W. 42.

(d) S. 16, App. 101.

Distinguis
upon shares.

to transfer the shares into the name of the assignee. (a) These provisions have been extended (b) so as to include all rights whether in possession, remainder, or reversion, and whether vested or contingent, not only in the shares themselves, but also in the interest or dividends arising therefrom.

(a) 1 & 2 Vict. c. 110, s. 54. (b) 3 & 4 Vict. c. 82, App. 109. App. 101.

CHAPTER XIX.

INSTALMENTS OF CAPITAL OR CALLS.

WHEN companies are proposed to be established a certain amount of capital is agreed upon. In order to facilitate their formation, it is considered desirable that such capital should be subscribed in small sums. These are instalments, or calls, required to be paid from time to time. The payment of them is enforced, either under the act of Parliament or deed of settlement by which the particular company have been established. As the authority thus given is important, both in its character and effects, it must be strictly pursued. Nor can it be successfully resorted to until conditions precedent have been first complied with; for these instruments are contracts between the promoters and managers of the undertaking and the subscribers to it. And before they can be enforced, it must be clear that the parties sued are actually subscribers to the company.

SECT. I.—*How made.*

The making of calls is prescribed in a particular mode by specific acts, or charters, incorporating the companies by which they are obtained, or by deeds of settlement where the companies are regulated by those instruments only, or

How made.

How made.

by such deeds in connexion with powers bestowed by certain general statutes. (*a*)

The companies which are regulated by deed, in conjunction with general statutes, are those formed under the Letters' Patent Act, (1 Vict. c. 73,) the new statute for registering general Joint Stock Companies, (7 & 8 Vict. c. 110,) and the Banking Acts, (7 Geo. 4, c. 46, and 7 & 8 Vict. c. 113). These companies have been already described. (*b*) In their deeds of settlement, as also in those of companies governed by such instruments alone, particular provisions are inserted, stating the amount of the capital, the shares in which the same is divided, and prescribing the time and form of making, and the amount of calls. (*c*) The same observations apply to incorporated companies, the difference being that the regulations on this subject are contained in the deeds in the former, whilst in the latter cases they are inserted in the instruments of incorporation.

The act of making calls is that of the directors (*d*) of a company. To comply with the provisions of the statute, or deed, as the case may be, they pass a resolution (*e*)

(*a*) See forms of clauses in a deed of settlement, App. 265. *

(*b*) *Ante*, 12, 20—46, 133, 180.

(*c*) It will depend upon the provisions of the deed whether it is a condition precedent to suing for calls that all the capital of the company shall have been subscribed. See an instance in *Hutt v. Giles*, 12 M. & W. 493, Law J. 1844, Exch. 337.

(*d*) See the *Southampton Dock Company v. Richards*, 1 M. & Gr. 448, where the words "the directors," and "a court of di-

rectors," used indiscriminately in the statute, were considered to mean the same thing.

(*e*) In speaking of the effect of a resolution made in pursuance of a railway act, Parke, B., said, "A question indeed may arise in some cases, where there has been a change of proprietorship by transfer, what is the time of making a call, which fixes the liability of the then proprietor of a share [under the section then under consideration], and which prevents the free transfer of a

stating the amount of call, and time of payment, &c. This resolution is not invalid by reason of its being prospective. When made it is entered upon the minutes (a) of the Board; and afterwards, notices or advertisements are inserted in newspapers, or otherwise, directing the shareholders to pay the calls at a particular time and place. These advertisements must be in strict conformity with the authority under which they are issued; but the resolutions need not be.

An action was brought for calls. The statute empowered the directors of a railway company to make calls, the amount not to exceed a specified sum, at certain intervals. It was provided that twenty-one days' notice should be given of every call by advertisements in newspapers, and that all monies so called for, should be paid to such persons at such times and places as in the said notice should be appointed. A resolution of the directors, making a call, stated the period within which it was to be paid, but omitted to specify any place where, or person

How made.

Sheffield and
Manchester
Railway
Company v.
Woodcock.

Great North
of England
Railway
Company v.
Biddulph.

share [under another section]; whether it is to date from the original resolution, from the time of fixing the mode of payment, of giving notice in the newspapers, or even from the period when the calls became due. It may be that the resolution of the directors is only an inchoate act, and that the call is not complete until the mode of payment is appointed and notice thereof given; so that no one is liable, unless he be a proprietor when the whole of these circumstances have occurred, and until all these have occurred a proprietor is not de-

prived of the right of free transfer. It may be that both the liability to pay the instalment, and the impediment to the transfer, attach from the date of that resolution itself, though the mode of payment be not fixed, nor notice given till afterwards: or, lastly, it may happen that the term "call" may for one purpose date from the resolution, and for another from a different period." *Sheffield and Manchester Railway Company v. Woodcock*, 7 M. & W. 574, Law J. 1842, Exch. 26.

(a) As to signing minutes, see *post*, 406.

How made.

to whom, the payment was to be made. The notice of the call inserted in the papers, specified the time and place of payment, and the person who was to receive the money. No proof of the notice not being the act of the directors, was given at the trial. It was held, that the publication of the notice must be presumed to have been the act of the directors, and that the call was properly made. (a) A similar decision was come to in the Court of Common Pleas. The company's resolution making the call, mentioned neither time nor place, but the advertisement, or notice of the call having been made, did disclose those particulars. (b)

So, if otherwise provided for, calls must not be made all at one time. The intervals prescribed between the making of the respective calls must be strictly observed.

Stratford and
Moreton Rail-
way Company
v. Stratton.

A company were empowered by statute to carry on certain works, and a committee were authorized to make calls, not exceeding 10*l.* per share, but so that none should be made at an interval of less than two months from each other. The committee by a single order, called at one

(a) The Great North of England Railway Company v. Biddulph, Law J. 1841, Exch. 17; 7 M. & W. 243. See the same case as to the declaration against a subscriber not alleging that the subscription was by deed, there having been a contract under seal, signed by defendant, for the purpose of raising the necessary amount of capital before the act was obtained.

(b) The London and Brighton Railway Company v. Fairclough, Law J. 1841, C. P. 133; 2 M. & Gr. 674. Sheffield and Manchester Railway Company v.

Woodcock, 7 M. & W. 574, Law J. 1842, Exch. 26. The provision in the statute in this case was similar to that in the Great North of England Railway Company v. Biddulph. It was insisted on behalf of the defendant, in the former case, that the secretary was not shown to have authority to publish the advertisement; but it was held that such authority from the directors might be presumed for an act obviously within the scope of his duty, or that they adopted the act, unless the contrary were shown.

time for several payments of 10% each, to be made at intervals of two months. A subsequent act recited, among other things, that a certain sum was due from defaulters in the payment of calls. It provided for making further calls. In an action by the company against one of the committee for money due on some of the calls made as above mentioned, others of which he had paid, it was held that all the calls having been made at one time were irregular, and that they were not ratified by the mention of them in the second statute, as it could not be presumed that the Legislature were apprised of their having been improperly made. (a)

How made.

It is the duty of directors to make calls equally on all the shareholders, and this will extend to a case in which the directors hold shares in trust, with reference to a particular object connected with the company. Such was the case of the *Grand Collier Dock Company*, the directors of which, in order to procure their act of Parliament, subscribed for a large number of shares, and signed a declaration that they held them in trust for the company, but did not pay the deposit on, or register them. Afterwards, at a special general meeting of the company, it was resolved that the trust should be annulled, and the shares transferred to the secretary, to be held by him at the disposal of the Board. The directors then proceeded to make calls on the registered shares. It was held that the directors were primarily liable in respect of the shares subscribed for in trust for the company as any other trustee would be, although they might be entitled to indemnity from their *cestuis que trust*; that they were not relieved from such liability by the proceeding taken to

Preston v.
Guyon

(a) The Stratford and Moreton Railway Company v. Stratton, 2 B & Ad. 518.

How made.

annul the trust and transfer the shares; that it was the duty of the directors to make the calls in respect of all such shares, equally with the calls on the registered shares; and that the Court would compel the directors to put all the shareholders on an equal footing with respect to the calls to be made upon them. (a)

Reg. v. The
Victoria Park
Company.

If, because calls have not been made, a company are unable to satisfy a debt recovered against them, there would seem to be a remedy by mandamus to compel them to make calls. But, supposing a mandamus to lie for this purpose, it must be clearly established, before it will be granted, that the company are evading the payment of their debts, and the due satisfaction of judgments recovered against them on the ground of their not having corporate assets actually in possession. But a mandamus to enforce (b) calls was refused, where it appeared that calls sufficient to satisfy the judgment had been made, but not paid, and that the company had not then the proper officers for making [quære enforcing] such calls. (c)

SECT. II.—*Liability to Calls.*

Liability to
calls.

With respect to companies formed under the Registration Act, (7 & 8 Vict. c. 110), the liability of a shareholder for calls will cease only on his transferee being registered at the registrar's office, and this registration will not be granted until the transferee shall have executed the company's deed of settlement. (d) In banking companies formed under the 7 & 8 Vict. c. 113, the liability to calls

(a) *Preston v. Guyon*, 11 Sim. 328.

(c) *Reg v. The Victoria Park Company*, 1 Q. B. 289.

(b) The rule does not appear to have been to make calls.

(d) See *ante*, 363.

is likewise provided for by statute. (a) This liability in other companies, depends upon the particular provisions of the act of Parliament, if incorporated, or, if not, then upon the particular deed of settlement; and it may be determined by assignment, or by forfeiture of the shares. If a person hold shares, and is registered as such, in an incorporated company, or in one regulated by deed of settlement which he has executed, he can only assign subject to the requisites or conditions of the particular instrument of incorporation, or of regulation. (b)

Liability to calls.

Acts of incorporation are generally much alike as to the provisions about calls. What has been observed with respect to a particular railway act, may in general apply to others. (c) The statutes, it is said, appear to treat a shareholder, (at least one who takes by transfer and is not an original subscriber) as identified with his share, and as having nothing to do with the company, either with respect to rights or liabilities, before he becomes, or after he ceases to be a shareholder. The duty of a shareholder, who takes by transfer, to pay a call, is the creature of the act; the act requires the payment to be made at the time appointed by the directors; at that time, and not before, the duty arises, and it is a duty which, by the terms of the act, is cast on the owners for the time being.

The Aylesbury Railway Company v. Mount.

In an action for two calls, brought by the Birmingham and Aylesbury Railway Company, it appeared the act of Parliament provided that, upon the trial, it should only be

The Birmingham and Aylesbury Railway Company v. Thompson.

(b) *Ante*, 177.

(b) See *ante*, 355, as to what are shares.

(c) See *Aylesbury Railway Company v. Mount*, 4 M. & Gr. 651, judgment of Tindal, C. J., Law J. 1842; C. P. 258. And

judgment of Parke, B., in *Sheffield and Manchester Railway Company v. Woodcock*, 7 M. & W. 588, which does not appear to have been noticed in the former case.

Liability to
calls.

necessary to prove that the defendant, at the time of making the respective calls, was the proprietor of a share in the undertaking. The act also required that there should be twenty-one days' notice of the making of the calls. Notice of the first call was given on the 6th of March, to be payable on the 9th of April; of the second call, on the 23rd of June, to be payable on the 28th of July. The defendant became a proprietor, by the transfer of shares, on the 7th of April. And it was held, that he was not liable for a call made previously, but not required to be paid until after the 7th of April. So that there was a verdict against him for the amount of the second, but not of the first call. (a)

The act, in making shares transferable by deed, generally directs that, on every sale, the deed being executed by the seller and purchaser, shall be kept by the company, who are to enter, in a book kept for that purpose, a memorial of such transfer and sale, and indorse the entry of such memorial on the deed of transfer; and that until such memorial shall have been made and entered, the seller shall remain liable for all future calls, and the purchaser shall have no part or share in the profits. (b)

By a navigation act the shares were declared to be vested

(a) The Birmingham and Aylesbury Railway Company v. Thompson, Law J. 1841, Q. B. 124. S. C. 2 Railway Cases, 668. The Aylesbury Railway Company, v. Mount, 4 M. & Gr. 651, Law J. 1842, C. P. 258, accord. And see previous Chapter on Transfer of Shares.

(b) The effect of this provision with respect to the memorial is not to make any alteration in the common law operation of the

deed, but is intended merely for the security of the company. But the deed being complete, it is sufficient evidence in an action for calls without proving the entry of any memorial. London and Brighton Railway Company v. Fairclough, 2 M. & Gr. 674. See observations of Tindal, C. J. ib. p. 706, "That until the deed is enrolled and entered, the company may compel the seller to pay all the future calls."

in the subscribers, their executors and assigns, with power to the subscribers to assign their shares, and a committee to be appointed under the act, were authorized to make calls on the proprietors of shares at such times as they should think fit. An original subscriber was held not to be liable for any call made by the committee after he had assigned his shares. (a)

Liability to calls.

Huddersfield Canal Company v. Buckley.

By the Thames Tunnel Act, 5 Geo. 4, c. 156, s. 23, it was enacted, that the persons who had subscribed, or should thereafter subscribe, or advance money towards making the Tunnel, should pay the sum by them subscribed at the time and place, and in the manner directed by the company; and in case any such subscribers should neglect to do so the company were empowered to sue for and recover the money. By s. 91, reciting that the probable expenses would amount to 160,000*l.*, and that more than four-fifths parts had already been subscribed by several persons, binding them, their heirs, &c. for payment of the sums so subscribed by them, it was enacted that the whole 160,000*l.* should be subscribed in the like manner before the act should be put in force. The word *subscribers* in the act was held to mean only those who had stipulated to pay, and not those who had paid money; and therefore a person whose name was inserted in the act, and who had paid a deposit on shares, but who had not signed the contract, was not a subscriber within the act, nor liable to be sued by the company. (b)

Thames Tunnel Company v. Sheldon.

But it will not be necessary to shew the execution of any contract, if from the conduct of the party sued, he shall be estopped from questioning the validity of the act.

(a) Huddersfield Canal Company v. Buckley, 7 T. R. 36.

(b) Thames Tunnel Company v. Sheldon, 9 D. & R. 278; 6 B.

& C. 341. See forms of Subscribers' Agreement preliminary to an act of Parliament, App. 232.

Liability to
calls.

Cromford
Highpeak
Railway Com-
pany v. Lacey.

A railway act prescribed the form of action against the proprietors for calls, and directed that it should only be necessary to prove that the defendant was a proprietor, and that the calls had been made in pursuance of the act. It is also recited, that a sum of money had been subscribed by the proprietors under a contract binding their heirs, whereas, in fact, that sum had not been subscribed by the proprietors. A defendant, with a knowledge of this mis-recital, had paid previous calls, and acted as a proprietor. It was held, that he was estopped from questioning the validity of the act upon the ground of mis-recital, and that it was not incumbent on the plaintiff to shew that the defendant had executed a contract under seal, in order to prove that he was a proprietor within the meaning of the act. (a)

The amount of capital mentioned in the statute must have been subscribed, before calls upon the shareholders can be made or enforced. In such a case there is a condition precedent to be satisfied before a shareholder can be subjected to an action for calls.

The Norwich
and Lowestoft
Navigation v.
Theobald.

Accordingly, where a statute provided, that, "the whole of the said sum of 100,000*l.* shall be subscribed before any of the powers and provisions given by the act shall be put in force;" and, by a subsequent section, that in any action for calls, it shall only be necessary for the company to prove that the defendant at the time of making such call, was an owner of shares in the undertaking; that such call was in fact made; and that such notice thereof was given as is directed by the act: and that the company should there-

(a) *Cromford Highpeak Railway Company v. Lacey*, 3 Y & J. 80. But see the *Stratford and Moreton Railway Company v Stratton*, 2 B. & Ad. 518, *ante*,

390, where it was said the defendant was not estopped, by having joined in making calls, or by his payment of part of them, from disputing their validity.

upon be entitled to recover what should appear to be due. The company made a call on the share before the subscriptions were complete, and commenced an action for the call after they were so: but the action was held not to be maintainable; the completion of the subscription list being necessary to enable the company to make the call, as well as to bring the action. (a)

Liability to
calls.

In an action for calls, issue was joined on a plea that the defendant was not a proprietor. Before the act passed, the undertakers signed a subscribers' agreement and parliamentary contract, paying a deposit, and scrip-certificates were delivered to them. These purported not to be transferable before the passing of the act, but were, in fact, sold and transferred in many instances before the act passed. After it passed, the company made a list of proprietors, in which B.'s name appeared in respect of certain shares for which he had been the original subscriber. He afterwards wrote to the company, stating that he had parted with certain shares, and retained others. Afterwards, defendant wrote to the company, stating that he held certain shares, (which, by the numbers named in his letter, appeared to be those which B. had parted with), and claimed to be registered as a proprietor in respect of the scrip-certificates which he inclosed. The company gave him a receipt for the scrip-certificates, and registered him as a proprietor of the shares in a book under their seal. Defendant never applied for sealed certificates, and no conveyance took place according to the act. The defendant paid some calls prior to those for which the action was brought. This was held to be sufficient evidence upon which to find the issue against the defendant. (b)

The Cheltenham and Great Western Union Railway Company v. Daniel.

(a) The Company of Proprietors of the Norwich and Lowestoft Navigation v. Theobald, 1 Moo. & M. 151

(b) The Cheltenham and Great Western Union Railway Company v Daniel, 2 Q. B. 281.

Liability to
calls.

London Grand
Junction Rail-
way Company
v. Gunston.

So, where A. and B. became respectively possessed of scrip-certificates of certain shares which had belonged to subscribers to an undertaking to procure an act of Parliament for a railway company. The certificates stated respectively, that the holders, having signed the Parliamentary contract, and agreed to pay all calls, were the proprietors of shares, &c. A. and B. had not signed the contract, nor executed any formal subscription to the undertaking. The act was afterwards procured, and the company then advertised for holders of scrip to bring it in to be registered. A. and B. brought in their certificates accordingly, and the shares were registered in their respective names. No memorial of a sale to either was ever made or entered. A. afterwards attended a half-yearly meeting of the company, and B. paid a call on his shares. They were both held to be proprietors and liable for calls. (a)

Humble v.
Langston.

It has been already observed that the registered shareholder is the party liable for calls. In contracts for the sale of shares provision ought to be made that the vendee will pay all calls becoming due after the date of the contract; otherwise the vendor will still remain liable. And there is no undertaking implied by law to indemnify the vendor against all subsequent calls. (b) But if the contract contain such a provision as is above mentioned, the vendor will be entitled to call upon the vendee to complete his purchase in a reasonable time, by preparing a deed in the statutory form; and if the vendee do this, the vendor may then execute it, and require the vendee to do the same, and to deliver, or attend with him to deliver, the deed to the company, that a memorial may be entered into and

(a) London Grand Junction
Railway Company v. Graham.
Same v. Gunston, 1 Q. B. 271.

(b) Humble v. Langston, 7 M.
& W. 517. See *ante*, 366.

indorsed on the deed of transfer, if so required by the particular statute. This done, the vendor is no longer liable to any call; but if the vendee refuse to perform his part, he will be liable to an action for the non-performance of that which he may have omitted to do: and if, in consequence of his breach of contract, the vendor be obliged to pay future calls, he may recover this amount by way of special damage for the breach of contract. (a)

Liability to calls. _____

With respect to shares forfeited, (b) it may be observed that a mere notice of forfeiture does not exonerate the shareholder from payment of calls, unless indeed the act provide that notice of itself shall be enough. But acts of Parliament usually provide that advantage shall not be taken of the forfeiture until after a certain time, nor until the forfeiture has been confirmed at a meeting of the shareholders. Where notice was given, that if calls were not paid by a certain day, the shares would be declared forfeited, and the calls were not paid, nor was the forfeiture confirmed, a defendant, in an action for calls, was not allowed to allege that his shares had been forfeited, or preclude the plaintiffs from treating him as a proprietor. (c)

Effect of forfeiture of shares on calls.

By the Edinburgh and Leith Railway Act, section 49, the directors were empowered to make the calls in manner therein-mentioned, and to sue for them, in case of non-payment, by action of debt, or otherwise, in their option, and that the proprietors neglecting to pay the same, should forfeit all their shares for the benefit of the company: provided that no advantage should be taken of any such for-

Birmingham, Bristol, and Thames Junction Railway Company v. Locke.

The Edinburgh, Leith, and Newhaven Railway Company v. Hebblewhite.

(a) See judgment in *Humble v. Langston*, 7 M. & W. 529.

(b) See *Prendergast v. Turton*, ante, 183, as to shares in a Mining Company.

(c) Birmingham, Bristol, and

Thames Junction Railway Company v. Locke, 1 Q. B. 256. See *The Edinburgh, Leith, and Newhaven Railway Company v. Hebblewhite*, 6 M. & W. 707.

Liability to
calls.

feiture, until notice thereof given to the proprietor in manner therein-mentioned, nor unless the same should be declared to be forfeited at some general or special meeting of the company within six months after such forfeiture should happen, which declaration should, *ipso jure*, be a forfeiture of the shares. To an action of debt for calls, the defendant pleaded that by reason of having neglected to pay calls on his shares, they were, in pursuance of the act, declared by the directors to be forfeited, and the directors exercised and declared their option, according to the act, that the same should be forfeited, and the same then became and were forfeited, of which the defendant had due notice, and acquiesced in the forfeiture. It was held, on special demurrer, that the plea was bad for not shewing that the shares had been declared to be forfeited at a general or special meeting of the company, according to the provisions of the act. (a)

Thorpe v.
Hughes.

Proceedings to enforce calls will not be restrained by injunction of a Court of Equity, unless there has been a default on the part of the company. A holder of shares in a joint stock bank, in Ireland, filed his bill in England, on the 6th of March, 1838, alleging that he had been induced to purchase shares through the misrepresentation and fraud of the directors, and that on the 19th January, 1838, they had commenced an action against him in the Exchequer, in England, for the recovery of calls, which action was to be tried at the Liverpool Assizes, on the 22nd of March then instant, and praying a discovery and injunction, and that the monies which he had previously paid for shares might be refunded. The injunction was granted by the Vice Chancellor, but was afterwards dis-

(a) The Edinburgh, Leith, and Newhaven Railway Company v. Hebblewhite, 6 M. & W. 707. And see London and Brighton Railway Company v. Fairclough, 2 M. & Gr. 690.

charged by the Lord Chancellor, on the ground, apparently, that the discovery sought by the bill was not material to the defence at law, and that the delay between the commencement of the action and the institution of the suit, was not sufficiently accounted for to justify the Court in extending the injunction so shortly before the trial. And it was said, there was no default in the defendant (Hughes) or the company. (a)

Liability to
calls.

SECT. III.—*Actions for Calls.*

Where companies are established under the 7 & 8 Vict. c. 110, a shareholder may be sued for calls in an action of debt. In the declaration, it will be sufficient to state only the particulars specified in the act. Interest, at 5% per cent. from the time when the call was due, will form part of the verdict. (b) Provisions having the same object, are also made by the 7 & 8 Vict. c. 113, regulating Banking Companies formed thereunder. (c)

Actions for
calls.

But with respect to other companies, including Banking Companies formed under the 7 Geo. 4, c. 46, actions for calls must be brought upon the statute, (d) where a company are incorporated, or upon the deed of settlement, where that is the only instrument of regulation. The proceeding upon an act of Parliament is regulated by the particular provisions contained in it, and which usually embrace a particular form of declaration, and also pre-

(a) *Thorpe v. Hughes*, 3 Myl. & Cr. 742.

(b) S. 55, App. 185.

(c) *Ante*, 177.

(d) An action for calls cannot

be maintained in an English Court, upon a statute for making a railway in Ireland. *The Dundalk Western Railway Company v Tapster*, 1 Q. B. 667.

**Actions for
calls.**

scribe the quality and extent of evidence necessary to support the action. (a)

**The South-
ampton Dock
Company v.
Richards.**

In declaring for calls where the company are incorporated, it is not necessary to insert a count for interest, if the statute provide that interest shall be recoverable; nor ought the amount of interest to be added by the company to the calls, and declared for as part of such calls. The proper course is for the company to declare for the bare amount of the calls, and for the jury to add the interest. It was so held in a case where the statute empowered a company to declare for calls and allege that the defendant, being a proprietor of so many shares, was indebted to the company in such sum of money as the calls in arrear amounted to, for so many calls of such sums of money upon so many shares belonging to the defendant, whereby an action had accrued to the company, by virtue of the act, without setting forth the special matters: and enacted, that on the trial of such action, it should only be necessary to prove that the defendant, at the time of the making of such respective calls, was a proprietor of such shares as such action was brought in respect of, and that such calls were in fact made, and that notice thereof was given as directed by the act without proving the appointment of the directors who made such call, or any other matter whatsoever, and that the company should thereupon be entitled to recover what should appear due, including interest at 5*l.* per cent. (b)

London and

The plea "never indebted" will have the effect of

(a) Several forms of declaration will be found in the Appendix, p. 323.

(b) The Southampton Dock Company v. Richards, 1 M. &

Gr. 448. Also admitted in London and Brighton Railway Company v. Fairclough, 2 M. & Gr. 690.

requiring the company, before they have any right to say a call is recoverable, to prove any conditions precedent which the statute may have imposed upon them (*a*). The variety of these conditions and their extent, depend upon the provisions of the particular statute. They may relate to the amount of capital subscribed before the works are to be commenced; or to certain forms to be followed, and certain notices given, in making calls from time to time; or to others of a similar description. Where there are conditions precedent it will be improper to make any of them the subject of a special plea, because they are put in issue by the plea of "never indebted." (*b*)

Actions for
calls.

Brighton Rail-
way Company
v. Wilson.

Where the defendant seeks to throw upon the company the burden of proving his proprietorship, the defendant will plead that he was not a proprietor of the shares (*c*). Very frequently it will be found that these two pleas of "never indebted," and "not a proprietor," are sufficient for the general purposes of defence to an action for calls. Or he may plead that the directors have exercised their option of declaring the shares of the defendant to be forfeited, and have taken the steps therein directed by the act. (*d*)

By the terms of a railway act, the directors were entitled to recover for calls in arrear, upon proving that the defendant was a proprietor, and that notice of the

London and
Brighton Rail-
way Company
v. Wilson.

(*a*) London and Brighton Rail-
way Company *v.* Wilson. Same
v. Fairclough, 6 Bing. N. C. 135.
See *ib.* 270; 8 Dowl. 40. See
South Eastern Railway Company
v. Hebblewhite, 12 Ad. & Ell.
497, accord.

(*b*) *Ibid.* The Edinburgh,
Leith, and Newhaven Railway
Company *v.* Hebblewhite, 6 M.

& W. 707.

(*c*) The Cheltenham Railway
Company *v.* Price, 9 C. & P. 55.

(*d*) South Eastern Railway
Company *v.* Hebblewhite, 12 Ad.
& Ell. 497. See *ante*, 399, and
the Eastern Counties Railway
Company *v.* Cooper, Law J. 1841,
Q. B. 8.

**Actions for
calls.**

**London and
Brighton Rail-
way Company
v. Wilson.**

calls had been given according to the act, unless the defendant should prove that he had paid the full amount of his subscription. Defendant having pleaded to an action for calls, that he was not indebted, and was not a proprietor, the Court refused to allow him to add pleas; first that due notice of the calls was not given; secondly, that no time or place was appointed for payment; thirdly, that the calls were made for purposes other than those warranted by the act; fourthly, that they were made after deviations in the line; and fifthly, that fewer shares were allotted than the act required. The two first were disallowed, because they were put in issue by the plea of "never indebted." By the 148th section of the company's act, it was expressly thrown on the plaintiffs to give proof of the two facts which these pleas deny; "on the trial of such action it shall only be necessary to prove that the defendant, at the time of making the respective calls, was a proprietor, and that such notice was given, as is directed by the act, of such call or calls having been made." (a)

The third plea was refused, on the ground that the act limited the answer to be given to the company's action for a call. "If the defendant has not paid the sum which is called for, the company shall be entitled to recover what shall appear due on such calls, unless it shall appear that the principal monies previously paid on any such share, together with such call, exceed the sum of 50*l*." If the plea were allowed it would, in effect, repeal those

(a) See the *Edinburgh, Leith, and Newhaven Railway Company v. Hebblewhite*, 6 M. & W. 707, where a plea of no notice having been given of calls made was held bad on special demurrer

for having concluded with a verification, instead of to the country. "Never indebted," would, it seems, have been a sufficient plea in that case for the defence of no notice of calls having been made.

directions of the 148th section, which enacts, that the money shall be recoverable upon certain proof being given by the plaintiffs. The debt being created by act of Parliament, it was never intended that, in calling on a Court to decide whether a sum for the subscription is due or not, the parties should litigate matters which belong to another forum: if the subscribers are dissatisfied with the mode in which the money is applied, the proper place and time to dispute that, is when a general meeting is called; they are there to express their disapprobation of the conduct of the directors: or if the general meeting is at a great distance, and the question cannot be delayed, and there is a sufficient number of persons to dispute the propriety of the proceedings, they can call a special meeting, by giving twenty-one days' notice thereof. It was never intended, nor ought it to be allowed, that so general a question as that should be litigated in the question whether a call is due from any individual subscriber." (a)

Actions for
calls.

London and
Brighton Rail-
way Company
v. Wilson.

In the same case the defence pleaded was, amongst other things, that there had been a deviation from the original line, and that the money called for was in respect of such deviation. The Court said, the effect of allowing such an answer as this would be, that if there is any deviation to the extent of three yards, with the consent of the person whose land immediately adjoins, and at the wish of the directors and of the company generally, every individual subscriber, from the moment that deviation is made, may stay his hand, and refuse his call, and the whole concern be broken up altogether. And accordingly the

(a) The London and Brighton Railway Company v. Wilson. Same v. Fairclough, 6 Bing. N. C. 135. Ib. 270; 8 Dowl. 40. See

South Eastern Railway Company v. Hebblewhite, 12 Ad. & Ell. 497.

Actions for calls.

London and Brighton Railway Company v. Willis.

plea was disallowed (a). So also, in the same case, as to a plea that fewer shares had been allotted than were required by the statute, which enacted, that "notwithstanding any thing in the several subscription deeds or contracts relating to the said several lines, the capital of the company hereby incorporated shall be 1,800,000*l.*, divided into 36,000 shares." It was said this was not an available plea, for there were, if not in fact, yet in contemplation of law, 36,000 shares.

SECT. IV.—Evidence.

Evidence.

The evidence to be adduced in actions for calls depends on the provisions of the particular statute, or deed of settlement. In general, in order to support an action for calls it is necessary to prove that the call was made in the manner pointed out by the statute, or deed, and that the defendant was a proprietor of shares at the time the call became payable. (b)

Southampton Dock Company v. Richards.

With respect to minutes, they are a registry of the orders and proceedings of the board of directors, and contain the resolutions come to from time to time to make calls. They are usually required to be signed by the chairman of each meeting of directors, and when so signed are made original orders and proceedings, and allowed to be read in evidence without proof that the meetings were duly convened, or that the persons making or entering

(a) London and Brighton Railway Company v. Wilson. Same v. Fairclough, 6 Bing. N. C. 135 ; 8 Dowl. 40.

(b) See *ante*, 401. The observations and cases contained in

this section relate to actions on railway statutes. Evidence in actions for calls in other companies must depend on the circumstances of each particular case.

such orders or proceedings were proprietors or directors of the company. It will be sufficient if the minutes of a meeting be signed at the next meeting, if the chairman of both meetings be the same. (a) But it would be better that the chairman should sign at the meeting where the proceedings take place, because, otherwise, if a different chairman presides at the next, they may go for nothing. (b) Moreover, where an act is directed to be done in a prescribed form, the interests of the proprietors are best consulted by endeavouring to follow the words of the statute. (c) It is not necessary to prove that the person signing as chairman filled that capacity, or, as such, presided at the meeting. (d). But where a statute does not make such a book the only evidence of the proceedings, it may be inferred from the defendant's promise that an order to make calls has been duly made. (e)

Evidence.

Minutes.

In order to shew proprietorship, the book of shareholders must be produced. This is required to be under the company's seal. Where it appeared that a call was

Book of shareholders.

(a) *The Southampton Dock Company v. Richards*, 1 M. & Gr. 448. Admitted in London and Brighton Railway Company v. Fairclough, 2 M. & Gr. 686. *Acc. Miles v. Bough*, 3 Q. B. 845, Law J. 1843, Q. B. 74; 3 Gale & D. 119. *The West London Railway Company v. Bernard*, 3 Q. B. 873. But see the doubt entertained by Coleridge, J., in *Miles v. Bough*.

(b) *The West London Railway Company v. Bernard*, 3 Q. B. 876, Law J. 1844, Q. B. 68.

(c) In the *Southampton Dock Company v. Richards*, 1 M. & Gr. 448, the minutes had been

roughly taken down at the meeting at which the order was made and the proceedings took place, and were afterwards put into form by the secretary, and transcribed by a clerk into the minute book, and they were read and approved, and signed at the next meeting by the same person as chairman, who had acted as chairman at the meeting at which the minutes were taken.

(d) *The Sheffield and Manchester Railway Company v. Woodcock*, 7 M. & W. 574.

(e) *Miles v. Bough*, 3 Q. B. 845.

Evidence.

Book of shareholders.

made in October, 1836, and that the book of shares, which contained the name of the defendant as a shareholder, was made up before the end of September 1836, from claims sent in by different parties, but that the seal was not affixed to it till November 1836; it was held that this book was no evidence that the defendant was a proprietor of shares at the time of the call in October 1836. (a)

Southampton Dock Company v. Richards.

Where an act directed that the company should prepare a list of shareholders in a book to be kept by the secretary, and that in an action for calls, the production of the book (b) should be *prima facie* evidence to prove the defendant a proprietor, and the number and amount of his shares,—it was held to be no objection to the admissibility of the book produced, as the book kept under the act, to prove him a proprietor, that an irregularity or omission was shewn to exist with respect to the entries relating to other shareholders; the provisions as to the entries to be made in the book being directory only (c), and not essential. (d)

(a) The Cheltenham and Great Western Union Railway Company v. Price, 9 C. & P. 55.

(b) See London and Brighton Railway Company v. Fairclough, 2 M. & Gr. 674, where a question arose on a construction of particular clauses in an act, as to the production of two books of names of shareholders in an action for calls.

(c) See Rex v. Loxdale, 1 Burr. 445, 447. Dwarris on Statutes, 713.

(d) The Southampton Dock Company v. Richards, 1 Man. & Gr. 448. Acc. London Grand

Junction Railway Company v. Freeman, 2 M. & Gr. 606. The Birmingham, Bristol, and Thames Junction Railway Company v. Locke, 1 Q. B. 256. London Grand Junction Railway Company v. Graham. Same v. Gunston, 1 Q. B. 271. London and Brighton Railway Company v. Fairclough, 2 M. & Gr. 674, Law J. 1841, C. P. 133. In the second case the book was held to be *prima facie* evidence, though irregularly kept, and that the holders of scrip-certificates were properly entered before the passing of the act as proprietors in

Where the act required such transfer to be by deed, and a transfer of shares was executed by the seller, with a blank for the purchaser's name, and stating the consideration untruly, but the purchaser afterwards signed and transmitted to the company, in pursuance of the act, a proxy paper describing himself as the proprietor of the shares,—it was held, in an action against him for calls on such shares, that he was precluded from disputing the validity of the transfer. (a)

Evidence.

Sheffield and Manchester Railway Company v. Woodcock.

Transfers.

It has been seen that, in general, it is sufficient evidence of proprietorship to prove that the defendant has been registered in the share-book of the company. This is the ordinary proof in actions for calls. But there may be instances in which it is desirable, from the circumstance of the entry in the books being imperfect, or otherwise, to fix the character of shareholder upon the defendant by other facts. It may, therefore, be shewn, that there had been a transfer of shares from another party to the defendant. The transfer itself may be produced; but this evidence can only be used when the transfer is a valid instrument. For, in a recent case of an action for calls, it was contended, on the part of the defendant, that the deed of transfer, upon the face of it, had been altered, by substituting the name of the defendant in the place of the name of the original transferee, and that, therefore it was void for the want of a new stamp. The answer attempted to be given to this objection was, that the insertion of the original name was made by mistake, and that whilst the matter was still *in fieri*, the seller had a right to correct such mistake by inserting the name of the real purchaser.

The London and Brighton Railway Company v. Fairclough.

the undertaking, though they had neither signed the Parliamentary contract, nor been originally subscribers.

(a) Sheffield and Manchester Railway Company v. Woodcock, 7 M. & W. 574.

Evidence.

But the Court said, that admitting such alteration might have been made without destroying the validity of the instrument, under such an assumed state of facts, yet that it was incumbent upon the plaintiffs, who produced and relied upon the deed in its altered shape, to shew the circumstances under which the alteration was made, and that such a state of facts had really existed; and accordingly effect was given to the objection. (a)

The Birmingham and Aylesbury Railway Company v. Thompson.

And where the statute directed that a deed of transfer should be kept by the company, and a memorial of it entered in a book,—and such an entry was made, with a memorial, dated 7th of April,—it was held, in an action for calls, that this was sufficient evidence of the time of transfer, so as to make the defendant a proprietor from that date, without evidence to shew when the entry was, in fact, made. (b)

Mangles v. The Grand Collier Dock Company.

With respect to evidence it may be further stated, that some of the statutes provide that, upon proof of certain facts on the trial, certain conclusions are to be made,—for example, that the appointment of directors shall be taken to be valid. On this subject it may be observed, that equity will not interfere on behalf of a defendant, even on a statement of facts shewing actual invalidity in the appointment of directors. (c)

Birmingham, Bristol, and Thames Junction Railway Company v. White.

It may also be mentioned that, when a shareholder is sued for calls, he will not be permitted to inspect the company's books, and make extracts from them; especially where it appears that the object is to discover what defence can be set up, and not how any particular defence

(a) The London and Brighton Railway Company v. Fairclough, Law J. 1841, C. P. 133; 2 M. & Gr. 674.

bury Railway Company v. Thompson, Law J. 1841, Q. B. 124.

(c) Mangles v. The Grand Collier Dock Company, 10 Sim. 519.

(b) The Birmingham and Ayles-

should be placed upon the record. And this will be so even where, by a railway act, a power to inspect all books relating to the company is given to the shareholders, at any general or special meeting, which meetings are required to be holden at intervals, not greater than six months, if he have allowed the time to go by within which, by the statute, the inspection was to be had. (a)

Evidence.

Inspection.

(a) Birmingham, Bristol, and Thames Junction Railway Company
v. White, 1 Q. B. 282.

CHAPTER XX.

ON THE BANKRUPTCY OF JOINT STOCK COMPANIES.

Bankruptcy.

THE object of the recent statutory provisions relative to the bankruptcy of companies is to ascertain the insolvency of the actual corporate fund at a particular time, altogether irrespective and independent of the solvency or insolvency of its individual members, and to enable a just winding up of the company by a fair contribution from each partner. (*a*)

With this view the Legislature declares in the first place, what descriptions of companies are to be subject to the Bankrupt Law; secondly, what acts on the part of a company are to be considered sufficiently indicative of their actual insolvency, to justify the sequestration of their property; and thirdly, provides a proper course of procedure for carrying out the sequestration and distribution of that property, and for compelling contribution amongst the partners. To these is superadded, an inquiry into the causes of the failure of the company in question.

SECT. 1.—*What Companies are subject to the Bankrupt Law.*

According to the requisition of the act, (*b*) a company to be subject to the Bankrupt Law, must be either *first*, a “trading or commercial” company; (in other words,

(*a*) 7 & 8 Vict. c. 111, ss. 1, 20, (*b*) *Ib.* s. 1, App. 200.
21, 22, App. 200, 207, 208.

a company of persons associated together for the purpose of prosecuting some enterprise or occupation of *trade*, in the sense in which that word is known to the general Bankrupt Law,) in which case it is immaterial whether the company is one incorporated by act of Parliament, or Royal Charter, or invested with any privilege or power by Letters Patent under the 1st Vict. c. 73, or is merely registered under 7 & 8 Vict. c. 110: or, *secondly*, if the company be not a trading company, in the legal acceptance of that word, then it must (in order to bring it within the jurisdiction of bankruptcy) be a company that falls within the definition of a Joint Stock Company, given by the 7 & 8 Vict. c. 110, s. 2; *and also*, must have been in existence at the time appointed for the present act (c. 111) to come into operation, viz., the 1st November, 1844. (a)

Bankruptcy.

SECT. II.—*What Acts are to be considered Acts of Bankruptcy.*

A company may commit an act of bankruptcy by declaring their own insolvency. This may be done by a resolution of the directors. A declaration (b) is then to be filed with the Lord Chancellor's secretary of bankrupts, stating therein the company's inability to meet their engagements. There must also be filed a minute of the

Acts of bankruptcy.

Declaration of insolvency.

(a) The wording of the first section of the act is such that two descriptions of companies must be considered as exempted from its operation, viz. :—

1. Companies for trading purposes, which ought to have been, but *have not* in fact been, registered under 7 & 8 Vict. c. 110.
2. Companies not for trading purposes, but included in the statutory definition of Joint Stock Companies, and which have come into existence *since* the 1st Nov. 1844.

(b) See Form, Sch. A., No 1, App. 212.

Acts of bankruptcy.

resolution in question. (a) Both documents must be under the company's common seal. If they have none, then they must be signed by the chairman of the directors present at the passing of the resolution. In either case, both documents must be attested by the company's attorney. The act of bankruptcy dates from the filing of the declaration, provided a fiat issues within two months. A copy of the declaration and minute, certified by the secretary of bankrupts, or his clerk, as a true copy, is made evidence of the filing. This, with proof by the attesting witness of the sealing or signature of the declaration and minute, will be sufficient evidence of the act of bankruptcy. (b)

Notice of judgment recovered.

So, likewise, a company will commit an act of bankruptcy if they do not, within fourteen days after notice, pay, secure, or compound any judgment recovered against them for a debt or money demand, provided there be nothing due from the plaintiff which may legally be set off against the judgment. The notice may be served upon the company's secretary, or chief clerk, or registrar, or, if no such officer, upon a director, personally, or by leaving it at the company's head office. The notice must require immediate payment of the debt. The act of bankruptcy dates from the fifteenth day after service of notice. But this notice cannot be so acted upon for the purposes of bankruptcy pending any suspension or restraining of the execution upon the judgment by order or rule of Court. (c)

Disobedience of order for payment of money.

An act of bankruptcy will also be committed if the company disobey any order in equity, bankruptcy, or lunacy, directing them to pay money. The service of the order may be in the same mode as already pointed out with respect to the preceding "notice." But the party

(a) See Form, Sch. A., No. 2, App. 201.

App. 212.

(c) *Ib.* s. 5 ; *ib.* 202.

(b) 7 & 8 Vict. c. 111, s. 4,

entitled to the money must apply to the Court to fix a peremptory day for the payment. If the company be served with the order fourteen days before the day so appointed, then, in case of non-payment, the act of bankruptcy is deemed to have been committed on the fifteenth day. (a)

Acts of bankruptcy.

The same result will follow if the company do not pay, secure, or compound to the satisfaction of the creditor, within a month after service of a writ of summons at the suit of a creditor for any sum sufficient to constitute a petitioning creditor's debt. But to have this effect the creditor must file an affidavit in a Court of law at Westminster, that the debt is justly due, and that the company is a commercial or trading company, or body incorporated or associated, (b) and must sue out of the same Court a writ of summons, and serve a copy of it in the mode already specified as to the "notice." But this effect will not arise if the company satisfy a Judge of their intention to defend the action upon the merits, and within a month after service enter an appearance to the action. If otherwise, an act of bankruptcy will have been committed on the day of serving the writ of summons. (c)

Non-payment of debt within a month after commencement of action.

SECT. III.—*Proceedings in Bankruptcy.*

The law and practice in bankruptcy are made applicable to companies becoming bankrupt, subject to the statutory provisions mentioned in this chapter. (d)

Proceedings in bankruptcy.

The duplicate of the adjudication of bankruptcy may be served in the mode already pointed out with respect

(a) 7 & 8 Vict. c. 111, s. 6, note (a), *supra*, p. (413).

App. 202.

(c) *Ib.* s. 7, App. 203.

(b) *Ib.* s. 1, App. 200. See

(d) *Ib.* s. 11, *ib.* 204.

Proceedings in
bankruptcy.

to "notices." The person so served may surrender to the fiat on behalf of the company, and consent to the advertisement of the adjudication. But to make the surrender valid such person must swear that he is the secretary, &c., and that he is authorized to make the surrender. (a)

The assignees of the bankrupt company may proceed against any person, whether a shareholder of the company or not, for a debt or demand. So, likewise, a person, even a shareholder of the company, may prove under the fiat such amount as may be due to him on the balance of accounts between himself and the company. (b)

But no set off against the assignees' demand is to be allowed to the shareholder in respect of his share in the capital, or of dividends, interest, profits, or bonus, payable in respect of such share. (c)

Any action brought by a creditor against the company, will not, as regards the recourse he may have against the person or property of a shareholder, be deemed to prejudice the creditor's right to prosecute a fiat against a company, or to prove under a fiat. Nor will a fiat affect the right of a creditor to maintain an action, or other proceeding against a shareholder. But this does not prevent remedy against copartners. But no execution can go against a shareholder for a company's debt, until, if the company be bankrupt, the creditor's demand has been proved under the fiat; nor can it issue after the appointment of a receiver, as hereafter mentioned, (d) without leave of the Court of Chancery. (e)

The Court of Bankruptcy, after a fiat has been issued against a company, may order the directors to prepare

Company's
balance sheet.

(a) 7 & 8 Vict. c. 111, s. 3,

(d) *Post*, p. 419.

App. 201.

(e) 7 & 8 Vict. c. 111, s. 10,

(b) *Ib.* s. 8, *ib.* 203.

App. 204.

(c) *Ib.* s. 9, App. 204.

a balance sheet and accounts, which they are to subscribe and file in Court. The order is prepared by the solicitor to the fiat, but must be served by the messenger as the officer of the Court. They are also to deliver a copy thereof to the official assignee ten days before the last examination, which, however, may be amended up to the time of such last examination. If required, the persons subscribing the balance sheet and accounts, are to swear to the truth of them. (a)

In like manner as other persons in other cases of bankruptcy, the parties preparing the balance sheet and accounts must surrender to the Court on the day of the last examination, sign and subscribe the surrender, submit to be examined from time to time upon oath, make a full discovery of the company's estate, and are liable to penalties for omitting to do so, or for not fully answering to the satisfaction of the Court, or for refusing to sign or subscribe their examinations, or for not delivering up all the company's estate, and all such books, &c. as may be in their possession, or for removing, concealing, or embezzling any of the company's estate to the value of 10*l.*, or any books, &c. (b)

The persons preparing the balance sheet and accounts are privileged from arrest, to the same extent as in other cases of bankruptcy. (c)

The Court may, before adjudication, summon any person, shareholder in the company or not, capable of giving information of the trading of, or act of bankruptcy committed by, the company; call for books, papers, &c. with the same objects; and may examine such person upon

(a) 7 & 8 Vict. c. 111, s. 12, App. 204. The Court may make an allowance out of the estate for the preparation of the balance sheet and accounts, ib.

(b) *Ib.* s. 13, App. 205.

(c) *Ib.* s. 14, *ib.* If in prison they may be brought before the Court by warrant, *ib.*

Proceedings in
bankruptcy.

oath. After adjudication, the Court may summon any person, member or not, supposed to have any of the company's estate in his possession, or to be indebted to it, or any person capable of giving information concerning the persons members of the company, and the trading, acts of bankruptcy, &c. Every such person may in like manner be examined on oath, and required to produce books, papers, &c. (a) Penalties are imposed for disobedience, &c. in like manner as before mentioned. (b)

Shareholders in a company so summoned may be paid their expenses, if any, according to the discretion of the Court. (c)

Persons, whether shareholders or not, (except those who may have prepared the balance sheet and accounts,) wilfully concealing any of the company's estate, and not discovering the same to the Court, or assignees, within thirty days after the fiat, are liable to forfeit 100*l.* and double the value of the estate concealed. On the other hand, persons, not being shareholders, discovering estate after the last examination, are to be paid 5*l.* per cent. upon the amount, and such further reward as may be fixed by the major part in value of the creditors. (d)

After the adjudication, the Court may order the treasurer, or other officer, or attorney of the company, to deliver over to the official assignee or Bank of England, all monies, and securities for monies, in his custody as officer or agent, "and which he is not by law entitled to retain as against the bankrupts or their assignees." (e)

A power of committal is given in cases where a party disobeys a rule or order of the Court. (f)

(a) 7 & 8 Vict. c. 111, s. 15,
App. 205.

(b) *Supra.*

(c) S. 16, App. 206.

(d) 7 & 8 Vict. c. 111, s. 17,
App. 206.

(e) *Ib.* s. 18.

(f) *Ib.* s. 19, App. 207.

If a shareholder, with knowledge of an act of bankruptcy, or in contemplation of the company's bankruptcy, destroy, alter, mutilate, or falsify, any of the books, &c., or be privy to the making of a false entry in their books, with intent to defraud their creditors, or to defeat the Bankrupt Laws, he will be guilty of a misdemeanour, and liable to imprisonment. (a)

Proceedings in bankruptcy.

But as the proceedings authorized, as well under this act as under the common law, on the part of the assignees and of the separate creditors against individual members of the company, are calculated to have the effect rather of complicating than of simplifying the accounts that will have ultimately to be taken, it is provided that it shall be competent for the Court of Bankruptcy to direct the creditors' assignees to apply by petition to the Court of Chancery, in order to have all such accounts and inquiries taken and made, in the Masters' offices, as may be required for the final adjustment of the conflicting claims and liabilities of all the different parties interested; and for the appointment of a receiver, and for such further orders and directions as may be found necessary for the final and conclusive liquidation of the debts of the company, and of its members, due to the general creditor, and of all questions of contribution, or other conflicting claims, between the various members of the latter body. (b)

Petition to Court of Chancery.

(a) 7 & 8 Vict. c. 111, s. 30, App. 211.

(b) Ibid. ss. 20, 21, App. 208. The proceedings taken under these sections, though they take place in the Court of Chancery, seem to fall more properly within the scope of the present chapter

than of the following, inasmuch as they are merely supplemental to the proceedings in the Court of Bankruptcy, are available only in the event of the company having been declared bankrupt, and require the previous sanction of the latter Court.

CHAPTER XXI.

PROCEEDINGS IN EQUITY.

SOME of the cases in which Joint Stock Companies, or their individual members, may fall within the limits of the jurisdiction of Courts of Equity, have been incidentally noticed in preceding parts of this work. In the present chapter we shall first give a few general illustrations of the interference of Courts of Equity with the view of restraining the proceedings of Joint Stock Companies within equitable limits; and then proceed to consider the scope and character of those forms of remedy which are peculiar to Courts of Equity, the technical difficulties which have stood in their way, and the recent enactments of the Legislature, intended to facilitate their future operation.

Proceedings in
equity.

SECT. I.—GENERAL PRINCIPLES OF THE INTERPOSITION OF COURTS OF EQUITY.

The controlling power of a Court of Equity, as exercised in support of its general equitable principles may, in the instance of Joint Stock Companies, be conveniently illustrated under two heads or subdivisions, which the Joint Stock Constitution itself serves to suggest. The great pecuniary resources commanded by this description of association, and the vast and arbitrary powers frequently

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entrusted to them by the Legislature, will, in the ordinary course of things, be continually requiring judicial interposition at the instance of the public, against the misuse of these powers: and on the other hand, the internal constitution of a Joint Stock Company, which assigns so extensive an executive and representative authority to the directing body, will also be likely to render a similar intervention of the Courts, desirable for the protection of the individual shareholders.

1. At instance
of third parties.

Accordingly, there are numerous cases to be found under the first of these heads, in the reports of decisions in Courts of Equity; among the more important of which, are those in which a company have been restrained from making use of their Parliamentary powers in defiance of, or inconsistently with arrangements made with third parties previous to the passing of the act, and but for which, the grant of those powers would have been opposed before Parliament. (a)

It is of course necessary in these cases that the negotiations between the company and the persons whose interests are to be effected by the powers given in the act, should have resulted in some complete and valid obligation on the part of the company: for if a person wishes to protect his property against the invasion or interference of these Parliamentary associations, he is under the necessity of making out his claims before Parliament, (and will be subject in all its strictness to any decision that Parliament may make,) unless the company have placed themselves under some private engagement with him to recognise his claims,

(a) *Edwards v. The Grand Junction Railway Company*, 1 Myl. & Cr. 650, and see *Stanley v. The Chester and Birkenhead Railway Company*, *ante*, 55. Lord

Petre v. Eastern Counties Railway Company, 1 Railway Cases, 462. *Doo v. Croydon Railway Company*, *ib.* 257.

or come to certain specified terms of compromise with him in consideration of his withdrawing his intended opposition. An instance of the necessity of this is furnished by the case (*a*) in which the trustees of a road having been applied to as usual by the projectors of the company for their assent to the measure, answered favourably, subject to the proviso that their road should not be lowered or otherwise prejudiced; and with this expression of their qualified assent, allowed the matter to rest. The projectors of the railway took no notice of the qualification, went to Parliament, and eventually obtained their act, which authorized them, among other things, to lower all such roads as that in question. It was determined by the Vice Chancellor, that there was nothing in the transaction between the trustees of the road and the projectors of the railway, to place the latter under any equitable obligation towards the former, or to relieve them from the ordinary necessity of appearing before Parliament in support of their pretensions. (*b*)

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interference.

Aldred *v.*
North Mullan
Railway
Company.

It is also proper to observe in this place, that although a Court of Equity will interfere to enforce the fulfilment of private arrangements of this description, by prohibiting in the particular instance the exercise of Parliamentary powers, there is no equity to prevent a company affected by such equitable liabilities from applying to Parliament to relieve them from the burthen of them, it being of course competent for Parliament to disregard equitable rights if it thinks proper. (*c*)

(*a*) Aldred *v.* The North Midland Railway Company, 1 Railway Cases, 404.

416, and Eton College *v.* The Great Western Railway Company, *ib.* 200.

(*b*) Similar decisions have been made in the cases of Hargrave *v.* The Lancaster and Preston Railway Company, 1 Railway Cases,

(*c*) Attorney General *v.* Manchester and Leeds Railway Company, 1 Railway Cases, 200.

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interference.

An instance of a somewhat different description of the interference of Courts of Equity to control the exercise of Parliamentary powers, occurred where a company (*a*) were restrained by injunction from putting in force their compulsory powers of taking land, in a particular instance, where they had failed to make out that the whole of the land proposed to be taken was to be applied to the purposes, which, upon a strict construction of the act, were held to have been contemplated by the Legislature. In some cases, (*b*) indeed, the authority of Courts of Equity to suspend the exercise of these Parliamentary powers, under inequitable circumstances, has been carried so far, as to make the decision turn upon the apparent inability of the company to bring their undertaking to a successful conclusion. (*c*)

2. At instance
of members.

Under the second class of instances of the interference of Courts of Equity in support of the general principles of their jurisdiction, relating to the control of the directing body of a company at the instance of their own constituents, may be mentioned the case of the Grand Collier Dock Company (*d*), in which the directors of a company were restrained by injunction from exercising their powers of declaring certain shares of the plaintiff forfeited for non-payment of calls, until they had taken proper measures for obtaining payment of previous calls on the shares of other members. And in the event of shares having been

(*a*) *Webb v. Manchester and Leeds Railway Company*, 4 Myl. & Cr. 116.

(*b*) *Agar v. The Regent's Canal Company*, 1 Swanst. 250, note. And see *Thicknesse v. Lancaster Canal Company*, 4 Mee. & W. 472.

(*c*) But this would probably be

considered, at the present time, as too direct a conflict with a legislative enactment. Mayor of King's Lynn *v. Pemberton*, 1 Swans. 244. *Salmon v. Randall*, 3 Myl. & Cr. 439.

(*d*) *Preston v. The Grand Collier Dock Company*, 2 Railway Cases, 335. S. C. 11 Sim., 327.

wrongfully ordered to be cancelled, a Court of Equity will, at the suit of the holder, order the cancellation to be set-aside. (a) Principles of interference.

In another case the power given to directors by the Deed of Settlement of withholding their approval of a person to whom a transfer of shares was proposed to be made by one of the shareholders, was restrained by injunction, on its being made to appear that the reason of the directors' refusal was, not any *bond fide* well founded objection to the assignee personally, but a hope of procuring, by means of this refusal, the payment of a debt due from the assignor to the company. (b) Pinkett v. Wright.

Again, it is a principle, that the powers of directors in their representative and executive capacity are restricted to the promotion of the particular undertaking for the purpose of which the association was formed, and they have no right to make any use of the funds or name of the company for any other object. Accordingly the directors of the Manchester Canal Company were restrained by injunction at the instance of one of the members, from taking measures for converting the canal into a railway. (c) Maudsley v. Manchester Canal Company. In the case indeed of the Grand Junction Waterworks, it was held by Lord Brougham, reversing the Vice Chancellor's decision, that there was no equity to restrain the directors from using the corporate seal and corporate funds in an application to Parliament for an act to enable the company to go to a very considerable expense in procuring their supply of water from a different source from that contemplated at the time of the

(a) *Stubbs v. Lister*, 1 Yo. & Coll. N. C. 81.

(b) *Pinkett v. Wright*, 2 Hare,

(c) *Maudsley v. Manchester Canal Company*, C. P. Cooper's

Rep. 501.

Principles of interference.

formation of the company. (a) Now, it is obvious, that this question of the right of the directors to assume to act, under such circumstances, as the representatives of the company, involves precisely the same principle as another question, which often arises, of the extent of the power of the majority in a company to bind the minority. This latter question has been discussed in several recent cases, (b) and the result would certainly appear to be a restriction of the power of the majority (or directors, as the case may be) considerably within the limits assigned to it by Lord Brougham. It will appear then, as the result of the cases, that where persons have associated together for the prosecution of a definite undertaking, and have given a general authority or power of decision to a certain majority or proportion of themselves, or to a select body of directors; the authority thus conferred is to be considered (in the absence of express declaration to the contrary) to be confined to such acts of management or control as are consistent with the continuance and integrity of the association; and that any measure or proposition calculated to annihilate the association, or materially to change the purposes for which it was originally constituted, (and upon the faith of which, of course, the shareholders were originally induced to join it) in order to be binding upon all, must receive the assent of all, and not merely of the majority: and if the directors of a company are proceeding to carry any such project into execution

(a) *Ware v. Grand Junction Waterworks Company*, 2 Russ. & M. 470. *Sed quare.*

(b) *Adley v. The Whitstable Company*, 17 Ves. 315. *Chappell v. Cadell*, Jac. 537. *Preston v.*

Grand Collier Dock Company, 2 Railway Cases, 335. *Foss v. Harbottle*, 2 Hare, 493. *Ward v. The Society of Attorneys*, 1 Coll. N. C. 370.

without the unanimous consent of the shareholders first obtained, a Court of Equity will interpose by injunction at the instance even of a single dissident.

Proceedings in equity.

A Court of Equity will also, in assertion of its ordinary principles of jurisdiction, interfere in order to maintain that fiduciary relation which is considered to subsist between the directors and shareholders in a company; not allowing any course of management on the part of the former, whereby any private profit can be derived to one of themselves from the mercantile operations of the company. Thus it has disallowed the appointment, on the part of the directors of a Navigation Company, of one of themselves to be ship's husband of one of the company's vessels; the rule being strictly enforced, that the fiduciary position of a director disentitles him to derive any personal profit out of the management of its affairs, or to acquire any right or interest calculated to conflict with his duties to the company. (a)

Benson v. Heathorn.

SECT. II.—FORMS OF EQUITABLE REMEDIES.

1. *Injunction.*

The circumstances under which this remedy may be properly had recourse to, seem to be incapable of any complete enumeration, but various instances of its application have been afforded in the preceding part of this Chapter. It may, however, be observed, that, whenever either the legal right of one party to do a certain act is disputed, and the performance of the act, in the mean time, would be productive of irreparable injury to the other party, the latter may, by means of injunction, arrest the performance of the act in question until the

Injunction.

(a) Benson v. Heathorn, 1 Yo. & Coll. N. C. 326.

Forms of
remedy—
Injunction.

right has been established at law. And again, if the strict legal right of one party to do a certain act cannot be disputed, but there are circumstances in the case which render it inequitable to assert that right, the party threatened with the injury may obtain from a Court of Equity by means of injunction, not merely a temporary, but a permanent protection against the act in question.

2. Account.

Account.

Account is one of the most ordinary heads of equity jurisdiction, and is founded on the greater facility afforded by the procedure in equity than by that at law for making a comprehensive and final settlement of the various claims and counter-claims of the different parties interested. But to the practical application of this equitable proceeding to the case of a Joint Stock Company, either in respect of transactions between the company, or the directors as its representatives, and third parties; or between the members of the company themselves; a very material impediment was for a long time opposed, by a supposed rule of practice, that relief would not be given on a bill for account, unless, besides praying an account, it went on to pray a dissolution. The rule thus stated was laid down broadly by Lord Eldon, (a) by Sir L. Shadwell, (b) and by Baron Alderson, (c) while, on the other hand, conflicting decisions had been made by Lord Eldon, (d) and by Sir J. Leach. (e) At last, in the year 1840, the question arose before Lord Cottenham, in the case of the Imperial Bank

(a) *Forman v. Humfray*, 2 Ves. & B. 329. *Waters v. Taylor*, 15 Ves. 10, and see *Marshall v. Coleman*, 2 Jac. & W. 266.

(b) *Loscombe v. Russell*, 4 Sim. 8.

(c) *Knebell v. White*, 2 Yo. &

Coll. 15.

(d) *Knowles v. Houghton*, 11 Ves. 168.

(e) *Harrison v. Armytage*, 4 Mod. 143. *Richards v. Davies*, 2 Russ. & M. 347.

of England,^(a) in which a bill was filed by some of the shareholders in the company in the name of themselves and all the others, except the defendants, against the directors, trustees, and public officer, and certain shareholders who had not paid their calls, praying for an account of the assets of the company, including the unpaid calls, and of the debts, and that the assets might be realised and applied as far as they would go towards payment of the debts, but not praying a general account *inter se*, nor a dissolution. To this bill a demurrer was put in for want of equity, and attempted to be supported on the ground, that it was contrary to the practice of the Court to grant relief by way of account between partners, except in cases where a dissolution was to ensue. The Vice Chancellor allowed the demurrer on this ground: but his decision was reversed by the Chancellor after a review of all the authorities. And it would almost seem to have been the opinion of that learned Judge, in conformity with that of Sir J. Leach, that even a more general account of the partnership transactions than that prayed for would be granted without any view to a dissolution; at all events it may now be considered as definitively settled that no such general rule of practice as that above stated continues to exist. (b)

The existing practice, however, in Chancery, throws many impediments in the way of taking the account of Joint Stock Companies; one of the principal of which will be adverted to when we come to the subject of pleading in equity.

(a) *Walworth v. Holt*, 4 Myl. & Cr. 619.

(b) See the remarks of V. C. Wigram, in *Fairthorne v. Weston*, 3 Hare, 387, and the cases

Forms of
remedy—
Account.

*Walworth v.
Holt.*

there cited. In the principal case, the bill prayed for a receiver, upon which point compare *Smith v. Jeyes*, 4 Beav. 309.

3. *Dissolution.*

Forms of
remedy—
Dissolution.

The dissolution of partnerships is another remedial proceeding peculiar to Courts of Equity, and the nature of the case required to be made out in the instance of a Joint Stock Company is the same as in that of an ordinary partnership. The Court requires to be satisfied that the further prosecution of the common undertaking has become, for some reason or other, either altogether impracticable, or else at least injurious to the common interest. But the facts from which such a conclusion would be properly drawn in the instance of an ordinary partnership, will not necessarily support that conclusion in the case of a Joint Stock Company: for instance, a certain amount of misconduct on the part of a single member of a partnership, will often be a sufficient reason for the dissolution of the entire association, inasmuch as in a partnership each partner is the authorized agent and representative of the whole body. This, however, is not the case in a Joint Stock Company, and consequently the misconduct of an individual is not, under ordinary circumstances, calculated to produce so injurious an effect, and will not, therefore, require the extreme remedy of dissolution; but, on the other hand, if a director of a Joint Stock Company, whose conduct is becoming ruinous to the general body, is by the connivance of a particular party, or by other circumstances, so secured in his position of director, that his removal by the means provided by the internal organisation of the company has become impracticable, it is not difficult to imagine a case might be made strong enough to induce a Court of Equity to decree a dissolution at the instance of individual shareholders.

A Court of Equity is sometimes called upon in cases of ordinary partnerships, not so much to decree a dissolution

prospectively, as to declare that a dissolution has already taken place, in consequence of certain circumstances which have previously occurred: for example, the death, or bankruptcy of a member, or a transfer of his share to a stranger; circumstances such as these obviously do not produce the same effect in a Joint Stock Company, the introduction of a stranger into the association not being open to the same objection.

Forms of
remedy—
Dissolution.

A question may arise, how far the authority of a Court of Equity to decree a dissolution of Joint Stock Companies, is limited by a charter, or act of incorporation, or other similar authoritative declaration of their legal perpetuity. It may be presumed, at all events, that the limited form of incorporation, derived from Letters Patent, under 1 Vict. c. 73, or registration under the 7 & 8 Vict. c. 110, would not be held to oppose any obstacle to the exercise of the ordinary powers of Courts of Equity: the effect of those two measures being, not so much to call a certain association into legal existence, for the purpose of carrying out a particular undertaking, as to invest a body already subsisting with a certain mode of operation, so long as its operations may continue. The perfect form of incorporation, on the other hand, given by Royal Charter or act of Parliament, involves a character of perpetuity, to destroy which, would appear to amount to overruling the Royal Prerogative, or to repealing an act of Parliament. But, though it might not be competent for a Court of Equity to dissolve one of these incorporated companies, there does not appear to be any want, in the existing state of the law, of means of effectually controlling them. For if it is the misconduct of particular individuals in the corporation that is leading to a state of things, for which, under other circumstances, dissolution would be the appropriate remedy, an injunction might be obtained against the

**Forms of
remedy—
Dissolution.**

operations of those individuals; or, if it is the corporate fund that is becoming insolvent, recourse may be had to the provisions of the 7 & 8 Vict. c. 111, and thus the dissolution of the company be ultimately obtained from the competent authorities. (a)

4. *Contribution.*

Contribution.

Contribution is merely a particular form of account, available only among the members of the association themselves. Its application however, to Joint Stock Companies, where the number of members is usually very large, has been hitherto impeded by the rules of Equity pleading, (b) which require all the persons materially interested, to be made actual parties on the record; the results of which are constant abatement of the suit, and delay of the proceedings, to such an extent, as to amount in practice to a denial of justice. With a view of obviating this inconvenience, the Lord Chancellor has been empowered (c) to make rules and orders concerning the forms and modes of proceeding in Chancery, for settling and enforcing the contribution to be paid by any present or late members, or their representatives. (d)

SECT. III.—PLEADING.

Some account having now been given of the character and scope of those forms of remedy which are peculiar to Courts of Equity, it remains to consider certain technical difficulties in the way of the practical application of those remedies.

These difficulties may all be traced to the rule of Equity

(a) See last Chapter, p. 420.

App. 208.

(b) See *infra*, Sect. III.

(d) No orders have yet been

(c) 7 & 8 Vict. c. 111, s. 22,

issued under this act.

Pleading—
Parties.

pleading, which requires (subject to a very narrow exception) that all the persons materially interested in the suit, should be made actual parties on the record; and that this separate representation of all these individual interests, should be maintained to the conclusion of the suit, through all the changes and transmissions to which they may be liable in the interim: changes which are so frequent in the numerous body of which a Joint Stock Company generally consists, and which involve so great a loss of time in proceedings by way of Supplement and Revivor, that the prosecution of the suit to a conclusion becomes often impracticable. Now, supposing the actual length of the proceedings not to be capable of reduction, without unduly prejudicing the interests of the parties, only one remedy for the inconvenience remains, *viz.*, the reduction of the number of actual parties on the record; and this reduction can only be justly effected by making use of some one or more to represent others. This principle of representation has accordingly been sanctioned by a rule of practice which, where the numbers are very great, (a) allows one or more members of the complainant or defendant body to represent the others on the record. But this practice must obviously, with reference to the principle on which it is founded, be limited to cases in which the interest of those whose names appear on the record, and of those whom they assume to represent are, so far as the relief prayed is concerned, perfectly identical and co-extensive. In the words of Lord Langdale, M. R. (b) “The cases in which suits have been permitted to be instituted by a few persons on behalf of themselves and a numerous body of other persons, have been cases in which

Evans v.
Stokes.

(a) In *Harrison v. Stewardson*, body consisting of only twenty persons, 2 Hare, 530.
V C. Wigram held that this frame of suit was not open to a

(b) *Evans v. Stokes*, 1 Kepp, 24.

Pleading—
Parties.

there was plainly a community of interest between the plaintiffs and those whom they represented." Accordingly, in a case (a) where a Joint Stock Company was entitled to the benefit of an agreement for a lease which had been entered into between the owner of the land and one of the shareholders in the company, it was held that the company might well be represented by four of the directors suing on behalf of themselves and all the other shareholders, against the owner of the land; and further, that there was no objection to the shareholder who acted as agent (but who had set up a claim of his own,) being made a co-defendant; although he was at the same time virtually a party complainant; for he appeared in the transaction in two distinct characters, with separate interests. So when a company sought to be relieved against a fraud in which its former directors had been implicated, it was held that the suit might well be framed by the present directors on behalf of themselves and all other the members of the company against their former directors. (b) So the trustees of a dissolved banking company are entitled to file a bill in their own names on behalf of themselves and all the other members to recover a debt due to the company. (c) Again, a bill has been allowed by some of the shareholders on behalf of themselves and all the other shareholders, except the defendants, against the directors, trustees, and public officer, and also certain of the shareholders who had not paid certain calls, praying for an account of the property of the company, including the amount of the unpaid calls, and that the same might be got in and realised, and applied in payment of the debts

Wallworth v.
Holt.

(a) Taylor v. Salmon, 4 Myl. & Coll. N. C. 326.
& Cr. 134, 142.

(c) Gordon v. Pym, 3 Hare,

(b) Benson v. Heathorn, 1 Yo. 223.

of the company. (a) In the case of the Grand Collier Dock Company, (b) a similar bill was allowed to be filed by one shareholder on behalf of himself and all the others, except the defendants, against certain shareholders who had been the actors in a transaction which was sought to be set aside: and again, in a case where one of the directors had with money of the company procured an assignment to himself of certain debts of the company, (c) a suit by the other directors on behalf of themselves and all the other shareholders, except the defendant, was held to be rightly framed for the purpose of having the defendant declared a trustee for the company of the debts in question.

Pleading—
Parties.—

Miller v.
Walker.

In all these cases there was held to be the necessary community of interest, in the relief prayed by the bill, between the actual plaintiffs and those on whose behalf they sued, to ensure a complete and effectual representation of the rights of all; but in other cases, from want of sufficient attention to the principle of the rule, the attempt on the part of the plaintiff to avail himself of this form of suit has miscarried. Thus in *Evans v. Stokes*, the object was to have the accounts of the company taken, and the rights of the partners settled *inter se*, on a bill filed by some of the partners on behalf of themselves and the rest, though it appeared that some of the partners thus attempted to be represented had paid their calls, and others had not; and it was consequently held that there was not the necessary community of interest. (d) So where a bill thus framed prayed a dissolution of the company, it was decided that

Evans v.
Stokes.

(a) *Wallworth v. Holt*, 4 Myl. & Cr. 619.

(b) 11 Sim. 327.

(c) *Miller v. Walker*, 9 Tur. 197. *Quere*, the propriety in the case of *Wallworth v. Holt*, of excepting the defendants from the

number of those on whose behalf the bill was filed; compare *Taylor v. Salmon*, 4 Myl. & Cr. 142.

(d) 1 Keen, 24, 32. And see *Richardson v. Larpent*, 2 Yo. & Coll. N. C. 507; *Richardson v. Story*, 8 Jur. 72, 209.

Placing—
Parties.

the relief prayed, and especially the accounts which must have preceded it, were not matters in which the plaintiff and the various other shareholders he assumed to represent, had such an interest in common as admitted of a bill in that shape, (a) and in the case above quoted, of *Wallworth v. Holt*, it will be observed, that the bill prayed no account *inter se*, nor a dissolution.

The practical difficulty attendant upon a rule which should require all the shareholders of a numerous company to be made actual parties, is avoided in the case of companies entitled to sue and be sued, either in the corporate or quasi-corporate name, (b) or in the name of their public officer; (c) but the facility thus afforded is not even of so extensive application as that we have just been considering. By means of the latter, it is possible to represent on the record not merely the company as a whole, but also a separate portion of its members, having an interest in common, while the privilege now under consideration is available only, when the aggregate association is to be represented: in other words, in cases where the litigation is between the company, as a company, and a stranger (or, indeed, a partner, provided he is acting in the particular transaction, not in his capacity of partner, but as a stranger to the association,) no provision being made (if we except the 7 & 8 Vict. c. 111, s. 22, *supra*.) for facilitating proceedings between partners themselves. An instance of a suit instituted by a company in the name of their public officer against members jointly with strangers, will be found in *Manners v. Rowley*; (d) and in *Pendlebury v. Walker*, (e)

(a) *Lang v. Yonge*, 2 Sim. 369;
Deeks v. Stanhops, 3 Jur. 349.

(b) *Supra*.

(c) *Supra*.

(d) 10 Sim. 470.

(e) 4 Yo. & Coll. 424. Upon the principle running through these cases of the distinction between an association aggregate, and the individuals who compose it, see



Pleadings*
Partes.

the converse case of a stranger suing a company in the name of its public officer, and joining an individual shareholder as co-defendant, on the ground of an interest he had acquired in the subject matter of the suit, in a capacity foreign and additional to that of his mere membership. In a suit between the shareholders themselves, the public officer is not a proper party; (a) nor does he, of course, sufficiently represent the individual members to enable the Court to dispense with their actual presence on the record, if the object of the suit is to procure a dissolution, or to have an account and settlement of their conflicting claims. (b)

It seems that when a company are empowered to sue and be sued in the name of their public officer, (c) or in their name of registration, under the 7 & 8 Vict. c. 110, that is the only proper mode of appearance on the record; just as a corporation proper necessarily sues and is sued in its corporate name: and, consequently, in these cases the frame of suit by one shareholder on behalf of himself and others would appear to be improper: but supposing an association of either of these descriptions to be placed under circumstances which render the intervention of a Court of Equity essential to its well being, but which, at the same time, deprive those members who may be desirous of resorting to the Court of Equity of the facility of using the proper and legal name of the corporation, or of the public officer for that purpose, there is no doubt that the strict rule would be relaxed, and the members allowed to

the observations of Lord Langdale, M. R. in *The Society of Practical Science v. Abbott*, 2 Beav. 559.

58.

(b) *Abraham v. Hannay*, 13 Law J. (N. S.) Chanc. 12.

(c) *Pendlebury v. Walker*, 4 Yo. & Coll. 424.

(a) *Seddon v. Connell*, 10 Sim.

fall back on the frame of suit by some on behalf of themselves and the others. (a)

It appears, then, that whatever be the constitution of the company, if the object sought is a general account and settlement of the claims and counterclaims of the various shareholders *inter se*, the technical rule requiring all persons materially interested to be made actual parties on the record, still continues, whenever their members are considerable, to oppose an insuperable difficulty in the way of obtaining remedy in Courts of Equity: nor does the provision of the late act, (b) empowering the Chancellor to make alterations in the forms and modes of proceeding in Chancery with the view of facilitating the operation of the equitable remedies, appear to bring the prospect of amelioration much nearer, unless an experiment is to be made of a change in the entire system of pleading and practice in equity in cases of Joint Stock Companies; for the forms of the existing procedure, whatever may be their merit in securing a due and deliberate administration of justice where the parties are few, must ever unavoidably operate as an impediment to the administration of justice at all, where the parties are numerous.

(a) *Foss v. Harbottle*, 2 Hare, 461.

(b) 7 & 8 Vict. c. 111, s. 22. *

APPENDIX.—STATUTES.

6 GEO. I. CHAP. 18.

An Act for better securing certain Powers and Privileges intended to be granted by his Majesty by two Charters for Assurance of Ships and Merchandizes at Sea, and for Lending Money upon Bottomry; and for restraining several extravagant and unwarrantable Practices therein mentioned. [1719.]

The Bubble
Act.

XVIII. ‘ And whereas it is notorious that several undertakings or projects of different kinds have, at some time or times since the four and twentieth day of June, one thousand seven hundred and eighteen, been publicly contrived and practised, or attempted to be practised, within the city of London and other parts of this kingdom, as also in Ireland, and other his Majesty’s dominions, which manifestly tend to the common grievance, prejudice and inconvenience of great numbers of your Majesty’s subjects in their trade or commerce, and other their affairs; and the persons who contrive or attempt such dangerous and mischievous undertakings or projects, under false pretences of public good, do presume, according to their own devices and schemes, to open books for public subscriptions, and draw in many unwary persons to subscribe therein towards raising great sums of money, whereupon the subscribers or claimants under them do pay small proportions thereof, and such proportions in the whole do amount to very large sums; which dangerous and mischievous undertakings or projects do relate to several fisheries, and other affairs, wherein the trade, commerce, and welfare of your Majesty’s subjects, or great numbers of them, are concerned or interested: And whereas in many cases the said undertakers or subscribers have, since the said four and twentieth day of June one thousand seven hundred and eighteen, presumed to act as if they were corporate bodies, and have pretended to make their shares in stocks transferrable or assignable, without any legal authority, either by act of Parliament, or by any charter from the crown for so doing; and in some cases the undertakers or subscribers, since the said four and twentieth day of June, one thousand seven hundred and eighteen, have acted or pretended to act under some charter or charters formerly granted by the crown for some particular or special purposes therein expressed, but have used or endeavoured to use the same charters for raising joint stocks, and for making

The Bubble Act.

After 24th June, 1720, all undertakings tending to the prejudice of trade,

and all subscriptions, &c., thereto,

or presuming to act as corporate bodies without legal authority,

and all acting under obsolete charters, &c.,

shall be deemed illegal and void.

' transfers or assignments, or pretended transfers or assignments for their own private lucre, which were never intended or designed by the same charters respectively; and in some cases the undertakers or subscribers, since the said four and twentieth day of June, one thousand seven hundred and eighteen, have acted under some obsolete charter or charters, although the same became void or voidable by nonuser or abuser, or for want of making lawful elections, which were necessary for the continuance thereof; and many other unwarrantable practices (too many to enumerate) have been, and daily are and may hereafter be contrived, set on foot, or proceeded upon, to the ruin and destruction of many of your Majesty's good subjects, if a timely remedy be not provided: And whereas it is become absolutely necessary, that all public undertakings and attempts, tending to the common grievance, prejudice and inconvenience of your Majesty's subjects in general, or great numbers of them, in their trade, commerce, or other lawful affairs, be effectually suppressed and restrained for the future, by suitable and adequate punishments for that purpose to be ascertained and established.' Now for suppressing such mischievous and dangerous undertakings and attempts, and preventing the like for the future, may it please your most excellent Majesty, at the humble suit of the said lords spiritual and temporal, and commons, in this present Parliament assembled, that it may be enacted; and be it enacted by authority of this present Parliament, that from and after the four and twentieth day of June, one thousand seven hundred and twenty, all and every the undertakings and attempts described, as aforesaid, and all other public undertakings and attempts, tending to the common grievance, prejudice and inconvenience of his Majesty's subjects, or great numbers of them, in their trade, commerce, or other lawful affairs, and all public subscriptions, receipts, payments, assignments, transfers, pretended assignments and transfers, and all other matters and things whatsoever, for furthering, countenancing or proceeding in any such undertaking or attempt, and more particularly the acting or presuming to act as a corporate body or bodies, the raising or pretending to raise transferrable stock or stocks, the transferring or pretending to transfer or assign any share or shares in such stock or stocks, without legal authority, either by act of Parliament, or by any charter from the crown, to warrant such acting as a body corporate, or to raise such transferrable stock or stocks, or to transfer shares therein, and all acting or pretending to act under any charter, formerly granted from the crown, for particular or special purposes therein expressed, by persons who do or shall use or endeavour to use the same charters, for raising a capital stock, or for making transfers or assignments, or pretended transfers or assignments of such stock, not intended or designed by such charter to be raised or transferred, and all acting or pretending to act under any obsolete charter become void or voidable by nonuser or abuser, or for want of making lawful elections, which were necessary to continue the corporation thereby intended, shall (as to all or any such acts, matters and things, as shall be acted, done, attempted, endeavoured or proceeded upon, after the said four and twentieth day of June, one thousand seven hundred and twenty) for ever be deemed to be illegal and void, and shall not be practised or in any wise put in execution.

XIX. And be it further enacted by the authority aforesaid, that from and after the said four and twentieth day of June one thousand seven hundred and twenty, all such unlawful undertakings and attempts, so tending to the common grievance, prejudice and inconvenience of his Majesty's subjects, or a great number of them, in their trade, commerce, or other lawful affairs, and the making or taking of any subscriptions for that purpose, the receiving or paying of any money upon such subscriptions, the making or accepting of any assignment or transfer, or pretended assignment or transfer, of any share or shares upon any such subscription, and all and every other matter and thing whatsoever, for furthering, countenancing, or proceeding in any such unlawful undertaking or attempt, and more particularly the presuming or pretending to act as a corporate body, or to raise a transferrable stock or stocks, or to make transfers or assignments of any share or shares therein, without such legal authority, as aforesaid, and all acting or pretending to act under any charter formerly granted from the crown for any particular or special purposes therein expressed, by persons making or endeavouring to make use of such charter for any such other purpose not thereby intended, and all acting or pretending to act under any such obsolete charter as is before described, and every of them (as to all or any such acts, matters or things, as shall be so acted, done, attempted, endeavoured or proceeded upon, after the said four and twentieth day of June, one thousand seven hundred and twenty) shall be deemed to be a public nuisance and nuisances, and the same, and all causes, matters and things relating thereto, and every of them, shall for ever hereafter be examined, heard, tried, and determined as common nuisances are to be examined, heard, tried and determined by or according to the laws of this realm; and all offenders therein, being thereof lawfully convicted upon information or indictment, in any of his Majesty's courts of record at Westminster, or in Edinburgh, or in Dublin, shall be liable to such fines, penalties and punishments, whereunto persons convicted for common and public nuisances are, by any of the laws and statutes of this realm, subject and liable; and moreover shall incur and sustain any further pains, penalties and forfeitures, as were ordained and provided by the statute of provision and præmunire made in the sixteenth year of the reign of King Richard the Second.

The Bubble Act.

All such undertakings deemed public nuisances,

and shall incur a præmunire, 16 R. 2, c. 5.

XX. And be it further enacted by the authority aforesaid, that if any merchant or trader, at any time after the said four and twentieth day of June, one thousand seven hundred and twenty, shall suffer any particular damage in his, her, or their trade, commerce, or other lawful affairs, by occasion or means of any undertaking or attempt, matter or thing, by this act declared to be unlawful as aforesaid, and will sue to be relieved therein, then and in every such case, such merchant or trader shall and may have his and their remedy for the same by an action or actions to be grounded upon this statute, against the persons, societies or partnerships, or any of them, who contrary to this act shall be engaged or interested in any such unlawful undertaking or attempt; and every such action and actions shall be heard and determined in any of his Majesty's courts of record aforesaid, wherein no essoin, protection, wager of law, or more than one

How merchants or traders may have their remedy against the undertakers.

The Bubble Act.

imprudence shall be granted or allowed; and in every such action the plaintiff shall or may recover treble damages with full costs of suit.

Penalty on brokers buying or selling any shares in such undertakings.

XXI. And it is hereby further enacted by the authority aforesaid, that if any broker or person acting as a broker for himself, or in behalf of any others, at any time or times after the said four and twentieth day of June, one thousand seven hundred and twenty, shall bargain, sell, buy, or purchase or contract, or agree for the bargaining, selling, buying, or purchasing of any share or interest in any of the undertakings by this act declared to be unlawful, or in any stock or pretended stock of such undertakers, that then and in every such case, every such broker or person acting as such, shall not only be disabled and rendered incapable to be or act as a broker for the future, but shall also forfeit and lose the sum of five hundred pounds, to be recovered, to wit, one moiety thereof to the use of the king's Majesty, his heirs, and successors, and the other moiety thereof to the use of any person or persons who will inform or sue for the same in any of his Majesty's said courts of record, as aforesaid, with full costs of suit.

Not to extend to undertakings settled before 24th June, 1718.

XXII. Provided always, and be it enacted by the authority aforesaid, that this act, or anything therein contained, shall not extend to any undertakings, or other matters or things settled, established or practised in point of time before the said four and twentieth day of June, one thousand seven hundred and eighteen, but that the same, and every of them, shall be of such or the like force, effect or validity, and no other, as they respectively would be of, in case this act had never been made; anything herein contained to the contrary notwithstanding.

Not to prejudice the two corporations hereby erected.

XXIII. Provided also, and it is hereby further intended, declared and enacted by the authority aforesaid, that any of the clauses, matters or things in this act contained, shall not extend, or be construed to hinder his Majesty from erecting or establishing the two corporations (a) intended by this act to be erected and established, as is above mentioned, or either of them, or to prejudice those two corporations, or either of them, (when erected) in the exercise or enjoying of the powers, privileges, benefits, or advantages intended to be granted to them respectively, by such respective charters or indentures as are above mentioned in that behalf, subject nevertheless to such powers of redemption or revocation as are above in this act prescribed for that purpose; anything in this act contained to the contrary notwithstanding.

Not to restrain the carrying on of any home or foreign trade in partnership.

XXV. Provided always, that nothing in this act shall extend, or be construed to extend to prohibit or restrain the carrying on of any home or foreign trade in partnership, in such manner as hath been hitherto usually, and may be legally, done, according to the laws of this realm now in force, excepting only as to the insuring of ships and goods or merchandizes at sea, or going to sea, and lending money

(a) The "Royal Exchange Assurance," and the "London Assurance" Companies, see the first seventeen sections of this act, and the 5 Geo. 4, c. 114, s. 2, *post*, 6.

upon bottomry; anything in this act to the contrary in anywise notwithstanding

The Bubble Act.

XXVII. Provided always, and be it further enacted by the authority aforesaid, that nothing in this act contained shall extend, or be construed to extend to any corporation formerly created for the carrying on a trade, which they have publicly continued to exercise from the time of their establishment.

Not to extend to corporations formerly created.

5 GEO. IV. CHAP. 114.

An Act to repeal so much of an Act of the sixth year of King George the First, as restrains any other corporations than those in the Act named, and any Societies or Partnerships, from effecting Marine Assurances, and lending Money on Bottomry. [24th June, 1824.]

WHEREAS an Act was passed in the sixth year of the reign of his Majesty King George the First, intituled "An Act for better securing certain Powers and Privileges, to be granted by his Majesty by two Charters, for Assurance of Ships and Merchandize at Sea and going to Sea, and for lending Money upon Bottomry; and for restraining several extravagant and unwarrantable Practices therein mentioned;" whereby his Majesty was empowered to incorporate, by two several charters, under the great seal of Great Britain, two several and distinct companies for assurance of ships, goods, and merchandize at sea, or going to sea, and for lending money upon bottomry, by such names as his Majesty should think proper; subject nevertheless to redemption and revocation in the manner therein expressed: And it was further enacted, that from and after the granting or making of the said respective charters for erecting the said two corporations, and passing the same under the great seal, for and during the continuance of the same corporations respectively, or either of them, all other corporations or bodies politic before erected or established, or thereafter to be erected or established, and all such societies or partnerships as then were or thereafter should or might be entered into by any person or persons, for assuring ships or merchandize at sea, or for any money upon bottomry, should, by force and virtue of the said recited act, be restrained from granting, signing, or underwriting any policy or policies of assurance of or upon any ship or ships, goods or merchandizes, at sea or going to sea, and from lending any monies by way of bottomry; and if any corporation or body politic, or persons acting in such society or partnership, other than the two corporations intended to be established by the said recited act, should presume to grant, sign, or underwrite, after the twenty-fourth day of June, one thousand seven hundred and twenty, any such policy or policies, or make any such contract or contracts for assurance of or upon any such ship or ships, goods or merchandizes, at sea or going to sea, or take or agree to take any premium or other reward for such policies, every such policy and policies of assurance of or upon any such ship or ships, goods or merchandizes, should be *ipso facto* void: and every sum and sums so signed or underwritten in such policy or policies, should be forfeited and recovered in manner expressed in the said recited act: and it was further enacted, that if any corporation or

Repeal of Bubble Act, 6 G. 1, c. 18, so far as affects Insurance Corporations.

Repeal of
Bubble Act,
so far as affects
Insurance
Corporations.

body politic, or persons acting in such society or partnership as aforesaid, other than the two corporations intended to be established by the said recited act, or one of them, should presume to lend, or agree to lend or advance, by themselves, or any others on their behalf, after the said twenty-fourth day of June, one thousand seven hundred and twenty, any money by way of bottomry as aforesaid, contrary to the said act, the bond or other security for the time should be *ipso facto* void, and such agreement should be adjudged to be an usurious contract, and the offender therein should suffer as in cases of usury: And whereas, pursuant to the said act, his Majesty, by one charter, bearing date the twenty-second day of June, one thousand seven hundred and twenty, created and established one corporation or body politic, called The Royal Exchange Assurance; and by another charter, bearing the same date, his Majesty created and established another corporation or body politic, called The London Assurance: And whereas it is expedient that so much of the said act, as restrains corporations or bodies politic, societies or partnerships, and persons acting in society or partnership, from insuring ships and goods and merchandizes at sea, and from lending money by way of bottomry, should be repealed: May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present Parliament assembled, and by the authority of the same, that from and after the passing of this act, so much of the said recited act as restrains any corporation or body politic, society or partnership, or persons acting in any society or partnership, from granting, signing, and underwriting any policy or policies of assurance, or making any contract for assurance, of or upon any ship or ships, or goods or merchandize, at sea or going to sea, or from lending money by way of bottomry, or as makes any such contract void, or declares that the same shall be adjudged usurious, or as imposes any forfeiture or penalty in respect of any such policy of assurance or contract, shall be and the same is hereby repealed.

So much of
act as restrain
Corporations
from under-
writing, re-
pealed.

Not to affect
rights of Royal
Exchange As-
surance Com-
pany, except
as to the
restriction
repealed.

II. Provided always, and be it enacted, that nothing in this act contained shall extend or be construed to extend to affect the rights and privileges of the said corporations of the Royal Exchange Assurance, and London Assurance, otherwise than by making it lawful for other corporations and bodies politic, and persons acting in society or partnership, to grant and make such policies of assurance and contracts of bottomry as hereinbefore mentioned.

6 GEO. IV. CHAP. 91.

An Act to repeal so much of an Act passed in the sixth year of his late Majesty King George the First, as relates to the restraining of several extravagant and unwarrantable Practices in the said Act mentioned; and for conferring additional Powers upon his Majesty, with respect to the granting of Charters of Incorporation to trading and other Companies.
[5th July, 1825.]

WHEREAS by an Act passed in the sixth year of the reign of his late Majesty King George the First, intituled, "An Act for better securing

certain Powers and Privileges intended to be granted by his Majesty, by two charters, for Assurance of Ships and Merchandizes at Sea, and for lending Money upon Bottomry, and for restraining several extravagant and unwarrantable Practices therein mentioned," it was enacted, that after the twenty-fourth day of June, one thousand seven hundred and twenty, all and every the undertakings and attempts in the said act described, and all other public undertakings and attempts, tending to the common grievance, prejudice, and inconvenience of his Majesty's subjects, or great numbers of them, in their trade, commerce, and other lawful affairs: and all public subscriptions, receipts, payments, assignments, transfers, pretended assignments and transfers, and all other matters and things whatsoever, for furthering, countenancing, or proceeding in any such undertaking or attempt; and more particularly the acting or presuming to act as a corporate body or bodies; the raising or pretending to raise transferrable stock or stocks: the transferring or pretending to transfer or assign any share or shares in such stock or stocks, without leave or authority, either by act of Parliament or by any charter from the crown, to warrant such acting as a body corporate, or to raise such transferrable stock or stocks, or to transfer shares therein; and all acting or pretending to act under any charter formerly granted from the crown, for particular or special purposes therein expressed, by persons who should use or endeavour to use the same charters for raising a capital stock, or for making transfers or assignments, or pretended transfer or assignment of such stock, not intended or designed by such charter to be raised or transferred; and all acting or pretending to act under any obsolete charter become void or voidable by non-user or abuser, or for want of making lawful elections, which were necessary to continue the corporation thereby intended, should (as to all or any such acts, matters and things as should be acted, done, attempted, endeavoured, or proceeded upon, after the said four-and-twentieth day of June, one thousand seven hundred and twenty) for ever be deemed to be illegal and void, and should not be practised or in anywise put into execution: And it was further enacted, that from and after the said four-and-twentieth day of June, one thousand seven hundred and twenty, all such unlawful undertakings and attempts so tending to the common grievance, prejudice, and inconvenience of his Majesty's subjects, or a great number of them, in their trade, commerce, or other lawful affairs, and the making or taking of any subscriptions for that purpose; the receiving or paying of any money upon such subscriptions: the making or accepting of any assignment or transfer, or pretended assignment or transfer, of any share or shares upon any such subscription, and all and every other matter and thing whatsoever for furthering, countenancing, or proceeding in any such unlawful undertaking or attempt; and more particularly the presuming or pretending to act as a corporate body, or to raise a transferrable stock or stocks, or to make transfers or assignments of any share or shares therein, without legal authority as aforesaid: and all acting or pretending to act under any charter formerly granted from the crown, for any particular or special purposes therein expressed, by persons making or endeavouring to make use of such charter for any such other purpose not thereby intended; and all acting or pretending to act under any such obsolete charter as was therein before described, and every one of them (as to all or any such acts, matters, or things

Repeal of the
Bubble Act.

as should be so acted, done, attempted, endeavoured, or proceeded upon, after the said four-and-twentieth day of June, one thousand seven hundred and twenty) should be deemed to be a public nuisance and nuisances; and the same, and all causes, matters and things relating thereto, and every of them, should for ever thereafter be examined, heard, tried, and determined as common nuisances were to be examined, heard, tried, and determined by or according to the laws of this realm: and all offenders therein, being thereof lawfully convicted upon information or indictment in any of his Majesty's courts of record at Westminster, or in Edinburgh, or in Dublin, should be liable to such fines, penalties, and punishments whereunto persons convicted for common and public nuisances were by any of the laws and statutes of this realm subject and liable, and moreover should incur and sustain any further pains, penalties, and forfeitures, as were ordained and provided by the statute of provision and præmunire made in the sixteenth year of the reign of King Richard the Second: And it was further enacted, that if any merchant or trader, at any time after the said four-and-twentieth day of June one thousand seven hundred and twenty, should suffer any particular damage in his, her, or their trade, commerce, or other lawful affairs, by occasion or means of any undertaking, or attempt, matter, or thing, by that act declared to be unlawful as aforesaid, and would sue to be relieved therein, then and in every such case, such merchant or trader should have his, her or their remedy for the same, by an action or actions to be grounded upon that statute, against the persons, societies, partnerships, or any of them, who contrary to that act, should be engaged or interested in any such unlawful undertaking or attempt; and every such action and actions should be heard and determined in any of his Majesty's courts of record aforesaid, wherein no essoign, protection, wager of law, or more than one imparlance should be granted or allowed; and in every such action the plaintiff should recover treble damages, with full costs of suit: And it was further enacted, that if any broker, or person acting as a broker, for himself or in behalf of any others, at any time or times after the four-and-twentieth day of June one thousand seven hundred and twenty, should bargain, sell, buy, or purchase, or contract or agree for the bargaining, selling, buying, or purchasing of any share or interest of any of the undertakings by that act declared to be unlawful, or in any stock or pretended stock of such undertakers, that then and in every such case every such broker, or person acting as such, should not only be disabled and rendered incapable to be or act as a broker in future, and should also forfeit and lose the sum of five hundred pounds, to be recovered, to wit, one moiety thereof to the use of his Majesty, his heirs and successors, and the other moiety thereof to the use of any person who would inform or sue for the same, in any of his Majesty's said courts of record as aforesaid, with full costs of suit: And whereas it is expedient that so much of the said recited act as is above set forth should be repealed; and that the said several undertakings, attempts, practises, acts, matters, and things aforesaid should be adjudged and dealt with in like manner as the same might have been adjudged and dealt with according to the common law, notwithstanding the said act: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled,

Parts of re-
cited act, as to
raising sub-

and by the authority of the same, That from and after the passing of this act, so much of the said recited act as is above set forth shall be and the same is hereby repealed; provided always, that nothing herein contained shall extend or be construed to extend to affect any action or suit now depending in any court of law or equity; but that every such action or suit shall and may be proceeded in, prosecuted, defended, and determined, in the same manner as if this act had not been passed.

Repeal of the
Bubble Act.

scriptions and
transferrable
shares of stock,
&c. repealed.

II. And be it further enacted, that in any charter hereafter to be granted by his Majesty, his heirs or successors, for the incorporation of any company or body of persons, it shall and may be lawful, in and by such charter, to declare and provide, that the members of such corporation shall be individually liable, in their persons and property, for the debts, contracts, and engagements of such corporation to such extent, and subject to such regulations and restrictions as his Majesty, his heirs or successors, may deem fit and proper, and as shall be declared and limited in and by such charter; and the members of such corporation shall thereby be rendered so liable accordingly (a).

Members of
corporations
incorporated
by charter to
be individually
liable.

(a) This section has been repealed, see 1 Vict. c. 73, s. 1, *post*.

7 GEO. IV. CHAP. 46.

An Act for the better regulating Copartnerships of certain Bankers in England; and for amending so much of an Act of the Thirty-ninth and Fortieth Years of the Reign of his late Majesty King George the Third, intituled, "An Act for establishing an Agreement with the Governor and Company of the Bank of England, for advancing the Sum of Three Millions towards the Supply for the Service of the Year one thousand eight hundred," as relates to the same.

[26th May, 1826.]

Whereas an Act was passed in the thirty-ninth and fortieth years of the reign of his late Majesty King George the Third, intituled, "An Act for establishing an Agreement with the Governor and Company of the Bank of England, for advancing the sum of Three Millions towards the Supply for the Service of the Year one thousand eight hundred:" And whereas it was, to prevent doubts as to the privilege of the said governor and company, enacted and declared in the said recited act, that no other bank should be erected, established or allowed by Parliament; and that it should not be lawful for any body politic or corporate whatsoever, erected or to be erected, or for any other persons united or to be united in covenants or partnership, exceeding the number of six persons, in that part of Great Britain called England, to borrow, owe, or take up any sum or sums of money on their bills or notes payable on demand, or at any less time than six months from the borrowing thereof, during the continuance of the said privilege to the said governor and company,

Banking Com-
panies.

Banking Companies.

who were thereby declared to be and remain a corporation, with the privilege of exclusive banking, as before recited; but subject nevertheless to redemption on the terms and conditions in the said act specified: And whereas the governor and company of the Bank of England have consented to relinquish so much of their exclusive privilege as prohibits any body politic or corporate, or any number of persons exceeding six, in England, acting in copartnership, from borrowing, owing, or taking up any sum or sums of money on their bills or notes payable on demand, or at any less time than six months from the borrowing thereof; provided that such body politic or corporate, or persons united in covenants or partnerships, exceeding the number of six persons in each copartnership, shall have the whole of their banking establishments and carry on their business as bankers at any place or places in England exceeding the distance of sixty-five miles from London, and that all the individuals composing such corporations or copartnerships, carrying on such business, shall be liable to and responsible for the due payment of all bills and notes issued by such corporations or copartnerships respectively: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this act it shall and may be lawful for any bodies politic or corporate erected for the purposes of banking, or for any number of persons united in covenants or copartnership, although such persons so united or carrying on business together shall consist of more than six in number, to carry on the trade or business of bankers in England, in like manner as copartnerships of bankers consisting of not more than six persons in number may lawfully do; and for such bodies politic or corporate, or such persons so united as aforesaid, to make and issue their bills or notes at any place or places in England exceeding the distance of sixty-five miles from London, payable on demand, or otherwise at some place or places specified upon such bills or notes, exceeding the distance of sixty-five miles from London, and not elsewhere, and to borrow, owe, or take up any sum or sums of money on their bills or notes so made and issued at any such place or places as aforesaid: provided always, that such corporations or persons carrying on such trade or business of bankers in copartnership shall not have any house of business or establishment as bankers in London, or at any place or places not exceeding the distance of sixty-five miles from London: and that every member of any such corporation or copartnership shall be liable to and responsible for the due payment of all bills and notes which shall be issued, and for all sums of money which shall be borrowed, owed, or taken up by the corporation or copartnership of which such person shall be a member, such person being a member at the period of the date of the bills or notes, or becoming or being a member before or at the time of the bills or notes being payable, or being such member at the time of the borrowing, owing, or taking up of any sum or sums of money upon any bills or notes by the corporation or copartnership, or while any sum of money on any bills or notes is owing or unpaid, or at the time the same became due from the corporation or copartnership: any agreement, covenant, or contract to the contrary notwithstanding.

Copartnerships of more than six in number may carry on business as bankers in England, 65 miles from London.

II. Provided always, and be it further enacted, that nothing in this act contained shall extend or be construed to extend to enable or authorize any such corporation or copartnership exceeding the number of six persons, so carrying on the trade or business of bankers as aforesaid, either by any member of or person belonging to any such corporation or copartnership, or by any agent or agents, or any other person or persons on behalf, of any such corporation or copartnership, to issue or re-issue in London, or at any place or places not exceeding the distance of sixty-five miles from London, any bill or note of such corporation or copartnership which shall be payable to bearer on demand, or any bank post bill; nor to draw upon any partner or agent, or other person or persons who may be resident in London, or at any place or places not exceeding the distance of sixty-five miles from London, any bill of exchange which shall be payable on demand, or which shall be for a less amount than fifty pounds: provided also, that it shall be lawful, notwithstanding anything herein or in the said recited act contained, for any such corporation or copartnership to draw any bill of exchange for any sum of money amounting to the sum of fifty pounds or upwards, payable either in London or elsewhere, at any period after date or after sight.

III. Provided also, and be it further enacted, that nothing in this act contained shall extend or be construed to extend to enable or authorize any such corporation, or copartnership exceeding the number of six persons, so carrying on the trade or business of bankers in England as aforesaid, or any member, agent or agents of any such corporation or copartnership, to borrow, owe, or take up in London, or at any place or places not exceeding the distance of sixty-five miles from London, any sum or sums of money on any bill or promissory note of any such corporation or copartnership payable on demand, or at any less time than six months from the borrowing thereof, nor to make or issue any bill or bills of exchange or promissory note or notes of such corporation or copartnership, contrary to the provisions of the said recited act of the thirty-ninth and fortieth years of King George the Third, save as provided by this act in that behalf: provided also, that nothing herein contained shall extend or be construed to extend to prevent any such corporation or copartnership by any agent or person authorized by them, from discounting in London, or elsewhere, any bill or bills of exchange not drawn by or upon such corporation or copartnership, or by or upon any person on their behalf.

IV. And be it further enacted, that before any such corporation, or copartnership exceeding the number of six persons, in England, shall begin to issue any bills or notes or borrow, owe, or take up any money on their bills or notes, an account or return shall be made out, according to the form contained in the schedule marked (A.) to this act annexed, wherein shall be set forth the true names, title, or firm of such intended or existing corporation or copartnership, and also the names and places of abode of all the members of such corporation, or of all the partners concerned or engaged in such copartnership, as the same respectively shall appear on the books of such

Banking Companies.

This act not to authorize copartnerships to issue, within the limits mentioned, any bills payable on demand; nor to draw bills upon any partner, &c., so resident for less than 50l. ;

nor to borrow money, or take up or issue bills of exchange, contrary to the provisions of the recited act, except as herein provided.

Such copartnerships shall, before issuing any notes, &c. deliver at the Stamp Office in London, an account containing the name of the firm, &c.

Banking Companies.

corporation or copartnership, and the name or firm of every bank or banks established, or to be established by such corporation or copartnership, and also the names and places of abode of two or more persons, being members of such corporation or copartnership, and being resident in England, who shall have been appointed public officers of such corporation or copartnership, together with the title of office or other description of every such public officer respectively, in the name of any one of whom such corporation shall sue and be sued as hereinafter provided, and also the name of every town and place where any of the bills or notes of such corporation or copartnership shall be issued by any such corporation, or by their agent or agents; and every such *amount or return shall be delivered to the commissioners of stamps at the stamp office in London, who shall cause the same to be filed and kept in the said stamp office, and an entry and registry thereof to be made in a book or books to be there kept for that purpose by some person or persons to be appointed by the said commissioners in that behalf, and which book or books any person or persons shall from time to time have liberty to search and inspect, on payment of the sum of one shilling for every search.

Sic.

Account to be filed.

Account to be verified by secretary.

V. And be it further enacted, that such account or return shall be made out by the secretary or other person, being one of the public officers appointed as aforesaid, and shall be verified by the oath of such secretary or other public officer, taken before any justice of the peace, and which oath any justice of the peace is hereby authorized and empowered to administer; and that such account or return shall, between the twenty-eighth day of February and the twenty-fifth day of March in every year, after such corporation or copartnership shall be formed, be in like manner delivered by such secretary or other public officer as aforesaid to the commissioners of stamps, to be filed and kept in the manner and for the purposes as hereinbefore mentioned.

Certified copies of returns to be evidence of the appointment of public officers, &c.

VI. And be it further enacted, that a copy of any such account or return so filed or kept and registered at the stamp office, as by this act is directed, and which copy shall be certified to be a true copy under the hand or hands of one or more of the commissioners of stamps for the time being, upon proof made that such certificate has been signed with the handwriting of the person or persons making the same, and whom it shall not be necessary to prove to be a commissioner or commissioners, shall in all proceedings, civil or criminal, and in all cases whatsoever, be received in evidence as proof of the appointment and authority of the public officers named in such account or return, and also of the fact that all persons named therein as members of such corporation or copartnership were members thereof at the date of such account or return.

Commissioners of stamps to give certified copies of returns.

VII. And be it further enacted, that the said commissioners of stamps for the time being, shall, and they are hereby required, upon application made to them by any person or persons requiring a copy, certified according to this act, of any such account or return as aforesaid, in order that the same may be produced in evidence, or for

any other purpose, to deliver to the person or persons so applying for the same such certified copy, he, she, or they paying for the same the sum of ten shillings, and no more. **Banking Companies.**

VIII. Provided also, and be it further enacted, that the secretary or other officer of every such corporation or copartnership shall and he is hereby required from time to time, as often as occasion shall render it necessary, make out upon oath, in manner hereinbefore directed, and cause to be delivered to the commissioners of stamps as aforesaid, a further account or return according to the form contained in the schedule marked (B.) to this act annexed, of the name or names of any person or persons who shall have been nominated or appointed a new or additional public officer or public officers of such corporation or copartnership, and also of the name or names of any person or persons who shall have ceased to be members of such corporation or copartnership, and also the name or names of any person or persons who shall have become a member or members of such corporation or copartnership, either in addition to or in the place or stead of any former member or members thereof, and of the name or names of any new or additional town or towns, place or places, where such bills or notes are or are intended to be issued, and where the same are to be made payable; and such further accounts or returns shall from time to time be filed and kept, and entered and registered at the stamp office in London, in like manner as is hereinbefore required with respect to the original or annual account or return hereinbefore directed to be made.

Account of new officers or members in the course of any year to be made.

IX. And be it further enacted, that all actions and suits, and also all petitions to found any commission of bankruptcy against any person or persons who may be at any time indebted to any such copartnership carrying on business under the provisions of this act, and all proceedings at law or in equity under any commission of bankruptcy, and all other proceedings at law or in equity to be commenced or instituted for or on behalf of any such copartnership against any person or persons, bodies politic or corporate, or others, whether members of such copartnership or otherwise, for recovering any debts or enforcing any claims or demands due to such copartnership, or for any other matter relating to the concerns of such copartnership, shall and lawfully may, from and after the passing of this act, be commenced or instituted and prosecuted in the name of any one of the public officers nominated as aforesaid for the time being of such copartnership, as the nominal plaintiff or petitioner for and on behalf of such copartnership; and that all actions or suits, and proceedings at law or in equity, to be commenced or instituted by any person or persons, bodies politic or corporate, or others, whether members of such copartnership or otherwise, against such copartnership, shall and lawfully may be commenced, instituted, and prosecuted against any one or more of the public officers nominated as aforesaid for the time being of such copartnership, as the nominal defendant for and on behalf of such copartnership; and that all indictments, informations, and prosecutions by or on behalf of such copartnership, for any stealing or embezzlement of any money, goods, effects, bills, notes, securities, or other property of or belonging to

Copartnerships shall sue and be sued in the name of their public officers.

Banking Companies.

such copartnership, or for any fraud, forgery, crime or offence committed against or with intent to injure or defraud such copartnership, shall and lawfully may be had, preferred, and carried on in the name of any one of the public officers nominated as aforesaid for the time being of such copartnership; and that in all indictments and informations to be had or preferred by or on behalf of such copartnership against any person or persons whomsoever, notwithstanding such person or persons may happen to be a member or members of such copartnership it shall be lawful and sufficient to state the money, goods, effects, bills, notes, securities, or other property of such copartnership, to be the money, goods, effects, bills, notes, securities, or other property of any one of the public officers nominated as aforesaid for the time being of such copartnership; and that any forgery, fraud, crime or other offence committed against, or with intent to injure or defraud any such copartnership shall and lawfully may in such indictment or indictments, notwithstanding as aforesaid, be laid or stated to have been committed against or with intent to injure or defraud any one of the public officers nominated as aforesaid for the time being of such copartnership, and any offender or offenders may thereupon be lawfully convicted for any such forgery, fraud, crime, or offence; and that in all other allegations, indictments, informations, or other proceedings of any kind whatsoever, in which it otherwise might or would have been necessary to state the names of the persons composing such copartnership, it shall and may be lawful and sufficient to state the name of any one of the public officers nominated as aforesaid for the time being of such copartnership; and the death, resignation, removal, or any act of such public officer shall not abate or prejudice any such action, suit, indictment, information, prosecution, or other proceeding commenced against or by or on behalf of such copartnership, but the same may be continued, prosecuted, and carried on in the name of any other of the public officers of such copartnership for the time being.

Not more than one action for the recovery of one demand.

X. And be it further enacted, that no person or persons, or body or bodies politic or corporate, having or claiming to have any demand upon or against any such corporation or copartnership, shall bring more than one action or suit, in case the merits shall have been tried in such action or suit, in respect of such demand; and the proceedings in any action or suit, by or against any one of the public officers nominated as aforesaid for the time being of any such copartnership, may be pleaded in bar of any other action or actions, suit or suits, for the same demand, by or against any other of the public officers of such copartnership.

Decrees of a court of equity against the public officer to take effect against the copartnership.

XI. And be it further enacted, that all and every decree or decrees, order or orders, made or pronounced in any suit or proceeding in any court of equity against any public officer of any such copartnership carrying on business under the provisions of this act, shall have the like effect and operation upon and against the property and funds of such copartnership, and upon and against the persons and property of every or any member or members thereof, as if every or any such members of such copartnership were parties members before the court to and in any such suit or proceeding; and that it

shall and may be lawful for any court in which such order or decree shall have been made, to cause such order and decree to be enforced against every or any member of such copartnership, in like manner as if every member of such copartnership were parties before such court to and in such suit or proceeding, and although all such members are not before the court.

Banking Companies.

XII. And be it further enacted, that all and every judgment and judgments, decree or decrees, which shall at any time after the passing of this act be had or recovered or entered up as aforesaid in any action, suit, or proceedings in law or equity against any public officer of any such copartnership, shall have the like effect and operation upon and against the property of such copartnership, and upon and against the property of every such member thereof as aforesaid, as if such judgment or judgments had been recovered or obtained against such copartnership; and that the bankruptcy, insolvency, or stopping payment of any such public officer for the time being of such copartnership in his individual character or capacity shall not be nor be construed to be the bankruptcy, insolvency, or stopping payment of such copartnership; and that such copartnership and every member thereof, and the capital, stock and effects of such copartnership, and the effects of every member of such copartnership, shall in all cases, notwithstanding the bankruptcy, insolvency, or stopping payment of any such public officer, be attached and attachable, and be in all respects liable to the lawful claims and demands of the creditor and creditors of such copartnership, or of any member or members thereof, as if no such bankruptcy, insolvency, or stopping payment of such public officer of such copartnership had happened or taken place.

Judgments against such public officer shall operate against the copartnership.

XIII. And be it further enacted, that execution upon any judgment in any action obtained against any public officer for the time being of any such corporation or copartnership carrying on the business of banking under the provisions of this act, whether as plaintiff or defendant, may be issued against any member or members for the time being of such corporation or copartnership; and that in case any such execution against any member or members for the time being of any such corporation or copartnership shall be ineffectual for obtaining payment and satisfaction of the amount of such judgment, it shall be lawful for the party or parties so having obtained judgment against such public officer for the time being to issue execution against any person or persons who was or were a member or members of such corporation or copartnership at the time when the contract or contracts or engagement or engagements in which such judgment may have been obtained was or were entered into, or became a member at any time before such contracts or engagements were executed, or was a member at the time of the judgment obtained: provided always, that no such execution as last mentioned shall be issued without leave first granted on motion in open court by the court in which such judgment shall have been obtained, and which motion shall be made on notice to the person or persons sought to be charged, nor after the expiration of three years next after any such person or persons shall have ceased to be a member or members of such corporation or copartnership.

Execution upon judgment may be issued against any member of the copartnership.

Banking Companies.

Officers, &c. in such cases indemnified.

XIV. Provided always and be it further enacted, that every such public officer in whose name any such suit or action shall have been commenced, prosecuted, or defended, and every person or persons against whom execution upon any judgment obtained or entered up as aforesaid in any such action shall be issued as aforesaid, shall always be reimbursed and fully indemnified for all loss, damages, costs, and charges, without deduction, which any such officer or person may have incurred by reason of such execution, out of the funds, of such copartnership, or in failure thereof by contribution from the other members of such copartnership, as in the ordinary cases of partnership.

Governor and company of the Bank of England may empower agents to carry on banking business at any place in England.

XV. And to prevent any doubts that might arise whether the said governor and company, under and by virtue of their charter, and the several acts of Parliament which have been made and passed in relation to the affairs of the said governor and company, can lawfully carry on the trade or business of banking otherwise than under the immediate order, management, and direction of the court of directors of the said governor and company; be it therefore enacted, that it shall and may be lawful for the said governor and company to authorize and empower any committee or committees, agent or agents, to carry on the trade and business of banking, for or on behalf of the said governor and company, at any place or places in that part of the United Kingdom called England, and for that purpose to invest such committee or committees, agent or agents, with such powers of management and superintendence, and such authority to appoint cashiers and other officers and servants, as may be necessary or convenient for carrying on such trade and business as aforesaid; and for the same purpose to issue to such committee or committees, agent or agents, cashier or cashiers, or other officer or officers, servant or servants, cash, bills of exchange, bank post bills, bank notes, promissory notes, and other securities for payment of money: provided always, that all such acts of the said governor and company shall be done and exercised in such manner, as may be appointed by any bye-laws, constitutions, orders, rules, and directions from time to time hereafter to be made by the general court of the said governor and company in that behalf, such bye-laws not being repugnant to the laws of that part of the United Kingdom called England; and in all cases where such bye-laws, constitutions, orders, rules, or directions of the said general court shall be wanting, in such manner as the governor, deputy governor, and directors, or the major part of them assembled, whereof the said governor or deputy governor is always to be one, shall or may direct, such directions not being repugnant to the laws of that part of the United Kingdom called England; any thing in the said charter or acts of Parliament, or other law, usage, matter, or thing to the contrary thereof notwithstanding; provided always, that in any place where the trade and business of banking shall be carried on for and on behalf of the said governor and company of the Bank of England, any promissory note issued on their account in such place shall be made payable in coin in such place as well as in London.

Copartnerships may issue

XVI. And be it further enacted, that if any corporation or copartnership carrying on the trade or business of bankers under the au-

thority of this act shall be desirous of issuing and re-issuing notes in the nature of bank notes, payable to the bearer on demand, without the same being stamped as by law is required, it shall be lawful for them so to do on giving security by bond to his Majesty, his heirs and successors, in which bond two of the directors, members, or partners of such corporation or copartnership shall be the obligors, together with the cashier or cashiers, or accountant or accountants, employed by such corporation or copartnership, as the said commissioners of stamps shall require; and such bonds shall be taken in such reasonable sums as the duties may amount unto during the period of one year, with condition to deliver to the said commissioners of stamps, within fourteen days after the fifth day of January, the fifth day of April, the fifth day of July, and the tenth day of October in every year, whilst the present stamp duties shall remain in force, a just and true account, verified upon the oaths or affirmations of two directors, members, or partners of such corporation or copartnership, and of the said cashier or cashiers, accountant or accountants, or such of them as the said commissioners of stamps shall require, such oaths or affirmations to be taken before any justice of the peace, and which oaths or affirmations any justice of the peace is hereby authorized and empowered to administer, of the amount or value of all their promissory notes in circulation on some given day in every week, for the space of one quarter of a year prior to the quarter day immediately preceding the delivery of such account, together with the average amount or value thereof according to such account; and also to pay or cause to be paid into the hands of the receivers general of stamp duties in Great Britain, as a composition for the duties which would otherwise have been payable for such promissory notes issued within the space of one year, the sum of seven shillings for every one hundred pounds, and also for the fractional part of one hundred pounds of the said average amount or value of such notes in circulation according to the true intent and meaning of this act, and on due performance thereof such bond shall be void; and it shall be lawful for the said commissioners to fix the time or times of making such payment, and to specify the same in the condition to every such bond; and every such bond may be required to be renewed from time to time, at the discretion of the said commissioners or the major part of them, and as often as the same shall be forfeited, or the party or parties to the same, or any of them, shall die, become bankrupt or insolvent, or reside in parts beyond the seas.

Banking Companies.

unstamped notes on giving bond.

XVII. Provided always, and be it further enacted, that no such corporation or copartnership shall be obliged to take out more than four licenses for the issuing of any promissory notes for money payable to the bearer on demand, allowed by law to be re-issued in all for any number of towns or places in England; and in case any such corporation or copartnership shall issue such promissory notes as aforesaid, by themselves or their agents, at more than four different towns or places in England, then after taking out three distinct licenses for three of such towns or places, such corporation or copartnership shall be entitled to have all the rest of such towns or places included in a fourth license.

No corporation compelled to take out more than four licenses.

XVIII. And be it further enacted, that if any such corporation or

Penalty on co-

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partnership neglecting to send returns, 500l.

Penalties for making false returns.

False oath perjury.

Penalty on copartnership for issuing bills payable on demand ;

or drawing bills of exchange payable on demand, or for less than 50l.

or borrowing money on bills except as herein provided.

copartnership exceeding the number of six persons in England, shall begin to issue any bills or notes, or to borrow, owe, or take up any money on their bills or notes, without having caused such account or return as aforesaid to be made out and delivered in the manner and form directed by this act, or shall neglect or omit to cause such account or return to be renewed yearly and every year, between the days or times herein-before appointed for that purpose, such corporation or copartnership so offending shall, for each and every week they shall so neglect to make such account and return, forfeit the sum of five hundred pounds; and if any secretary or other officer of such corporation or copartnership shall make out or sign any false account or return, or any account or return which shall not truly set forth all the several particulars by this act required to be contained or inserted in such account or return, the corporation or copartnership to which such secretary or other officer so offending shall belong, shall for every such offence forfeit the sum of five hundred pounds, and the said secretary or other officer so offending shall also for every such offence forfeit the sum of one hundred pounds: and if any such secretary or other officer making out or signing any such account or return as aforesaid shall knowingly and wilfully make a false oath of or concerning any of the matters to be therein specified and set forth, every such secretary or other officer so offending, and being thereof lawfully convicted, shall be subject and liable to such pains and penalties as by any law now in force persons convicted of wilful and corrupt perjury are subject and liable to.

XIX. And be it further enacted, that if any such corporation or copartnership exceeding the number of six persons, so carrying on the trade or business of bankers as aforesaid, shall, either by any member of or persons belonging to any such corporation or copartnership, or by any agent or agents, or any other person or persons on behalf of any such corporation or copartnership, issue or re-issue in London, or at any place or places not exceeding the distance of sixty-five miles from London, any bill or note of such corporation or copartnership which shall be payable on demand; or shall draw upon any partner or agent, or other person or persons who may be resident in London, or at any place or places not exceeding the distance of sixty-five miles from London, any bill of exchange which shall be payable on demand, or which shall be for a less amount than fifty pounds; or if any such corporation or copartnership exceeding the number of six persons so carrying on the trade or business of bankers in England as aforesaid, or any member, agent, or agents of any such corporation or copartnership, shall borrow, owe, or take up in London, or at any place or places not exceeding the distance of sixty-five miles from London, any sum or sums of money on any bill or promissory note of any such corporation or copartnership payable on demand, or at any less time than six months from the borrowing thereof, or shall make or issue any bill or bills of exchange, or promissory note or notes of such corporation or copartnership, contrary to the provisions of the said recited act of the thirty-ninth and fortieth years of King George the Third, save as provided by this act, such corporation or copartnership so offending, or on whose account or behalf any such offence as aforesaid shall be committed, shall for every such offence forfeit the sum of fifty pounds.

XX. Provided also, and be it further enacted, that nothing in this act contained shall extend or be construed to extend to prejudice, alter, or affect any of the rights, powers, or privileges of the said governor and company of the Bank of England, except as the said exclusive privilege of the said governor and company is by this act specially altered and varied.

Banking Companies.

Not to affect rights of Bank of England.

XXI. And be it further enacted, that all pecuniary penalties and forfeitures imposed by this act shall and may be sued for and recovered in his Majesty's Court of Exchequer at Westminster, in the same manner as penalties incurred under any act or acts relating to stamp duties may be sued for and recovered in such court.

Penalties how recovered.

XXII. And be it further enacted, that this act may be altered, amended, or repealed by any act or acts to be passed in this present session of Parliament.

Act may be altered.

SCHEDULES referred to by this Act.

SCHEDULE (A.)

RETURN or Account to be entered at the Stamp Office in London, in pursuance of an act passed in the seventh year of the reign of King George the Fourth, intituled [*here insert the title of this act*], viz. :—

Firm or name of the banking corporation or copartnership, viz. *set forth the firm or name.*]

Names and places of abode of all the partners concerned or engaged in such corporation or copartnership, viz. [*set forth all the names and places of abode.*]

Names and places of the bank or banks established by such corporation or copartnership, viz. [*set forth all the names and places.*]

Names and descriptions of the public officers of the said banking corporation or copartnership, viz. [*set forth all the names and descriptions.*]

Names of the several towns and places where the bills or notes of the said banking corporation or copartnership are to be issued by the said corporation or copartnership, or their agent or agents, viz. [*set forth the names of all the towns and places.*]

A. B. of secretary [*or other officer, describing the office,*] of the above corporation or copartnership, maketh oath and saith, that the above doth contain the name, style, and firm of the above corporation or copartnership, and the names and places of the abode of the several members thereof, and of the banks established by the said corporation or copartnership, and the names, titles, and descriptions of the public

Banking Companies.

officers of the said corporation or copartnership, and the names of the towns and places where the notes of the said corporation or copartnership are to be issued, as the same respectively appear in the books of the said corporation or copartnership, and to the best of the information, knowledge, and belief of this deponent.

Sworn before me the _____ day of
 at _____ in the county of
 C. D. justice of the peace in and for the said county.

SCHEDULE (B.)

RETURN or Account to be entered at the Stamp Office in London, on behalf of [*name the corporation or copartnership,*] in pursuance of an act passed in the seventh year of the reign of King George the Fourth, intituled [*insert the title of this act*], viz. :—

Names of any and every new or additional public officer of the said corporation or copartnership; viz.

A. B. in the room of C. D. deceased, or removed, [*as the case may be,*] [*set forth every name.*]

Names of any and every person who may have ceased to be a member of such corporation or copartnership; viz. [*set forth every name.*]

Names of any and every person who may have become a new member of such corporation or copartnership, [*set forth every name.*]

Names of any additional towns or places where bills or notes are to be issued, and where the same are to be made payable.

A. B. of _____, secretary, [*or other officer,*] of the above-named corporation or copartnership, maketh oath and saith, that the above doth contain the name and place of abode of any and every person who hath become or been appointed a public officer of the above corporation or copartnership, and also the name and place of abode of any and every person who hath ceased to be a member of the said corporation or copartnership, and of any and every person who hath become a member of the said copartnership since the registry of the said corporation or copartnership on the _____ day of _____ last, as the same respectively appear on the books of the said corporation or copartnership, and to the best of the information, knowledge, and belief of this deponent.

Sworn before me the _____ day of
 at _____ in the county of
 C. D. justice of the peace in and for the said county.

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10 GEO. IV. CHAP. 56.

An Act to consolidate and amend the Laws relating to Friendly Societies.
[19th June, 1829.]Friendly
Societies.

WHEREAS it is expedient to amend the laws relating to friendly societies, and to consolidate the same in one act, and to make other provisions respecting friendly societies; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that an act passed in the thirty-third year of his late Majesty's reign, intituled "An Act for the Encouragement and Relief of Friendly Societies;" and also so much of an act passed in the thirty-fifth year of his said late Majesty's reign, intituled "An Act for the more effectually carrying into execution an Act made in the thirty-third year of the reign of his present Majesty, intituled 'An Act for the encouragement and relief of friendly societies,' and for extending so much of the Powers thereof as relates to the framing Rules and Regulations for the better Management of the Funds of such Societies, and the Appointment of Treasurers, to other Institutions of a charitable Nature," as relates to friendly societies; and also an act passed in the Parliament of Ireland in the thirty-sixth year of his said late Majesty's reign, intituled "An Act for the Encouragement and Relief of Friendly Societies;" and also an act passed in the forty-third year of his said late Majesty's reign, intituled "An Act for enabling Friendly Societies, intended to be established under an Act passed in the Thirty-third Year of the Reign of his present Majesty, to rectify Mistakes made in the Registry of their Rules;" and also an act passed in the forty-ninth year of his said late Majesty's reign, to explain and render more effectual the said recited act made in the Parliament of Ireland in the thirty-sixth year of his said late Majesty's reign; and also an act passed in the forty-ninth year of his said late Majesty's reign, intituled "An Act to amend an Act made in the Thirty-third Year of his present Majesty, for the Encouragement and Relief of Friendly Societies;" and also an act passed in the fifty-ninth year of his said late Majesty's reign, intituled "An Act for the further Protection and Encouragement of Friendly Societies, and for preventing Frauds and Abuses therein;" and also so much of an Act passed in the sixth year of the reign of his present Majesty, intituled "An Act for consolidating and amending the Laws relating to Conveyances and Transfers of Estates and Funds vested in Trustees who are Infants, Idiots, Lunatics, or Trustees of unsound Mind, or who cannot be compelled or refuse to act, and the Laws relating to Stocks and Securities belonging to Infants, Idiots, Lunatics, and Persons of unsound Mind," as relates to friendly societies, for the better security, or for the application, receipt, payment, or transfer of any of the funds thereof; shall be and the same are hereby repealed, except so far as any of the said acts repeal the whole or any part of any other acts, and except as hereinafter is excepted: provided nevertheless, that such repeal shall not invalidate or effect anything which has been done before the passing of this act in pursuance of any of the said acts.

33 Geo. 3, c.

54.

35 Geo. 3, c.

111.

36 Geo. 3 (1).

43 Geo. 3, c.

111.

49 Geo. 3, c.

58.

49 Geo. 3, c.

125.

59 Geo. 3, c.

128.

6 Geo. 4, c.

74, in part repealed, except as herein stated.

Friendly Societies.

Any number of persons may form themselves into a society, and raise a fund for their mutual benefit, and make rules, &c.

Power to alter and amend rules.

Societies, in their rules, to declare the purpose of their establishment, &c.

II. And whereas certain friendly societies have been established in Great Britain and Ireland, for raising, by voluntary subscription of the members thereof, separate funds for the mutual relief and maintenance of the said members in sickness, old age, and infirmity; and it is expedient to give protection to such societies and the funds thereby established, and to afford encouragement to other persons to form the like societies; be it enacted, that it shall and may be lawful to and for any number of persons in Great Britain and Ireland to form themselves into and to establish a society for the purpose of raising from time to time, by subscriptions of the several members of every such society, or by voluntary contributions, or by donations, a stock or fund for the mutual relief and maintenance of all and every the members thereof, their wives or children, or other relations, in sickness, infancy, advanced age, widowhood, or any other natural state or contingency whereof the occurrence is susceptible of calculation by way of average; and to and for the several members of each society from time to time to assemble together, and to make, ordain, and constitute such proper and wholesome rules for the better government and guidance of the same as to the major part of the members of such society so assembled together shall seem meet, so as such rules shall not be repugnant to the laws of this realm, nor any of the express provisions or regulations of this act; and to impose and inflict such reasonable fines and forfeitures upon the several members of any such society who shall offend against such rules as shall be just and necessary for duly enforcing the same, to be respectively paid to such uses, for the benefit of such society, as such society by such rules shall direct; and also from time to time to alter and amend such rules as occasion shall require, or to annul and repeal the same, and to make new rules in lieu thereof, under such restrictions as are in this act contained.

III. And be it further enacted, that every such society so to be established as aforesaid, before any of the rules thereof shall be confirmed by the justices in the manner herein-after directed, shall, in or by one or more of the rules to be confirmed by such justices, declare all and every the intents and purposes for which such society is intended to be established, and shall also in and by such rules direct all and every the uses and purposes to which the money which shall from time to time be subscribed, paid, or given to or for the use or benefit of such society, or which shall arise therefrom, or in anywise shall belong to such society, shall be appropriated and applied, and in what shares and proportions and under what circumstances any member of such society, or other person, shall or may become entitled to the same or any part thereof; provided that the application thereof shall not in anywise be repugnant to the uses, intents, and purposes of such society, or any of them, so to be declared as aforesaid; and all such rules, during the continuance of the same, shall be complied with and enforced; and the monies so subscribed, paid, or given, or so arising, to or for the use or benefit of such society, or belonging thereto, shall not be diverted or misapplied either by the treasurer, trustee, or any other officer or member of such society entrusted therewith, under such penalty or forfeiture as such society shall by any rule impose and inflict for such offence.

IV. And be it further enacted, that a transcript, fairly written on paper or parchment, of all such rules, signed by three members, and countersigned by the clerk or secretary, with all convenient speed after the same shall be made, altered, or amended, and so from time to time after every making, altering or amending thereof, shall be submitted, in England and Wales and Berwick-upon Tweed, to the barrister at law for the time being appointed to certify the rules of savings banks, and in Scotland to the Lord Advocate or any of his deputies, and in Ireland to such barrister as may be appointed by his Majesty's Attorney General in Ireland, for the purpose of ascertaining whether the said rules of such society, or alteration or amendment thereof, are in conformity to law and to the provisions of this act; and that the said barrister or advocate shall give a certificate thereof, or point out in what part or parts they are repugnant thereto; and that the fee payable to such barrister or advocate for perusing the rules, or alterations or amendments of the rules, of each respective society, and giving such certificate as aforesaid, shall not at any one time exceed the sum of one guinea, which together with the expense of conveying the rules to and from the said barrister or advocate, shall be defrayed by each society respectively; and such transcript, when certified by the said barrister or advocate, shall be deposited with the clerk of the peace for the county wherein such society shall be formed, and by him laid before the justices for such county at the general quarter sessions, or adjournment thereof, next after the time when such transcript shall have been so certified and returned as aforesaid; and the justices then and there present are hereby authorized and required to allow and confirm the same; and such transcript shall be filed by such clerk of the peace with the rolls of the sessions of the peace in his custody; and a certificate of the enrolment thereof shall, within fourteen days after the end of the said sessions or adjournment thereof, be signed by such clerk of the peace on a duplicate copy to be provided by and returned to such society, without fee or reward: provided always, that nothing herein contained shall be construed to require any rules, alterations or amendments thereof, to be submitted to such barrister or advocate, if the same, when deposited with the clerk of the peace, are accompanied with an affidavit of being a copy of any of the rules, alterations, or amendments of any other society which shall have been already enrolled under the provisions of this act in the same county.

V. Provided always, and be it further enacted, that in case any such barrister or advocate shall refuse to certify all or any of the rules so to be submitted for his perusal and examination, it shall then be lawful for any such society to submit the same to the court of quarter sessions, together with the reasons assigned by the said barrister or advocate, in writing, for any such rejection or disapproval of any one or more such rules; and that the justices at their said quarter sessions shall and may, if they think fit, confirm and allow the same, notwithstanding any such rejection or disapproval by any such barrister or advocate.

VI. Provided always, and be it further enacted, that no rules of any society hereafter to be formed shall be allowed unless it shall appear to the justices to whom the same are tendered that the tables

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Rules of the society to be submitted to a barrister, or other person, by whom they are to be certified;

and deposited with the clerk of the peace.

Rules, when certified, to be confirmed by justices at sessions, and a duplicate certified by clerk of the peace.

When not necessary to submit rules to barrister.

Manner of proceeding in case barrister shall refuse to certify.

Rules not to be allowed unless the justices are

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satisfied with the tables.

No society entitled to the benefit of this act, unless their rules have been confirmed.

of the payment to be made by the members, and of the benefits to be received by them, may be adopted with safety to all parties concerned.

VII. And be it further enacted, that no such society as aforesaid shall have the benefit of this act, unless all the rules for the management thereof shall be entered in a book to be kept by an officer of such society appointed for that purpose, and which book shall be open at all reasonable times for the inspection of the members of such society, and unless all such rules shall be fairly transcribed, and such transcript deposited with the clerk of the peace for the county wherein such society shall be established as aforesaid; but nevertheless nothing contained herein shall extend to prevent any alteration in or amendment of any such rules so entered and deposited and filed as aforesaid, or repealing or annulling the same, or any of them, in the whole or in part, or making any new rules for the management of such society, in such manner as by the rules of such society shall from time to time be provided; but such new rules, or such alterations in or amendments of former rules, or any order annulling or repealing any former rules in the whole or in part, shall not be in force until the same respectively shall be entered in such book as aforesaid, and certified, when necessary by such barrister or advocate as aforesaid, and until a transcript thereof shall be deposited with such clerk of the peace as aforesaid, who shall file and certify the same as aforesaid; and that no such rule, or alteration in or amendment of any former rule, shall be binding or have any force or effect until the same shall have been confirmed by such justices, and filed as aforesaid.

Rules, when entered and deposited, to be binding on members and depositors.

Copy of transcript to be received in evidence.

VIII. And be it further enacted, that all rules from time to time made and in force for the management of such society as aforesaid, and duly entered in such book as aforesaid, and confirmed by the justices as aforesaid, shall be binding on the several members and officers of such society, and the several contributors thereto, and their representatives, all of whom shall be deemed and taken to have full notice thereof by such entry and contribution as aforesaid; and the entry of such rules in such book as aforesaid, or the transcript thereof deposited with such clerk of the peace as aforesaid, or a true copy of such transcript, examined with the original and proved to be a true copy, shall be received as evidence of such rules respectively in all cases; and no certiorari, suspension, advocacion, reduction, or other legal process shall be brought or allowed to remove any such rules into any of his Majesty's courts of record; and every copy of any such transcript deposited with any clerk of the peace as aforesaid shall be made without fee or reward, except the actual expense of making such copy.

No confirmed rule to be altered but at a general meeting of the society, &c.

IX. And be it further enacted, that no rule confirmed by the justices of the peace in manner aforesaid shall be altered, rescinded, or repealed, unless at a general meeting of the members of such society as aforesaid, convened by public notice, written or printed, signed by the secretary or president or other principal officer or clerk of such society, in pursuance of a requisition for that purpose by seven or more of the members of such society, which said requisition and notice shall be publicly read at the two usual meetings of

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such society to be held next before such general meeting for the purpose of such alteration or repeal, unless a committee of such members shall have been nominated for that purpose at a general meeting of the members of such society convened in manner aforesaid, in which case such committee shall have the like power to make such alterations or repeal, and unless such alterations or repeal shall be made with the concurrence and approbation of three-fourths of the members of such society then and there present, or by the like proportion of such committee as aforesaid, if any shall have been nominated for that purpose.*

X. And be it further enacted, that the rules of every society formed under the authority of this act shall specify the place or places at which it is intended such society shall hold its meetings, and shall contain provisions with respect to the powers and duties of the members at large, and of such committees or officers as may be appointed for the management of the affairs of such society: provided always, that it shall and may be lawful for any such society to alter their place or places of meeting whenever they may consider it necessary, upon giving notice thereof in writing to the clerk of the peace for the county within which such society shall be held, the said notice to be given within seven days before or after such removal, and signed by the secretary or other principal officer, and also by three or more of the members of the said society; and provided that the place or places at which such society intend to hold their meetings shall be situate within the county in which the rules of the said society are enrolled.

Rules shall specify place of meeting and duties of officers.

Societies may alter place of meeting.

XI. And be it further enacted, that every such society shall and may from time to time, at any of their usual meetings, or by their committee, if any such shall be appointed for that society, elect and appoint such person into the office of steward, president, warden, treasurer, or trustee of such society, as they shall think proper, and also shall and may from time to time elect and appoint such clerks and other officers as shall be deemed necessary to carry into execution the purposes of such society, for such space of time and for such purposes as shall be fixed and established by the rules of such society, and from time to time to elect and appoint others in the room of those who shall vacate or die; and such treasurer, trustee, and all and every other officer or other person whatever who shall be appointed to any office in anywise touching or concerning the receipt, management, or expenditure of any sum of money collected for the purpose of any such society, before he, she, or they shall be admitted to take upon him, her, or them the execution of any such office or trust, (if required so to do by the rules of such society to which such officer shall belong,) shall become bound in a bond, according to the form prescribed in the schedule to this act annexed, with two sufficient sureties, for the just and faithful execution of such office or trust, and for rendering a just and true account according to the rules of such society, and in all matters lawful to pay obedience to the same, in such penal sum of money as by the major part of such society at any such meeting as aforesaid shall be thought expedient, and to the satisfaction of such society; and that every such bond to be given by or on the behalf of such treasurer or

Society may appoint officers.

Securities to be given for offices of trust, if required.

Treasurer or trustees to

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give bond to the clerk of the peace.

trustee, or of any other person appointed to any other office or trust, shall be given to the clerk of the peace of the county where such society shall be established, for the time being, without fee or reward; and in case of forfeiture it shall be lawful to sue upon such bond in the name of the clerk of the peace for the time being, for the use of the said society, fully indemnifying and saving harmless such clerk of the peace from all costs and charges in respect of such suit; provided that such bond shall have in Scotland the same force and effect as a bond in the form in use in Scotland containing a clause of registration.

Appointment of committees.

XII. And be it further enacted, that every such society shall and may from time to time elect and appoint any number of the members of such society to be a committee, the number thereof to be declared in the rules of every such society, and shall and may delegate to such committee all or any of the powers given by this act to be executed, who, being so delegated, shall continue to act as such committee, for and during such time as they shall be appointed, for such society, for general purposes, the powers of such committee being first declared in and by the rules of such society, confirmed by the justices of the peace at their sessions, and filed in the manner hereinbefore directed; and in all cases where a committee shall be appointed for any particular purpose, the powers delegated to such committee shall be reduced into writing and entered into a book by the secretary or clerk of such society, and a majority of the members of such committee shall at all times be necessary to concur in any act of such committee; and such committee shall, in all things delegated to them, act for and in the name of such society; and all acts and orders of such committee, under the powers delegated to them, shall have the like force and effect as the acts and orders of such society at any general meeting thereof could or might have had in pursuance of this act: provided always, that the transactions of such committee shall be entered in a book belonging to such society, and shall be from time to time and at all times subject and liable to the review, allowance, or disallowance and control of such society, in such manner and form as such society shall by their general rules, confirmed by the justices and filed as aforesaid, have directed and appointed, or shall in like manner direct and appoint.

Powers of standing committees to be declared in the rules of the society, and of particular ones entered in a book.

Committee controllable by society.

Treasurer or trustees to lay out surplus of contributions;

XIII. And be it further enacted, that it shall and may be lawful to and for the treasurer or trustee for the time being of any such society, and he, she, and they is and are hereby authorized and required, from time to time, by and with the consent of such society, to be had and testified in such manner as shall be directed by the general rules of such society, to lay out or dispose of such part of all such sums of money as shall at any time be collected, given, or paid to and for the beneficial ends, intents, and purposes of such society, as the exigencies of such society shall not call for the immediate application or expenditure of, either on real or heritable securities or heritable property, to be approved of as aforesaid, (such securities to be taken in the name of such treasurer or trustee for the time being,) or to invest the same in the public stocks or funds, savings banks, or government securities, or in any of the chartered banks in Scotland, or in the bank of the Commercial Banking Company of Scotland, and not otherwise, in the proper name of such treasurer or trustee; and

from time to time, with such consent as aforesaid, to alter and transfer such securities and funds, and to make sale thereof respectively; and that all the dividends, interests, and proceeds which shall from time to time arise from the monies so laid out or invested as aforesaid shall from time to time be brought to account by such treasurer or trustee, and shall be applied to and for the use of such society, according to the rules thereof.

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and to bring the proceeds to account.

XIV. And be it further enacted, that every person who shall have or receive any part of the monies, effects, or funds of or belonging to any such society, or shall in any manner have been or shall be entrusted with the disposal, management, or custody thereof, or of any securities, books, papers, or property relating to the same, his or her executors, administrators, and assigns respectively, shall, upon demand made, or notice in writing given or left at the last or usual place of residence of such persons, in pursuance of any order of such society, or committee to be appointed as aforesaid, for that purpose, give in his or her account at the usual meeting of such society, or to such committee thereof as aforesaid, to be examined and allowed or disallowed by such society or committee thereof, and shall, on the like demand or notice, pay over all the monies remaining in his or her hands, and assign and transfer or deliver all securities and effects, books, papers, and property, taken or standing in his or her name as aforesaid, or being in his or her hands or custody, to the treasurer or trustee for the time being, or to such other person as such society or committee thereof shall appoint; and in case of any neglect or refusal to deliver such account, or to pay over such monies, or to assign, transfer, or deliver such securities and effects, books, papers, and property, in manner aforesaid, it shall and may be lawful to and for every such society, in the name of the treasurer or trustee or other principal officer thereof, as the case may be, to exhibit a petition in the Court of Exchequer in England or Ireland, or in the Court of Session in Scotland, or the Courts of Great Sessions in Wales respectively, who shall and may proceed thereupon in a summary way, and make such order therein, upon hearing all parties concerned, as to such Court in their discretion shall seem just, which order shall be final and conclusive; and all assignments, sales, and transfers made in pursuance of such order shall be good and effectual in law to all intents and purposes whatsoever.

Treasurers, &c., to render accounts, and pay over balances, &c.

and in case of neglect, application may be made to the Court of Exchequer, &c.

XV. And be it further enacted, that when and so often as any person seised or possessed of any lands, tenements, or hereditaments, or other property, or any estate or interest therein, as a trustee of any such society, shall be out of the jurisdiction of or not amenable to the process of the Court of Exchequer in England or Ireland, or the Court of Session in Scotland, or of the Court of Great Sessions in Wales, or shall be idiot, lunatic, or of unsound mind, or it shall be unknown or uncertain whether he or she be living or dead, or such person shall refuse to convey or otherwise assure such lands, tenements, hereditaments, or property, or estate or interest, to the person duly nominated as trustee of such society in their stead, either alone or together with any continuing trustee, as occasion shall require, then and in every or any such case it shall be lawful for the judges of the said Courts respectively to appoint such person, as to such Court shall

Where trustees, &c., are out of jurisdiction of Court, or it be uncertain whether they are alive, or they refuse to convey, &c. Court of Exchequer may appoint a person to convey.

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seem meet, on behalf and in the name of the person seised or possessed as aforesaid, to convey, surrender, release, assign, or otherwise assure the said lands, tenements, hereditaments, or property, or estate or interest, to such trustee so duly nominated as aforesaid; and every such conveyance, release, surrender, assignment, or assurance shall be as valid and effectual to all intents and purposes as if the person being out of the jurisdiction or not amenable to the process of the said Courts, or not known to be alive, or having refused, or as if the person being idiot, lunatic, or of unsound mind, had been at the time of the execution thereof of sane mind, memory, and understanding, and had by himself or herself executed the same.

When trustee shall be absent, &c. Courts may order stock to be transferred and dividends paid.

XVI. And be it further enacted, that when and as often as it shall happen that all and every person in whose name any part of the several stocks, annuities, and funds transferrable or which hereafter shall be made transferrable at the Bank of England, or in the books of the governor and company of the Bank of England, is, are, or shall be standing as a trustee of any such society, shall be absent, out of the jurisdiction or not amenable to the process of the said Court of Exchequer in England or Ireland, or the Court of Session in Scotland, or the Courts of Great Session in Wales, or shall be a bankrupt, insolvent, or lunatic, or it shall be uncertain or unknown whether such trustee is living or dead, that then and in such case it shall and may be lawful to and for the judges of the said Courts respectively to order and direct that the accountant general, or the secretary or deputy secretary, or other proper officer for the time being of the governor and company of the Bank of England, do transfer in the book of the said company such stock, annuities, or funds standing as aforesaid, to and into the name of such person as such society may appoint, and also pay over to such person as aforesaid the dividends of such stock, annuities, or funds; and when and as often as it shall happen that one or more only, and not all or both of such trustees as aforesaid, shall be so absent, or not amenable to such process as aforesaid, or a bankrupt, insolvent, or lunatic, or it be uncertain or unknown whether any one or more of such trustees is or are living or dead, that then, and in all and every such last-mentioned case and cases, it shall and may be lawful to and for the judges of the said Courts respectively to order and direct that the other and others of such trustees who shall be forthcoming and ready and qualified to act do transfer such stock, annuities, or funds to and into the name of such person as aforesaid, and also that such forthcoming trustee do also receive and pay over the dividends of such stock, annuities, or funds, as such society shall direct; and that all such transfers and payments so made shall be and are hereby declared to be valid and effectual to all intents and purposes whatsoever, any former statute, law, usage, or custom to the contrary thereof in anywise notwithstanding.

No fee to be taken for any proceeding in such Courts, &c.

XVII. And be it further enacted, that no fee, reward, emolument, or gratuity whatsoever shall be demanded, taken, or received by any officer or minister of such Courts for any matter or thing done in such Courts in pursuance of this act; and that upon the presenting of any such petition it shall be lawful for the judges of the said Courts respectively to assign counsel learned in the law, and to appoint a clerk or practitioner of such Court, to advise and carry on such petition

on the behalf of such society, who are hereby respectively required to do their duties therein without fee or reward.

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XVIII. Provided always, and be it further enacted, that in all cases in which orders shall be made by any of the Courts aforesaid for the transfer of stocks or funds transferrable at the Bank of England, the persons to be named in such orders respectively for making such transfers shall be the secretary, deputy secretary, or accountant general of the governor and company of the Bank of England for the time being, or one of them, except in cases where one or more of the trustees in whose name such stocks or funds shall stand shall be ordered to transfer the same without the concurrence of any other or others of such trustees; any thing herein contained to the contrary thereof in anywise notwithstanding.

Who shall be named in the orders of the Court for making transfers.

XIX. And be it further enacted, that this act shall be and is hereby declared to be a full and complete indemnity and discharge to the governor and company of the Bank of England, and their officers and servants, for all acts and things done or permitted to be done pursuant thereto, and that such acts and things shall not be questioned or impeached in any Court of law or equity to their prejudice or detriment.

Act to be an indemnity to the Bank.

XX. And be it further enacted, that if any person appointed to any office by any such society, and being entrusted with or having in his or her hands or possession, by virtue of his or her said office, any monies or effects belonging to such society, or any deeds or securities relating to the same, shall die, or become a bankrupt or insolvent, his or her executors or administrators or assignees, or other persons having legal right, shall, within forty days after demand made by the order of any such society or committee thereof, or the major part of them assembled at any meeting thereof, deliver over all things belonging to such society to such person as such society shall appoint, and shall pay, out of the estates, assets, or effects of such person, all sums of money remaining due which such person received by virtue of his or her said office, before any of his or her other debts are paid or satisfied: and all such assets, estates, and effects shall be bound to the payment and discharge thereof accordingly.

Executors, &c., to pay money due to societies before any other debts.

XXI. And be it further enacted, that all real and heritable property, monies, goods, chattels, and effects whatever, and all titles, securities for money, or other obligatory instruments and evidences or muniments, and all other effects whatever, and all rights or claims belonging to or had by such society, shall be vested in the treasurer or trustee of such society for the time being, for the use and benefit of such society and the respective members thereof, their respective executors or administrators, according to their respective claims and interests; and after the death or removal of any treasurer or trustee shall vest in the succeeding treasurer or trustee, for the same estate and interest as the former treasurer or trustee had therein, and subject to the same trusts, without any assignment or conveyance whatever, except the transfer of stocks and securities in the public funds of Great Britain and Ireland; and also shall, for all purposes of action or suit, as well criminal as civil, in law or in equity, in anywise touching

Effects of societies to be vested in the trustees or treasurers for the time being, who may bring and defend actions, &c.

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or concerning the same, be deemed and taken to be, and shall in every such proceeding (where necessary) be stated to be, the property of the person appointed to the office of treasurer or trustee of such society for the time being, in his or her proper name, without further description; and such person shall and he or she is hereby respectively authorized to bring or defend, or cause to be brought or defended, any action, suit, or prosecution, criminal as well as civil, in law or in equity, touching or concerning the property, right, or claim aforesaid of or belonging to or had by such society; provided such person shall have been thereunto duly authorized by the consent of the majority of members present at any meeting of the society or committee thereof; and such person so appointed shall and may, in all cases concerning the property, right, or claim aforesaid of such society, sue and be sued, plead and be impleaded, in his or her proper name, as treasurer or trustee of such society, without other description; and no such suit, action, or prosecution shall be discontinued or abate by the death of such person, or his or her removal from the office of treasurer or trustee, but the same shall and may be proceeded in by the succeeding treasurer or trustee in the proper name of the person commencing the same, any law, usage, or custom to the contrary notwithstanding; and such succeeding treasurer or trustee shall pay or receive like costs as if the action or suit had been commenced in his or her name, for the benefit of or to be reimbursed from the funds of such society.

Limitation of responsibility of treasurers or trustees.

XXII. And be it further enacted, That the treasurer or trustee, or any other officer of any society established under the authority of this act, shall not be liable to make good any deficiency which may arise in the funds of such society, unless such persons shall have respectively declared by writing under their hands, deposited and registered in like manner with the rules of such society, that they are willing so to be answerable; and it shall be lawful for each of such persons, or for such persons collectively, to limit his, her, or their responsibility to such sum as shall be specified in any such instrument or writing: provided always, that the said treasurer, trustee, and every other the officer of any such society, shall be and they are hereby declared to be personally responsible and liable for all monies actually received by him, her, or them, on account of or to and for the use of the said society.

Treasurer, &c., liable for money actually received.

Payment to persons appearing to be next of kin declared valid.

XXIII. And be it further enacted, That whenever the trustees of any society established under this act, at any time after the decease of any member, have paid and divided any sum of money to or amongst any person or persons who shall at the time of such payment appear to such trustees to be entitled to the effects of any deceased intestate member, the payment of any such sum or sums of money shall be valid and effectual with respect to any demand of any other person or persons as next of kin of such deceased intestate member, or as the lawful representative or representatives of such member, against the funds of such society, or against the trustees thereof; but nevertheless such next of kin or representatives shall have remedy for such money so paid as aforesaid against the person or persons who shall have received the same.

XXIV. And be it further enacted, That in case any member of any society shall die, who shall be entitled to any sum not exceeding twenty pounds, it shall be lawful for the trustees or treasurer of such society, and they are hereby authorized and permitted, if such trustees or treasurer shall be satisfied that no will was made and left by such deceased member, and that no letters of administration or confirmation will be taken out, of the funds, goods, and chattels of such depositor, to pay the same at any time after the decease of such member according to the rules and regulations of the said institution, and in the event of there being no rules and regulations made in that behalf, then the said trustees or treasurer are hereby authorized and permitted to pay and divide the same to and amongst the person or persons entitled to the effects of the deceased intestate, and that without administration in England or Ireland, and without confirmation in Scotland.

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For payment of sums not exceeding 20l. where members die intestate.

XXV. And be it further enacted, That for the more effectually preventing fraud and imposition on the funds of such societies, if any officer, member, or any other person being or representing himself or herself to be a member of such society, or the nominee, executor, administrator, or assignee of any member of such society, or any other person whatever, shall in or by any false representation or imposition fraudulently obtain possession of the monies of such society, or any part thereof, or, having in his or her possession any sum of money belonging to such society, shall fraudulently withhold the same, and for which offence no special provision is made in the rules of such society, it shall be lawful for any one justice of the peace residing within the county within which such society shall be held, upon complaint made on oath or affirmation by an officer of such society, appointed for that purpose, to summon such person against whom such complaint shall be made to appear at a time and place to be named in such summons; and upon his or her appearance, or, in default thereof, upon due proof, upon oath or affirmation, of the service of such summons, it shall and may be lawful for any two justices residing within the county aforesaid to hear and determine the said complaint according to the rules of the said society, confirmed as directed by this act; and, upon due proof of such fraud, the said justices shall convict the said party, and award double the amount of the money so fraudulently obtained or withheld to be paid to the treasurer, to be applied by him to the purposes of the society so proved to have been imposed upon and defrauded, together with such costs as shall be awarded by the said justices, not exceeding the sum of ten shillings; and in case such person against whom such complaint shall be made shall not pay the sum of money so awarded to the person and at the time specified in the said order, such justices are hereby required, by warrant under their hands and seals, to cause the same to be levied by distress and sale of the goods of such person on whom such order shall have been made, or by other legal proceeding, together with such costs as shall be awarded by the said justices, not exceeding the sum of ten shillings, and also the costs and charges attending such distress and sale or other legal proceeding, returning the overplus (if any) to the owner; and, in default of such distress being found, the said justices of the peace shall commit such person so proved to have offended to the common gaol or House of

Justices may hear cases of fraud, and punish by fine or imprisonment.

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Correction, there to be kept to hard labour for such a period, not exceeding three calendar months, as to them shall seem fit: provided nevertheless, that nothing herein contained shall prevent the said society from proceeding by indictment or complaint against the party complained of; and provided also, that no party shall be proceeded against by indictment or complaint, if a previous conviction has been obtained for the same offence under the provisions of this act.

Proceedings necessary for the dissolution of any society.

XXVI. And be it further enacted, that it shall not be lawful for any such society, by any rule at any general meeting, or otherwise, to dissolve or determine such society, so long as the intents or purposes declared by such society, or any of them, remain to be carried into effect, without obtaining the votes of consent of five-sixths in value of the then existing members of such society, to be ascertained in manner herein-after mentioned, and also the consent of all persons then receiving or then entitled to receive relief from such society, either on account of sickness, age, or infirmity, to be testified under their hands individually and respectively; and for the purpose of ascertaining the votes of such five-sixths in value, every member shall be entitled to one vote, and an additional vote for every five years that he may have been a member; provided also, that no one member shall have more than five votes in the whole; and in all cases of dissolution, the intended appropriation or division of the funds or other property of such society shall be fairly and distinctly stated in the proposed plan of dissolution, prior to such consent being given; nor shall it be lawful for such society by any rule to direct the division or distribution of such stock or fund, or any part thereof, to or amongst the several members of such society, other than for carrying into effect the general intents and purposes of such society, declared by them, and confirmed by the justices of the peace as aforesaid, according to the directions of this act; but that all such rules for the dissolution or determination of any such society, without such consent as aforesaid, or for the distribution or division of the stock or fund of such society, contrary to the rules which shall have been confirmed by the said justices at their sessions, and filed in pursuance of this act shall be void and of none effect; and in the event of such division or misappropriation of the funds of such society, without the consent hereby declared to be requisite, the trustee or other officer or person aiding or abetting therein shall be liable to the like penalties as are herein-before provided for in cases of fraud.

Stock not divisible but for general purposes of the society.

Penalties for illegal dissolution or division of funds.

Rules to be made directing how disputes shall be settled.

Appointment of arbitrators.

XXVII. Provided always, and be it further enacted, that provision shall be made by one or more of the rules of every such society, to be confirmed as required by this act, specifying whether a reference of every matter in dispute between any such society, or any person acting under them, and any individual member thereof, or person claiming on account of any member, shall be made to such of his Majesty's justices of the peace as may act in and for the county in which such society may be formed, or to arbitrators to be appointed in manner herein-after directed; and if the matter so in dispute shall be referred to arbitration, certain arbitrators shall be named and elected at the first meeting of such society, or general committee thereof, that shall be held after the enrolment of its rules, none of

the said arbitrators being beneficially interested, directly or indirectly, in the funds of the said society, of whom a certain number, not less than three, shall be chosen by ballot in each such case of dispute, the number of the said arbitrators and mode of ballot being determined by the rules of each society respectively, the names of such arbitrators shall be duly entered in the book of the said society in which the rules are entered as aforesaid; and in case of the death, or refusal or neglect of any or all of the said arbitrators to act, it shall and may be lawful to and for the said society, or general committee thereof, and they are hereby required, at their next meeting, to name and elect one or more arbitrator or arbitrators as aforesaid to act in the place of the said arbitrator or arbitrators so dying, or refusing or neglecting to act as aforesaid; and whatever award shall be made by the said arbitrators, or the major part of them, according to the true purport and meaning of the rules of such society, confirmed by the justices according to the directions of this act, shall be in the form to this act annexed, and shall be binding and conclusive on all parties, and shall be final, to all intents and purposes, without appeal, or being subject to the control of one or more justices of the peace, and shall not be removed or removable into any court of law, or restrained or restrainable by the injunction of any court of equity; and should either of the said parties in dispute refuse or neglect to comply with or conform to the decision of the said arbitrators, or the major part of them, it shall and may be lawful for any one justice of the peace residing within the county within which such society shall be held, upon good and sufficient proof being adduced before him of such award having been made, and of the refusal of the party to comply therewith, upon complaint made by or on behalf of the party aggrieved, to summon the person against whom such complaint shall be made to appear at a time and place to be named in such summons; and upon his or her appearance, or in default thereof, upon due proof, upon oath, of the service of such summons, any two justices of the peace may proceed to make such order thereupon as to them may seem just: and if the sum of money so awarded, together with a sum for costs not exceeding the sum of ten shillings, as to such justices shall seem meet, shall not be immediately paid, then such justices shall, by warrant under their hands and seals, cause such sum and costs [as aforesaid to be levied by distress or by distress and sale of the monies, goods, chattels, securities, and effects belonging to the said party or to the said society, or other legal proceeding, together with all further costs and charges attending such distress and sale or other legal proceeding, returning the overplus (if any) to the said party, or to the said society, or to one of the treasurers or trustees thereof; and in default of such distress being found, or such other legal proceeding being ineffectual, then to be levied by distress and sale of the proper goods of the said party, or of the officer of the said society, so neglecting or refusing as aforesaid, by other legal proceedings, together with such further costs and charges as aforesaid, returning the overplus (if any) to the owner: provided always, that whatever sums shall be paid by any such officer, so levied on his or her property or goods in pursuance of the award of arbitrators or order of any justices, shall be repaid, with all damages accruing to him or her, by and out of the monies belonging to such society, or out of the first monies which shall be thereafter received by such society.

Justices shall enforce compliance with the decision of arbitrators.

Friendly Societies.

Reference of disputes to justices, if so directed by the rules of the society.

XXVIII. And be it further enacted, that if by the rules of any such society it is directed that any matter in dispute as aforesaid shall be decided by justices of the peace, it shall and may be lawful for any such justice, on complaint being made to him of any refusal or neglect to comply with the rules of such society by any member or officer thereof, to summon the person against whom such complaint shall be made to appear at a time and place to be named in such summons; and upon his or her appearance, or in default thereof, upon due proof, on oath or affirmation, of the service of such summons, it shall and may be lawful for any two justices to proceed to hear and determine the said complaint according to the rules of the said society; and in case the said justices shall adjudge any sum of money to be paid by such person against whom such complaint shall be made, and such person shall not pay such sum of money to the person and at the time specified by such justices, they shall proceed to enforce their award in the manner herein-before directed to be used in case of any neglect to comply with the decision of the arbitrators appointed under the authority of this act.

Orders of justices to be final.

XXIX. And be it further enacted, that every sentence, order, and adjudication of any justices under this act shall be final and conclusive to all intents and purposes, and shall not be subject to appeal, and shall not be removed or removable into any court of law, or restrained or restrainable by the injunction of any court of equity, and that no suspension, advocacy, or reduction shall be competent.

Funds may be subscribed into savings bank;

XXX. And be it further enacted, that it shall be lawful for any society established under the authority of this act from time to time to subscribe the whole or any part of the funds of such society into the funds of any institution which shall have taken the benefit of an act passed in the last session of Parliament, intituled "An Act to consolidate and amend the Laws relating to Saving Banks," subject to the provisions in the said last recited act contained relating to friendly societies.

9 Geo. 4, c. 92.

or into the Bank of England, on receipts.

XXXI. And be it further enacted, that it shall be lawful for any society established under authority of this act to pay directly into the Bank of England any sum of money not being less than fifty pounds, to the account of the commissioners for the reduction of the national debt, upon the declaration of the treasurers or trustees of such society, or any two or more of them, that such monies belong exclusively to the society for which such payment is intended to be made; and the cashier or cashiers of the Bank of England are hereby required to receive all such monies, and to place the same to the account raised in the names of the said commissioners for the time being in the books of the Bank of England, denominated "The Fund for the Friendly Societies;" and in case any such declaration shall not be true, then and in every such case the sum so paid shall be forfeited to the said commissioners; and all the clauses and provisions of an act passed in the ninth year of his present Majesty's reign, intituled "An Act to consolidate and amend the Laws relating to Savings Banks," with respect to the accounts of banks for savings, and the regulation of receipts, certificates, or order concerning the same, shall be applicable to the monies so paid into the Bank of England under the authority of

this act, as if the same had been repeated herein: provided nevertheless, that every society formed and enrolled previous to the twenty-eighth day of July one thousand eight hundred and twenty-eight, under the provisions of an act made and passed in the said fifty-ninth year of his late Majesty's reign, intituled "An Act for the further Protection and Encouragement of Friendly Societies, and for preventing Frauds and Abuses therein," shall, on paying money directly into the Bank of England as aforesaid, be entitled to receive receipts bearing interest at the rate of three-pence per centum per diem, any thing in this act contained to the contrary thereof notwithstanding, provided also, that no friendly society which already has invested or may hereafter invest any money with the said commissioners shall be entitled to re-deposit any sum or sums of money with them, without the consent of the said commissioners, or on their behalf by the comptroller general or assistant comptroller general under the said commissioners.

Friendly Societies.

Societies enrolled under 59 Geo. 3, c. 128, prior to 28 July, 1828, entitled to 3d. per cent. per diem.

XXXII. And be it further enacted, that a minor may become a member of any such society, and shall be empowered to execute all instruments, give all necessary acquittances, and enjoy all the privileges and be liable to all the responsibilities appertaining to members of matured age, notwithstanding his or her incapacity or disability in law to act for himself or herself: provided always, that such minor be admitted into such society by and with the consent of his or her parents, masters, or guardians.

Minors may be members, and have legal authority to act.

XXXIII. And be it further enacted, that the rules of every such society shall provide that the treasurers, trustees, stewards, or other principal officer thereof shall, once in every year at least, prepare or cause to be prepared a general statement of the funds and effects of or belonging to such society, specifying in whose custody or possession the said funds or effects shall be then remaining, together with an account of all and every the various sums of money received and expended by or on account of the said society since the publication of the preceding periodical statement; and every such periodical statement shall be attested by two or more members of such society appointed auditors for that purpose, and shall be countersigned by the secretary or clerk of such society; and every member shall be entitled to receive from the said society a copy of such periodical statement, on payment of such sum as the rules of such society may require, not exceeding the sum of sixpence.

Societies shall make annual audits and statements of the funds to the members.

XXXIV. And whereas it is desirable, for the better security of such societies, that correct calculations of tables of payment and allowances, dependent on the duration of sickness and the probabilities of human life, may be constructed for their assistance; and whereas the present existing data on these subjects have been found imperfect and inefficient; be it therefore further enacted, that every such society established or to be established under the authority of this act shall, within three months after the expiration of the month of December one thousand eight hundred and thirty-five, and so again within three months after the expiration of every further period of five years, transmit to the clerk of the peace for the county wherein such society is held a return of the rate of sickness and mortality experienced by

Returns to be made to the clerks of the peace at certain periods.

Friendly Societies.

the said society within the before-mentioned period of five years, according to the form prescribed in the schedule appended to this act a copy whereof shall be annexed to the rules of each society respectively.

Returns to be transmitted to secretary of state, and laid before Parliament.

XXXV. And be it further enacted, That the said clerks of the peace shall, within one month after the expiration of the month of March one thousand eight hundred and thirty-six, and so again within one month after the expiration of every further period of five years, transmit to one of his Majesty's principal secretaries of state a list of the societies which have been enrolled during such period under this act, specifying their names, the places where they have been established, and date of enrolment, and time of ceasing to exist, if such case should arise, and also a copy of the returns of sickness and mortality hereinbefore directed to be made to them according to the Schedule (A.); a copy of which list, with the schedule attached to it, shall be laid before both houses of Parliament within one month then next ensuing, if Parliament shall be sitting, or within one month after the time when Parliament shall next sit.

Penalty on societies not making returns.

XXXVI. And be it further enacted, That should any such society refuse or neglect to transmit or cause to be transmitted the aforesaid returns of sickness and mortality in the manner and within the time hereinbefore directed, the clerk of the peace within each county shall give immediate notice to such society, that unless the said return is made within twenty-one days from the date of such notice, the said society will, and thereupon shall, cease to be entitled to the privileges of this act, unless good and sufficient cause be shewn to the justices at their then next ensuing general or quarter sessions why such returns could not be made.

Exemption from stamp duties.

XXXVII. And be it further enacted, That no copy of rules, power, warrant, or letter of attorney granted or to be granted by any persons as trustee of any society established under this act, for the transfer of any share in the public funds standing in the name of such trustee, nor any receipts given for any dividend in any public stock or fund or interest of exchequer bills, nor any receipt, nor any entry in any book of receipt, for money deposited in the funds of any such society, nor for any money received by any member, his or her executors or administrators, assigns or attornies, from the funds of such society, nor any bond nor other security to be given to or on account of any such society, or by the treasurer or trustee or any officer thereof, nor any draft or order, nor any form of assurance, nor any appointment of any agent, nor any certificate or other instrument for the revocation of any such appointment, nor any other instrument or document whatever required or authorized to be given, issued, signed, made, or produced in pursuance of this act, shall be subject or liable to or charged with any stamp duty or duties whatsoever.

Construction of act.

XXXVIII. And be it further enacted, That the word "society" in this act shall be understood to include friendly society or societies, institution or institutions; the word "rules" to include rules, orders, and regulations; the word "county" to include county, riding, division, or place; and the words "treasurer or trustee" to include

treasurers or trustees; and the word "person" to include persons; and the word "book" to include books; and the word "bond" to include bonds; "name" to include names; "account" to include accounts; "member" to include members and honorary members; "clerk of the peace" to include town clerk; unless it be otherwise specially provided.

Friendly
Societies.

XXXIX. And be it further enacted, That this act shall extend to all friendly societies hereafter to be established, and also to societies already established, as soon as they shall think fit to conform to the provisions thereof.

Act to extend
to all present
and future
societies.

XL. And be it further enacted, That provided societies already enrolled shall not conform to the provisions of this act within the space of three years from the passing of this act, the said societies shall then cease to be entitled to the privileges and provisions of any or either of the hereinbefore repealed acts: provided nevertheless, that the provisions of the hereinbefore repealed acts shall continue in force as to all societies established under any or either of them before the passing of this act for the said space of three years, or until they shall sooner conform to the provisions of this act.

Societies al-
ready enrolled
to conform to
this act within
three years.

XLI. And be it further enacted, That this act shall be deemed a public act, and shall extend to Great Britain and Ireland and Berwick-upon-Tweed, and be judicially taken notice of as such by all judges, justices, and other persons whatsoever, without the same being specially shown or pleaded.

Public act.

SCHEDULE (A.)

LIST of the Members of the Society, held at _____, established on the _____; with a Return of the Sickness and Mortality experienced therein for the period of Five Years, commencing January 1st, 18 _____, and ending December 31st, 18 _____.

Names.	Trade or Profession.	Date of Birth.	Date of Admission into the Society.	Date of becoming a Free Member.	For what Time entitled to Relief on account of Sickness.												For what Time entitled to Relief on account of Superannuation.			Date of Death.	Place of Residence at Time of Death.	Remarks		
					Weeks.	Days.	Weeks.	Days.	Weeks.	Days.	Weeks.	Days.	Weeks.	Days.	Weeks.	Days.	Weeks.	Days.	Weeks.				Days.	
					In 18	In 18	In 18	In 18	In 18	In 18	In 18	In 18	In 18	In 18	In 18	In 18	In 18	In 18	In 18					
					Weeks.	Days.	Weeks.	Days.	Weeks.	Days.	Weeks.	Days.	Weeks.	Days.	Weeks.	Days.	Weeks.	Days.	Weeks.	Days.				

[N. B.—This Column may be filled up with Initials.]

FORM OF AWARD.

We, the major part of the arbitrators duly appointed by the society established at _____ in the county of _____, do hereby award and order, that *A. B.* [*specifying by name the party or the officer of the society*] do, on the _____ day of _____, pay to *C. D.* the sum of _____ [*or we do hereby reinstate in or expel A. B. from the said society [as the case may be].*] Dated this _____ day of _____ one thousand eight hundred and _____

E. F.
G. H.

FORM OF BOND.

Know all men by these presents, that we, *A. B.* of _____ treasurer [*or trustee, &c.*] of the _____ society established at _____ in the county of _____, and *C. D.* of _____ and *G. H.* of _____ (as sureties on behalf of the said *A. B.*), are jointly and severally held and firmly bound to *E. F.*; the present clerk of the peace [*or town clerk*] for the county [*or county of a city, or county of a town, riding, division, or place, as the case may be,*] of _____ in the sum of _____ to be paid to the said *E. F.* as such clerk of the peace, [*or town clerk,*] or his successor, clerk of the peace [*or town clerk*] of the said county [*or county of a city, &c.*] for the time being, or his certain attorney; for which payment well and truly to be made we jointly and severally bind ourselves, and each of us by himself, our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals. Dated the _____ day of _____ in the _____ year of our Lord _____

Whereas the above-bounden *A. B.* hath been duly appointed treasurer [*or trustee, &c.*] of the _____ society established as aforesaid, and he, together with the above-bounden *C. D.* and *G. H.* as his sureties, have entered into the above-written bond, subject to the condition hereinafter contained; now, therefore, the condition of the above-written bond is such, that if the said *A. B.* shall and do justly and faithfully execute his office of treasurer [*or trustee*] of the said society established as aforesaid, and shall and do render a just and true account of all monies received and paid by him, and shall and do pay over all the monies remaining in his hands, and assign and transfer or deliver all securities and effects, books, papers, and property of or belonging to the said society in his hands or custody to such person or persons as the said society shall appoint, according to the rules of the said society, together with the proper or legal receipts or vouchers for such payments, and likewise shall and do in all respects well and truly and faithfully perform and fulfil his office of treasurer [*or trustee, &c.*] to the said society, according to the rules thereof, then the above-written bond shall be void and of no effect, otherwise shall be and remain in full force and virtue.

Banking
Companies.

3 & 4 Wm. IV. CHAP. 83.

An Act to compel Banks issuing Promissory Notes payable to Bearer on Demand to make Returns of their Notes in Circulation, and to authorize Banks to issue Notes payable in London for less than Fifty Pounds.
[28th August, 1833.]

Partnerships and persons carrying on business, and issuing promissory notes, to keep accounts of the amount in circulation, and make periodical returns therefrom to the stamp office in London.

Such returns to be verified on oath.

Penalty for default, 500*l.*

Whereas it is expedient that all corporations, copartnerships, and persons carrying on banking business, and making and issuing promissory notes payable to bearer on demand, should make returns of the amount of such notes in circulation: be it therefore enacted, by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that all corporations and copartnerships carrying on banking business under the provisions of an act passed in the seventh year of the reign of his late Majesty King George the fourth, intituled, "An Act for the better regulating Copartnerships of certain Bankers in England, and for amending so much of an Act of the Thirty-ninth and Fortieth Years of the Reign of his late Majesty King George the Third, intituled 'An Act for establishing an Agreement with the Governor and Company of the Bank of England for advancing the Sum of Three Millions towards the Supply for the Service of the Year One thousand eight hundred as relates to the same,'" and all other persons carrying on banking business, and making and issuing promissory notes payable to bearer on demand, shall respectively keep weekly accounts from the passing of this act of the average amount of notes in circulation at the end of each week of the corporation, copartnership, or persons or person so carrying on banking business and keeping such weekly account; and shall within one month after the thirty-first day of December after the passing of this act, make up from such weekly account an average account of the amount of such notes in circulation during the period between the passing of this act and the making up such account; and shall also make up a like account at the end of each quarter ending on the first day of April, the first day of July, the first day of October, and the first day of January in the year one thousand eight hundred and thirty-four and every subsequent year, of the average amount of notes in circulation in the preceding quarter, and shall return and deliver such account to the commissioners of stamps at the stamp office in London; and such accounts and returns shall be verified upon the oath of the secretary or accountant or some officer of the corporation, company, or copartnership, or persons or person so carrying on banking business and making such return, which oath shall be taken before any justice of the peace, and which oath any justice of the peace is hereby authorized to administer; and if any corporation, company, or copartnership, or persons or person so carrying on banking business, shall neglect to keep such weekly accounts, or to make out or to return or deliver such averages to the commissioners of stamps at the stamp office in London, or if any secretary, accountant, or other person verifying any such account or average shall return or deliver to the commissioners of stamps any false account or

return of such averages, the corporation, company, or copartnership, or persons or person to whom any such account or averages, or such secretary, accountant, or person verifying the account, shall belong, shall forfeit for every such offence the sum of five hundred pounds, and the secretary or other person so offending shall also forfeit for every such offence the sum of one hundred pounds: and any secretary, accountant, or other person who shall knowingly and wilfully take any false oath as to any such account or averages shall be subject to such pains and penalties as are by any law in force at the time of taking such oath enacted as to persons convicted of wilful and corrupt perjury.

Banking Companies.

False swearing punished as perjury.

II. And be it further enacted, that it shall be lawful for any body politic or corporate whatsoever, erected or to be erected, and for any other persons united or to be united in covenants or partnership, exceeding the number of six persons, carrying on business as bankers, to make any bill of exchange or promissory note of such corporation or copartnership payable in London by any agent of such corporation or copartnership in London, or to draw any bill of exchange or promissory note upon any such agent in London, payable on demand or otherwise in London, and for any less amount than fifty pounds, any thing in the said recited act of the seventh year of the reign of his late Majesty king George the Fourth, or in any other act, to the contrary notwithstanding.

Banks of more than six persons may draw on agent in London, on demand or otherwise, for less than 50L, notwithstanding the act 7 G. 4, c. 46.

III. And be it further enacted, that this act may be amended, altered, or repealed by any act or acts to be passed in this present session of Parliament.

Act may be altered this session.

3 & 4 Wm. IV. CHAP. 98.

An Act for giving to the Corporation of the Governor and Company of the Bank of England certain Privileges, for a limited Period, under certain Conditions.
[29th August, 1833.]

Whereas an act was passed in the thirty-ninth and fortieth years of the reign of his Majesty king George the Third, intituled "An Act for establishing an Agreement with the Governor and Company of the Bank of England for advancing the sum of Three Millions towards the Supply for the service of the year one thousand eight hundred:" and whereas it was by the said recited act declared and enacted, that the said governor and company should be and continue a corporation with such powers, authorities, emoluments, profits and advantages, and such privileges of exclusive banking, as are in the said recited act specified, subject nevertheless to the powers and conditions of redemption, and on the terms in the said act mentioned: and whereas an act passed in the seventh year of the reign of his late Majesty King George the Fourth, intituled "An Act for the better regulating Copartnerships of certain Bankers in England, and for amending so much of an Act of the Thirty-ninth and Fortieth Years of the Reign of his late Majesty King George the Third, intituled 'An Act for es-

39 & 40 G. 3, c. 28.

7 G. 4, c. 46.

Banking Companies.

Bank of England to enjoy an exclusive privilege of banking upon certain conditions.

During such privilege, no banking company of more than six persons to issue notes payable on demand within London, or sixty-five miles thereof.

Any company or partnership may carry on business of banking in London, or within sixty-five miles

tablishing an Agreement with the Governor and Company of the Bank of England for advancing the sum of Three Millions towards the Supply for the Service of the Year one thousand eight hundred, as relates to the same: and whereas it is expedient that certain privileges of exclusive banking should be continued to the said governor and company for a further limited period, upon certain conditions: and whereas the said governor and company of the Bank of England are willing to deduct and allow to the public, from the sums now payable to the said governor and company for the charges of management of the public unredeemed debt, the annual sum hereinafter mentioned, and for the period in this act specified, provided the privilege of exclusive banking specified in this act is continued to the said governor and company for the period specified in this act; may it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that the said governor and company of the Bank of England shall have and enjoy such exclusive privilege of banking as is given by this act, as a body corporate, for the period and upon the terms and conditions hereinafter mentioned, and subject to the termination of such exclusive privilege at the time and in the manner in this act specified.

II. And be it further enacted, that during the continuance of the said privilege, no body politic or corporate, and no society or company, or persons united or to be united in covenants or partnerships, exceeding six persons, shall make or issue in London, or within sixty-five miles thereof, any bill of exchange or promissory note, or engagement for the payment of money on demand, or upon which any person holding the same may obtain payment on demand; provided always, that nothing herein or in the said recited act of the seventh year of the reign of his late Majesty King George the Fourth contained shall be construed to prevent any body politic or corporate or any society or company, or incorporated company or corporation or copartnership, carrying on and transacting banking business at any greater distance than sixty-five miles from London, and not having any house of business or establishment as bankers in London, or within sixty-five miles thereof (except as hereinafter mentioned,) to make and issue their bills and notes payable on demand or otherwise, at the place at which the same shall be issued, being more than sixty-five miles from London, and also in London, and to have an agent or agents in London, or at any other place at which such bills or notes shall be made payable for the purpose of payment only, but no such bill or note shall be for any sum less than five pounds, or be re-issued in London, or within sixty-five miles thereof.

III. And whereas the intention of this act is, that the governor and company of the Bank of England, should during the period stated in this act (subject nevertheless to such redemption as is described in this act), continue to hold and enjoy all the exclusive privileges of banking given by the said recited act of the thirty-ninth and fortieth years of the reign of his Majesty King George the Third aforesaid, as regulated by the said recited act of the seventh year of his late Majesty King George the Fourth, or any prior or subsequent

act or acts of Parliament, but no other or further exclusive privilege of banking; and whereas doubts have arisen as to the construction of the said acts, and as to the extent of such exclusive privilege; and it is expedient that all such doubts should be removed, be it therefore declared and enacted, that any body politic or corporate, or society, or company or partnership, although consisting of more than six persons, may carry on the trade or business of banking in London, or within sixty-five miles thereof, provided that such body politic or corporate, or society or company or partnership, do not borrow, owe, or take up in England any sum or sums of money on their bills or notes payable on demand, or at any less time than six months from the borrowing thereof, during the continuance of the privileges granted by this act to the said governor and company of the Bank of England.

**Banking
Companies.**

thereof, upon
the terms here-
in mentioned.

XIV. And be it further enacted, that all the powers, authorities, franchises, privileges, and advantages given or recognised by the said recited act of the thirty-ninth and fortieth years aforesaid, as belonging to or enjoyed by the governor and company of the Bank of England, or by any subsequent act or acts of Parliament, shall be and the same are hereby declared to be in full force and continued by this act, except so far as the same are altered by this act, subject nevertheless to such redemption upon the terms and conditions following; (that is to say) that at any time, upon twelve months' notice to be given after the first day of August, 1855, and upon repayment by Parliament to the said governor and company, or their successors, of the sum of eleven millions fifteen thousand one hundred pounds, being the debt which will remain due from the public to the said governor and company, after the payment of the one-fourth of the debt of fourteen millions six hundred and eighty-six thousand eight hundred pounds as hereinbefore provided, without any deduction, discount, or abatement whatsoever, and upon payment to the said governor and company, and their successors of all arrears of the sum of one hundred thousand pounds per annum in the said act of the thirty-ninth and fortieth years aforesaid mentioned, together with the interest or annuities payable upon the said debt or in respect thereof, and also upon repayment of all the principal and interest which shall be owing unto the said governor and company, and their successors upon all such tallies, exchequer orders, exchequer bills, or Parliamentary funds which the said governor and company or their successors shall have remaining in their hands or be entitled to at the time of such notice to be given as last aforesaid, then and in such case and not till then, (unless under the proviso hereinbefore contained) the said exclusive privileges of banking granted by this act shall cease and determine at the expiration of such notice of twelve months.

Provisions of
act of 39 and
40 Geo. 3, to
remain in force,
except as altered
by this
act.

Friendly Societies.

4 & 5 Wm. IV. CHAP. 40.

An Act to amend an Act of the Tenth Year of His late Majesty King George the Fourth, to consolidate and amend the Laws relating to Friendly Societies. [30th July 1834].

- Whereas it is expedient to alter and amend an act made in the tenth year of the reign of his late Majesty King George the Fourth, intituled
- 10 G. 4, c. 56. "An Act to consolidate and amend the Laws relating to Friendly Societies:" Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, That so much of the said act as enacts that no rules shall be allowed unless it shall appear to the justices to whom the same are tendered that the tables of the payment to be made by the members, and of the benefits to be received by them, may be adopted with safety to all parties concerned; and so much as enacts that the executors, administrators, or assignees of bankrupts or insolvents shall pay money due to friendly societies before any other debts; and so much as enacts that the funds of any friendly society may be subscribed into a savings bank; and so much as requires the returns of the rate of sickness and mortality to be made to the clerk of the peace, or as requires clerks of the peace to transmit such returns to the secretary of state, or as provides that the friendly society refusing or neglecting to make such return should cease to be entitled to the privileges of the said recited act; shall be and the same are hereby repealed.
- Repeal of
10 G. 4, c. 56,
s. 6.
- s. 20.
- s. 30.
- Part of s. 34.
- Part of s. 35.
s. 36.

Purposes for which societies may be formed under 10 G. 4, c. 56.

II. And whereas it is in and by the said recited act provided that a society may be established for the mutual relief and maintenance of all and every the members thereof, their wives or children, or other relations in sickness, infancy, advanced age, widowhood, or any other natural state or contingency whereof the occurrence is susceptible of calculation by way of average: And whereas it is expedient to extend the object or purpose for which a society may be established under the provisions of the said recited act; be it therefore enacted, That it shall and may be lawful for any number of persons in Great Britain and Ireland to form themselves into and to establish a society under the provisions of the said recited act, for the mutual relief and maintenance of all and every the members thereof, their wives, children, relations, or nominees, in sickness, infancy, advanced age, widowhood, or any other natural state or contingency whereof the occurrence is susceptible of calculation by way of average, or for any other purpose which is not illegal: (a) Provided always, that when the rules of any society provide for relief in any other case than that of sickness, infancy, advanced age, widowhood, or other natural state or contingency as aforesaid, the contributions for such other purpose shall be kept separate and distinct, or the charges defrayed by extra subscriptions of the members at the time such contingencies take place.

(a) See *Silver v. Barnes*, 6 Bing. N. C. 180, where a benefit society lent money to their members at more than 5l. per cent. interest. Such lending was held not to be usurious,—the transaction was not deemed a loan of money, but a mere dealing with the partnership fund.

III. And be it further enacted, That so much of the said recited act as relates to the rules of friendly societies being transmitted to the barrister or advocate, and deposited with the clerk of the peace and certified by him, as well as so much as relates to alterations of rules being certified by the clerk of the peace, and that no rule or alteration or amendment should be binding until confirmed by the justices, and filed under the recited act, shall be and the same are hereby repealed.

Friendly Societies.

Repeal of
10 G. 4, c. 56,
s. 4, and part
of s. 7.

IV. And be it further enacted, that two transcripts, fairly written on paper or parchment of all rules made in pursuance of the said recited act or this act, signed by three members, and counter-signed by the clerk or secretary (accompanied, in the case of an alteration or amendment of rules, with an affidavit of the clerk or secretary, or one of the officers of the said society that the provisions of the said recited act, or of the act under which the rules of the society may have been enrolled, have been duly complied with,) with all convenient speed after the same shall be made, altered, or amended, and so from time to time after every making, altering, or amending thereof, shall be submitted, in England and Wales and Berwick-upon-Tweed, to the barrister at law for the time being appointed to certify the rules of saving banks, and in Scotland to the lord advocate or any depute appointed by him for that purpose, and in Ireland to such barrister as may be appointed by his Majesty's attorney general in Ireland, for the purpose of ascertaining whether the said rules of such society, or alteration or amendment thereof, are calculated to carry into effect the intention of the parties framing such rules, alterations, or amendments, and are in conformity to law and to the provisions of the said recited act or this act; and that the said barrister or advocate shall advise with the said clerk or secretary, if required, and shall give a certificate on each of the said transcripts, that the same are in conformity to law and to the provisions of the said recited act and this act, or point out in what part or parts the said rules are repugnant thereto; and that the barrister or advocate, for advising as aforesaid, and perusing the rules, or alterations or amendments of the rules of each respective society, and giving such certificate as aforesaid, shall demand no further fee than that specified in the said recited act; and one of such transcripts, when certified by the said barrister or advocate shall be returned to the society, and the other of such transcripts shall be transmitted by such barrister or advocate to the clerk of the peace for the county wherein such society shall be formed, and by him laid before the justices for such county at the general quarter sessions, or adjournment thereof, held next after the time when such transcript shall have been so certified and transmitted to him as aforesaid; and the justices then and there present are hereby authorized and required without motion, to allow and confirm the same; and such transcript shall be filed by such clerk of the peace with the rolls of the sessions of the peace in his custody, without fee or reward; and that all rules, alterations, and amendments thereof from the time when the same shall be certified by the said barrister or advocate, shall be binding on the several members and officers of the said society, and all other persons having interest therein.

Two transcripts of rules to be submitted to a barrister, &c., by whom they are to be certified.

Barrister, &c. to certify both transcripts.

Fee payable to barrister.

One transcript to be returned to society, the other to be sent to clerk of peace.

Justices to confirm rules.

Transcript to be filed.

Rules, &c. to be binding.

V. Provided always, and be it enacted, That the said barrister shall be entitled to no further fee for or in respect of any alteration or

Barrister not entitled to fee

Friendly Societies.

in respect of alterations nor for certificate to rules being copies of those already enrolled.

Returns of sickness, &c. to be sent to barrister.

If rules of society direct reference in case of dispute to arbitration, and society refuse to grant arbitrators, &c., justices may determine the dispute.

Provision in case member of society is expelled.

Funds of friendly society may be depo-

amendment of any rules upon which one fee has been already paid to the said barrister within the period of three years: Provided also that if any rules, alterations, or amendments, are sent to such barrister or advocate, accompanied with an affidavit of being a copy of any rules, or alterations or amendments of the rules, of any other society, which shall have been already enrolled under the provisions of the said recited act or this act, the said barrister or advocate shall certify and return the same as aforesaid, without being entitled to any fee for such certificate.

VI. And be it further enacted, That the returns of the rate of sickness and mortality according to the form prescribed in the schedule appended to the said recited act shall be transmitted at the periods therein mentioned to the barrister or advocate by whom the rules of the society may have been certified, and shall by such barrister or advocate be transmitted to the secretary of state, for the purposes in the said recited act provided.

VII. And whereas in and by the said recited act provision is directed to be made by the rules of every society whether reference of any matter in dispute shall be made to justices or to arbitrators: And whereas it is expedient that further provision should be made in case the reference is to arbitrators; be it therefore enacted, that when the rules of any society provide for a reference to arbitrators of any matter in dispute, and it shall appear to any justices of the peace, on the complaint on oath of a member of any such society, or of any person claiming on account of such member, that application has been made to such society, or the steward or other officer thereof, for the purpose of having any dispute so settled by arbitration, and that such application has not within forty days been complied with, or that the arbitrators have neglected or refused to make any award, it shall and may be lawful for such justice to summon the trustee, treasurer, steward, or other officer of the society, or any one of them against whom the complaint is made, and for any two justices to hear and determine the matter in dispute, in the same manner as if the rules of the said society had directed that any matter in dispute as aforesaid should be decided by justices of the peace, anything in the said recited act contained to the contrary notwithstanding.

VIII. And be it further enacted, That in case any member of a friendly society established under the said recited act or this act shall have been expelled from such society, and the arbitrators or justices, as the case may be, shall award or order that he or she shall be reinstated, it shall and may be lawful for such arbitrators or justices to award or order, in default of such reinstatement, to the member so expelled, such a sum of money as to such arbitrators or justices may seem just and reasonable; which said sum of money, if not paid, shall be recoverable from the said society, or the treasurer, trustee, or other officer, in the same way as any money awarded by arbitrators is recoverable under the said recited act.

IX. And be it further enacted, That it shall be lawful for any society established under the authority of the said recited act or this act from time to time to subscribe the whole or any part of the funds

of such society into the funds of any institution which shall have taken the benefit of an act passed in the ninth year of the reign of his late Majesty King George the Fourth, intituled "An Act to consolidate and amend the Laws relating to Savings Banks," subject to the provisions in that act contained relating to friendly societies, except so much thereof as restricts the amount allowed to be invested, which restriction as to the amount allowed to be invested by any friendly society is hereby repealed: provided always, that it shall not be necessary for the trustees of any savings bank to enrol at the sessions any alteration in the rules of such institution which may be occasioned by the provision herein contained.

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sited in savings bank.
9 G. 4, c. 92.

X. And be it further enacted, That on the trial of any action, indictment, or other proceeding respecting the property of any society enrolled under the authority of the said recited act or this act, or in any proceedings before any justice of the peace, any member of such society shall be a competent witness, and shall not be objected to on account of any interests he may have as such member in the result of such action, indictment, or other proceeding.

Members of friendly societies may be witnesses.

XI. And be it further enacted, That no fee shall be charged to any member of any friendly society whatever for any oath or oaths which he may be legally required to make before a magistrate or magistrates in order to obtain the payment of his sick pay or allowance; any law, usage, rule, or custom to the contrary notwithstanding.

No fee for oaths before magistrates in obtaining payment of sick pay.

XII. And be it further enacted, That if any person already appointed or who may hereafter be appointed to any office in a society established under the said recited act or this act, and being entrusted with the keeping of the accounts, or having in his hands or possession, by virtue of his said office or employment, any monies or effects belonging to such society, or any deeds or securities relating to the same, shall die, or become a bankrupt or insolvent, or have any execution or attachment, or other process issued, or action or diligence raised against his lands, goods, chattels, or effects, or property or estate, heritable or moveable, or make any assignment, disposition, assignation, or other conveyance thereof for the benefit of his creditors, his heirs, executors, administrators, or assignees, or other persons having legal right, or the sheriff or other officer executing such process, or the party using such action or diligence, shall, within forty days after demand made in writing by the order of any such society or committee thereof, or the major part of them assembled at any meeting thereof, deliver and pay over all monies and other things belonging to such society to such person as such society or committee shall appoint, and shall pay out of the estates, assets, or effects, heritable or moveable, of such person, all sums of money remaining due which such person received by virtue of his said office or employment, before any other of his debts are paid or satisfied, or before the money directed to be levied by such process as aforesaid, or which may be recovered or recoverable under such diligence, is paid over to the party issuing such process or using such diligence; and all such assets, lands, goods, chattels, property, estates, and effects shall be bound to the payment and discharge thereof accordingly.

Executors, &c. of officers of friendly society to pay money due to society before any other debts.

Friendly Societies.

Letters to and from barristers and advocate to be free of postage.

XIII. And be it further enacted, That the barristers and advocate appointed under the provisions of the said recited act passed in the tenth year of the reign of his late Majesty King George the Fourth shall and may receive and send by the general post, from and to places within the United Kingdom, all letters and packets relating solely and exclusively to the execution of the said recited act or this act, free from the duty of postage, provided that such letters and packets as shall be sent to either of the said barristers or advocate be directed to the "barrister, or advocate, appointed to certify the rules of friendly societies," at his office in London, Edinburgh, or Dublin, as the case may be, and that all such letters and packets as shall be sent by either of the said barristers or advocate shall be in covers, with the words "barrister, or advocate, appointed to certify rules of friendly societies pursuant to act of Parliament passed in the tenth year of the reign of his late Majesty King George the Fourth," printed on the same, and be signed on the outside thereof under such words with the name of such barrister or advocate in his own handwriting, (such name to be from time to time transmitted to the secretaries of the General Post Office in London, Edinburgh, and Dublin,) and under such other regulations and restrictions as the lords commissioners of the treasury, or any three or more of them, shall think proper and direct; and the said barrister or advocate is hereby strictly forbidden so to subscribe any letter or packet whatever except such as he shall himself know to relate solely and exclusively to the execution of the said last mentioned recited act or this act; and if such barrister or advocate shall send or cause or permit to be sent, under any such cover, any letter, paper, or writing, or any inclosure, other than what shall relate to the execution of the said last-mentioned recited act or this act, the barrister or advocate so offending shall forfeit and pay the sum of one hundred pounds, and be dismissed from his office; one moiety of the said penalty to the use of his Majesty, his heirs and successors, and the other moiety to the use of the person who shall inform or sue for the same, to be sued for and recovered in any of his Majesty's Courts of record at Westminster for offences committed in England, and in any of his Majesty's courts of record in Dublin for offences committed in Ireland, and before the sheriff or stewardry court of the shire or stewardry within which the party offending shall reside or the offence shall be committed for offences committed in Scotland; and if any letter, paper, or writing, or other inclosure, shall be sent under cover to either of the said barristers or advocate, the same not relating solely and exclusively to the execution of the said last-mentioned recited act or this act, he is hereby strictly required and enjoined to transmit the same forthwith to the secretary of the Post Office in London, Edinburgh, or Dublin, as the case may be, with the covers under which the same shall be sent, in order that the contents thereof may be charged with the full rates of postage.

Provisions of former statutes to continue in force as to societies esta-

XIV. And whereas in and by the said recited act it was enacted, that, provided societies then already enrolled should not conform to the provisions of that act within the space of three years from the passing of such act, the said societies should then cease to be entitled to the privileges and provisions of any or either of certain acts

thereby repealed, but that the provisions of the said acts thereby repealed should continue in force as to all societies established under any or either of them before the passing of the said recited act for the said space of three years, or until they should sooner conform to the provisions of that act: and whereas by a certain act made and passed in the second year of the reign of his present Majesty the said space of three years was extended until Michaelmas Day one thousand eight hundred and thirty-four: and whereas many friendly societies existing and enrolled before the passing of the said recited act have not yet conformed to the provisions therein contained, and it is expedient further to extend the time for enrolment under the recited act; be it therefore enacted, that the provisions of the several acts repealed by the said recited act shall continue in force as to all societies established under any or either of them before the passing of the said recited act until they shall conform to the provisions of the said recited act as altered and amended by this act, anything in the said recited act, or in the said act passed in the second year of his present Majesty, to the contrary contained in any-wise notwithstanding: provided always, that when a society already enrolled under any or either of the acts repealed by the said recited act shall be desirous of making any alteration in, amendment of, or addition to, the rules thereof, the said alteration, amendment, or addition shall be made in conformity with the said recited act as amended by this act, and such society shall thenceforth be subject to all the provisions and entitled to all the benefits and privileges in the said recited act and this act contained.

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lished under them until they shall conform to the provisions of 10 G. 4, c. 56, as hereby amended.

A society enrolled under acts repealed by 10 G. 4, c. 56, may alter their rules.

XV. And be it further enacted, That wherever in the said recited act or this act, in describing or referring to any person, the word importing the singular number or the masculine gender only is used, the same shall be understood to include and shall be applied to several persons or parties as well as one person or party, and females as well as males, unless there be something in the subject or context repugnant to such construction.

Construction of words in the act.

XVI. And be it further enacted, That this act may be altered, amended, or repealed during the present session of Parliament.

Act may be amended.

XVII. And be it further enacted, That this act shall be deemed a public act, and shall extend to Great Britain and Ireland and Berwick-upon Tweed, and be judicially taken notice of as such by all judges, justices, and other persons whatsoever, without the same being specially shown or pleaded.

Public act.

4 & 5 Wm. IV. CHAP. 94.

An Act to enable His Majesty to invest trading and other Companies with the Powers necessary for the due Conduct of their Affairs, and for the Security of the Rights and Interests of their Creditors.

[15th August, 1834.]

WHEREAS by an act passed in the sixth year of his late Majesty king George the Fourth, intituled "An Act to repeal so much of an act passed in the sixth year of his late Majesty king George the

Joint Stock Companies.

**Joint Stock
Companies.**

First, as relates to the restraining several extravagant and unwarrantable practices in the said act mentioned, and for conferring additional powers upon his Majesty with respect to the granting of charters of Incorporation to trading and other Companies," it is amongst other things enacted, that in any charter hereafter to be granted by his Majesty, his heirs or successors, for the incorporation of any company or body of persons, it shall and may be lawful in and by such charter to declare and provide that the members of such corporation shall be individually liable in their persons and property for the debts, contracts, and engagements of such corporation, to such extent, and subject to such regulations and restrictions, as his Majesty, his heirs or successors, may deem fit and proper, and as shall be declared and limited in and by such charter, and the members of such corporation shall thereby be rendered so liable accordingly; and whereas divers companies and bodies of persons do and from time to time associate themselves together for trading, charitable, literary, or other purposes, which associations it would be inexpedient to incorporate by royal charters, granted either according to the rules of the common law, or in pursuance of the said recited act, although it would be expedient to confer upon such associations, or some of them, some of the privileges of and incident to corporations created by royal charters, and especially the privilege of maintaining and defending suits, actions, prosecutions, or other legal proceedings in the name or names of some one or more of the principal officers for the time being of such associations respectively: be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that it shall and may be lawful for his Majesty, his heirs and successors, by letters patent to be from time to time for that purpose issued under the great seal of the United Kingdom of Great Britain and Ireland, or in Scotland under the seal appointed by the articles of union to be used, and instead of the great seal thereof, to grant to any company or body of persons associated together for any trading, charitable, literary, or other purposes, and to the heirs, executors, administrators, and assigns of any such persons, although not incorporated by such letters patent, any privilege or privileges which, according to the rules of the common law, or in pursuance of the said recited act, it would be competent to his Majesty, his heirs and successors, to grant to any such company or body of persons in and by any charter of incorporation, and especially the before-mentioned privilege of maintaining and defending actions, suits, prosecutions, and other proceedings, both at law and in equity, in the name or names of any one or more of the principal officers for the time being of any such associations respectively, which privileges shall be granted in and by such letters patent in such manner and form, and upon such conditions for the prevention of abuses in the management of the affairs of any such associations, and for the security of the rights and interests of their creditors, and for the protection of the public at large, as his Majesty, his heirs and successors, shall by any such letters patent as aforesaid see fit from time to time to prescribe and impose; and any letters patent which shall be so granted and issued as aforesaid, shall, to the extent of the privileges thereby granted, and subject to the conditions to be thereby imposed, be as valid and effectual

His Majesty empowered, by letters patent, to grant to trading companies not incorporated certain privileges for protection of themselves and of the public.

in the law as if such privileges were granted and such conditions were imposed by any act passed for granting and imposing the same; provided always, that in all cases where such letters patent shall be granted to any such company or body of persons, it shall and may be lawful, in all suits or proceedings in equity commenced or instituted against the principal officer or officers of such company or body of persons, to join, for the purpose of discovery, in such suits or proceedings, any member or members of such company as the nominal defendant or defendants for or on behalf of such company or body of persons, subject to the payment by the plaintiffs of such costs as the Court in which such proceedings may be had shall in that behalf order or direct: provided always, that nothing in this act contained shall enable his Majesty to grant to any company or body of persons any privilege under this act until after notice in the *Gazette* shall have been given three months that it is intended to grant such privilege or privileges.

Joint Stock Companies.

Name of any member may be joined with principal officer in suits in equity.

Notice in *Gazette*.

II. And to the end that the issuing of such letters patent, and the name or names of the principal officer or officers for the time being of the several associations thereby constituted, may be made known to the public, be it enacted, that an entry of the grant of such letters patent, and of the name or names of the principal officer or officers therein designated, or who may from time to time be appointed by virtue of the powers for that purpose contained in such letters patent, shall be made in a book to be kept for that purpose in the office of the clerk of the patents, and that the same shall be open for inspection at all reasonable times, by any person requiring the same, on payment of a fee of one shilling only; and further, that a sufficient notice or memorandum of such letters patent, together with the name or names of such principal officer or officers, be advertised in the *London Gazette* within one calendar month from the date of such letters patent, and also in some one newspaper published or circulating in the county or place where the meetings of any such association shall be usually held; and also, that upon the death, or change from any other cause whatever, of any such principal officer or officers, notice thereof, and of the name or names of the person or persons succeeding him or them, shall in like manner be recorded in the office of the clerk of the patents, and advertised in the *London Gazette* and in some one newspaper as aforesaid; and the officer or officers so from time to time recorded and advertised shall, for all intents and purposes, be held and considered as the party or parties entitled to sue and to be sued on behalf of his or their respective associations, within the meaning of this act, and of any patent or patents to be from time to time granted by virtue thereof.

Entry of grant of letters patent to be made in the office of clerk of the patents, and memorandum thereof published in the *London Gazette* and in one newspaper in the neighbourhood of the association.

III. And be it enacted, that any decree, judgment, order, or interlocutor made or pronounced in any action, suit, or proceeding in any Court of law or equity against any officer of any such company, body, or association named as aforesaid, shall have the like effect and operation upon and against the property, funds, and effects of such company, body, or association, and upon and against the persons and property of every and any member thereof, as if such company, body, or association, and such member or members thereof, had been a party or parties to such action, suit or proceeding, and as if such decree,

Decree, judgments, &c., given against said company to extend to the property of such company and to the person and effects

Joint Stock
Companies.
of every mem-
ber thereof.

judgment, order, or interlocutor had been pronounced against such company, body, or association, or against every or any such member or members thereof; provided that no diligence or execution shall pass or be issued thereon without leave first granted in open Court by the Court in which such decree, judgment, order or interlocutor was made or pronounced, and which motion shall be made on notice to the person or persons sought to be charged, nor after the expiration of three years next after such person or persons shall have ceased to be a member of such company, body, or association.

List of mem-
bers' names
with their
places of abode,
to be filed with
clerk of patents,
and be open for
inspection.

IV. Provided always, and be it enacted, that the principal officer or officers for the time being of such company or body of persons to whom such letters patent shall be granted shall, in the first week of the month of June, and in the first week of the month of December in each year during the continuance of such letters patent, cause a true list of the names of all the then existing members of such company or body of persons, with their respective places of abode and description, to be filed with the clerk of the patents, and that the same shall be open for inspection at all reasonable times by any person requiring the same.

Saving privi-
leges of exist-
ing companies.

V. Provided always and be it further enacted, that nothing in this act contained shall authorize or be construed to authorize the grant to any company or body of persons of any privilege in derogation of any exclusive privileges now enjoyed by any company or corporation under any act or acts of Parliament.

5 & 6 WM. IV. CHAP. 23.

An Act for the Establishment of Loan Societies in England and Wales, and to Extend the Provision of the Friendly Societies' Acts to the Islands of Guernsey, Jersey, and Man. [21st August, 1835.]

Loan Societies.

Societies to
cause their
rules to be
certified, &c.

Whereas certain institutions for establishing loan funds have been and may be established in England, Wales, and Berwick-upon-Tweed, for the benefit and advantage of the labouring classes of his Majesty's subjects, and it is expedient to give protection to the funds of such institutions, and to afford encouragement to the formation of other institutions of a like kind: be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal and commons in the present Parliament assembled, and by the authority of the same, that if any number of persons who have formed or shall form any society in any parish, township, or place in England, Wales, or Berwick-upon-Tweed, for the purpose of establishing a society for a loan fund for the industrious classes in England, Wales, or Berwick-upon-Tweed, and receiving back payment for the same by instalments, with the legal interest due thereon, shall be desirous of having the benefit of this act, such persons shall cause the rules or regulations framed, or to be framed for the management of such institutions to be certified, deposited, and enrolled in manner hereinafter directed, and thereupon shall be deemed and be entitled to and shall have the benefit of the provisions contained in this act.

II. And be it further enacted, that all the rules and regulations of any society to be entitled to the benefit of this act shall be certified, deposited, and enrolled in the same manner as the rules and regulations of any friendly society are required to be certified, deposited, and enrolled pursuant to the provisions of a certain act passed in the fourth and fifth years of the reign of his present Majesty King William the Fourth, entitled "An Act to amend an Act of the tenth year of his late Majesty King George the Fourth, to consolidate and amend the laws relating to Friendly Societies," and that all the provisions of the said act, as well as the act made and passed in the tenth year of his late Majesty King George the Fourth, to consolidate and amend the laws relating to friendly societies, as far as the same relate to the framing, certifying, enrolling, and altering rules of friendly societies, shall be applicable to the framing, certifying, enrolling, and altering the rules and regulations of any society to be established under the provisions of this act.

Loan Societies.

In the same manner as under the Friendly Society's Acts.

4 & 5 W. 4, c. 40.

III. And be it further enacted, that all rules and regulations from time to time made and in force for the management of any such society as aforesaid, and duly enrolled, shall be entered in a book or books to be kept by an officer of such institution to be appointed for that purpose, and which book or books shall be open at all reasonable times for the inspection of persons receiving assistance from such institution, and shall be binding on the several members and officers of such society; and the several persons receiving assistance from the same, and their representatives as well as those parties who may become the sureties for the re-payment of any loan, all of whom shall be deemed and taken to have full notice thereof by such entry and deposit with the clerk of the peace or town clerk; and the entry of such rules and regulations in such book or books as aforesaid, or the transcript thereof, deposited with the clerk of the peace or town clerk, or a true copy of such transcript, examined with the original and proved to be a true copy, shall be received as evidence of such rules and regulations respectively in all cases: and no certiorari shall be brought or allowed to remove any such rules or regulations into any of his Majesty's courts of record; and every copy of any such transcript deposited with any clerk of the peace or town clerk as aforesaid shall be made without fee or reward, except the actual expense of making such copy, and such copy shall not be subject to any stamp duty.

Rules and regulations to be entered in a book to be kept by the officer of the society.

IV. And be it further enacted, that all monies, goods, chattels, and effects whatsoever shall be vested in the trustee or trustees of such institution for the time being, for the use and benefit of such institution and the respective members thereof, their respective executors and administrators, according to their respective claims and interest, and after the death, resignation, or removal of any trustee or trustees shall vest in the succeeding trustee or trustees for the same estate and interest as the former trustee or trustees had therein, and subject to the same trusts, without any assignment or conveyance whatever, and also shall, for all purposes of action or suit, as well criminal as civil, in law or in equity, in anywise touching or concerning the same, be deemed and taken to be and shall in every such proceeding (where necessary) be stated to be the property of

Property of society vested in trustees thereof.

Loan Societies.

the person or persons appointed to the office of trustee or trustees of such institution for the time being, in his or their proper name or names, without further description; and such person or persons shall and they are hereby respectively authorized to bring or defend, or cause to be brought or defended, any action, suit or prosecution, criminal as well as civil, in law or equity, touching or concerning the property, right, or claim aforesaid of such institution, and to sue and be sued, plead and be impleaded, in his or their proper name or names, as trustee or trustees of such institution, without other description; and no suit, action, or prosecution shall be discontinued or abate by the death of such person or persons, or his or their removal from the office of trustee or trustees as aforesaid, but the same shall and may be proceeded in by the succeeding trustee or trustees in the proper name or names of such person or persons commencing the same, any law, usage, or custom to the contrary notwithstanding; and such succeeding trustee or trustees shall pay or receive like costs as if the action or suit had been commenced in his or their name or names, for the benefit of or to be reimbursed from the funds of such institution.

Treasurer, &c., to give security, if required by rules of institution.

V. And be it further enacted, that if any treasurer or other officer or officers or other person whatsoever who shall be intrusted with the receipt or custody of any sum or sums of money, the property of such institution, or any interest or dividend arising from time to time thereby, shall be required by the rules or regulations of such institution to become bound with sureties for the just and faithful execution of such office or trust in such sum or sums of money as shall be required by the rules and regulations of such institution, such security shall and may be given by bond or bonds to the clerk of the peace for the county, county of a city, county of a town or place where such institution shall be established for the time being, without fee or reward; and in case of forfeiture it shall be lawful for the trustees of such institution to sue upon such bond or bonds in the name of the clerk of the peace for the time being, and to carry on such suit at the costs and charges of and for the use of the said institution, fully indemnifying and saving harmless such clerk of the peace from all costs and charges of such suit or suits, or in respect thereof; and no bond or security so to be given shall be subject to or chargeable to any stamp duty whatsoever.

Amount of any loan.

VI. And be it further enacted, that it shall not be lawful to and for any such society to make any loan to any one individual at any one time exceeding in amount the sum of fifteen pounds: provided nevertheless, that no second or other loan shall be made to the same individual until the previous loan is repaid.

No note or security liable to stamp duty.

VII. And be it further enacted, that no note or other security or undertaking which may be entered into for the repayment of any loan made under this act in manner hereinbefore provided, nor any receipt or entry in any book of receipt for money lent or paid, nor any draft or order, nor any appointment of any agent, nor any other instrument or document whatever required to be given, issued, made, or provided in pursuance of the rules and regulations of the society, shall be subject to or chargeable with any stamp duty whatever.

VIII. And be it further enacted, that all notes and securities entered into for the payment of such loans shall be made payable to the treasurer or clerk for the time being of the said institution; and if the party or parties liable to pay the same shall fail to make full payment in money of the sum in the note or security mentioned, or any part thereof, for seven days after demand made on such party, or left at his usual place of abode, by or on behalf of the treasurer or clerk for the time being, of the said institution, it shall and may be lawful for any one or more of his Majesty's justices of the peace for the county, riding, city, division, or place where the person or persons respectively so refusing to pay any of such notes or securities as aforesaid shall or may happen to be or reside, and such justice or justices is and are hereby required, upon complaint made by such treasurer or clerk as aforesaid, to summon the person or persons against whom such complaint shall be made; and after his, her, or their appearance, or in default thereof, upon due proof upon oath of such summons or warning having been given or left as aforesaid, such justice or justices shall proceed to hear and determine the said complaint, and award such sum to be paid by the person or persons respectively liable to the payment of any such note or security to such treasurer or clerk as aforesaid, as shall appear to such justice or justices to be due thereon, together with such a sum for costs, not exceeding the sum of ten shillings, as to such justice or justices shall seem meet, and if any person or persons shall refuse or neglect to pay or satisfy such sum of money as upon such complaint as aforesaid shall be adjudged, upon the same being demanded, such justice or justices shall, by warrant under his or their hand and seal or hands and seals, cause the same to be levied by distress and sale of the goods of the party so neglecting or refusing as aforesaid, together with all costs and charges attending such distress and sale and returning the overplus, if any, to the owner, and no such proceedings shall be removed by certiorari or otherwise into any of his Majesty's superior courts of record.

Loan Societies.

Recovery of
loan, &c. be-
fore justices of
the peace.

IX. And be it further enacted, that it shall and may be lawful to and for the trustees or managers of any institution established under the provisions of this act to demand and receive from the person to whom any loan may be made, at the time of making the same, the full amount of interest at the rate of five pounds per centum per annum, which would be due for the time the money may be advanced, or to receive the amount of such interest at such other time or times and in such proportion or proportions as the said trustees or managers may think fit, without being subject or liable on account thereof to any of the forfeitures or penalties imposed by any act or acts of Parliament relating to usury.

Receipt of
interest.

X. And be it further enacted, that the provisions of a certain act made and passed in the tenth year of the reign of his late Majesty king George the Fourth, intituled "An Act to consolidate and amend the Laws relating to Friendly Societies," and of a certain other act made and passed in the fourth and fifth years of his present Majesty, intituled "An Act to amend an Act of the tenth year of his late Majesty king George the Fourth, to consolidate and amend the Laws relating to Friendly Societies," shall extend to the islands of Guernsey

10 G. 4, c. 56,
and 4 & 5 W.
4, c. 40, ex-
tended to
Guernsey, &c.

Loan Societies. and Jersey, and Isle of Man, and that the rules and alterations of rules of any society established or to be established in the islands of Guernsey, Jersey, and Isle of Man, under the said last mentioned act or this act, shall be submitted to the barrister-at-law for the time being appointed to certify the rules of savings banks in England.

6 & 7 Wm. IV. CHAP. 32.

An Act for the Regulation of Benefit Building Societies.

[14th July, 1836.]

Building Societies.

Societies may be established for the purchase or erection of dwelling-houses.

Whereas certain societies, commonly called building societies, have been established in different parts of the kingdom, principally amongst the industrious classes, for the purpose of raising by small periodical subscriptions a fund to assist the members thereof in obtaining a small freehold or leasehold property, and it is expedient to afford encouragement and protection to such societies and the property obtained therewith: be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present Parliament assembled, and by the authority of the same, that it shall and may be lawful for any number of persons in Great Britain and Ireland to form themselves into and establish societies for the purpose of raising by the monthly or other subscriptions of the several members of such societies, shares not exceeding the value of one hundred and fifty pounds for each share, such subscriptions not to exceed in the whole twenty shillings per month for each share, a stock or fund for the purpose of enabling each member thereof to receive out of the funds of such society the amount or value of his or her share or shares therein, to erect or purchase one or more dwelling-house or dwelling-houses, or other real or leasehold estate to be secured by way of mortgage to such society until the amount or value of his or her shares shall have been fully repaid to such society with the interest thereon, and all fines or other payments incurred in respect thereof, and to and for the several members of each society from time to time to assemble together, and to make, ordain, and constitute such proper and wholesome rules and regulations for the government and guidance of the same as to the major part of the members of such society so assembled together shall seem meet, so as such rules shall not be repugnant to the express provisions of this act and to the general laws of the realm, and to impose and inflict such reasonable fines, penalties, and forfeitures upon the several members of any such society who shall offend against any such rules, as the members may think fit, to be respectively paid to such uses for the benefit of such society as such society by such rules shall direct, and also from time to time to alter and amend such rules as occasion shall require, or annul or repeal the same, and to make new rules in lieu thereof, under such restrictions as are in this act contained; provided that no member shall receive or be entitled to receive from the funds of such society any interest or dividend, by way of annual or other periodical profit upon any shares in such society, until the amount

or value of his or her share shall have been realized, except on the withdrawal of such member, according to the rules of such society then in force.

Building Societies.

II. And be it enacted, that it shall and may be lawful to and for any such society to have and receive from any member or members thereof any sum or sums of money by way of bonus on any share or shares, for the privilege of receiving the same in advance prior to the same being realized, and also any interest for the share or shares so received or any part thereof, without being subject or liable on account thereof to any of the forfeitures or penalties imposed by any act or acts of Parliament relating to usury.

Bonus, &c. not to be usurious.

III. And be it further enacted, that it shall and may be lawful to and for any such society, in and by the rules thereof, to describe the form or forms of conveyance, mortgage, transfer, agreement, bond, or other instrument which may be necessary for carrying the purposes of the said society into execution; and which shall be specified and set forth in a schedule to be annexed to the rules of such society, and duly certified and deposited as hereinafter provided.

Rules may be made for forms of conveyance, &c.

IV. And be it further enacted, that all the provisions of a certain act made and passed in the tenth year of the reign of his late Majesty King George the Fourth, intituled "An Act to consolidate and amend the Laws relating to Friendly Societies," and also the provisions of a certain other act made and passed in the fourth and fifth years of the reign of his present Majesty King William the Fourth, intituled "An Act to amend an Act of the tenth year of his late Majesty King George the Fourth, to consolidate and amend the Laws relating to Friendly Societies," so far as the same, or any part thereof, may be applicable to the purpose of any benefit building society, and to the framing, certifying, enrolling, and altering the rules thereof, shall extend and apply to such benefit building society and the rules thereof, in such and the same manner as if the provisions of the said acts had been herein expressly re-enacted.

Provisions of Friendly Society Acts of 10 G. 4, c. 56, and 4 & 5 W. 4, c. 40, extended to this act.

V. And be it further enacted, that it shall be lawful for the trustees named in any mortgage made on behalf of such societies, or the survivor or survivors of them, or for the trustees for the time being, to indorse upon any mortgage or further charge given by any member of such society to the trustees thereof for monies advanced by such society to any member thereof, a receipt for all monies intended to be secured by such mortgage or further charge, which shall be sufficient to vacate the same, and vest the estate of and in the property comprised in such security, in the person or persons for the time being entitled to the equity of redemption, without it being necessary for the trustees of any such society to give any reconveyance of the property so mortgaged, which receipt shall be specified in a schedule to be annexed to the rules of such society, duly certified and deposited as aforesaid.

Receipt indorsed on mortgage to be sufficient discharge without reconveyance.

VI. Provided always, and be it further enacted, that nothing herein contained shall authorize any benefit building society to

Investment of funds in savings banks.

Building Societies.

invest its funds, or any part thereof in any savings bank, or with the commissioners for the reduction of the national debt.

Benefit of act to extend to all societies established prior to June, 1836.

VII. And be it further enacted, that all building societies established prior to the first day of June, one thousand eight hundred and thirty-six, shall be entitled to the protection and benefits of this act, on their present rules being duly certified and deposited as directed by the said recited acts; and no such society shall be entitled to the benefits of this act until their rules shall have been so certified and deposited; and that no such society shall be required to alter in any manner the rules under which they are now respectively governed.

Exemption from stamp duties.

VIII. And be it further enacted, that no rules of any such society, or any copy thereof, nor any transfer of any share or shares in any such society, shall be subject or liable to or charged with any stamp duty or duties whatsoever.

Public act.

IX. And be it further enacted, that this act shall be deemed a public act, and shall extend to Great Britain, Ireland, and Berwick-upon Tweed, and be judicially taken notice of as such by all judges, justices, and other persons whatsoever, without the same being specially shown or pleaded.

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6 & 7 WM. IV. CHAP. 106.

An Act to make Provision for the better and more expeditious Administration of Justice in the Stannaries of Cornwall, and for the enlarging the Jurisdiction and improving the Practice and Proceedings in the Courts of the said Stannaries. (a) [20th August, 1836.]

The Stannaries.

Whereas there has existed throughout the stannaries of Cornwall a court in which the vice-warden has in certain cases, wherein tin or tanners or matters connected with tin are concerned, exercised original equitable jurisdiction; and whereas there has existed a court in each of the stannaries of Cornwall, called the steward's court, and in which the steward of the stannaries has exercised a common law jurisdiction in such like cases; and whereas the jurisdiction so exercised by the vice-warden and the steward respectively has been confined to cases wherein tin or tanners are concerned: and whereas in late times lead, copper, and other metals and metallic minerals than tin have been discovered in the county of Cornwall, and over the matters connected with the working for and purifying and smelting of which lead, copper, and other metals and metallic minerals such jurisdiction has not been considered to extend: and whereas the various persons in the said county working and interested in such lead, copper, and other metals and metallic minerals are greatly in-

(a) Amended by 2 & 3 Vict. c. 58, *post*.

The Stannaries.

convenienced in their disputes in cases where such metals and metallic minerals other than tin are concerned, and are put to great inconvenience in obtaining redress therein : and whereas it is expedient to unite the court of equity of the vice-warden with courts of common law of the steward of the said stannaries, and to extend the jurisdiction of the court to and over all metals and metallic minerals in the said stannaries, and to and over all transactions connected therewith in the said county of Cornwall, in manner hereinafter mentioned, and also to confirm, alter, and enlarge the powers of such court in various particulars, and to make other provision than heretofore for the hearing of appeals and writs of error therefrom : be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present Parliament assembled, and by the authority of the same, that from and after the death or resignation or other removal of the present vice-warden it shall and may be lawful for the Duke of Cornwall for the time being, if of full age, or his Majesty and his successors, King or Queen regnant of England for the time being, if there be no Duke of Cornwall or if the Duke of Cornwall for the time being is under age, to nominate and appoint from time to time (by letters patent under the privy seal of the duchy of Cornwall or under the great seal of England as the case may be,) a fit person, being a barrister at law of five years' standing at the least, to be and be called the vice-warden of the stannaries.

Appointment of future vice-warden.

II. And be it further enacted, that the present vice-warden and every future vice-warden shall be judge of the court hereinafter mentioned, and which shall have both a common law and an equity side, and shall comprehend the court heretofore the court of the vice-warden and the court heretofore the courts of the stannaries, and that the vice-warden for the time being shall hold such office during his good behaviour : provided always, that it shall and may be lawful for the Duke of Cornwall for the time being, if of full age, or his Majesty and his successors, King or Queen regnant of England for the time being, if there is no Duke of Cornwall or if the Duke of Cornwall for the time being be under age, on a requisition to him for that purpose, stating therein at length sufficient grounds, and signed by the majority of five of the council or of the commissioners or principal officers of the duchy of Cornwall, but not otherwise, (the lord warden of the stannaries being always one of the persons signing such requisition,) to remove the person for the time being holding the said office of vice-warden.

Vice-warden to hold office during good behaviour.

Power of removal.

III. Provided always, and be it enacted, that, notwithstanding any thing herein contained, the appointment of vice-warden (should any vacancy occur during the time the present lord warden of the stannaries holds that situation) shall be in such lord warden, subject nevertheless to all the provisions as to the qualification of the person to be appointed vice-warden, and his removal, as hereinbefore contained.

Present lord warden to have the appointment of vice-warden in case of vacancy.

IV. And be it further declared and enacted, that the original equitable jurisdiction heretofore lawfully exercised by the vice-warden for the time being shall and may be henceforth exercised by the present

Original equitable jurisdiction of vice-warden con-

The Stannaries.

firm, and extended to matters connected with all metals and metallic minerals in the county in the same way as heretofore over tin.

and every future vice-warden for the time being, and that the present and every future vice-warden for the time being shall have, exercise, and enjoy the same equitable jurisdiction and the same power and authority in all matters and things brought before him, so far as relates to the working, managing, conducting, or carrying on any mine worked for any lead, copper, or other metal or metallic mineral within the said county of Cornwall, or to the searching for, working, smelting, or purifying any lead, copper, or other metal or metallic mineral within the said county, in as full and ample a manner as if the same had related to any tin or tin ore, or tin mine, or mine worked for tin, in the said county: provided always, that nothing herein contained shall be deemed or taken to affect any suit or matter now pending in any court of law or equity.

Decrees, &c. of vice-warden subject to rehearing and appeal.

V. Provided nevertheless, and be it enacted, that all decrees, orders, and acts, as well already or hereafter to be made or done by the vice-warden for the time being, shall in each and every case be subject to be reheard and varied by the vice-warden for the time being according to the practice of the court, and that the lord warden for the time being shall have full power and authority on any appeal or appeals presented to him for that purpose, within the time limited by the practice of the court, (such appeal or appeals being left with the secretary of the lord warden at the duchy office,) and with the aid and assistance of three or more members of the judicial committee of his Majesty's privy council for the time being, to affirm, alter, or reverse any decrees, orders, or acts already or hereafter made or done by the vice-warden, for the time being, either in whole or in part, and to dismiss such appeal or appeals, with costs or otherwise, as may to the lord warden so aided and assisted seem just: provided, that the judgment pronounced by the lord warden so aided and assisted on any appeal or appeals presented shall be transmitted to the court of the vice-warden, to be by such court carried into effect, and shall be subject to appeal to the lords spiritual and temporal in Parliament assembled.

Judgments on appeal to be transmitted to the vice-warden's court

The courts of the stannaries consolidated, and to be held before the vice-warden, who is to have the same jurisdiction as the steward has had,

VI. And be it further enacted, that the courts of law of the respective stannaries heretofore held before the stewards or steward thereof shall be one court for all the stannaries, and shall be held by and before the vice-warden for the time being, who as judge thereof shall have, exercise, and enjoy the same common law jurisdiction, and the same powers, privileges, and authorities with reference thereto, and shall transact, do, and perform the same duties, matters, and things in relation thereto, as have heretofore been lawfully transacted, done, performed, or to be exercised or enjoyed by the steward for the time being of any of the stannaries.

and also similar jurisdiction in all cases connected with all metals and metallic minerals in Cornwall.

VII. And be it further enacted, that such vice-warden for the time being shall also have, exercise, and enjoy the same common law jurisdiction and the same power and authority in all matters and things which shall be brought before him in any way connected with the working, managing, conducting, or carrying on any mine worked for lead, copper, or any other metal or metallic mineral within the said county of Cornwall, or in any way relating to lead, copper, or any other metal or metallic mineral, or the searching for, working, smelt-

ing, or purifying lead, copper, or any other metal or metallic mineral within the said county, in as full and ample a manner, as if the same had been connected with or related to any tin or tin ore, or tin mine, or mine worked for tin, in the said county: provided always, that it shall and may be lawful for either or any of the parties, plaintiff or defendant, against whom any judgment or order or sentence shall be given, to appeal therefrom to the lord warden for the time being, and that the lord warden for the time being shall have power and authority to receive appeals (the same to be lodged with his secretary at the duchy office as aforesaid) from such judgments, orders, and sentences, and shall have power and authority, being aided and assisted by three or more members of the judicial committee of his Majesty's privy council for the time being, to hear such appeals, and to affirm, alter, and reverse such judgments, orders, or sentences in whole or in part, or to dismiss the said appeals, with costs or otherwise, as may be just: provided always, that a record of every judgment, order, or sentence pronounced by the lord warden so aided and assisted as aforesaid, and signed by such lord warden, be remitted to the court of the vice-warden, to be by such court carried into effect, according to law; provided also, that upon any appeal from any judgment upon the verdict of a jury, the lord warden, so aided and assisted as aforesaid, shall not reverse, alter or inquire into the said judgment, except only for error of law apparent upon the record; and that every judgment of the lord warden shall be subject to an appeal to the lords spiritual and temporal in Parliament assembled.

The Stannaries.

Appeal.

Judgment on appeal to be sent to the vice-warden's court.

Judgment not to be reversed except on error of law.

VIII. And be it further enacted, that any party to any action at law brought in the said Court may apply for a new trial in any such action to the vice-warden within eight days after the trial of such cause, if the said vice-warden shall be then sitting, or within the first four days of the next term, and the said vice-warden may grant a new trial upon any of the grounds on which new trials are now granted by the courts at Westminster, and upon such terms and conditions as by the said vice-warden shall be thought reasonable; and the said vice-warden, if he shall think that an impartial trial cannot be had in Cornwall, may direct that the nisi prius record on any cause shall be sent to the judges of assize for the county of Devon, who shall have authority to try such cause, and after the trial to cause such record to be transmitted to the court of the vice-warden, who shall proceed on the said record as if the cause had been tried in his own court: provided always, that the orders of the said vice-warden upon such application for a new trial shall be subject to such appeal as hereinbefore provided as to other decrees, orders, and acts of the said vice-warden.

Vice-warden may grant a new trial.

IX. And be it enacted, that the service of every writ of subpoena to attend and give evidence hereafter, to be issued out of either side of the said court of the vice-warden and served upon any person in any part of England or Wales, shall be as valid and effectual in law, and shall entitle the party suing out the same to all and the like remedies by action or otherwise howsoever, as if the same had been served within the jurisdiction of the said court of the vice-warden; and that in case the person so served shall not appear according to the exigency of such writ, it shall be lawful for the said court of the

Service of subpoena on witnesses good in any part of England or Wales:

The Stannaries.

and to be enforced by process from King's Bench;

said vice-warden upon oath or affirmation to be taken in open court, or affidavit, of the personal service of such writ, to transmit a certificate of such default under the seal of the said court to the court of the King's Bench at Westminster; and the said last-mentioned court may and shall thereupon proceed against and punish by attachment or otherwise, according to the course and practice of the same court, the person so having made default, in such and the like manner as the same court might have done if such person had neglected or refused to appear in obedience to a writ of subpoena issued to compel the attendance of witnesses out of such last-mentioned court.

provided expenses be tendered.

X. Provided always, and be it further enacted, that the said court of King's Bench shall not in any such case as aforesaid proceed against or punish any person, nor shall any such person be liable to any action, for having made default by not appearing to give evidence in obedience to any such writ of subpoena as aforesaid for that purpose issued under the authority of this act, unless it shall be made to appear to the said Court of King's Bench that a reasonable and sufficient sum of money to defray the expenses of coming and attending to give evidence, and of returning from giving such evidence, had been tendered to such person at the time when such writ of subpoena was served upon such person.

Where judgment obtained, and the person and effects cannot be found within the jurisdiction of the court, any of the superior courts may issue execution.

XI. And be it further enacted, that whenever a plaintiff or defendant in any action or suit in which judgment shall be recovered in the said court of the vice-warden shall remove his person, or goods, or chattels from or out of the jurisdiction of the said court of the vice-warden, it shall and may be lawful for any of the superior courts at Westminster, upon a certificate from the registrar, under the seal of the said court of the said vice-warden, of the amount of final judgment obtained in any such action, to issue a writ of execution thereupon, for the amount of such judgment and the costs of such writ and certificate, to the sheriff of any county, city, liberty, or place, against the person or goods of the party against whom such final judgment shall have been obtained, in such manner as upon judgments obtained in any of the said superior courts at Westminster.

Rule may be enforced by making it a rule of a superior court at Westminster.

XII. And be it further enacted, that in case any rule of the said court of the vice-warden cannot be enforced by reason of the non-residence of any party or parties within the jurisdiction thereof, it shall be lawful, upon a certificate of such rule by the registrar, under the seal of the said court of the said vice-warden, and an affidavit that by reason of such non-residence such rule cannot be enforced, to make such rule a rule of any one of the said courts at Westminster, if such superior court shall think fit, and that thereupon such rule shall be enforced as a rule of such superior court.

The vice-warden to have no jurisdiction except as hereby provided, and any parties may

XIII. And be it further enacted, that neither the vice-warden for the time being, nor the court of such vice-warden, shall have, use, or exercise any power or authority save as hereby provided, and that any person against whom proceedings shall be instituted in the court of the vice-warden shall, after the appearance entered, be at liberty to demur or plead to the jurisdiction of the said court; but that no question as to the jurisdiction of the said court with respect to the

matters embraced in such proceedings shall hereafter be raised unless such person shall within fourteen days after appearance entered by or on behalf of himself, or entered by the person instituting such proceedings in manner hereby provided, demur or plead to such proceedings by filing a statement of the grounds of such demurrer or plea at the registrar's office, and serving a copy thereof on the person instituting such proceedings, or his solicitor or attorney.

The Stannaries.
demur to jurisdiction of the court.

XIV. And be it further enacted, that the vice-warden for the time being shall have power and authority from time to time, and as often as circumstances shall require, to make and prescribe such rules and orders touching and concerning the forms and manner of proceeding in the court of the vice-warden, and the practice and pleadings in all matters to be brought therein, the appointing commissioners to examine witnesses, the taking of examinations *de bene esse*, and allowing the same as evidence, the process of the said court and the mode of executing the same, the fees reasonable to be demanded by attornies, solicitors, and others, and by the officers of the said court, for business by them transacted in the said court, and such other rules, orders, and regulations as shall from time to time seem necessary and proper for expediting the business of the said court with most convenience and at most reasonable expense to the parties concerned therein, and that the vice-warden for the time being shall have power to revoke, alter, and amend the rules, orders, and regulations so from time to time made; provided that the rules, orders, and regulations so at any time made by such vice-warden for the time being are not inconsistent with this act or any of the provisions herein contained, and that such of them as shall apply to the equity side of the said court be approved of by the lord chancellor of England, and that such of them as apply to the common law side of the said court be approved of by a judge of one of the superior courts of common law at Westminster; provided always, that such rules and orders, when so approved, shall be transmitted to one of his Majesty's principal secretaries of state, and be laid before both houses of Parliament within one month from the making thereof, if Parliament be then sitting, or if Parliament be not then sitting, within one month from the commencement of the then next session of Parliament; provided nevertheless, that all rules, regulations, and orders, and all forms of practice, heretofore in use, and all fees heretofore authorized or accustomed to be taken, in the court of the vice-warden for the time being, or in any of the courts of the stannaries, shall (except so far as the same or any of them are hereby annulled or are inconsistent herewith) be and be considered binding and valid rules, regulations, and orders, and forms of practice, and authorized fees, until the same be altered, amended, or revoked by virtue of the powers hereby given.

Vice-warden empowered to make rules and orders touching the practice and proceedings of the court.

Old practice to continue until such rules and orders are made.

XV. And be it further enacted, that the vice-warden for the time being shall in all cases in equity brought before him, whether by bill, petition, or otherwise, have power and authority to take the whole or any part of the evidence therein, either *vivâ voce* on oath or affirmation before himself or before the registrar, or before persons duly authorized by him for administering oaths and taking affidavits, or on depositions taken before the registrar or commissioners appointed for that purpose, or otherwise as the vice-warden may from time to time

Vice-warden authorized to regulate how evidence shall be taken.

The Stannaries.

Old practice to remain until otherwise ordered.

Vice-warden may direct and try an issue of fact arising on the equity side.

Motion for new trial.

Power to vice-warden to make orders though court adjourned or not sitting.

Vice-warden ordering a person having a share in a mine to pay money may order a sale of his share.

The vice-warden's seal to be the seal of his court.

direct by any general rule to be made by virtue of this act: provided always, that the said vice-warden for the time being may, on interlocutory matters, and in such other cases as to him shall seem desirable, receive evidence either in whole or in part on affidavits, and that either with or without further evidence *vivâ voce* or on depositions: provided nevertheless, that the practice heretofore adopted as to taking evidence in the court of the vice-warden and of the steward's courts shall nevertheless in the meanwhile continue in each and every case until the same shall be altered by virtue hereof or of the powers herein contained.

XVI. And be it further enacted, that it shall and may be lawful for the vice-warden to direct an issue of any fact arising before him in any suit instituted by bill, petition, or otherwise on the equity side of the said court, to be tried by a jury, and to issue process to compel the attendance of jurors and witnesses for that purpose, and that the vice-warden shall have all necessary powers for trying the same and carrying the verdict thereof into execution: and that after any such issue shall be tried a new trial may be moved before the vice-warden for the time being, who shall have power to grant or refuse such new trial according to the rules of the common law and practice of the courts of Westminster in granting or refusing new trials.

XVII. And be it further enacted, that it shall and may be lawful for the vice-warden for the time being, whether he be at the time in the county of Cornwall or otherwise, in all cases which may be brought before him, whether in the said county of Cornwall or otherwise, over which cases he has jurisdiction, to make such order by way of injunction or otherwise, as the nature of the case may require, notwithstanding he may have adjourned his court to some future time or some other place; and that for the entry of pleadings, orders, proclamations, and other matters touching the practice of the court in process and execution, the said court shall be considered and be at all times open; provided that nothing be therein done on any Sunday, Christmas-day, Good Friday, or any day appointed for a public fast or thanksgiving.

XVIII. And be it further enacted, that in case the vice-warden shall in any proceedings instituted for that purpose make any decree or decretal order against any person for the payment of any money due or payable in respect of the working or management of or the providing goods for any mine worked for any metal or metallic mineral, and the person against whom such order or decretal order shall be made, or any person in trust for him, shall have any share or interest in such mine, and shall not pay the sum so decreed to be paid, it shall and may be lawful for the vice-warden, under such regulations and in such way as to him shall seem fit, to cause a sale of such share or interest, or of so much thereof as shall be necessary to raise such sum and the costs attending such sale.

XIX. And be it further enacted, that the seal of the stannaries heretofore used by and considered as the seal of the vice-warden for the time being shall be and be deemed and taken to be the seal of the court of the vice-warden, and that every process issuing from

either the equity or common law side of the said court shall issue under such seal; and that all orders, proceedings, documents, and copies by the laws of the Stannaries as now existing, or by the act or by any rule or order of either side of the said court, or of the vice-warden as judge of the said court, as shall be required to be sealed, shall be sealed therewith.

The Stannaries;

XX. And be it further enacted, that all barristers at law and all attornies and solicitors of any of the superior courts of law or equity at Westminster may appear and plead in any proceedings in the said court of the vice-warden; and in case any person, not being an attorney or solicitor of such superior courts, shall practice in the said court of the vice-warden as attorney or solicitor, he shall be deemed guilty of a contempt of the said court, and be liable to all the penalties incident thereto, on complaint thereof made to the said court; and that all the laws and statutes now in force concerning attornies or solicitors shall, so far as the same are applicable, extend to attornies or solicitors practising in the said court of the said vice-warden.

All barristers and solicitors may practice in vice-warden's court.

XXI. And be it further enacted, that the court of the vice-warden shall have jurisdiction throughout the county of Cornwall, and be held at Truro in the said county, and shall be a court of record, and shall have within the limits of its jurisdiction all the powers, rights, privileges and incidents of a court of record as fully and amply to all intents and purposes as the same are used, or exercised, or enjoyed by any of his Majesty's courts of law at Westminster; and that the vice-warden for the time being shall have, use, exercise, and enjoy all the powers, rights, privileges, and exemptions of a court of record; and that the sittings of the said court shall be held as often as shall be found necessary, and at least once in every three calendar months, on such days as the vice-warden shall from time to time appoint.

Court to have jurisdiction throughout the county of Cornwall, to be a court of record, and to be held at Truro.

XXII. And be it further enacted, that it shall and may be lawful for the Duke of Cornwall for the time being, or for his Majesty, his heirs and successors, King or Queen regnant of England for the time being, in case there shall be no Duke of Cornwall, or the Duke of Cornwall for the time being shall be under age, by letters patent under the privy seal of the duchy of Cornwall, or under the great seal of England as the case may be, from time to time to appoint a fit and proper person, being a barrister at law, or a solicitor or attorney of one of the superior courts at Westminster, to be and act as the registrar of the said court of the vice-warden, and to attend upon and assist the said vice-warden in his said court, whether sitting as a court of law or equity, and to enter and draw up all orders, decrees, sentences and judgments of all kinds made and pronounced by him and to take such accounts and to execute such references as the said vice-warden shall direct, and that the person so appointed as registrar shall hold his office during his good behaviour: provided always, that it shall and may be lawful for the Duke of Cornwall for the time being, if of full age, or his Majesty, his heirs and successors, King or Queen regnant of England for the time being, if there be no Duke of Cornwall, or if the Duke of Cornwall for the time being be under age, on a requisition to him for that purpose, stating therein

Appointment of registrar.

Removal of registrar.

The Stannaries.

sufficient grounds, and signed by the vice-warden for the time being, and by five or more of the council or of the commissioners, or of the principal officers of the duchy, but not otherwise, to remove the person for the time being holding the said office of registrar.

Present lord warden to have the appointment of registrar.

XXIII. Provided always, and be it enacted, that, notwithstanding anything herein contained, the appointment to the office of such registrar, shall, during the time the present lord warden of the Stannaries holds such situation of lord warden, be in such lord warden, subject nevertheless to all the provisions as to the qualification of the person appointed, and his removal, as hereinbefore contained.

Vice-warden may appoint secretary, prothonotary, and collector.

XXIV. And be it further enacted, that it shall and may be lawful for the vice-warden for the time being to appoint by writing under the seal of his court a fit and proper person to be and act as his secretary, and also in like manner to appoint one other fit and proper person to be and act as prothonotary or assistant registrar in the said court, and also in like manner to appoint one other fit and proper person (who shall enter into such security as the vice-warden for the time being shall think fit) as collector for the said court.

The salary of the vice-warden and other officers.

XXV. And whereas it is expedient that the vice-warden for the time being, and the registrar, and the other before-mentioned officers of his court should be paid by fixed salaries, and that all fees received by such registrar and the other officers aforesaid for business done in the court should be accounted for in manner hereinafter mentioned: and whereas his Majesty has been graciously pleased to direct that one moiety or half part of the salaries of the vice-warden and of the before-mentioned officers of his court should be paid out of and be a charge upon the revenues of the duchy, subject nevertheless to be in part indemnified by contribution of part of such fees so to be accounted for as aforesaid: and whereas it is expedient that for the purpose of raising money sufficient, with the remaining portion of such court fees, to pay the other moiety or half part of the aforesaid salaries of the said vice-warden and the aforesaid officers of his court, a small assessment should be made on all metals and metallic minerals (except tin ore) over all matters connected with which the jurisdiction of such court is hereby extended as aforesaid, and which shall be from time to time brought to sale in or withdrawn from any mine in the said county of Cornwall; be it therefore enacted, that there shall be paid and payable in the manner hereinafter mentioned, the yearly sums following as and for the salaries to the vice-warden and the before-mentioned officers of his said court for the time being; (*videlicet.*) to the vice-warden the sum of one thousand five hundred pounds, to the registrar the sum of five hundred pounds, to the person who shall be so appointed the secretary to the vice-warden the sum of one hundred pounds, to the prothonotary, or assistant registrar, the sum of two hundred pounds, and to the collector the sum of thirty pounds; which said several sums shall be paid from time to time half-yearly, in manner hereby provided, free and clear from all taxes and deductions whatsoever, on the twenty-fifth day of March and on the twenty-ninth day of September in each year, by equal portions, the first of such respective portions to be paid on the twenty-fifth day of March next; and that if any person at any time

Apportionment

holding any of the said offices shall die, resign, or be removed from the same, the executor or administrator of the person so dying, or the person so resigning or being removed, shall be entitled to have such proportionate part of his salary as shall have accrued during the time that such person shall have held his office since the last payment; and that the successor of any such person so dying, resigning, or being removed as aforesaid, shall be entitled to receive such portion of his salary, as shall be accruing or shall accrue from the day of such death, resignation, or removal.

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of salary on
death, &c.

XXVI. And be it further enacted, that a moiety or half part of the aforesaid salaries to the vice-warden for the time being and to the aforesaid officers of his said court shall be a charge on the revenues of the duchy of Cornwall, and that the same shall be paid by the receiver-general for the time being of the said duchy, under debentures for that purpose from the auditor for the time being of the said duchy, in which the said auditor is hereby authorized to issue; and that the said receiver-general shall, on the twenty-fifth of March and the twenty-ninth of September in each year, under the debentures so issued, pay, free from all deductions, the sums following; (*videlicet*.) to the vice-warden for the time being the sum of three hundred and seventy-five pounds, to the registrar the sum of one hundred and twenty-five pounds, to the person so appointed secretary to the vice-warden the sum of twenty-five pounds, to the prothonotary or assistant registrar the sum of fifty pounds, and to the collector the sum of seven pounds ten shillings.

The revenues
of the duchy
charged with
half the
salaries.

XXVII. And be it further enacted, that the person so as aforesaid appointed secretary to the vice-warden, and the said prothonotary or deputy registrar, and the said collector, shall once in every half-year account for and pay over to the registrar for the time being of such court all fees received by them by virtue of their respective appointments during the previous half-year; and that the registrar for the time being shall forthwith make out a full and true account of all fees received by him during such preceding half-year, and of all fees received by the aforesaid officers of the said court, and accounted for and paid to him as aforesaid, for the same period; and that such registrar shall have such account audited by the said vice-warden for the time being, in which account and audit there may and shall be charged and allowed such small sums of money as to the vice-warden shall seem reasonable for the keeping order in, and the lighting, airing, and cleansing the place in which such court shall be held, and shall transmit a copy of such account so audited to the auditor for the time being of the said duchy, and shall pay or cause to be paid to the said receiver or his deputy one-third part of the total amount of fees so appearing to have come to the hands of such registrar, for which sum so paid the receiver shall on passing his accounts give credit to the duchy in part discharge of the moiety of the salaries so as aforesaid charged on the revenues of the said duchy.

Secretary, &c.
to account for
all fees half-
yearly.

Account to be
audited by vice-
warden, and
one-third of
fees to be paid
in aid of moiety
of the salaries
charged on the
duchy re-
venues.

XXVIII. And be it further enacted, that there shall be paid and payable the sum of one farthing in the pound sterling on the value of all metals and metallic minerals (except tin and tin ore) which shall be from time to time brought to sale in or withdrawn from any mine within the said county of Cornwall; and that the head manager

Assessment of
one farthing in
the pound ster-
ling on all me-
tals, &c., ex-

The Stannaries.
cept tin; and
head manager
of every mine
to make a re-
turn quarterly
of the quantity
and value.

of every mine in the said county of Cornwall shall, within ten days after each quarterly account of the mine over which he is head manager shall have been or ought to have been made up, transmit to the registrar for the time being of the vice-warden's court a full, true and particular account and return of all metals and metallic minerals (except tin and tin ore) which shall have been brought to sale in or shall have been withdrawn from the mine of which he is such head manager during the preceding quarter, and shall in such return state the value in money of the respective quantities of the metals and metallic minerals specified therein at the time the same were respectively brought to sale or withdrawn, as the case may be; and that the head manager of every such mine shall, on application from the collector of the vice-warden's court, pay or cause to be paid to such collector the sum of one farthing in the pound sterling on the aggregate value of all metals and metallic minerals (except tin and tin ore) which shall have been brought to sale or withdrawn from such mine during the preceding quarter; and that every such payment by such head manager shall be considered as costs, and shall on passing his account with respect to the mine of which he is such head manager be allowed to him accordingly.

Registrar out
of the assess-
ment and the
remaining fees,
to pay the other
moiety of the
salaries.

XXIX. And be it further enacted, that the registrar for the time being shall, out of the monies which shall from time to time be in his hands by means of such assessments as aforesaid, and by means of the remaining of the court fees as aforesaid, pay to the said vice-warden and to himself and the other officers aforesaid of the said court the sums following, being the other moiety of the said salaries, in manner following; (that is to say,) shall pay on the twenty-fifth day of March and on the twenty-ninth day of September in each year, free from all deductions, to the said vice-warden the sum of three hundred and seventy-five pounds, to himself the registrar the sum of one hundred and twenty-five pounds, to the person filling the situation of secretary to the vice-warden the sum of twenty-five pounds, to the prothonotary the sum of fifty pounds, and to the collector, the sum of seven pounds ten shillings.

The registrar
to have his
accounts of
receipts from
the assessment
and the fees,
and his pay-
ments thereout,
audited by the
vice-warden
half yearly.

XXX. And be it further enacted, that the said registrar for the time being shall at the end of every half-year lay before the vice-warden for the time being a full, true, and particular account of the balance remaining in his hands at the commencement of such preceding half-year, and of all monies received by him during such last half-year in respect of such assessment as aforesaid, and when and from whom and from what mine received, and also shall in such account give credit for the remaining portion of the said court fees so in his hands after such payment to the auditor of the duchy as aforesaid, and shall also in like manner lay before the vice-warden a full, true, and particular account of all salaries and other expenses paid by such registrar during the same period; and that a balance shall be thereby struck, showing the balance remaining in the hands of such registrar at the end of the then last half-year; and that thereupon the vice-warden for the time being shall and is hereby required to audit the said account, and also the said account for court fees herein-before-mentioned, and if the same shall be found correct to allow the same respectively, by putting his signature thereto; and that such ac-

counts when so allowed shall be filed amongst the records of the said court, and be open for the inspection of all persons in the usual way: provided always, that if it shall at any time appear to the vice-warden for the time being, on auditing such account of the registrar, that there remains a general balance in his hands sufficient to meet all payments hereby authorized to be made thereout for the next half-year, then and in such case the vice-warden shall have power and is hereby required to give notice thereof by advertisement in the county papers, or in such way as he shall think fit; and that thereupon no assessment shall be made or become payable in respect of the said one farthing in the pound sterling on the value of all metals and metallic minerals as aforesaid during such succeeding half-year: provided nevertheless, that, although no such assessment shall in such case be made during such period, the said manager of every mine is required to and shall make such returns as aforesaid to the said registrar of all metals and metallic minerals (except tin and tin ore) brought to sale or withdrawn from the mine over which he is such head manager, precisely as if such assessments were or would be payable in respect of the ore specified in such return.

The Stammers

If at the end of any half-year a balance appears sufficient for the next half-year no assessment to be made until the expiration of such half-year; but nevertheless the head manager to make the returns.

XXXI. And be it further enacted, that if the head manager of any mine shall omit to make such full, true, and particular return as hereby required of the quantities of metals and metallic minerals (except tin and tin ore) brought to sale or withdrawn as aforesaid in the mine of which he is such head manager, or of the value thereof, as is hereby required, or shall, on demand made, omit to pay or cause to be paid such assessment as aforesaid, or shall wilfully make any false or incorrect return, then and in every such case such head manager shall be subject for every such offence to a penalty not exceeding fifty pounds.

Penalty on head manager omitting to make any return, or making a false return.

XXXII. And be it enacted, that the vice-warden for the time being may and shall in the present and every succeeding year order the clerk of the peace of the county of Cornwall to make out a duplicate of the jurors' book at the time in use, or about to be brought into use, or of such part of the said book as such vice-warden may think fit to specify in such order; and the clerk of the peace, upon the receipt of such order, shall with all convenient speed make out such duplicate, and deliver the same to the registrar of the court of such vice-warden; and that every such duplicate shall be the book of jurors qualified and liable to serve as jurymen in all cases before the vice-warden for the time being, and that every such duplicate shall be kept by the registrar, and shall be by him used as the jurors' book for the time being.

Jurors.

XXXIII. And be it enacted, that the registrar of the said court shall cause to be summoned one week before the first day of each sitting of such vice-warden, forty-eight persons named in the jurors' book by him kept as aforesaid, to attend at the time and place appointed for holding such sitting; and every such summons shall be according to the form given in the schedule hereto annexed, and shall be served either personally on each such person or by leaving it at his dwelling-house; and that in summoning such persons regard shall always be had as far as may be to the convenience of the indi-

Summoning of jurors.

The Stannaries. **viduals so summoned; and no person shall be summoned oftener than once in a year.**

Ballot and challenge of jurors.

XXXIV. And be it enacted, that the registrar of the said court shall make a list of the jurors so summoned, together with the places of abode and additions, and shall cause their names to be written severally on slips of paper and put into a box, and the names of the jurors for the trial of causes shall be drawn out of the box by the registrar; and each party may, until no more than twelve remain, object to any person whose name is drawn out, without assigning any cause; and if any objection is made to the twelve so remaining, it must be stated to and decided on by the vice-warden for the time being; and if any such objection be allowed, the names of the jurors rejected without cause assigned shall be returned to the box, and drawn again until a sufficient number be found to make a jury of twelve; and such jury of twelve shall be the jury sworn for the trial: provided always, that if there shall not be twelve persons attending, or against whom no objection shall have been allowed, it shall be lawful for the said vice-warden to order the requisite number of persons from among the by-standers to be summoned by the registrar, and sit on the jury, subject to any objections which may be made for causes assigned, except for want of qualification or want of summons; provided also, that the said vice-warden may, if he sees fit, direct the registrar to divide the list of forty-eight jurors into two lists, and to require the persons in the one list to attend and serve for so many days at the beginning of the sitting as the said vice-warden shall order, and those in the other list to attend and serve for the residue of the sittings, according as the said vice-warden shall think fittest for the convenience of the said persons; and then and in that case the registrar shall divide the said list of forty-eight jurors into two lists, and cause the persons named in each of such lists to be summoned to attend on different days accordingly.

Jury to consist of twelve.

Jury de circumstantibus.

Penalty on jurors for non-attendance.

XXXV. And be it enacted, that if any person having been duly summoned to attend as a juror in the court of the vice-warden shall not attend in pursuance of such summons, or being thrice called in court shall not answer to his name, or if any such person being present in court, or any such by-stander in court, after having been called shall not duly appear, or after his appearance, shall wilfully withdraw himself from the presence of the said court, it shall be lawful for the said vice-warden to impose such fine upon every such person or by-stander so making default (unless some reasonable excuse shall be given to the satisfaction of the said vice-warden) as to the said vice-warden shall seem meet; and if such fine shall not be paid at the time ordered by the said vice-warden, the same shall and may be levied by writ of fieri facias to be issued out of the common law side of the said court of the vice-warden.

Appointment of crier and usher.

XXXVI. And be it further enacted, that the vice-warden for the time being shall and may appoint a fit and proper person to be crier and usher of his said court, who shall hold his office during the pleasure of the vice-warden for the time being, and may be removed in a summary manner, and may and shall receive such fees for act-

ing as crier and usher of the said court as the said vice-warden shall from time to time by virtue of the provisions herein contained authorize.

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XXXVII. And be it further enacted, that the vice-warden for the time being shall not during his continuance in such office practice as a barrister, and that the registrar for the time being of the said court shall not during his continuance in such office practice as a barrister or solicitor or attorney in such court, or in any other court of law or equity in the United Kingdom of England and Ireland.

Vice-warden and registrar not to practise.

XXXVIII. And be it further enacted, that the vice-warden for the time being shall not demand or take, upon any pretence, any fee, gratuity, or reward whatever; and that such registrar and other aforesaid officers of the said court appointed under this act shall not demand or take, upon any pretence whatever, any fee, gratuity, or reward other than and except such as are hereby authorized, or as shall be from time to time settled and allowed by the vice-warden for the time being by virtue hereof or of the provisions herein contained; and that if any such person shall offend in that behalf he shall be removed from the office he shall then hold, and be disabled from again holding the same or any other office under this act.

Vice-warden, registrar, and other officers to take no fees, &c. except as hereby provided, &c.

Penalty.

XXXIX. And be it further enacted, that a table of all fees for the time being authorized by the vice-warden to be taken by any solicitor or attorney practising in his said court, or by any officer of his said court, for business done therein, shall be hung up in some conspicuous place in such court.

A list of fees to be hung up.

XL. And whereas the gaol belonging to the courts heretofore the courts of the vice-warden and of the Stannaries is situate at Lostwithiel in the said county of Cornwall: And whereas it would tend more to the public convenience that the court of the vice-warden should use as its gaol or prison for all purposes the prison belonging to the county of Cornwall, and situate at Bodmin, in lieu or place of the said gaol at Lostwithiel; be it therefore enacted, that every person hereafter arrested or taken prisoner or detained by virtue of any writ, process, order, decree, or proceeding issuing out of or from or by either side of the said court of the vice-warden of the Stannaries, or committed for contempt of the said court, shall be taken to the county prison at Bodmin in the said county of Cornwall, or to other the prison for the time being of the said county, in the same manner, and subject to the same provisions and regulations in every respect, as if such person were arrested and conveyed to the prison by virtue of any writ, process, order, decree or proceeding issuing out of any of the superior courts of law or equity at Westminster, or committed for contempt by any of the said last-mentioned courts; and the gaoler or keeper for the time being of such county prison as aforesaid is hereby authorized and required to receive into such county prison every person so arrested and conveyed to prison by virtue of any writ, process, order, decree, or proceeding issuing out of or from or by either side of the said court of the vice-warden or so committed for contempt of the said court as aforesaid, and to maintain, support, and provide for every such person in the same manner as if he had

The county prison at Bodmin to be the prison of vice-warden's court.

The Stannaries.

been arrested and brought to the said county prison by virtue of any writ, process, order, decree, or proceeding issued out of any of the superior courts of law or equity at Westminster, or were committed for contempt of any of the said last-mentioned courts; and that all and singular the charges and expenses of maintaining, supporting, and providing for every person so arrested or committed to the said county prison as aforesaid shall be paid and defrayed out of such portion of county rate of the said county of Cornwall as for the time being shall be applicable to the support of the debtors confined in the said county prison.

The powers heretofore vested in the vice-warden or steward or court of the Stannaries to be exercised by the vice-warden.

XLI. And be it enacted, that all jurisdictions, powers, and authorities heretofore lawfully exercised by the vice-warden or steward or any judge of any of the Stannaries shall be hereafter exercised by the vice-warden for the time being; and that all penalties heretofore authorized to be recovered, and all oaths heretofore required or authorized to be taken, and all acts, matters, and things heretofore required or authorized to be had or done in any of the courts of the Stannaries, or before the vice-warden or the steward of any of the Stannaries, shall be and are hereby required and authorized to be recovered, taken, had, and done before the vice-warden, or in the court of the vice-warden, as the case may be; and that all proclamations, returns, certificates, exhibits, matters, and things heretofore required to be made, transmitted, or given to or deposited with any of the courts of the Stannaries, or the vice-warden or steward of any of the Stannaries, shall be and are hereby required to be made, transmitted, and given to and deposited with the court of the vice-warden; and all bonds and recognizances heretofore required to be entered into before the steward or any of the courts of the Stannaries shall be entered into before the registrar of the said court.

Removal of causes in certain cases to the Court of King's Bench.

XLII. And be it further enacted, that it shall be lawful for the court of King's Bench at Westminster, on the application of any party to any action or suit on the common law side of the said court of the vice-warden, on special and sufficient cause shown by affidavit to the satisfaction of such court of King's Bench, that an impartial or sufficient trial cannot be had in such court of the vice-warden, to remove by writ of certiorari, all proceedings which may have been had in such action or suit, and to deal therewith, and to make such orders respecting the same and the future trial of and proceedings in such action or suit as to the said court of King's Bench shall seem meet.

All existing laws, customs, &c. not inconsistent with this act or the law of the realm preserved.

XLIII. And be it further enacted, that all acts, statutes, laws, liberties, privileges, customs, rights, usages, and freedoms at the time of passing this act in force in any of the Stannaries of the said county of Cornwall shall, notwithstanding anything herein contained, continue and be and have the same force and effect as if this act had not passed, save and except so far as the same or any of them are contrary or repugnant to the laws of this realm, or inconsistent with the provisions herein contained, or are annulled, repealed, or altered hereby or by means of any of the powers and authorities hereby given.

Interpretation of act.

XLIV. And be it further enacted, that wherever this act, in de-

scribing or referring to any person or matter or thing, uses the words importing the singular number or the masculine gender only, the same shall be understood to include and shall be applied to several persons as well as one person, and to females as well as males, and bodies corporate as well as individuals, and several matters, or things respectively as well as one matter or thing respectively, unless there be something in the subject or context repugnant to such construction; and that wherever the word "plaintiff" or "defendant" is used, it shall mean the person instituting the proceedings, or the person against whom proceedings are instituted respectively, in whatever way such proceedings are commenced; and wherever the word "mine" is used, it shall mean any mine, work, or adventure wherein or connected with which any metals or metallic minerals are worked; and that wherever the words "head manager of any mine" is used, it shall mean the captain, purser, or other person who for the time being shall have the principal superintendence over such mine; and that the powers hereby given to the lord chancellor of England shall and may be used by the lords commissioners for the custody of or the lord keeper of the great seal for the time being: provided always, that nothing herein contained shall apply to or affect or extend or be considered as extending to the county of Devon, or the Stannaries within the said county, except as to the service in the said county of Devon of any writ of subpœna issuing out of such vice-warden's court as hereinbefore provided.

XLV. And be it further enacted, that this act shall commence and take effect on the twenty-ninth day of September, one thousand eight hundred and thirty-six. Commencement of act.

XLVI. And be it further enacted, that this act may be amended, altered, or repealed during the present session of Parliament. Act may be altered.

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SCHEDULE to which the foregoing act refers.

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Form of Summons to Jurors.

You are hereby required to attend and serve as a juror at the sitting to be holden before vice-warden
of the Stannaries, at his court, on the day of
next.

day of Registrar of 183 .

To A. B.

◆

7 WM. 4, & 1 VICT. CHAP. 73.

An Act for better enabling her Majesty to confer certain powers and immunities on trading and other Companies. [17th July, 1837.]

Joint Stock Companies.

6 G. 4, c. 91.

Whereas divers associations are and may be formed for trading or other purposes, some of which associations it would be inexpedient to incorporate by royal charters, although it would be expedient to confer on them some of the privileges of and incident to corporations created by royal charters, and also to invest such associations or some of them with certain other powers and privileges: And whereas it would also be expedient to extend the powers of her Majesty in reference to the creation of corporations, and to the conferring of privileges upon corporations, and upon other bodies or companies enabled to sue and be sued: And whereas by an act passed in the sixth year of the reign of his Majesty king George the Fourth, intituled "An Act to repeal so much of an Act passed in the sixth year of his late Majesty king George the First as relates to the restraining of several extravagant and unwarrantable practices in the said Act mentioned; and for conferring additional powers upon his Majesty with respect to the granting of charters of incorporation to trading and other Companies," it was amongst other things enacted, that in any charter thereafter to be granted by his Majesty, his heirs or successors, for incorporation of any company or body of persons, it should and might be lawful in and by such charter to declare and provide that the members of such corporation should be individually liable in their persons and property for the debts, contracts, and engagements of such corporation, to such extent, and subject to such regulations and restrictions, as his Majesty, his heirs or successors, might deem fit and proper, and as should be declared and limited in and by such charter, and the members of such corporation should thereby be rendered so liable accordingly: and whereas by an act passed in the session of Parliament held in the fourth and fifth years of the reign of his late Majesty, intituled "An Act to enable his Majesty to invest trading and other companies with the powers necessary for the due conduct of their affairs, and for the security of the rights and interests of their Creditors," his Majesty, his heirs and successors, were empowered to grant to unincorporated companies and associations certain privileges in such last-mentioned act set forth; And whereas the aforesaid provisions of the said recited acts have not been found effectual for the purposes thereby intended, and it is therefore expedient to repeal the same, and to make such provisions in reference to the several matters aforesaid as are hereinafter contained: Now therefore be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that so much of the said act of the sixth year of the reign of his Majesty king George the Fourth as is hereinbefore set forth, and also the said recited act of the session of Parliament held in the fourth and fifth years of the reign of his late Majesty king William the Fourth, shall be and they are hereby respectively repealed.

4 & 5 W. 4, c. 94.

Part of 6 G. 4, c. 91, and 4 & 5 W. 4, c. 94, repealed.

II. And be it enacted, that it shall and may be lawful for her Majesty, her heirs and successors, by letters patent to be from time to time for that purpose issued under the great seal of the united kingdom of Great Britain and Ireland, or in Scotland under the seal appointed by the articles of union to be used instead of the great seal thereof, to grant to any company or body of persons associated together for any trading or other purposes whatsoever, and to the heirs, executors, administrators, and assigns of any such persons, although not incorporated by such letters patent, any privilege or privileges which, according to the rules of the common law, it would be competent to her Majesty, her heirs and successors, to grant to any such company or body of persons in and by any charter of incorporation.

Joint Stock
Companies.

Privileges may
be granted by
letters patent.

III. And be it enacted, that in any such letters patent so to be granted as aforesaid by her Majesty, her heirs or successors, to any such company or body of persons so associated together as aforesaid, but not incorporated, it shall and may be lawful, in and by such letters patent, either expressly or by a general or special reference to this act, to provide and declare that all suits and proceedings, whether at law, in equity, or in bankruptcy or sequestration, or otherwise howsoever, as well in Great Britain and Ireland as in the colonies and dependencies thereof, by or on behalf of such company or body, or any person or persons as trustee or trustees for such company or body, against any person or persons, whether bodies politic or others, and whether members or not of such company or body, shall be commenced and prosecuted in the name of one of the two officers for the time being to be appointed to sue and be sued on behalf of such company or body, and registered in pursuance of the directions of such appointment and registration respectively hereinafter contained; and that all suits and proceedings, whether at law or in equity, by or on behalf of any person or persons, whether bodies politic or others, and whether or not members of such company or body, against such company or body, shall be commenced and prosecuted against one of such officers, or if there shall be no such officer for the time being, then against any member of such company or body: provided nevertheless, that nothing in this act or in such letters patent contained or to be contained shall prevent the plaintiff from joining any member of such company or body with such officer as a defendant in equity, for the purpose of discovery, or in case of fraud.

The letters
patent may
provide that
suits shall be
carried on in
the name of
one of the
officers of any
company.

Proviso.

IV. And be it enacted, that it shall and may be lawful, in and by such letters patent so to be granted to any such body or company as aforesaid, to declare and provide that the members of such company or body so associated as aforesaid shall be individually liable in their persons and property for the debts, contracts, engagements, and liabilities of such company or body to such extent only per share as shall be declared and limited in and by such letters patent; and the members of such company or body shall accordingly be individually liable for such debts, contracts, engagements, and liabilities respectively to such extent only per share as in such letters patent shall be declared and limited; such liability nevertheless to be enforced in such manner and subject to such provisions as are hereinafter contained.

Individual lia-
bility of mem-
bers of a
company may
be restricted.

Joint Stock Companies.

Deed of partnership to be executed.

V. And be it enacted, that every such company or body to which any such privileges or powers as hereinbefore mentioned shall be granted under the authority of this act shall be entered into or formed by a deed of partnership or association, or an agreement in writing of that nature; and the undertaking shall by such deed or agreement be divided into a certain number of shares to be there specified; and in such deed or agreement, or in some schedule thereto, there shall be set forth the name or style of the said company or body, the names or styles of the members of the said company or body, the date of the commencement thereof, the business or purpose for which the said company or body is formed, and the principal or only place for carrying on such business; and in such deed or agreement there shall also be contained the appointment of two or more officers to sue or be sued on behalf of such company or body in manner hereinafter mentioned.

Return to be made of the granting of letters patent, and style of company.

VI. And be it enacted, that such company or body as aforesaid shall, within three calendar months after the grant of such letters patent as aforesaid, make or cause to be made a return to such one of the offices for enrolment hereinafter mentioned as shall be required under the provisions of this act, containing the date of the grant of such letters patent as aforesaid, the name or style of the said company or body, the business or purpose for which the said company or body is formed, the principal or only place for carrying on such business, the total number of shares in the said company or body (and each of which shares is to be distinguished by a separate number in regular succession), the amount to which each share shall render the holder thereof liable, the names and (except as to bodies politic) the places of abode of all the members thereof, and the distinctive number or numbers of the share or respective shares which each member holds; and such company or body shall also at the same time make a return of the names and descriptions of the officers appointed by such company or body to sue and be sued on behalf thereof in manner aforesaid; such return to be made in the form in the schedule (A.) to this act annexed.

Name of company not to be changed. As to place of business being changed.

VII. And be it enacted, that during the continuance of any such company or body after it shall have been so registered no change shall be made in the name or style thereof; and if the principal or only place for carrying on the business of the said company or body shall be changed the said company or body shall within three calendar months after such change make or cause to be made a return to the said office as aforesaid of such change in the form in schedule (B.) to this act annexed.

When persons cease to be members, company to make return within three months.

VIII. And be it enacted, that in case any person shall cease to be a member of such company or body (except by means of the transfer by deed or writing of any share therein), or in case of the addition of any person thereto (except by means of the transfer of any share as aforesaid), or of the change of the name of any member thereof by marriage or otherwise, the said company or body shall, within three calendar months after information shall be received by the said company or body of any person so ceasing as aforesaid, or of such change

or addition as aforesaid, make or cause to be made a return to the said office as aforesaid, containing the names and places of abode of all persons having ceased to be members thereof (except as aforesaid), and the names and places of abode of all persons having become members thereof (except as aforesaid), and specifying any change in the name of any member thereof by marriage or otherwise; such return to be made in one of the forms in the schedule (C.) to this act annexed, as the case may be.

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Companies.

IX. And be it enacted, that on the transfer by deed or writing of any share in any such company or body as aforesaid, a notice in writing, specifying the date of such transfer, the distinguishing number of the share transferred, the name and (except in the case of a body politic) the place of abode of the person by whom or on whose behalf and of the name and (except as aforesaid) the place of abode of the person to whom such transfer is made, shall be given to the said company or body, by leaving the transfer, when executed by both parties, or some note or memorandum thereof signed by them, at the principal or only office of the said company or body.

On transfer of
shares, notice
to be given to
the company
by transferee.

X. And be it enacted, that in case of the transfer of any share in such company or body, the said company or body shall, within three calendar months after receiving such notice as aforesaid of such transfer, make or cause to be made a return to the said office as aforesaid, containing the date of such transfer, the distinguishing number of the share transferred, the name and (except in the case of a body politic) the place of abode of the person by whom or on whose behalf such transfer is made, and of the person to whom such transfer is made in the form in schedule (D.) to this act annexed; and such company or body are hereby required, on the request in writing of either of the parties, forthwith to make such return accordingly.

Company to
make return
after receiving
notice of
transfer.

XI. And be it enacted, that where the extent per share of the liability of the individual members of any such company or body shall have been limited by letters patent as aforesaid, it shall be lawful for any person who shall or may from time to time have advanced or paid any sum in consequence or by virtue of any execution or diligence issued against him in respect of any share in such company or body, under any judgment, decree, interlocutor, or order to be obtained against any officer of the said company or body, or any member thereof, in manner hereinafter mentioned, to make a return thereof to such office as aforesaid in the form in schedule (E.) to this act annexed; and every such return shall be accompanied with a proper voucher or vouchers of the fact of such payment, without which the same shall not be registered as hereinafter mentioned.

Any person
having made
payment in re-
spect of a share
in a company
under any
judgment
against such
company to
make a return
thereof.

XII. And be it enacted, that if any sum or sums shall at any time be repaid by any such company or body as last aforesaid in respect of any such sum which may have been so advanced or paid by virtue of such execution or diligence, the said company or body shall forthwith make or cause to be made a return to such office as aforesaid, specifying the amount of such repayment, in the form in schedule (F.) to this act annexed.

Return to be
made when
repayment of
money so
advanced.

Joint Stock Companies.

On death, resignation, or removal of officer appointed to sue and be sued, another to be appointed, and return made.

XIII. And be it enacted, that in case of the death or resignation or removal of any officer appointed to sue and be sued on behalf of any company or body to be formed in pursuance of any of the provisions of this act, the said company or body shall forthwith appoint in his stead another officer to sue and be sued on behalf of such company or body, and shall, within three calendar months after the death, resignation, or removal of such officer as aforesaid, make or cause to be made a return to the said office as aforesaid, containing as well the name and description of the person who has ceased to be such officer in manner aforesaid as the name and description of the officer who has been appointed to sue and be sued on behalf of such company or body; such return to be made in the form of schedule (G.) to this act annexed.

Returns how to be signed and verified.

5 W. 4, c. 62.

XIV. And be it enacted, that all returns to be made in manner aforesaid by such company or body shall be signed by one of such officers, and shall be verified by a declaration of such officer made pursuant to the provisions of the statute of the fifth year of his late Majesty's reign, intituled "An Act to repeal an Act of the present session of Parliament, intituled, 'An Act for the more effectual abolition of oaths and affirmations taken and made in various departments of the state, and to substitute declarations in lieu thereof, and for the more entire suppression of voluntary and extra-judicial oaths and affidavits;' and to make other provisions for the abolition of unnecessary oaths," except that if there shall be no such officer, or such officer shall refuse to act, then such return shall be signed and verified as aforesaid by some member of the said company or body.

Return of names of members, &c. not to be rendered invalid by unintentional error.

XV. And be it enacted, that any return to be made in manner aforesaid of the name or place of abode of any original member of such company or body, or of any person to or in whom any share in such company or body shall be transferred or become vested, shall not be rendered invalid for the purposes of this act by any error or omission in the same, if the said company or body shall, within one calendar month after information of such error or omission shall be received by such company or body, cause a correct return to be made to the said office as aforesaid in the form in schedule (F.) to this act annexed: Provided always, that this clause shall not invalidate or prejudice any intermediate transaction or matter whatsoever which shall have *bonâ fide* taken place or proceeded upon the faith of such erroneous or defective return, nor shall the benefit of this clause extend to any error or omission which shall be fraudulent.

Returns, to what office to be made respectively in England, Scotland, or Ireland.

XVI. And be it enacted, that where the principal or only place for carrying on the business of any such company or body as aforesaid shall be situated in any part of England or Wales, the returns hereinbefore directed shall be made to the Enrolment Office of the Court of Chancery in England; and where such principal or only place for carrying on such business shall be situate in any part of Scotland, such returns shall be made to his Majesty's General Registry Office at Edinburgh; and where such principal or only place for carrying on such business shall be situated in any part of Ireland, such returns shall be made to the Enrolment Office of the Court of Chancery in Ireland.

XVII. And be it enacted, that all such returns as are hereinbefore directed to be made to the Enrolment Office of the Court of Chancery in England shall be registered by the clerks of enrolment in Chancery, or their deputy, and that all such returns as are hereinbefore directed to be made to the General Registry Office at Edinburgh shall be registered by the lord clerk register or his deputy, and all such returns as are hereinbefore directed to be made to the Enrolment Office of the Court of Chancery in Ireland shall be registered by the clerks of enrolments in Chancery in Ireland, or their deputy, in books to be by them respectively kept for that purpose, and that an alphabetical index shall be kept of the names of such companies or bodies, with references to such returns, and that there shall be paid for the registering of each return a fee of sixpence per folio, and no more; and that any person shall be at liberty to inspect such books and index, and that there shall be paid for such inspection a fee of one shilling, and no more; and that any person shall be at liberty to require a copy of any such return, to be certified by the said clerks or their deputy, and that there shall be paid for such certificate a fee of one shilling and sixpence for each folio of such copy, and no more; and the day of the registration of every return to be made in pursuance of this act shall be written on such return by the said clerks or their deputy.

Joint Stock Companies.

By whom returns are to be registered.

XVIII. And be it enacted, that a copy, so certified as aforesaid, of such return, including the date to be marked on such return, shall be received in evidence in all proceedings, whether civil or criminal and shall also be received as evidence of the day of the registering thereof.

Copy of return, &c. to be received in evidence.

XIX. And be it enacted, that such orders and directions as to the forms of the returns to be made in pursuance of this act, and the mode of keeping the register, and of making the index thereof, and of any other matters incidental thereto, as may be deemed expedient, may from time to time be made, altered, or varied as follows; that is to say, as regards the registration to be made in the Enrolment Office in the Court of Chancery in England, by the Lord Chancellor, Lord Keeper, or first Lord Commissioner of the Great Seal, and the Master of the Rolls, jointly; as regards the registration to be made in the General Registry Office in Edinburgh, by the Lord Clerk Register and Lords of Council and Session jointly; and as regards the registration to be made in the Court of Chancery in Ireland, by the Lord Chancellor of Ireland and Master of the Rolls in Ireland jointly.

Regulations as to forms of returns and mode of keeping the register, &c. by whom to be made.

XX. And be it enacted, that no person becoming a member of any such company or body by the transfer of any share therein, or otherwise, shall be entitled to sue for or recover any share of the profits thereof, unless and until a return of the transfer or other fact whereby he shall so become a member, shall be registered pursuant to the provisions hereinbefore contained.

No person to share in profits till registered.

XXI. And be it enacted, that any person ceasing to be a member of any such company or body, whether by the transfer of any share therein, or by death or otherwise, shall be considered for all purposes

Person ceasing to be a member liable

Joint Stock Companies.

till transfer, &c. registered.

of liability as continuing a member of such company or body until a return of the transfer or other fact whereby he shall have so ceased to be a member shall be registered pursuant to the provisions hereinbefore contained.

Proceedings commenced in the name of officer not to be abated.

XXII. And be it enacted, that no action, suit, or proceeding, whether civil or criminal, commenced either by or against any such company or body (whether in the name of one of the officers appointed to sue and be sued as aforesaid, or of some member of such company or body, in the case and in manner aforesaid), shall be abated or prejudiced by the death or by any act of such officer or person, or by the resignation or removal of such officer, either before or after the commencement of such action, suit, or proceeding, or by any change in the members of such company or body by the transfer of shares or otherwise, but that the same shall be continued in the name of such officer or member, (as the case may be) notwithstanding such death or act, or such resignation or removal, and notwithstanding such change in the members of such company or body.

Evidence of officer or of member of company admissible.

XXIII. And be it enacted, that in all such actions, suits, and other proceedings, whether civil or criminal, the evidence of any such officer as aforesaid, or of any member of such company or body, shall be admissible in the like manner as if such officer or member were not an officer or member of such company or body.

Effect of judgments against company.

XXIV. And be it enacted, that all judgments, decrees, interlocutors, and orders obtained in any such actions, suits, or other proceedings as aforesaid against such officer or member in manner aforesaid, whether such member or officer respectively be party to such actions, suits, or proceedings, as plaintiff, pursuer, petitioner, or defendant or defender, shall have the same effect against the property and effects of such company or body, and also (to the extent hereinafter mentioned) against the persons, property, and effects of the individual existing or former members thereof respectively, as if such judgments, decrees, interlocutors, or orders had been obtained against such company or body in suits or proceedings to which all the persons liable as existing or former members of such company or body had been parties, and that execution or diligence, or executions or diligences, shall be issued thereon accordingly: provided nevertheless, that where the extent per share of the liability of the individual members shall have been limited by any letters patent as aforesaid, no such execution or diligence shall be issued against any such individual existing and former member of such company or body as aforesaid for a greater sum than the residue, if any, of the amount for which, by virtue of such letters patent as aforesaid, such individual member shall be liable in respect of the share or shares then or theretofore held by him in the said company or body, after deducting therefrom the amount, if any, which shall appear by such register as aforesaid to have been advanced and paid in respect of such shares or any of them by himself or herself, or any previous or subsequent holder of the same shares or any of them, or the representatives of any such holder, under or by virtue of any former execution or diligence, and not repaid at the time of issuing such subsequent execution or diligence.

XXV. And be it enacted, that the bankruptcy, insolvency, or stopping payment of any officer or member of such company or body in his individual capacity shall not be construed to be the bankruptcy, insolvency, or stopping payment of such company or body; and that the property, and effects of such company or body, and the persons, property, and effects of the individual members or other individual members thereof (as the case may be), shall, notwithstanding such bankruptcy, insolvency, or stopping payment, be liable to execution or diligence in the same manner as if such bankruptcy, insolvency, or stopping payment had not taken place.

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Bankruptcy of officer of company not to affect company or liabilities of members.

XXVI. And be it enacted, that in all cases wherein it may be necessary for any person to serve any summons, demand, or notice, or any writ or other proceeding at law or in equity, or otherwise, upon the said company or body, service thereof respectively on the clerk of the said company or body, or by leaving the same at the head office for the time being of the said company or body, or in case such clerk of the said office shall not be found or known, then service thereof on any agent or officer employed by the said company or body, or by leaving the same at the usual place of abode of such agent or officer, shall be deemed good and sufficient service of the same respectively on the said company or body.

Service of notice on the company.

XXVII. And be it enacted, that in all cases wherein it may be necessary for the said company or body to give any summons, demand, or notice of any kind whatsoever to any person or corporation, under the provisions or directions contained in this act, such summons, demand, or notice may be given in writing, signed by the clerk, attorney, or solicitor for the time being of the said company or body, without being required to be under the common seal of the said company or body.

Service of notice by the company.

XXVIII. And be it enacted, that in case of the determination of such company or body such company or body shall nevertheless be considered as subsisting, and to be in all respects subject to the provisions of this act, so long and so far as any matters relating to such company or body shall remain unsettled, to the end and intent that such company or body may do all things necessary to the winding up of the concerns thereof, and that it may be sued and sue under the provisions of this act in respect of all matters relating to such company or body.

Determination of company not to prevent the winding up of their affairs.

XXIX. And be it also enacted, that it shall be lawful for her Majesty, her heirs and successors, in any charter of incorporation to be hereafter granted, to limit the duration thereof for any term or number of years, or for any other period whatsoever; and also in any charter of incorporation (whether in perpetuity or for any term or period), either by reference to this act or otherwise, to make the corporation thereby formed, and the officers and members thereof, subject to all of the provisions, liabilities, and directions hereinbefore authorized to be imposed on or required from any unincorporated company or body, or its officers or members, and also to confer on such corporation or its members and officers all the powers or privileges hereinbefore authorized to be conferred on any unincorporated company or

Duration of charters of incorporation may be limited.

**Joint Stock
Companies.**

body, or its officers or members; and all the powers, provisions, clauses, matters, and things herein-before contained in reference to unincorporated companies or bodies shall accordingly in such case, and so far as the same may be applicable, be considered to belong and apply to such corporation.

**Limitations as
to exemptions
to be granted to
companies by
letters patent.**

XXX. Provided always, and be it enacted, that nothing in this act contained shall authorize or be construed to authorize her Majesty, her heirs and successors, by any such letters patent, to exempt any company or body of persons associated as aforesaid from the necessity of entering into a deed of partnership, from making the return of the patent to the enrolment office of the Court of Chancery, from the necessity of carrying into execution the provisions of this act in respect to change of name or style of the company or body associated, in respect to the cessation, or to the addition or to the change of name of any of the individuals of the company, or to the transfer of shares and to the notices to be given thereof, or to the payment of any sum by any shareholder on account of any preferment against such company or body, or to the returns to be made to the enrolment office of such payment, or of the repayment thereof, or from making a return to the said office of the name of the officer appointed by said company to sue and be sued on its behalf, in case of the death, resignation or removal of the one registered, or to exempt any company or body so associated from the provisions of this act in relation to the period at which its several members shall become entitled or shall cease to share in the profits thereof, the whole as required by the provisions of this act.

**Act not to
affect existing
privileges.**

XXXI. Provided always, and be it enacted, that nothing in this act contained shall authorize or be construed to authorize the grant to any company or body of persons of any privilege in derogation of any exclusive privileges now enjoyed by any company or corporation under any act or acts of Parliament.

**Notice of ap-
plication for
letters patent
to be inserted
in the *London
Gazette*, &c.**

XXXII. And be it enacted, that whenever an application shall be made to her Majesty to grant letters patent or a charter of incorporation to any company or body of persons associated together for any purpose of trade, and such application shall have been referred by her Majesty to the committee of Privy Council for trade and plantations, then, before any report shall be made to her Majesty, and before any such letters patent or charter shall be granted, notice of such application shall be inserted by the parties applying three several times in the *London Gazette* and in one or more of the newspapers circulating within the county in which it is proposed that the principal place of business of such company shall be established, at intervals of not less than one week.



SCHEDULES to which this Act refers.

SCHEDULE (A.)

RETURN made pursuant to Statute Vict.

Date of Letters Patent.	Name of Company or Body.	Business or Purpose.	Place [or principal Place, if more than one,] of Business.	Total Number of Shares.	Liability in respect of each Share.

[Names and places of abode of all the Members and the distinctive Numbers of the Shares which each of them holds.]

[Names and descriptions of the Officers appointed to sue and be sued on behalf of the Company or Body.]

I (one of the above-named officers) do solemnly and sincerely declare, that the above is a true return; and I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an act made and passed in the fifth year of the reign of his late Majesty, intituled "An Act," &c.

Dated this _____ day of _____ 18

[Declared, &c.]

[Signature.]

SCHEDULE (B.)

RETURN made pursuant to Statute Vict.

CHANGE OF PLACE OF BUSINESS.

Name of Company or Body.	Business or Purpose.	Former Place [or principal Place, if more than one,] of Business.	Present Place [or principal Place] of Business.

I [*&c. as before.*]

[Date.]

[Declared, &c.]

[Signature.]

Joint Stock
Companies.

SCHEDULE (C.)
RETURN made pursuant to Statute Vict.

CHANGE OF MEMBERS.

Name of Company or Body.	Business or Purpose.	Place [<i>or principal Place, if more than one,</i>] of Business.

[*Names and places of abode of all persons having ceased to be Members (except by transfer of Shares) since the last return. Dated the Day of .*]

[*Names and places of abode of all persons who have become Members (except by transfer of Shares) since the last return. Dated the Day of .*]

[*Former names and places of abode of persons whose names have been changed.*]

[*Present names and places of abode of persons whose names have been changed.*]

I [*&c. as before.*]

[*Date.*]

[*Declared, &c.*]

[*Signature.*]

SCHEDULE (D.)

RETURN made pursuant to Statute Vict.

TRANSFER OF SHARES.

Name of Company or Body.	Business or Purpose.	Place [<i>or principal Place, if more than one,</i>] of Business.	
Name and Place of Abode of Person by whom Transfer is made.	Name and Place of Abode of Person to whom Transfer is made.	The Distinctive Numbers of the Shares transferred.	Date of transfer.

I [*&c. as before.*]

[*Date.*]

[*Declared, &c.*]

[*Signature.*]

SCHEDULE (E.)

RETURN made pursuant to Statute Vict.

Joint Stock
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PAYMENT BY INDIVIDUAL MEMBER.

Name of Company or Body.	Business or Purpose.	Place [or principal Place, if more than one,] of Business.	
Name and Place of Abode of Individual Member.	Distinctive Numbers of the Shares in respect of which Payment is made.	Sum paid in respect of each Share.	Total amount paid under exemptions or diligence.

I [*&c. as before.*][*Date.*]

[Declared, &c.]

[*Signature.*]

SCHEDULE (F.)

RETURN made pursuant to Statute Vict.

PAYMENT TO INDIVIDUAL MEMBERS.

Name of Company or Body.	Business or Purpose.	Place [or principal Place, if more than one,] of Business.	
Name and Place of Abode of Individual Member.	Distinctive Numbers of the Shares in respect of which re-payment is made.	Sum repaid in respect of each Share.	Total Amount repaid to Individual Member.

I [*&c. as before.*][*Date.*]

[Declared, &c.]

[*Signature.*]

Joint Stock
Companies.

SCHEDULE (G.)

RETURN made pursuant to Statute Vict.

CHANGE OF OFFICER.

Name of Company or Body.	Business or Purpose.	Place [or principal Place, if more than one,] of Business.

[Name and description of the person who has ceased to be an officer to sue and be sued on behalf of the company or body since the last return.

Dated .]

[Name and description of the officer appointed to sue and be sued on behalf of the company or body since the last return. Dated .]

I [&c. as before.]

[Date.]

[Declared, &c.]

[Signature.]

SCHEDULE (H.)

RETURN made pursuant to Statute Vict.

CORRECTED RETURN.

[Copy of former incorrect Return.]

(Copy.)

Amended return with correct names and descriptions [in such of the preceding forms as are applicable to the case under the provisions of the foregoing act.]

I [&c. as before.]

[Date.]

[Declared, &c.]

[Signature.]



1 VICT. CHAP. 83.

An Act to compel Clerks of the Peace for Counties and other Persons to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament.

[17th July, 1837.]

Whereas the houses of Parliament are in the habit of requiring that, previous to the introduction of any bill into Parliament for making certain bridges, turnpike roads, cuts, canals, reservoirs, aqueducts, waterworks, navigations, tunnels, archways, railways, piers, ports, harbours, ferries, docks, and other works, to be made under the authority of Parliament, certain maps or plans and sections, and books and writings, or extracts or copies of or from certain maps, plans, or sections, books and writings, shall be deposited in the office of the clerk of the peace for every county, riding, or division in England or Ireland, or in the office of the sheriff clerk of every county in Scotland, in which such work is proposed to be made, and also with the parish clerk of every parish in England, the schoolmaster of every parish of Scotland, or in royal burghs with the town clerk, and the postmaster of the post town in or nearest to every parish in Ireland, in which such work is intended to be made, and with other persons: and whereas it is expedient that such maps, plans, sections, books, writings, and copies or extracts of and from the same, should be received by the said clerks of the peace, sheriff clerks, parish clerks, schoolmasters, town clerks, postmasters, and other persons, and should remain in their custody for the purposes hereinafter mentioned: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that whenever either of the Houses of Parliament shall by its standing orders, already made or hereafter to be made, require that any such maps, plans, sections, books, or writings, or extracts or copies of the same, or any of them, shall be deposited as aforesaid, such maps, plans, sections, books, writings, copies, and extracts shall be received by and shall remain with the clerks of the peace, sheriff clerks, parish clerks, schoolmasters, town clerks, postmasters, and other persons with whom the same shall be directed by such standing orders to be deposited, and they are hereby respectively directed to receive and to retain the custody of all such documents and writings so directed to be deposited with them respectively, in the manner, and for the purposes, and under the rules and regulations concerning the same respectively directed by such standing orders, and shall make such memorials and endorsements on and give such acknowledgments and receipts in respect of the same respectively as shall be thereby directed.

Deposit of
Plans, &c.

Clerks of the
peace, &c. to
receive the
documents
herein men-
tioned, and
retain them for
the purposes
directed by
the standing
orders of the
houses of
Parliament.

II. And be it further enacted, that all persons interested shall have liberty to, and the said clerks of the peace, sheriff clerks, parish clerks, schoolmasters, town clerks, and postmasters, and every of them, are and is hereby required, at all reasonable hours of the day, to permit all persons interested to inspect during a reasonable time and

Clerks of the
peace, &c. to
permit such
documents to
be inspected or

**Deposit of
Plans, &c.**

copied by persons interested.

make extracts from or copies of the said maps, plans, sections, books, writings, extracts and copies of or from the same, so deposited with them respectively, on payment by each person to the clerk of the peace, sheriff clerk, clerk of the parish, schoolmaster, town clerk, or postmaster having the custody of any such map, plan, section, book, writing, extract, or copy, one shilling for every such inspection, and the further sum of one shilling for every hour during which such inspection shall continue after the first hour, and after the rate of sixpence for every one hundred words copied therefrom.

Clerks of the peace, &c. for every omission to comply with the provisions of this act, liable to the penalty of 5*l*.

III. And be it further enacted, that in case any clerk of the peace, sheriff clerk, parish clerk, schoolmaster, town clerk, postmaster, or other person shall in any matter or thing refuse or neglect to comply with any of the provisions hereinbefore contained, every clerk of the peace, sheriff clerk, parish clerk, schoolmaster, town clerk, postmaster, or other person shall for every such offence forfeit and pay any sum not exceeding the sum of five pounds; and every such penalty shall, upon proof of the offence before any justice of the peace for the county within which such offence shall be committed, or by the confession of the party offending, or by the oath of any credible witness, be levied and recovered, together with the costs of the proceedings for the recovery thereof, by distress and sale of the goods and effects of the party offending, by warrant under the hand of such justice, which warrant such justice is hereby empowered to grant, and shall be paid to the person or persons making such complaint; and it shall be lawful for any such justice of the peace to whom any complaint shall be made of any offence committed against this act to summon the party complained of before him, and on such summons to hear and determine the matter of such complaint in a summary way, and on proof of the offence to convict the offender, and to adjudge him to pay the penalty or forfeiture incurred, and to proceed to recover the same, although no information in writing or in print shall have been exhibited or taken by or before such justice; and all such proceedings by summons without information shall be as good, valid, and effectual to all intents and purposes as if an information in writing had been exhibited.

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1 VICT. CHAP. 10.

An Act to make good certain contracts which have been or may be entered into by certain Banking and other Copartnerships.

[20th February, 1838.]

**Banking
Companies.**

Whereas divers associations and copartnerships consisting of more than six members or shareholders, have from time to time been formed for the purpose of being engaged in and carrying on the business of banking and divers other trades and dealings for gain and profit, and have accordingly for some time past been and now are engaged in carrying on the same by means of boards of directors, or managers, committees or other officers, acting on behalf of all the members or

shareholders of or persons otherwise interested in such associations or copartnerships: and whereas divers spiritual persons, having or holding dignities, prebends, canonries, benefices, stipendiary curacies, or lectureships, have been and are members or shareholders of or otherwise interested in divers of such associations and copartnerships, and it has not been commonly known or understood that the holding of such shares or interests by such spiritual persons was contrary to law: and whereas it is expedient to render legal and valid all contracts entered into by such associations or copartnerships, or which for a limited time may be entered into by them although the same may now be void by reason of such spiritual persons being or having been such members or shareholders or otherwise interested as aforesaid. Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal and commons, in this present Parliament assembled, and by the authority of the same, that no such association or copartnership already formed or which may be formed at any time before the end of the next session of Parliament, nor any contract either as between the members, partners, or shareholders composing such association or copartnership for the purposes thereof, or as between such association or copartnership, and other persons heretofore entered into, or which before the end of the next session of Parliament shall be entered into by any such association or copartnership already formed or hereafter to be formed, shall be deemed or taken to be illegal or void, or to occasion any forfeiture whatsoever by reason only of any such spiritual person as aforesaid, being or having been a member, partner, shareholder, manager, or director of or otherwise interested in the same, but all such associations and copartnerships shall have the same validity, and all such contracts shall and may be enforced in the same manner to all intents and purposes as if no such spiritual person had been or was a member, partner, shareholder, manager or director, of or interested in such association or copartnership.

No association or copartnership or contract entered into by any of them to be illegal or void by reason only of spiritual persons being members of such association or copartnership.

1 & 2 VICT. CHAP. 96.

An Act to amend, until the end of the next session of Parliament, the law relative to legal proceedings by certain Joint Stock Banking Companies against their own Members, and by such Members against the Companies. [14th August, 1838.]

Whereas by an act passed in the seventh year of the reign of his late Majesty king George the Fourth, intituled "An Act for the better regulating Copartnerships of certain Bankers in England, and for amending so much of an Act of the thirty-ninth and fortieth years of the reign of his late Majesty king George the Third, intituled 'An Act for establishing an agreement with the Governor and Company of the Bank of England, for advancing the sum of three millions towards the supply of the service of the year 1800, as relates to the same,' " it was amongst other things enacted, that it should be lawful for any bodies politic or corporate, erected for the purposes of bank-

Banking Companies.

ing, or for any number of persons united in covenants or co-partnerships, although such persons so united or carrying on business together, should consist of more than six in number, to carry on (subject to certain provisions therein contained) the trade or business of bankers in England, in like manner as copartnerships of bankers, consisting of not more than six persons in number might lawfully do; and it was further enacted, that all actions and suits against any persons who might be at any time indebted to any such copartnership, carrying on business under the provisions of the said act, and all other proceedings at law and in equity to be instituted on behalf of any such copartnership against any persons, bodies politic or corporate, or others, whether members of such copartnership or otherwise, for recovering any debts or enforcing any claims or demands due to such copartnership, or for any other matter relating to the concerns of such copartnership, might be commenced and prosecuted in the name of any one of the public officers for the time being of such copartnership, to be nominated as therein is mentioned, as the nominal party on behalf of such copartnership, and that actions or suits and proceedings at law or in equity, to be instituted by any persons, bodies politic or corporate, or others, whether members of such copartnership or otherwise, against such copartnership should be commenced and prosecuted against any one or more of the public officers for the time being of such copartnership as the nominal defendant on behalf of such copartnership; and that the death, resignation, removal, or any act of such public officer should not abate or prejudice any such action, suit, or other proceeding commenced against or on behalf of such copartnership, but that the same might be continued in the name of any other of the public officers of such copartnership for the time being: and whereas an act was passed in the sixth year of the reign of his said late Majesty, intituled "An Act for the better regulation of Copartnerships of certain Bankers in Ireland:" and whereas it is expedient that the said acts should for a limited time be amended so far as relates to the powers enabling any such copartnership, not being a body corporate, to sue any of its own members, and the powers enabling any member of any such copartnership, not being a body corporate to sue the said copartnership: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present Parliament assembled, and by the authority of the same, that any person now being, or having been, or who may hereafter be or have been a member of any copartnership now carrying on or which may hereafter carry on the business of banking under the provisions of the said recited acts may, at any time during the continuance of this act, in respect of any demand which such person may have, either solely or jointly with any other person, against the said copartnership, or the funds or property thereof, commence and prosecute, either solely or jointly with any other person (as the case may require), any action, suit, or other proceeding at law or in equity against any public officer appointed or to be appointed, under the provisions of the said acts, to sue and be sued on the behalf of the said copartnership; and that any such public officer may in his own name commence and prosecute any action, suit, or other proceeding at law, or in equity, against any person being or having been a member of the said copartnership, either alone or jointly with any

6 G. 4, c. 42.

Banking copartnership may sue and be sued.

other person, against whom any such copartnership has or may have any demand whatsoever; and that every person being or having been a member of any such copartnership, shall either solely or jointly with any other person (as the case may require), be capable of proceeding against any such copartnership by their public officer, and be liable to be proceeded against, by or for the benefit of the said copartnership, by such public officer as aforesaid, by such proceedings and with the same legal consequences as if such person had not been a member of the said copartnership; and that no action or suit shall in anywise be affected or defeated by reason of the plaintiffs or defendants, or any of them respectively, or any other person in whom any interest may be averred, or who may be in anywise interested or concerned in such action, being or having been a member of the said copartnership; and that all such actions, suits, and proceedings shall be conducted and have effect as if the same had been between strangers.

II. And be it enacted, that in case the merits of any demand by or against any such copartnership shall have been determined in any action or suit, by or against any such public officer, the proceedings in such action or suit may be pleaded in bar of any other action or suit by or against the public officer of the same copartnership for the same demand. **Proceedings in an action may be pleaded in bar of any other.**

III. And be it enacted, that all the provisions of the said recited acts relative to actions, suits, and proceedings commenced or prosecuted under the authority thereof, shall be applicable to actions, suits, and proceedings commenced or prosecuted under the authority of this act. **Extending provisions of recited acts to present act.**

IV. And be it enacted, that no claim or demand which any member of any such copartnership may have in respect of his share of the capital or joint stock thereof, or of any dividends, interest, profits, or bonus payable, or apportionable in respect of such share shall be capable of being set off, either at law or in equity, against any demand which such copartnership may have against such member on account of any other matter or thing whatsoever; but all proceedings in respect of such other matter or thing may be carried on as if no claim or demand existed in respect of such capital or joint stock, or of any dividends, interest, profits, or bonus, payable or apportionable in respect thereof. **A member's share in capital of copartnership not to be set off against any demand which such copartnership may have against him.**

V. And be it enacted, that this act shall continue in force until the end of the next session of Parliament; and that any such action, suit, or other proceeding as aforesaid, which during the continuance of this act may have been commenced or instituted, shall (notwithstanding this act may have expired) be carried on in all respects whatsoever, as if this act had continued in force (a). **Continuance of act.**

(a) This act was extended by 3 & 4 Vict. c. 111, *post*, and made perpetual by 5 & 6 Vict. c. 85.

1 & 2 VICT. CHAP. 98.

An Act to provide for the Conveyance of the Mails by Railways.

[14th August, 1838.]

Railway
Companies.

Postmaster-
general may
require railway
companies to
convey the
mails.

Whereas it is expedient that provision should be made by law for the conveyance of the mails by railways at a reasonable rate of charge to the public: be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that in all cases of railways already made or in progress or to be hereafter made within the United Kingdom, by which passengers or goods shall be conveyed in or upon carriages drawn or impelled by the power of steam, or by any locomotive or stationary engines, or animal or other power whatever, it shall be lawful for the postmaster general, by notice in writing under his hand delivered to the company of proprietors of any such railway, to require that the mails or post letter bags shall from and after the day to be named in any such notice (being not less than twenty-eight days from the delivery thereof) be conveyed and forwarded by such company on their railway, either by the ordinary trains of carriages, or by special trains, as need may be, at such hours or times in the day or night as the postmaster general shall direct, together with the guards appointed and employed by the postmaster general in charge thereof, and any other officers of the post office; and thereupon the said company shall, from and after the day to be named in such notice, at their own costs, provide sufficient carriages and engines on such railways for the conveyance of such mails and post letter bags to the satisfaction of the postmaster general, and receive, take up, carry, and convey by such ordinary or special trains of carriages or otherwise, as need may be, all such mails or post letter bags as shall for that purpose be tendered to them, or any of their officers, servants, or agents, by any officer of the post office, and also receive, take up, carry, and convey, in and upon the carriages carrying such mails or post letter bags, the guards in charge thereof, and any other officers of the post office, and shall receive, take up, deliver, and leave such mails or post letter bags, guards, and officers at such places in the line of such railway, on such days, at such hours or times in the day or night, and subject to all such reasonable regulations and restrictions as to speed of travelling, places, times, and duration of stoppages, and times of arrival, as the postmaster general shall in that behalf from time to time order or direct: provided always, that the rate of speed to be required shall in no case exceed the maximum rate of speed prescribed by the directors of such railway or railways for the conveyance of passengers by their first class trains; but that no alteration in the rate of speed of any train by which the mails shall be conveyed shall be made until six calendar months previous notice shall be given to the postmaster general of any such intended alteration.

Exclusive use
carriage.

II. And be it enacted, that it shall be lawful for the postmaster general (if he shall see fit) to require that the whole of the inside of any carriage used on any railway for the conveyance of mails

or post letter bags shall be exclusively appropriated for the purpose of carrying the mails.

Railway Companies.

III. And be it enacted, that the company of proprietors of any such railway shall, on being required so to do by the postmaster general, provide and furnish (in addition to the carriages aforesaid) a separate carriage or separate carriages, fitted up as the postmaster general, or such person as he shall nominate in that behalf, shall direct, for the purpose of sorting letters therein, and shall forward the same carriage or carriages by their railway, at such hours or times, and subject to all such reasonable regulations as aforesaid, as the postmaster general shall in that behalf order or direct; and such company of proprietors shall receive, take up, carry, and convey in any such last-mentioned carriage or carriages all such post letter bags and officers of the post office as the postmaster general shall reasonably require, and shall deliver and leave any post letter bags and officers of the post office at such places on the line of the railway as the postmaster general shall in that behalf from time to time reasonably order and direct.

Railway company, if required, to provide separate carriage for sorting letters.

IV. And be it enacted, that in case the postmaster general shall at any time be desirous of sending by any such railway any of her Majesty's mail coaches or mail carts, with the mails or post letter bags and guards thereof, and carriages for sorting letters, with any officers of the post office therein, instead of sending the said mails or post letter bags, guards, and officers of the post office by carriages to be provided by such railway company as aforesaid, then and in any such case such railway company shall, at the request of the postmaster general, signified by such notice as aforesaid, cause such mail coaches or mail carts, with the mails or post letter bags and guards thereof, and carriages for sorting letters, with any officers of the post office therein, to be conveyed by the usual or proper trucks or frames on their said railway, subject to such regulations and restrictions of the postmaster general as hereinbefore mentioned.

Postmaster general may direct mails to be carried on railway in mail coaches, in lieu of company's carriages.

V. And be it enacted, that for the greater security of the mails or post letter bags so to be carried or conveyed by railways the company of proprietors of such respective railways along which such mails or post letter bags, mail coaches, or carts and carriages for sorting letters shall be so required by the postmaster general to be conveyed, and their respective officers, servants, and agents, shall obey, observe, and perform all such reasonable regulations respecting the conveyance, delivering, and leaving of such mails and post letter bags, guards, and officers of the post office, mail coaches, or carts and carriages, on any such railways, or on the line thereof, as the postmaster general, or such officer of the post office as he shall nominate in that behalf, shall in his discretion from time to time give or make: provided always, that it shall not be lawful for any officer or servant of the post office to interfere with or give orders to the engineer or other person having the charge of any engine upon any railway along which mails or post letter bags shall be conveyed; but if any cause of complaint shall arise the same shall be stated to the conductor or other officer of the railway company having the charge of the train, or to the chief officer at any station upon the railway:

Railway companies to be subject to directions of post office respecting conveyance of mails.

Railway Companies.

and in case of any default or neglect on the part of any officers or servants of the railway company to comply with any of the regulations of the postmaster general or other officer of the post office so to be nominated as aforesaid the railway company shall be wholly responsible for the same.

Remuneration to railway companies for conveyance of mails.

VI. And be it enacted, that every company of proprietors of any railway along which such mails or post letter bags, mail coaches, carts, or carriages shall be so required by the postmaster general to be conveyed, shall be entitled to such reasonable remuneration to be paid by the postmaster general to any such company of proprietors for the conveyance of such mails, post letter bags, mail guards, and other officers of the post office, mail coaches, carts, and carriages, in manner required by such postmaster general, or by such officer of the post office as he shall in that behalf nominate as aforesaid, as shall (either prior to or after the commencement of such service) be fixed and agreed on between the postmaster general and such company of proprietors, or in case of difference of opinion between them then as shall be determined by arbitration as herein-after provided, but so that the services which may be required by the postmaster general, or by such officer of the post office as he in that behalf shall nominate as aforesaid, to be performed by any such company of proprietors, be not suspended, postponed, or deferred by reason of such remuneration not having been then fixed or agreed on between the said postmaster general and such company of proprietors, or by reason of the award on any reference to arbitration to determine the remuneration not having been then made.

Agreements between postmaster general and railway companies as to amount of remuneration, &c. may be altered.

VII. And be it enacted, that notwithstanding any agreement entered into between the postmaster general and any such company, or any award to be made on any such reference as aforesaid, fixing the amount of remuneration to be paid to such company for any services to be rendered by them as aforesaid, it shall be lawful and competent to and for the postmaster general, by notice in writing, to require, from and after the day to be named in any such notice, not being less than twenty-eight days from the delivery thereof, any addition to be made to the services in respect of which such agreement shall be entered into or award made; and in any such case, and also in case of a discontinuance of any part of such services as herein-after provided, a fresh agreement shall be entered into between the postmaster general and such company, regulating the future amount of remuneration to be paid by the postmaster general to such company for such increased or diminished services, as the case may be; or if the parties cannot agree on such amount the same shall be referred to arbitration in like manner as hereinbefore is mentioned and herein-after provided as to any original agreement; and such arbitrators shall have power to award any compensation they may consider reasonable to be paid to any railway company for any loss that may have been occasioned to them by the discontinuance or alteration of the services previously agreed to be performed by them by any train or carriage specially required by the postmaster general to be forwarded for the conveyance of the mails, but so that nevertheless such increased or diminished services shall not be suspended, postponed, or deferred by reason of the amount of such increased or diminished remuneration not having been then fixed or agreed on

between the postmaster general and such company of proprietors, or by reason of the award on any reference to arbitration to determine the amount of such increased or diminished remuneration not having been then made.

Railway
Companies.

VIII. And be it enacted, that it shall be lawful for the postmaster general and he is hereby authorized, at any time during the continuance of the services of any company of proprietors as aforesaid, to give to such company, by writing under his hand, six calendar months' previous notice that such services or any part thereof shall cease and determine; and thereupon, at the expiration of such six calendar months' notice, the said services, or such part thereof as aforesaid, and the remuneration for the same, shall cease and determine.

Postmaster general may terminate services of railway companies on notice;

IX. And be it enacted, that it shall be lawful for the postmaster general at any time during the continuance of the services of any company of proprietors as aforesaid, by notice in writing under his hand, absolutely to determine and put an end to the same or any part thereof, without giving any previous notice, or on giving any notice less than six calendar months in respect thereof, and thereupon the said services shall cease and determine accordingly: provided nevertheless, that in case the postmaster general shall, without giving six calendar months notice as aforesaid, at any time determine the services to be required by the postmaster general of any company of proprietors, or any part of such services, without any cause whatever, or for any cause other than the default by such company of proprietors in the performance of any of the services to be required of them by the postmaster general, or the breach by such company of proprietors of any of their engagements with the postmaster general, then and in any such case the postmaster general shall make to such company a full and fair compensation for all loss thereby occasioned, the amount whereof in case the parties differ about the same shall be ascertained by arbitration as hereinafter mentioned.

or may terminate services of railway companies without notice, subject to certain conditions.

X. And be it enacted, that on all carriages to be provided for the service of the post office on any such railway there shall on the outside be painted the royal arms, in lieu of the name of the owner and of the number of the carriage, and of all other requisites, if any, prescribed by law in respect of carriages passing on any such railway; but the want of such royal arms on any carriage belonging to or used by the post office shall not form an objection to such carriage running on any railway, anything to the contrary notwithstanding.

Royal arms to be painted on engines or carriages provided for the service of the post office.

XI. And be it enacted, that it shall not be competent or lawful to or for the company of proprietors of any railway to make any bye-laws, orders, rules, or regulations which shall militate against or be contrary or repugnant to any of the enactments herein contained; and that if any company of proprietors shall make or shall have made any such bye-laws, orders, rules, or regulations, either prior or subsequently to the postmaster general signifying to the said company his intention that the mails or post letter bags, mail coaches, carts, or carriages shall be conveyed by such railway, all

Bye-laws of railway companies not to be repugnant to provisions of act.

Railway Companies.

such bye-laws, orders, rules, and regulations, so far as they shall militate against or be contrary or repugnant to any of the enactments herein contained, shall be and be deemed absolutely void and of no effect, in like manner as if such bye-laws, orders, rules, or regulations had never been made or passed, anything to the contrary in anywise notwithstanding.

Penalty for refusing or neglecting to convey mails.

XII. And be it enacted, that if the company of proprietors of any railway, or any of their respective officers, servants, or agents, shall refuse or neglect to carry or convey any mails or post letter bags, when tendered to them for such purpose by the postmaster general or any officer of the post office, or shall refuse to carry on their railway any mail coaches, carts, or carriages as hereinbefore provided, when so required by the postmaster general, or shall refuse or neglect to receive, take up, deliver, and leave any such mails or post letter bags, mail guards, or other officers of the post office, mail coaches, carts, or carriages, at such places, at such times, on such days, and subject to such regulations and restrictions as to speed of travelling, places, times, and duration of stoppages, as the postmaster general shall from time to time reasonably direct, or appoint, as hereinbefore provided, or shall not obey, observe, and perform all such regulations respecting the conveyance of the mails and post letter bags, mail coaches, carts, and carriages on any such railways as the postmaster general, or such officer of the post office, as he shall nominate in that behalf, shall make for the purposes aforesaid, then and in any such case the company of proprietors who, or whose officer, servant, or agent, shall so offend in the premises, shall for every such offence forfeit and pay a sum not exceeding twenty pounds; provided nevertheless, that the payment of or liability to such penalty shall not in any manner lessen or affect the liability of any such company under any bond which may have been given by them under the provisions hereinafter contained.

Postmaster general may require railway companies to give security by bond.

XIII. And be it enacted, that it shall be lawful for the postmaster general, if he shall so think fit, to require the company of proprietors of any railway already made or in progress or to be hereafter made within the United Kingdom to give security by bond to her Majesty, her heirs and successors, conditioned to be void if such company shall from time to time carry or convey, or cause to be carried or conveyed, all such mails or post letter bags, mail guards, and other officers of the post office, mail coaches, carts, and carriages in manner hereinbefore mentioned, when thereunto required by the postmaster general, or any officer of the post office duly authorized for that purpose, and shall receive, take up, deliver, and leave all such mails or post letter bags, guards and officers, mail coaches, carts, and carriages, at such places, at such times, on such days, and subject to such regulations and restrictions as to speed of travelling, places, times, and duration of stoppages, as hereinbefore mentioned, and shall obey, observe, and perform all such regulations respecting the same as the postmaster general shall reasonably make, and shall well and truly do and perform, and cause to be done and performed, all such other acts, matters, and things as by this act are required or directed to be done or performed by or on the part or behalf of such company, their officers, servants, and agents; and every such bond shall be taken in

such sum and in such form as the postmaster general shall think proper; and every such security shall be renewed from time to time whenever and so often as such bond shall be forfeited, and also whenever and so often as the postmaster general shall in his discretion require the same to be renewed; and if any company of proprietors of any such railway as aforesaid shall, when so required as aforesaid, refuse or neglect, for the space of one calendar month next after the delivery of any notice for such purpose to them given by or from the postmaster general, to execute to her Majesty, her heirs and successors, such bond to the effect and in manner aforesaid, or shall at any time refuse or neglect to renew such bond whenever and so often as the same shall by or in pursuance of this act be required to be renewed, such company of proprietors shall forfeit one hundred pounds for every day during the period for which there shall be any refusal, neglect, or default to give or renew such security as aforesaid, after the expiration of the said one calendar month.

XIV. Provided always, and be it enacted, that in all cases in which any railway or part of a railway may previous to the passing of this act have been demised or let by the company of proprietors thereof, the body corporate or company, or other persons to whom the same shall have been so demised or let, their successors, executors, administrators, or assigns, shall during the continuance of such lease be liable to all the provisions of this act for or in respect of such railway or part of a railway, in lieu of such company of proprietors, but so that such lessees (not being a body corporate or company), their executors, administrators, or assigns, shall not be required in respect of any such railway or part of a railway to give security under the foregoing enactment to any amount in any one bond exceeding the sum of one thousand pounds, and shall not in any one year be liable in damages to be recovered upon any bonds which they may have given to any amount exceeding the sum of one thousand pounds and costs of suit.

Lessees of railway, not being a body corporate or company, not to be required to give security by bond above 1000l.

XV. And be it enacted, that all notices under the provisions of this act by or on behalf of the postmaster general to any company of proprietors of any railway as aforesaid shall be considered as duly served on any company of proprietors in case the same shall be given or delivered to any one or more of the directors of such company, or to the secretary or clerk of such company, or be left at any station belonging to such company.

Service of notices.

XVI. And be it enacted, that in all cases in which the postmaster general and any company of proprietors of any railway shall not be able to agree on the amount of remuneration or compensation to be paid by the postmaster general to such company of proprietors for any services performed or to be performed by them as hereinbefore mentioned, the same shall be referred to the award of two persons, one to be named by the postmaster general, and the other by such company; and if such two persons cannot agree on the amount of such remuneration or compensation, then to the umpirage of some third person, to be appointed by such two first-named persons previously to their entering upon the inquiry; and the said award or umpirage, as the

For settling differences between postmaster general and railway companies in certain cases

Railway Companies

case may be, shall be binding and conclusive on the said parties, and their respective successors and assigns.

Railroad companies, after contracts have existed for a certain period, may refer them to arbitrators to decide as to their continuance.

XVII. And be it enacted, that after any contract entered into or award made under the authority of this act shall have continued in operation for a period of three years, it shall be competent for any railway company who may consider themselves aggrieved by the terms of remuneration fixed by such contract or award, by notice under their common seal, to require that it shall be referred to arbitrators to determine whether any and what alteration ought to be made therein; and thereupon such arbitrators or umpire to be appointed as herein-before mentioned shall proceed to inquire into the circumstances, and make their award therein, as in the case of an original agreement: provided always, that the services performed by such railway company for the post office shall in nowise be interrupted or impeded thereby.

Nomination of arbitrators to be within a limited time after application for references made

XVIII. And be it enacted, that in all references to be made under the authority of this act the postmaster general, or the railway company, as the case may be, shall nominate his or their arbitrator within fourteen days after notice from the other party, or in default it shall be lawful for the arbitrator appointed by the party giving notice to name the other arbitrator; and such arbitrators shall proceed forthwith in the reference, and make their award therein within twenty-eight days after their appointment, or otherwise the matter shall be left to be determined by the umpire; and if such umpire shall refuse or neglect to proceed and make his award for the space of twenty-eight days after the matter shall have been referred to him, then a new umpire shall be appointed by the two first-named arbitrators, who shall in like manner proceed and make his award within twenty-eight days, or in default be superseded, and so *toties quoties*.

Construction of terms.

XIX. And be it enacted, that whenever the term "company of proprietors," or "railway company," or "company" is used in this act, the same shall extend to and be construed to include the proprietors for the time being of any railway, whether a body corporate or individuals, and also (during the continuance of any demise or lease as aforesaid) any person, whether a body corporate or company or individuals, to whom any railway or part of a railway may previous to the passing of this act have been demised or let, and their successors, executors, administrators, and assigns, unless the subject or context be otherwise repugnant to such construction; and that the provisions of this act shall be construed according to the respective interpretations of the terms and expressions contained in an act passed in the first year of the reign of her present Majesty, intituled "An Act for consolidating the Laws relative to Offences against the Post Office of the United Kingdom, and for regulating the judicial Administration of the Post Office Laws, and for explaining certain Terms and Expressions employed in those Laws," so far as those interpretations are not repugnant to the subject or inconsistent with the context of such provisions; and that this present act shall be deemed and construed to be a post office act within the intent and meaning of the said last-mentioned act; and the pecuniary penalties

1 & 2 VICT. c. 110.

hereby imposed shall be recovered and recoverable in the manner and form therein particularly mentioned and expressed with reference to the pecuniary penalties imposed by the post office acts: provided nevertheless, that any justice of the peace having jurisdiction for any county through which any railway shall pass, in respect of which any penalty or forfeiture under this act shall have been incurred, shall and may hear and determine any offence against this act which may subject any company to a pecuniary penalty not exceeding twenty pounds; and a summons issued under the post office acts by any such justice against any railway company for the recovery of any such penalty shall be deemed to be sufficiently served in case either the summons or a copy thereof be delivered to any officer, servant, or agent of such company, or be left at any station belonging to such company.

Railway
Companies.

1 & 2 VICT. CHAP. 110.

An Act for abolishing Arrest on Mesne Process in civil actions, except in certain cases; for extending the Remedies of Creditors against the property of Debtors; and for amending the Laws for the Relief of Insolvent Debtors in England. [16th August, 1838.]

XIV. And be it enacted, that if any person against whom any judgment shall have been entered up in any of her Majesty's superior courts at Westminster shall have any government stock, funds, or annuities, or any stock, or shares of or in any public company in England (whether incorporated or not), standing in his name in his own right, or in the name of any person in trust for him, it shall be lawful for a judge of one of the superior courts, on the application of any judgment creditor, to order that such stock, funds, annuities or shares, or such of them or such part thereof respectively as he shall think fit, shall stand charged with the payment of the amount for which judgment shall have been so recovered, and interest thereon, and such order shall entitle the judgment creditor to all such remedies as he would have been entitled to if such charge had been made in his favour by the judgment debtor: provided that no proceeding shall be taken to have the benefit of such charge until after the expiration of six calendar months from the date of such order.

Joint Stock
Companies.

Stock and shares in public funds and public companies belonging to the debtor and standing in his own name to be charged by order of a judge.

XV. And in order to prevent any person against whom judgment shall have been obtained from transferring, receiving, or disposing of any stock, funds, annuities or shares hereby authorized to be charged for the benefit of the judgment creditor under an order of a judge, be it farther enacted that every order (a) of a judge charging any go-

Order of judge to be made in the first instance *ex parte*, and on notice.

(a) *Order to Restrain Stock.*

A. }
v. }
B. }

Form of judge's order to restrain stock.

Upon hearing the attorney to the plaintiff, a judgment creditor in this cause, and upon reading the affidavit of I do order, that

Joint Stock Companies.
To operate as a distringas.

vernment stock, funds, or annuities, or any stock or shares in any public company under this act, shall be made in the first instance *ex parte*, and without any notice to the judgment debtor, and shall be

unless cause be shewn to the contrary before me or such other judge as shall then be at Chambers in Rolls' Gardens, Chancery Lane, within six months from the date of this order, that the stock now standing in the name of the defendant in his own right by the name and description of or of G. H. in trust for him in the books of the Governor and Company of the Bank of England (*the particulars of the stock must be inserted*) shall stand charged with the payment of to the plaintiff, being the amount in which judgment has been recovered in this cause, and interest, pursuant to the statute of 1 & 2 Vict. c. 110. Dated, &c.

(Signed) J. LITTLEDALE,

To obtain an order under this enactment, the judge must be satisfied of two things; the first, that there is a subsisting judgment against the defendant; the second, that there is stock to which the defendant is beneficially entitled, and which must be described. The two forms of *affidavit* which are here given apply to the points referred to, and have been used for the purpose in question. They are placed here merely as examples of what is required.

Forms of affidavit.

In the Queen's Bench.
Between Thomas Wilson, Plaintiff,
and Henry White Defendant.

William Edward Stubbs, of Staple Inn, in the county of Middlesex, gentleman, the plaintiff's agent, maketh oath and saith, that judgment was signed in this action against the above-named defendant on the 26th day of November last past.

W. E. STUBBS.

Sworn at the Judge's Chambers, in the Rolls' Gardens, Chancery Lane, this 4th day of December, 1838.

(Signed.) J. LITTLEDALE.

In the Queen's Bench.
Between Thomas Wilson, Plaintiff,
and Henry White Defendant.

Thomas Wilson, of High, in the parish of Moresby, in the county of Cumberland, husbandman, maketh oath and saith, that he this deponent, has lately obtained a judgment in this honourable Court against the above named defendant, in an action of debt and that there is now justly due and owing to him this deponent on the said judgment, the sum of 24*l.* 1*s.* 11*d.* And this deponent further saith that he has been informed, and verily believes, that there is now standing in the books of the Governor and Company of the Bank of England, a sum of 200*l.* new 3*l.* 10*s.* per cent. annuities, in the names of A. B. & C. D., both of Whitehaven, in the county of Cumberland, gentlemen, in trust to pay the interest and dividends thereof to the said defendant for his life and after his decease to pay the interest and dividends thereof to the said defendant's wife for her life, and after the decease of the survivor of them the said defendant and his said wife, then in trust for the children of the said defendant.

THOMAS WILSON.

Sworn at Whitehaven, in the county of Cumberland, this 1st day of December, 1838, before me,

ANTHONY BURNS STEWARD,
A Commissioner in this behalf.

an order to show cause only; and such order, if any government stock, funds, or annuities, standing in the name of the judgment debtor, in his own right or in the name of any person in trust for him, is to be affected by such order, shall restrain the governor and company of the Bank of England from permitting a transfer of such stock in the meantime and until such order shall be made absolute or discharged; and if any stock or shares of or in any public company standing in the name of the judgment debtor in his own right, or in the name of any person in trust for him, is or are to be affected by any such order, shall in like manner restrain such public company from permitting a transfer thereof; and that if after notice of such order to the person or persons to be restrained thereby, or in case of corporations to any authorized agent of such corporation, and before the same order shall be discharged or made absolute, such corporation or person or persons shall permit any such transfer to be made, then and in such case the corporation or person or persons so permitting such transfer shall be liable to the judgment creditor for the value or amount of the property so charged and so transferred or such part thereof as may be sufficient to satisfy his judgment; and that no disposition of the judgment debtor in the mean time shall be valid or effectual as against the judgment creditor; and further, that unless the judgment debtor shall within a time to be mentioned in such order show to a judge of one of the said superior courts sufficient cause to the contrary, the said order shall, after proof of notice thereof to the judgment debtor, his attorney or agent, be made absolute; Provided that any such judge shall upon the application of the judgment debtor or any person interested have full power to discharge or vary such order, and to award such costs upon such application as he may think fit.

XVI. And be it enacted, that if any judgment creditor who under the powers of this act shall have obtained any charge or be entitled to the benefit of any security whatsoever shall afterwards, and before the property so charged or secured shall have been converted into money or realized, and the produce thereof applied towards the payment of the judgment debt, cause the person of the judgment debtor to be taken or charged in execution upon such judgment, then and in such case such judgment creditor shall be deemed and taken to have relinquished all right and title to the benefit of such charge or security, and shall forfeit the same accordingly.

Securities not realized to be relinquished if the person taken in execution.

LIV. And be it enacted, that if any such prisoner shall at the time of filing such petition as aforesaid, whether such petitions shall have been preferred by himself or by any such creditor as aforesaid, or at any time before such prisoner shall become entitled to his final discharge according to this act, have any government stocks, funds, or annuities or any of the stock of any public company, either in England, Scotland, or Ireland, standing in his own name in his own right, it shall be lawful for the said Court for the Relief of Insolvent Debtors, whenever it shall deem fit so to do, to order all persons whose act or consent is thereto necessary to transfer the same into the name of such assignee or assignees as aforesaid; and all such persons whose act or consent is so necessary as aforesaid are hereby indemnified for all things done or permitted pursuant to such order.

Where the prisoner is beneficially entitled to stock, the court may order a transfer.

1 & 2 VICT. CHAP. 117.

An Act to provide for the Custody of certain Monies paid in pursuance of the Standing Orders of either House of Parliament by Subscribers to Works or Undertakings to be effected under the Authority of Parliament. [16th August, 1838.]

Deposit of monies under Parliamentary orders.

Authority to deposit

Whereas it is expedient to provide for the custody of any sums of money paid in pursuance of any standing order of the lords spiritual and temporal in Parliament assembled, or of the commons in Parliament assembled, by subscribers to works or undertakings to be made under the authority of an act of Parliament: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that in all cases in which any sum of money is required by any standing order of either house of Parliament, either now or hereafter to be in force, to be paid by the subscribers to any work or undertaking which is to be executed under the authority of an act of Parliament, if the director or person or directors or persons having the management of the affairs of any such proposed work or undertaking, or any five of them, shall apply to the chairman of the committees of the House of Lords with respect to any such money required by any standing order of the lords spiritual and temporal in Parliament assembled, or to the speaker of the House of Commons with respect to any such money required by any standing order of the commons in Parliament assembled, the said chairman or the said speaker may, by warrant or order under his hand, direct that such sum of money shall be paid in manner hereinafter mentioned; that is to say, into the Bank of England in the name and with the privity of the accountant general of the Court of Exchequer in England, if the work or undertaking in respect of which the sum of money is required to be paid is intended to be executed in that part of the United Kingdom called England; or into the Bank of England in the name and with the privity of the said accountant general, or into any of the banks in Scotland established by act of Parliament or royal charter in the name and with the privity of the Queen's remembrancer of the Court of Exchequer in Scotland, at the option of the person or persons making such application as aforesaid, in case such work or undertaking is intended to be executed in that part of the United Kingdom called Scotland; or into the Bank of Ireland in the name and with the privity of the accountant general of the Court of Chancery in Ireland, in case such work or undertaking is intended to be made or executed in that part of the United Kingdom called Ireland; and every such application as aforesaid to the said chairman or speaker shall be made in writing, and be signed by the director or directors, or person or persons having the management of the said work or undertaking, or by any five of them; and therein shall be stated the name or description of such work or undertaking, and name and place of abode or the names and places of abode of such director or directors, person or persons, and the sum of money required to be paid, and the bank and name into and in which the same is to be paid; and such particulars shall also be set forth in every such war-

rant or order; and such warrant or order shall be a sufficient authority for the accountant general of the said Court of Exchequer in England, the Queen's remembrancer of the Court of Exchequer in Scotland, and the accountant general of the Court of Chancery in Ireland respectively, to permit the sum of money directed to be paid by such warrant or order to be placed to an account opened or to be opened in his name in the bank mentioned in such warrant or order.

Deposit of monies under Parliamentary orders.

II. And be it enacted, that it shall be lawful for the person or persons named in such warrant or order, or the survivors or survivor of them, or any five of them, to pay the sum of money mentioned in such warrant or order into the bank mentioned in such warrant or order in the name and with the privity of the officer or person in whose name such sum shall be directed to be paid by such warrant or order, to be placed to his account there *ex parte* the work or undertaking mentioned in such warrant or order; and every such sum so paid in, or the securities in or upon which the same may be invested as hereinafter mentioned, shall there remain until the same or such securities as aforesaid shall be paid out of such bank in pursuance of the provisions of this act: provided always, that every sum paid into the Bank of England in the name and with the privity of the accountant general of the Court of Exchequer under the provisions of this act shall be paid in and placed to his account there pursuant to the method prescribed by an act passed in the first year of the reign of his late Majesty king George the Fourth, intituled "An Act for the better securing Money and Effects paid into the Court of Exchequer at Westminster on account of the Suitors of the said Court, and for the Appointment of an Accountant General and Two Masters of the said Court, and for other Purposes," and pursuant to the general orders of the said Court, and without fee or reward; and every sum paid into the bank of Ireland in the name and with the privity of the accountant general of the Court of Chancery in Ireland, under the provisions of this act, shall be paid in and placed to his account pursuant to the method prescribed by an act made and passed in the Parliament of Ireland in the twenty-third and twenty-fourth years of the reign of his late Majesty king George the Third, intituled "An Act for the better securing the Monies and Effects of the Suitors of the Court of Chancery and Exchequer, by depositing the same in the National Bank, and to prevent the forging and counterfeiting any Draft, Order, or other Voucher for the Payment or Delivery of such Money and Effects, and for other Purposes," and pursuant to the general orders of the said Court, and without fee or reward.

Payment of deposit.

1 G. 4, c. 35.

23 & 24 G. 3, (I.)

III. And be it enacted, that if the person or persons named in such warrant or order, or the survivor or survivors of them, or any five of them, desire to have invested any sum so paid into the Bank of England or the Bank of Ireland, the Court in the name of whose accountant general the same may have been paid, on a petition presented to such Court in a summary way by him or them, may order that such sum shall, until the same be paid out of Court in pursuance of this act, be laid out in the Three per Centum Consoli-

Investment of deposit.

Deposit of
monies under
Parliamentary
orders.

Repayment of
of deposit.

dated or Three per Centum Reduced Bank Annuities, or any government security or securities.

IV. And be it enacted, that on the termination of the session of Parliament in which the petition or bill for the purpose of making or sanctioning any such work or undertaking shall have been introduced into Parliament, or if such petition or bill shall be rejected or finally withdrawn by some proceeding in either house of Parliament, or shall not be allowed to proceed, or if an act be passed authorizing the making of such work or undertaking, and if in any or either of the foregoing cases the person or persons named in such warrant or order, or the survivor or survivors of them, or the majority of such persons, apply by petition to the Court in the name of whose accountant general the sum of money mentioned in such warrant or order shall have been paid, or to the Court of Exchequer in Scotland in case such sum of money shall have been paid in the name of the said Queen's remembrancer, the Court in the name of whose accountant general or Queen's remembrancer such sum of money shall have been paid shall, by order, direct the sum of money paid in pursuance of such warrant or order, or the stocks, funds, or securities in or upon which the same are invested, and the interest or dividends thereof, to be transferred and paid to the party or parties so applying, or to any other person or persons whom they may appoint in that behalf; but no such order shall be made in the case of any such petition or bill being rejected, or not being allowed to proceed, or withdrawn, unless it be proved by the certificate of the chairman of committees, if the said petition or bill was rejected or not allowed to proceed, or withdrawn in its passage through the House of Lords, or of the said speaker, if the said petition or bill was rejected or not allowed to proceed or withdrawn during its passage through the House of Commons, that the petition or bill has been either so rejected, or not allowed to proceed, or so withdrawn by some proceeding in one or other house of Parliament; which certificate the said chairman or speaker shall grant on the application in writing of the person or persons or the majority of the persons named in such warrant or order, or the survivor or survivors of them; and every such certificate shall be conclusive proof of such rejection, or not proceeding, or withdrawal.

2 & 3 VICT. CHAP. 58.

An Act to make further provision for the Administration of Justice and for improving the practice and proceedings in the Courts of the Stannaries of Cornwall; and for the prevention of Frauds by workmen employed in Mines within the county of Cornwall.

[17th August, 1839.]

The Stannaries. Whereas by an act passed in last session of Parliament, for the abolition of the duties payable on the coinage of tin in the counties of Cornwall and Devon, and for giving compensation in lieu of such duties, and to reduce the duties of customs payable on tin, the tinners of Cornwall were released from all payment of the duty of coinage on tin and tin ore raised within the county, and thereupon it is reasonable

and just that the said tin ore be subject to the like assessment as all other metals and metallic minerals raised in the said county are subject by virtue of an act made and passed at a Parliament held in the sixth and seventh years of the reign of his late Majesty King William the Fourth, to make provision for the more expeditious administration of justice in the Stannaries of Cornwall, and for improving the practice and proceedings in the courts of the said Stannaries: And whereas also it is expedient that such last mentioned act be amended in certain cases, be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present Parliament assembled, and by the authority of the same, that from and after the 29th day of September 1839, there be paid and payable the sum of one farthing in the pound sterling on the value of all tin and tin ore which shall from time to time be brought to sale in or withdrawn from any mine or stream-work within the said county of Cornwall: and that the head manager of every tin mine and stream-work shall in respect of such tin and tin ore and the assessment and payment of one farthing in the pound sterling thereon be liable to all such obligations, penalties and payments, and allowed all such discharges as are imposed on and allowed to the head manager of any other mine in the said county, in respect of the like assessment and payment on other metals and metallic minerals imposed by virtue of the said act passed at the Parliament held in the sixth and seventh years of the reign of his late Majesty King William the Fourth; and that the monies arising by means of such assessment on tin and tin ore shall form part of the general fund provided by the said last-mentioned act, and arising from the assessment on metals and metallic minerals and be recovered and applied according to the provisions of the said act; and that from and after the said 29th day of September, 1839, there be paid to the collector of such assessment, in addition to his present salary, the sum of 10*l.* in every year, charged in equal moieties on the said fund, and on the revenues of the duchy of Cornwall, and payable as his present salary is paid.

The Stannaries

Assessment upon all tin and tin ore taken from mines in Cornwall.

Additional salary to collector.

II. And whereas the attendance of jurors at the court of the vice-warden of the said Stannaries is long and laborious; be it therefore enacted, that all persons who shall duly attend the said court as jurors shall be exempted from attendance as jurors at the sessions for the said county of Cornwall for one year from the time of their attendance as jurors at the said court, and the vice-warden of the said Stannaries shall at the close of each of his sittings cause to be made and sent to the clerk of the peace of the said county a list of those jurors who shall have duly attended at his said court: provided always, that all fines imposed on any juryman for non-attendance or on any other person by the said vice-warden, be, when received, paid by the registrar of the said court to the sheriff of the said county, and be by the said sheriff received and accounted for in like manner as all other fines for non-attendance of jurors are by him now by law accounted for.

The jurors to be exempted from attending county sessions as jurors for one year.

All fines to be paid over to the sheriff.

III. And be it enacted that no appeal, by reason of the vice-warden granting or refusing a new trial, be allowed on behalf of the defendant, where the damages found by the jury shall not exceed 20*l.*; and that no appeal against any judgment order or sentence given in the court

No appeal where damages do not exceed 20*l.*

The Stannaries.

No appeal from court of common law of the Stannaries to operate as a stay of proceedings unless security given.

No appeal from a decree of the court of equity of the Stannaries unless security given

The vice-warden may make rules relating to times of new trials and matters of practice.

The registrar of the court of the Stannaries may administer oaths and take affidavits; and others by commission may take affidavits.

For adjourning and holding the court in case of illness of the vice-warden or other good cause.

of common law of the said vice-warden, shall at any time operate therein as a stay of proceedings, unless the party appealing shall in the opinion of the said vice-warden or of the registrar of the said court (if the matter be referred to him) give previously to his said appeal good security for the satisfaction and due performance of the judgment, order, or sentence so appealed against, if the same be affirmed, and for payment of such costs incurred by or relating to his said appeal as he may be ordered to pay.

IV. And be it enacted, that no appeal against any decree, order, or act of the said vice-warden, made or done in the court of equity of the said vice-warden, shall at any time operate as a stay of proceedings in such court, or be allowed unless the party appealing shall, previously to his said appeal give good security, in the opinion of the said vice-warden or registrar as aforesaid, for payment of such costs incurred by or relating to his said appeal as he may be ordered to pay.

V. And be it enacted, that so much of the said act passed at the Parliament held in the sixth and seventh years of the reign of his late Majesty as regulates the time within which any motion must be made for a new trial shall be and the same is hereby repealed; and that the said vice-warden may make such rules and orders in his said court relating to the time for moving for new trials and re-hearings of causes and to all matters relating to the taxation of costs, and to practice, as to him may from time to time seem fit, anything in such act to the contrary notwithstanding.

VI. And be it enacted, that the registrar of the said court of the said vice-warden may in all causes pending therein, administer oaths, take affidavits, and affirmations, and receive depositions relating thereto; and that any commissioner of the superior courts of common law at Westminster, having by commission from such courts or any of them authority to take affidavits in matters relating to such courts or any of them may, without fee or reward apply for and have by commission of the said vice-warden, under his seal of the Stannaries, authority to take affidavits and affirmations in all suits and matters in the court of common law of the said vice-warden; and that the said vice-warden may, without fee or reward, by commission under his said seal, give authority to any solicitor of the superior court of equity, or to any attorney of any of the said superior courts of common law resident or practising in or near Westminster, to take affidavits and affirmations in all suits and matters in the court of the said vice-warden.

VII. And be it enacted, that if in consequence of accident or illness the said vice-warden shall be prevented from attending at Truro on the day appointed for him to hold his sittings there, or any adjournment thereof, the registrar of the said court of the said vice-warden shall have power from time to time to open and adjourn such court, and thereupon all persons summoned or bound or having occasion to attend thereat shall attend according to such adjournment as if the vice-warden had been present and adjourned the court; and the vice-warden when he shall be present at such court so adjourned shall proceed thereat as if the day of adjournment had been

the day originally appointed for the holding thereof; and the said vice-warden shall, without delay, send a statement in writing for the lord-warden, to be delivered to the secretary of the lord-warden, of the cause whereby he was prevented from attending as aforesaid; and the said lord-warden shall, without delay, produce such statement to the council or commissioners or principal officers of the said duchy, who have authority to require the removal of the vice-warden from his office; provided also, that in case of sufficient cause being at any time shown to such council or commissioners or principal officers, a majority of five of them the said council or commissioners or principal officers as aforesaid, of whom the said lord-warden, if he be present, shall be one, may appoint a fit person, being a barrister of ten years' standing at the least, to execute the duties of the vice-warden for a time not exceeding four calendar months together.

The Stannaries

Vice-warden to state the cause thereof.

A person may be appointed to execute the duties for a time.

VIII. And be it enacted, that if any person be in custody for contempt, or be alleged to be in contempt of any order or decree of the said vice-warden, or be in custody for any cause relating to his said court, when the same court is not sitting, such person shall, by order of the court be brought before the vice-warden or registrar, who shall hear the defence or allegations of such person, and thereupon the said vice-warden may commit, or the said vice-warden or registrar may, in their discretion, respectively discharge such person altogether, or may otherwise discharge such person until the next sittings or for some shorter period on such person so discharged giving good security for his appearance at the next sittings or the expiration of such shorter period and on such other terms as the nature of the case may require: provided always, that if such security be forfeited the vice-warden may thereupon order what shall appear to be just, and give relief accordingly.

Vice-warden or registrar of the court of the Stannaries may in certain cases commit or discharge any person in contempt.

IX. And be it enacted, that the said registrar may make orders respecting errors and amendments in petitions or other pleadings at law as well as in equity before any defendant shall have pleaded or answered; and in like manner may at any time make orders respecting formal amendments or misnomers, or the adding or striking out names of parties and may by consent of all parties, plaintiffs and defendants make orders respecting any other amendments after a defendant shall have pleaded, and may from time to time require from any officer of the said court who shall collect or receive money either by assessment on ores or by fees of court, or in course of a suit or otherwise, an account and payment of such money to be made to him at such time as he shall think fit.

The registrar may make orders relating to formal errors and amendments.

X. And for the prosecution and punishment of frauds in mines by idle and dishonest workmen removing or concealing ore for the purpose of obtaining more wages than are of right due to them and thereby defrauding the adventurers in or proprietors of such mines, or the honest and industrious workmen therein, be it enacted, that if any person or persons employed in or about any mine within the county of Cornwall shall take, remove, or conceal the ore of any metal, or any *lapis calaminaris*, manganese, mundick, or other mineral found or being in such mine, with intent to defraud the proprietor or proprietors of or adventurer or adventurers in such mine, or any one or

Workmen in mines removing or concealing ore to defraud the adventurers or other miners to be guilty of simple larceny.

The Stannaries. more of them respectively, or any workman or miner employed therein, then and in every such case respectively, such person or persons so offending shall be deemed and taken to be guilty of felony, and being convicted thereof shall be liable to be punished in the same manner as in the case of simple larceny.

3 & 4 VICT. CHAP. 78.

An Act to explain and amend the Acts relating to Friendly Societies.
[7th August, 1840.]

Friendly Societies.

10 G. 4, c. 56,
s. 37.

Whereas an act was passed in the tenth year of the reign of his late Majesty king George the Fourth, intituled "An Act to consolidate and amend the Laws relating to Friendly Societies" and whereas by the said act it was enacted, "that no power, warrant, or letter of attorney granted or to be granted by any persons as trustees of any society established under this act for the transfer of any share in the public funds standing in the name of such trustee, nor any receipts given for any dividend in any public stock or fund or interest of exchequer bills, nor any receipt, nor any entry in any book of receipt, for any money deposited in the funds of any such society, nor for any money received by any member, his or her executors or administrators, assigns or attornies, from the funds of such society, nor any bond or other security to be given to or on account of any such society, or by the treasurer or trustee or any officer thereof, nor any draft or order, nor any form of assurance, nor any appointment of any agent, nor any certificate or other instrument for the revocation of any such appointment, nor any other instrument or document whatever, required or authorized to be given, issued, signed, made, or produced in pursuance of this act, shall be subject or liable to or charged with any stamp duty or duties whatsoever:" and whereas it is expedient that the said act should be explained and amended: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that nothing in the said recited act contained shall be construed to extend to grant any exemption from stamp duty to any friendly society enrolled or to be enrolled under the provisions of the said act, or of any other act relating to friendly societies, when the sum to be assured to any individual, or to any person nominated by or to claim under him or her, shall exceed the sum of two hundred pounds.

Recited act not to exempt from stamp duty certain friendly societies when the sum assured exceeds 200*l*.

No society assuring for more than 200*l*. entitled to invest in savings banks or with national debt commissioners.

II. And be it enacted, that no friendly society enrolled or to be enrolled under the provisions of the said recited act or of any act relating to friendly societies, by the rules of which the sum assured to any individual, or to any person nominated by or to claim under him or her, may exceed the sum of two hundred pounds, shall from and after the passing of this act be entitled or authorized to invest the funds of such society, or any part thereof, (except so much as may be hereafter received on account of assurances made previous to

the passing of this act,) in any savings banks, or with the commissioners for the reduction of the national debt.

Friendly Societies.

III. Provided always, and be it enacted, that every friendly society enrolled under the provisions of the said recited act, or of such act as amended by an act passed in the session held in the fourth and fifth years of the reign of his late Majesty king William the Fourth, intituled "An Act to amend an Act of the Tenth Year of His late Majesty king George the Fourth, to consolidate and amend the Laws relating to Friendly Societies," and which by means of this act shall be deprived of the benefit of exemption from stamps, and of the benefit of investing their funds (except as aforesaid) in any savings bank, or with the commissioners for the reduction of the national debt, shall be entitled to add to its rules any rule or rules by which any member of such society shall be empowered to nominate any person or persons, his, her, or their executors, administrators, or assigns, to receive any sum already assured or to be hereafter assured by such member, or any part thereof; and every such nomination shall be valid, although the nominee or nominees shall be a trustee or trustees for any other person or persons, or for any trust or trusts, or purpose or purposes whatsoever, any thing in the said recited acts or any other act relating to friendly societies to the contrary notwithstanding.

Certain friendly societies empowered to appoint nominees to receive sums assured.

4 & 5 W. 4, c. 40.

IV. And be it enacted, that from and after the passing of this act a declaration shall be made by the treasurer or trustees of every friendly society, on the investment of any sum of money in any savings bank, or to the account of the commissioners for the reduction of the national debt, that the sum to be invested does not arise from the subscriptions or payments by individuals on account of any assurance made subsequent to the passing of this act, by which assurance the sum assured to any individual or person nominated by or to claim under him or her exceeds the sum of two hundred pounds, which declaration shall be made in such form as the said commissioners shall from time to time direct; and in case such declaration shall not be true, then and in every such case the sum of money paid on such declaration shall be forfeited to the said commissioners, to be applied by them in the manner directed in an act passed in the ninth year of the reign of his late Majesty king George the Fourth, intituled "An Act to consolidate and amend the Laws relating to Savings Banks."

On future investments by societies a declaration to be made in form directed by commissioners.

9 G. 4, c. 92, s. 34.

VI. And be it enacted, that this act shall extend to the United Kingdom of Great Britain and Ireland.

Extent of act.

3 & 4 VICT. CHAP. 82.

An Act for further amending the Act for Abolishing Arrest on Mesne Process in Civil Actions. [7th August, 1840.]

Whereas by an act passed in the second year of the reign of Her Majesty, intituled "An Act for Abolishing Arrest on Mesne Process

Judgments, against stocks, shares, &c.

Judgments,
against stocks,
shares, &c.

1 & 2 Vict.
c. 110.

Provisions of
recited act as
to property of
judgment-
debtors defined
and extended.

in civil actions, except in certain cases; for extending the remedies of Creditors against the property of Debtors; and for amending the Laws for the relief of Insolvent Debtors in England," it was amongst other things enacted, "that if any person against whom any judgment should have been entered up in any of Her Majesty's superior Courts at Westminster should have any government stock, funds or annuities, or any stock or shares of or in any public company in England (whether incorporated or not) standing in his name in his own right, or in the name of any person in trust for him, it should be lawful for a judge of one of the superior courts on the application of any judgment-creditor to order that such stocks, funds, annuities or shares, or such of them or such part thereof respectively, as he should think fit should stand charged with the payment of the amount for which judgment should have been so recovered and interest thereon, and such order should entitle the judgment-creditor to all such remedies as he would have been entitled to if such charge had been made in his favour by the judgment-debtor; provided that no proceedings should be taken to have the benefit of such charge until after the expiration of six calendar months from the date of such order: and whereas doubts have been entertained whether the said provisions extend to the cases hereinafter mentioned." Now therefore be it declared and enacted by the Queen's most excellent Majesty by and with the advice and consent of the lords spiritual and temporal and commons in this present Parliament assembled and by the authority of the same, that the aforesaid provisions of the said act shall be deemed and taken to extend to the interest of any judgment-debtor, whether in possession, remainder or reversion, and whether vested or contingent, as well in any such stocks, funds, annuities or shares as aforesaid, as also in the dividends, interest or annual produce of any such stock, funds, annuities or shares; and whenever any such judgment-debtor shall have any estate, right, title or interest, vested or contingent, in possession, remainder or reversion, in to or out of any such stocks, funds, annuities or shares as aforesaid, which now are or shall hereafter be standing in the name of the accountant general of the Court of Chancery, or the accountant general of the Court of Exchequer, or in to or out of the dividends, interest or annual produce thereof, it shall be lawful for such judge to make any order as to such stock, funds, annuities or shares or the interest, dividends, or annual produce thereof, in the same way as if the same had been standing in the name of a trustee of such judgment-debtor: provided always, that no order of any judge as to any stock, funds, annuities, or shares standing in the name of the accountant-general of the Court of Chancery or the accountant-general of the Court of Exchequer, or as to the interest, dividends or annual produce thereof, shall prevent the governor and company of the Bank of England or any public company from permitting any transfer of such stocks, funds, annuities or shares, or payment of the interest, dividends or annual produce thereof, in such manner as the Court of Chancery or the Court of Exchequer respectively may direct, or shall have any greater effect than if such debtor had charged such stock, funds, annuities or shares, or the interest, dividends or annual produce thereof in favour of the judgment-creditor, with the amount of the sum to be mentioned in any such order.

II. And whereas it was by the said act further enacted, that no judgment of any of the superior courts of common law at Westminster, nor any decree or order in any court of equity, nor any rule of a court of common law, nor any order in bankruptcy or lunacy, should by virtue of the said act affect any lands, tenements or hereditaments, as to purchasers, mortgagees, or creditors, unless and until such a memorandum or minute as therein mentioned should be left with the senior master of the Court of Common Pleas at Westminster: And whereas, doubts have been entertained whether a purchaser, mortgagee, or creditor, having notice of any such judgment, decree, order or rule as aforesaid would not in equity be affected thereby notwithstanding such a memorandum or minute of the same

Judgments,
against stocks,
shares, &c.

No judgment,
decree, &c. to
affect real es-
tate, until mo-
memorandum left
with the senior
master of the
Common
Pleas

in the said act is mentioned may not have been left with the senior master of the said Court of Common Pleas: be it therefore further declared and enacted, that no such judgment, decree, order or rule as aforesaid shall, by virtue of the said act, affect any lands, tenements, or hereditaments at law or in equity, as to purchasers, mortgagees or creditors, unless and until such a memorandum or minute as in the said act in that behalf mentioned, shall have been left with the senior master of the said Court of Common Pleas at Westminster: any notice of any such judgment, decree, order or rule to any such purchaser, mortgagee or creditor in anywise notwithstanding.

3 & 4 VICT. CHAP. 97

An Act for regulating Railways.

[10th August, 1840.]

Whereas it is expedient for the safety of the public to provide for the due supervision of railways: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present Parliament assembled, and by the authority of the same, that, after two months from the passing of this act, no railway, or portion of any railway, shall be opened for the public conveyance of passengers or goods until one calendar month after notice in writing of the intention of opening the same shall have been given, by the company to whom such railway shall belong, to the lords of the committee of her Majesty's privy council appointed for trade and foreign plantations.

Railway
Companies.

No railway to
be opened
without notice
to the Board
of Trade.

II. And be it enacted, that if any railway, or portion of any railway, shall be opened without due notice as aforesaid, the company to whom such railway shall belong shall forfeit to her Majesty the sum of twenty pounds for every day during which the same shall continue open, until the expiration of one calendar month after the company shall have given the like notice as is hereinbefore required before the opening of the railway; and any such penalty may be recovered in any of her Majesty's courts of record.

Penalty for
opening rail-
ways without
notice.

Railway Companies.
Minutes to be made by railway companies.

III. And be it enacted, that the lords of the said committee may order and direct every railway company to make up and deliver to them returns, according to a form to be provided by the lords of the said committee, of the aggregate traffic in passengers, according to the several classes, and of the aggregate traffic in cattle and goods respectively, on the said railway, as well as of all accidents which shall have occurred thereon attended with personal injury, and also a table of all tolls, rates, and charges from time to time levied on each class passengers, and on cattle and goods, conveyed on the said railway; and if the returns herein specified shall not be delivered within thirty days after the same shall have been required, every such company shall forfeit to her Majesty the sum of twenty pounds for every day during which the said company shall wilfully neglect to deliver the same; and every such penalty may be recovered in any of her Majesty's courts of record: provided always, that such returns shall be required, in like manner and at the same time, from all the said companies, unless the lords of the said committee shall specially exempt any of the said companies, and shall enter the grounds of such exemption in the minutes of their proceedings.

Penalty for making false returns.

IV. And be it enacted, that every officer of any company who shall wilfully make any false return to the lords of the said committee shall be deemed guilty of a misdemeanor.

Board of Trade may appoint persons to inspect railways.

V. And be it enacted, that it shall be lawful for the lords of the said committee, if and when they shall think fit, to authorize any proper person or persons to inspect any railway; and it shall be lawful for every person so authorized, at all reasonable times, upon producing his authority, if required, to enter upon and examine the said railway, and the stations, works, and buildings, and the engines and carriages belonging thereto: provided always, that no person shall be eligible to the appointment as inspector as aforesaid who shall within one year of his appointment have been a director or have held any office of trust or profit under any railway company.

Penalty on persons obstructing inspector.

VI. And be it enacted, that every person wilfully obstructing any person, duly authorized as aforesaid, in the execution of his duty, shall, on conviction before a justice of the peace having jurisdiction in the place where the offence shall have been committed, forfeit and pay for every such offence any sum not exceeding ten pounds; and on default of payment of any penalty so adjudged, immediately or within such time as the said justice of the peace shall appoint, the same justice, or any other justice having jurisdiction in the place where the offender shall be or reside, may commit the offender to prison for any period not exceeding three calendar months; such commitment to be determined on payment of the amount of the penalty; and every such penalty shall be returned to the next ensuing court of Quarter Sessions in the usual manner.

Copies of existing bye laws to be laid before the Board of Trade;

VII. And whereas many railway companies are or may hereafter be empowered by act of Parliament to make bye laws, orders, rules, or regulations, and to impose penalties for the enforcement thereof, upon persons other than the servants of the said companies, and it is expedient that such powers should be under proper control; be it

enacted, that true copies of all such bye laws, orders, rules, and regulations made under any such powers by every such company before the passing of this act, certified in such manner as the lords of the said committee shall from time to time direct, shall, within two calendar months after the passing of this act, be laid before the lords of the said committee; and that every such bye law, order, rule, or regulation, not so laid before the lords of the said committee within the aforesaid period, shall, from and after that period, cease to have any force or effect, saving in so far as any penalty may have been then already incurred under the same.

**Railway
Companies.**

otherwise to be void.

VIII. And be it enacted, that no such bye law, order, rule, or regulation made under any such power, and which shall not be in force at the time of the passing of this act, and no order, rule, or regulation annulling any such existing bye law, rule, order, or regulation which shall be made after the passing of this act, shall have any force or effect until two calendar months after a true copy of such bye law, order, rule, or regulation, certified as aforesaid, shall have been laid before the lords of the said committee, unless the lords of the said committee shall, before such period, signify their approbation thereof.

No future bye laws to be valid till two calendar months after laid before Board of Trade.

IX. And be it enacted, that it shall be lawful for the lords of the said committee, at any time either before or after any bye law, order, rule, or regulation shall have been laid before them as aforesaid shall have come into operation, to notify to the company who shall have made the same their disallowance thereof, and, in case the same shall be in force at the time of such disallowance, the time at which the same shall cease to be in force; and no bye law, order, rule, or regulation which shall be so disallowed shall have any force or effect whatsoever, or, if it shall be in force at the time of such disallowance, it shall cease to have any force or effect at the time limited in the notice of such disallowance, saving in so far as any penalty may have been then already incurred under the same.

Board of Trade may disallow bye laws.

X. And be it enacted, that so much of every clause, provision, and enactment in any act of Parliament heretofore passed as may require the approval or concurrence of any justice of the peace, court of quarter sessions, or other person or persons, other than members of the said companies, to give validity to any bye laws, orders, rules, or regulations made by any such company, shall be repealed.

Provisions of railway acts, &c. repealed.

XI. And be it enacted, that whenever it shall appear to the lords of the said committee that any of the provisions of the several acts of Parliament regulating any of the said companies, or the provisions of this act, have not been complied with on the part of any of the said companies, or any of their officers, and that it would be for the public advantage that the due performance of the same should be enforced, the lords of the said committee shall certify the same to her Majesty's attorney general for England or Ireland, or to the lord advocate for Scotland, as the case may require; and thereupon the said attorney general or lord advocate shall, by information, or by action, bill, plaint, suit at law or in equity, or other legal proceeding, as the case may require, proceed to recover such penalties and forfeitures, or otherwise to enforce the due performance of the said provisions, by

Board of Trade may direct prosecutions to enforce provisions of railway acts.

**Railway
Companies.****Flanches of
railways.**

to be referred to the decision of any two justices of the peace within their respective jurisdictions: and whereas it is expedient that so much of every clause, provision, and enactment in any act of Parliament heretofore passed, as gives to any justice or justices the power of hearing or deciding upon any such disagreement or difference as to the proper places for any such openings in the ledges or flanches of any railway, should be repealed; be it therefore enacted, that so much of every such clause, provision, and enactment as aforesaid shall be repealed.

**Board of Trade
to determine
such disputes
in future.**

XIX. And be it enacted, that in case any disagreement or difference shall arise between any such owner or occupier, or other persons, and any railway company, as to the proper places for any such openings in the ledges or flanches of any railway (except at such places as aforesaid), for the purpose of such communication, then the same shall be left to the decision of the lords of the said committee, who are hereby empowered to hear and determine the same in such way as they shall think fit, and their determination shall be binding on all parties.

**Communica-
tions to the
board to be left
at their office.****Communica-
tions by the
board how to
be authenti-
cated.****What shall be
deemed good
service on rail-
way company.**

XX. And be it enacted, that all notices, returns, and other documents required by this act to be given to or laid before the lords of the said committee shall be delivered at or sent by the post to the office of the lords of the said committee; and all notices, appointments, requisitions, certificates, or other documents in writing, signed by one of the secretaries of the said committee, or by some officer appointed for that purpose by the lords of the said committee, and purporting to be made by the lords of the said committee, shall, for the purposes of this act, be deemed to have been made by the lords of the said committee; and service of the same upon any one or more of the directors of any railway company, or on the secretary or clerk of the said company, or by leaving the same with the clerk or officer at one of the stations belonging to the said company, shall be deemed good service upon the said company.

**Meaning of the
words "rail-
way" and
"company."**

XXI. And be it enacted, that wherever the word "railway" is used in this act it shall be construed to extend to all railways constructed under the powers of any act of Parliament, and intended for the conveyance of passengers in or upon carriages drawn or impelled by the power of steam or by any other mechanical power; and wherever the word "company" is used in this act it shall be construed to extend to and include the proprietors for the time being of any such railway, whether a body corporate or individuals, and their lessees, executors, administrators, and assigns, unless the subject or context be repugnant to such construction.

3 & 4 VICT. CHAP. 110.

An Act to amend the Laws relating to Loan Societies.

[11th August, 1840.]

Whereas an act was passed in the fifth year (*a*) of the reign of his late Majesty, intituled "An Act for the Establishment of Loan Societies in England and Wales; and to extend the provisions of the Friendly Societies' Acts to the Islands of Guernsey, Jersey, and Man:" and whereas it is expedient to repeal so much of the said act as relates to the establishment of loan societies in England and Wales, and to make other provisions instead thereof: be it enacted, by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that so much of the said act as relates to the establishment of loan societies in England and Wales, shall be repealed, except as is hereinafter provided: provided always, that the provisions of the said act, and all rules heretofore certified by the barrister appointed to certify the rules of savings banks, and enrolled for the management of societies established under the said act, shall continue and be in force, and applicable for the recovery of all sums of money which have been lent by any such society before the passing of this act, and may be due and owing or become due in respect of any loan made by any such society previous to the passing of this act, according to the rules of such society, except where the same shall be contrary to the provisions in this act contained; and all such rules shall be judicially taken notice of, and enforced by all justices in any proceedings to be had or taken by the treasurer or clerk of such society for the recovery of any loan or loans, or any sum of money on account thereof.

II. And be it enacted, that no society certified and enrolled under the said act, or treasurer, trustee, clerk, servant, or member thereof, shall be liable to any penalty or forfeiture imposed by any act or acts relating to usury on account of having reserved or contracted for more than the legal rate of interest, either in the way of interest, or other charges or expenses, in respect of any loan made by such society before the passing of this act.

III. And be it enacted, that if any number of persons who have formed, or shall form any society in England for establishing a fund for making loans to the industrious classes (*b*), and taking payment of the same by instalments, with interest thereon, shall be desirous of having the benefit of this act, such persons shall cause the rules framed or to be framed for the management of such society to be certified, deposited, and enrolled in manner hereinafter directed, and

Loan Societies.

5 & 6 W. 4,
c. 23.

Repeal of 5 & 6
W. 4, c. 23,
except as is
hereinafter
provided.
Provisions to
be in force for
recovery of all
sums lent pre-
vious to passing
of this act.

Society not
liable to penal-
ties for loans
made before
passing of act.

Formation of
loan societies
under restric-
tions in this
act.

(a) *Ante.*

(b) These words, "loans to the industrious classes," seem to create the distinction between the societies contemplated by this act and those comprehended within the Friendly Societies' Acts, and which are, and in the nature of, *mutual benefit societies*. See the Friendly Societies' Acts, *ante*.

Loan Societies. thereupon shall have the benefit of the provisions contained in this act.

Transcripts of rules.

IV. And be it enacted, that three transcripts fairly written or printed, or partly written and partly printed, on paper or parchment of all rules made in pursuance of this act, signed by three members, and countersigned by the clerk or secretary, (accompanied, in the case of any amendment of the rules, with an affidavit of the clerk or secretary, or one of the officers of the said society, that the provisions of this act have been duly complied with), with all convenient speed after the same shall be made or amended, and so from time to time after every making or amending thereof, shall be submitted to the barrister at law for the time being appointed to certify the rules of savings banks, for the purpose of ascertaining whether the said rules of such society, or amendment thereof, are calculated to carry into effect the intention of the parties framing such rules or amendments, and are in conformity to law; and that the said barrister shall advise with the said clerk or secretary, if required, and shall give a certificate on each of the said transcripts, that the same are in conformity to law, or point out in what part or parts the said rules are repugnant thereto; and that the barrister for advising as aforesaid, and perusing the rules or amendments of the rules of each society, and giving such certificates as aforesaid, shall demand no further fee than the sum of one guinea; and one of such transcripts, when certified by the said barrister, shall be kept by the said barrister, and another returned to the society, and the third of such transcripts shall be transmitted by such barrister, to the clerk of the peace for the county, city, or borough wherein such society shall be formed, and by him laid before the court of general quarter sessions, or adjournment thereof, held next after the time when such transcript shall have been so certified and transmitted to him as aforesaid; and the said court is hereby authorized and required, without motion, to allow and confirm the same; and such transcript shall be filed by such clerk of the peace with the rolls of the sessions of the peace in his custody, without fee or reward; and that all rules and amendments thereof, from the time when the same shall be certified by the said barrister, shall be binding on the several members and officers of the said society, and the borrowers and sureties, and all other persons having interest therein.

Barrister, &c. to certify.

One transcript to be kept by the barrister, another returned to the society, and the third sent to the clerk of peace. Justices to confirm rules.

Rules, &c. when to be binding

No confirmed rule to be altered but at a general meeting.

V. And be it enacted, that no rule, certified in manner aforesaid, shall be altered, rescinded, or repealed, unless at a general meeting of the members of such society, convened by notice, written or printed, signed by the secretary or president or other principal officer or clerk of such society, in pursuance of the enrolled rules, or of a requisition for that purpose signed by three or more of the members of such society, such notice to be forwarded by post or otherwise to every member of the society, seven clear days at least before the day appointed for such meeting; and such alterations or repeal shall and may be made with the concurrence of the majority of the members of such society then and there present.

Limitation of fee payable to barrister.

VI. And be it enacted, that the said barrister shall be entitled to no further fee for or in respect of any amendment of any rules

enrolled under this act, or which have been before the passing of this act enrolled under the said act of the fifth year of his late Majesty, upon which one fee has been already paid to the said barrister within the period of three years. Loan Societies.

VII. And be it enacted, that all rules from time to time made and in force for the management of any such loan society, and duly certified and enrolled, shall be entered in a book or books to be kept by an officer of such society, to be appointed for that purpose, which book or books shall be open at all reasonable times for the inspection of all members of such society, and of the persons receiving loans from such society, and shall be binding on the several members and officers of such society, and the several persons receiving loans from the same, and their representatives, as well as those parties who may become the sureties for the repayment of any loan, their executors or administrators; and all such persons and parties shall be deemed to have full notice of the enrolled rules of the society by the deposit thereof with the clerk of the peace or town clerk, as required by this act, and by the entry thereof in such book or books; and the entry of such rules in such book or books as aforesaid, or the transcript thereof, deposited with the clerk of the peace or town clerk, or a true copy of such transcript examined with the original, and proved to be a true copy, or the copy certified by the barrister at law appointed for that purpose, shall be received as evidence of such rules respectively in all cases, and no certiorari shall be brought or allowed to remove any such rules into any of her Majesty's courts of record; and every copy of any such transcript deposited with any clerk of the peace or town clerk as aforesaid shall be made without fee or reward, except the actual expense of making such copy, and such copy shall not be subject to any stamp duty. Rules to be entered in a book to be kept by the officer of the society

VIII. And be it enacted, that all monies and securities for money, and all chattels whatsoever, belonging to any such society, shall be vested in a trustee or trustees for the use and benefit of such society, and the members thereof, their executors and administrators respectively, according to their several shares and interests therein, and after the death, resignation, or removal of any trustee or trustees, shall vest in the surviving or succeeding trustee or trustees for the same estate and interest as the former trustee or trustees had therein, and subject to the same trusts, without any assignment or conveyance whatever, and also shall for all purposes of suit, as well criminal as civil, at law or in equity, in anywise concerning the same, be deemed to be the property of the person or persons appointed to the office of trustee or trustees of such society for the time being, in his or their proper name or names without further description; and such person or persons are hereby respectively authorized to bring or defend, or cause to be brought or defended, any suit, criminal as well as civil, at law or in equity, concerning the property or any claim of such society, and to sue and be sued, plead and be impleaded, in his or their proper name or names, as trustee or trustees of such society, without any other description; and no suit shall abate or be discontinued by the death of such person or persons, or his or their removal from the office of trustee or trustees as aforesaid, but the same shall and may be proceeded in and by or against the succeeding trustee or trustees; Property of society vested in the trustees thereof.

Loan Societies.

and such succeeding trustee or trustees shall pay or receive like costs for the benefit of or to be reimbursed from the funds of such society, as if the suit had been commenced in his or their name or names.

Societies to issue debentures.

IX. And be it enacted, that for every sum of money deposited or to be deposited with any loan society, otherwise than by way of gift, it shall be lawful for such society, if they shall think fit, to issue a debenture, to be registered in the books of the loan society, by whom such debenture shall be payable; and no such debenture shall be liable to any stamp duty or Parliamentary imposition whatever.

Trustees signing debentures, not personally liable.

X. And be it enacted, that no treasurer, trustee, or other officer of any loan society subscribing a debenture shall be individually responsible in person or property, for the payment of the same, or of any interest thereon; but such debenture shall be a charge on the capital and property of the society alone, unless such treasurer, trustee, or other officer shall, in the instrument or by writing at the foot or on the back thereof, declare his or their willingness to be so liable in person or property; and such understanding shall only apply to the specific sums so guaranteed.

Sums under 50*l.* deposited in any loan fund society payable without probate.

XI. And be it enacted, that in case any debenture holder, depositor, or other claimant, entitled to receive any sum not exceeding fifty pounds out of the funds of any such loan society, shall die, it shall be lawful for the trustees or trustee thereof, from and after the expiration of three calendar months after the death of such debenture holder, depositor, or other claimant, if they shall be satisfied that no will was made and left by such deceased person, and that no letters of administration of the goods, chattels, rights, and credits of such deceased person have or will be taken out, to pay the same to any person who shall appear to the said trustees or trustee to be the person or one of the persons entitled under the Statute of Distribution to the effects of the deceased intestate, although no letters of administration shall have been taken out; and the payment of any such sum of money shall be valid and effectual with respect to any demand of any other person as next of kin of such deceased intestate, or as the lawful representative of such person, against the funds of such society, or against the trustee, treasurer, or officers thereof; but nevertheless such next of kin or representatives shall have remedy for such money so paid as aforesaid against the person who shall have received the same.

Treasurer, &c. to give security.

XII. And be it enacted, that every treasurer or other person whatsoever who shall be intrusted with the receipt or custody of any money or securities for money, the property of such society, shall become bound with sureties for the faithful execution of such office or trust, in such sum or sums of money as shall be required by the rules of such society; and such security shall be given by bond, in the form in the schedule to this act annexed, marked (D.), to the trustee or trustees of the society for the time being; and in case of forfeiture it shall be lawful for the trustee or trustees of such society for the time being, to sue upon such bond or bonds, and to carry on such suit, at the costs and charges of and for the use of the said

society; and no bond or security so to be given shall be chargeable with any stamp duty whatsoever. Loan Societies.

XIII. And be it enacted, that it shall not be lawful for any such society to lend to any person at the same time a greater sum than fifteen pounds, and that no second or other loan shall be made to the same person until the former loan shall have been repaid. Amount of loan.

XIV. And be it enacted, that no note which shall be signed for the repayment of any loan made under this act, nor any receipt or entry in any book of receipt for money lent or paid, nor any draft or order, nor any appointment of any agent, nor any other instrument whatever required to be made in pursuance of this act or of the rules of the society, shall be chargeable with any stamp duty whatever. No note or security liable to stamp duty.

XV. And be it enacted, that no note of hand, bill, or other security for the payment of money taken by any such society shall be transferrable by indorsement or otherwise to any person or party whomsoever, nor shall any such note, bill, or other security be sued upon by any person or party other than the society to whom the same shall have been made. Securities not transferrable.

XVI. And be it enacted, that all notes signed for the repayment of such loans shall be made payable to the treasurer for the time being of the society, and may be in the form given in the schedule to this act annexed marked (A.), or to the like effect; and that it shall be lawful for any such society to add to or embody in such note the statement of any allegations made by the parties to such note respecting their goods or property, and all such allegations made under the hand of any such party may be given in evidence against him on any proceeding under this act; and if the party liable to pay the same shall fail to make full payment in money of the sum in the note mentioned, or any part thereof, after demand in writing made on such party, or left or sent by the post, directed to him at his usual place of abode, or at his place of residence, as described in the said note, by or on behalf of the treasurer for the time being of the said society, any one of her Majesty's justices of the peace for the county, riding, city, borough, division, district, or place where the person so neglecting to discharge any such note as aforesaid may happen to be or reside, upon complaint made by or on behalf of such treasurer, shall summon the person against whom such complaint shall be made, and after his appearance, or in default thereof, upon due proof upon oath of such summons having been given, left, or sent as aforesaid, shall thereupon proceed to hear and determine the said complaint, and award such sum to be paid by the person thereunto liable to such treasurer as aforesaid as shall appear to such justice to be due thereon, without any rebate of interest, together with such a sum for costs, not exceeding the sum of five shillings, as to such justice shall seem reasonable; and it shall be lawful for any such society, if they shall think fit, to direct that the sureties for payment of any loan, or any one or more of them, shall be sued for recovery of any loan or instalment thereof in preference to the actual borrower; and if any person shall refuse or neglect to pay

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the sum of money which shall be so adjudged to be due upon such note and costs as aforesaid, upon the same being demanded in manner aforesaid, such justice shall, by warrant under his hand and seal, cause the same to be levied by distress and sale of the goods of the party so neglecting or refusing as aforesaid, together with all costs and charges attending such distress and sale, returning the overplus (if any) to the owner; and no such proceedings shall be removed by certiorari or otherwise into any of her Majesty's superior courts of record: provided always, that nothing herein contained shall be construed to affect the right of the landlord to be paid the amount of rent which may be due to him at the time of making the distress out of the proceeds of the said sale.

Recovery of loans in courts of request.

XVII. And be it declared and enacted, that, notwithstanding the provisions herein-before contained, the treasurer or clerk of such society for the time being may proceed for the recovery of the sum due on such note against the party or parties liable to pay the same, in any county court, or court of conscience or request, having jurisdiction to the amount so due, according to the course and practice of such courts; and in such case the act or acts, and all provisions therein relating to such court, and the powers thereof, shall be applicable to the recovery of the sum so due on such note.

Power to reduce demand to enable courts of request to adjudge.

XVIII. And be it enacted, that in case the whole sum that shall appear to be due on any such note shall exceed the amount for which such court shall have jurisdiction, and such treasurer or clerk shall declare to the court that he is willing to accept such sum of money as the said court shall be enabled to adjudge and order to be paid, in full of the whole of such amount so due as aforesaid, then, in every such case, the court shall adjudge such sum or sums to be paid by the defendants or defendant, not exceeding the amount for which such court shall have jurisdiction, as to the court shall seem just; and such treasurer or clerk shall be precluded from afterwards proceeding in any other court, or before any justice, for or on account of such debt.

Treasurer to sue for securities granted to his predecessor.

XIX. And be it enacted, that it shall be lawful for the treasurer or clerk for the time being of any loan society, whose rules shall have been duly certified as aforesaid, to sue for and recover, for the use of such society, the amount of any note or other security which shall have been passed or made payable to the treasurer for the time being of such society, whether or not any change or changes shall have taken place in the person by whom the said office of treasurer or clerk may be filled.

Sum to be demanded for inquiries.

XX. And be it enacted, that it shall be lawful for the trustees or trustee of any society established under the provisions of this act to demand and receive from any person applying for a loan, at the time of giving out the form of application, such sum as shall be specified in the enrolled rules, not exceeding one shilling and sixpence, for the form of application, and the expense of making inquiries into the character and solvency of the applicant, and his proposed sureties, which sum the society shall not be bound to return, although no loan shall be granted; provided that such inquiry shall be made

within fourteen days from the time when the application paper shall have been returned to the office of the society, duly filled up, as required by the enrolled rules. Loan Societies.

XXI. And be it enacted, that it shall be lawful for the trustees or trustee of any society established under the provisions of this act to demand and receive from every person to whom a loan shall be made by way of discount, at the time of making the same, the full amount which shall be specified by the enrolled rules of the society, not exceeding in the whole the rate of twelve pounds by the hundred, for the full term of one year, and to receive the amount of the principal sum by instalments, at such time or times, and in such proportion or proportions, as shall be specified by the enrolled rules, but so nevertheless that the first repayment shall not be paid sooner than the eleventh day after the day on which the loan shall have been actually granted and advanced, and that the time and manner of paying such instalments, shall be taken into account in the calculation of the interest to be paid, and to take a note of hand for the whole amount of the loan, by which the same or so much thereof as shall then remain unpaid shall be recoverable immediately on failure of the payment of any instalment, without being liable on account thereof to any of the forfeitures or penalties imposed by any act or acts relating to usury. Sum for interest.

XXII. And be it declared and enacted, that the instalments to be paid, and the corresponding sum charged for interest, may be such as is expressed in any one of the schemes mentioned in the schedule (E.) to this act annexed, and that the scheme which is adopted by any society, and the actual number of shillings and pence taken by way of interest for every loan, shall be fully and clearly set forth in the enrolled rules of such society; and that if such scheme shall in any respect differ from every one of the schemes set forth in the said schedule (E.), it shall not be lawful for the said barrister to certify the rules of such society, until a certificate shall have been obtained, under the hand of the actuary to the national debt office, to the effect that the rate of interest proposed to be taken, including therein all charges whatsoever, except the aforesaid sum of one shilling and sixpence, or so much thereof as shall be charged for the form of application and expense of inquiry, is not greater than is allowed by this act; for which certificate the said actuary shall be entitled to have a fee of one guinea, and no more. New schemes must be certified by actuary of national debt office.

XXIII. And be it declared and enacted, that the said sum of one shilling and sixpence, or so much thereof as shall be charged under this head by each society, and the sum so to be taken by way of interest, shall be in full of all charges and demands to be made by the said society for making inquiry, and for executing the note, and for the purchase of the borrower's pass book and copy of the rules, and all other books, papers, or things which he is required by the society to have, and for all business whatsoever connected with the granting of the said loan, and that it shall not be lawful by the rules of any such society to impose any fine or penalty for any irregularity in making payment of the instalments of the loan, except by requiring the balance of the loan then remaining due and unpaid, or any part Sums herein stated to be in full of all charges.

- Loan Societies.** thereof, to be paid either forthwith, or within such time as shall be allowed by the rules of the society; and that any clerk, officer, agent, or servant of the society, who by any device, directly or indirectly, shall knowingly obtain from the borrower, or any surety, payment of any further or other sum than is allowed by the provisions of this act, by way of charge, contribution, liquor ticket, or for making any inquiry giving any notice, writing or sending any letter, or otherwise howsoever, either for his own benefit, or for the benefit of the society, or any other person or party whatsoever, in consideration of the granting of such loan, shall be liable to the penalties of usury; and it shall be expressed in the enrolled rules of every such society that an entry must be made in the borrower's pass book of every payment made to the society by any such borrower, including the payment made for inquiries, and entries shall be made therein accordingly.
- Clerks, &c. overcharging liable to penalties of usury.**
- Instalments not to be paid in advance, nor loans to be ballotted for.** XXIV. And be it enacted, that it shall not be lawful for any such society to receive from any borrower any sum by way of instalment or otherwise, (except the said sum of one shilling and sixpence, or so much thereof as shall be taken for the form of application and expenses of inquiry), before the day when the loan shall be actually advanced and paid to such borrower; nor shall it be lawful for any such society to cause the applicants for loans to ballot for precedence, or in any way to make the granting of any such loan to depend upon any chance, lot, or other gambling device whatsoever; and every society which shall offend against this enactment shall forfeit all the benefit of the provisions of this act.
- Penalty.**
- Members to be competent witnesses.** XXV. And be it enacted, that on the trial of any suit or other proceeding respecting the property of any society established under the authority of this act, or in any proceedings before any justice of the peace, or in any court, any trustee, treasurer, manager, shareholder, officer, clerk, or servant of such society shall be a competent witness, notwithstanding any interest he may have in the result of such suit or other proceeding.
- Forms stated in schedule may be used.** XXVI. And be it enacted, that the several forms which are set forth in the schedules annexed to this act, marked respectively (B.) and (C.) may be used, with such additions or variations as may be necessary to adapt them to the particular circumstances of each case, and that no objection shall be made or advantage taken for want of form in any such proceedings by any person whomsoever.
- Abstract of accounts to be made out yearly, and sent to the barrister.** XXVII. And be it enacted, that the trustees of every society established under the provisions of this act, or which may become entitled to the benefits thereof, shall cause an abstract of the accounts of such society for each year to be made out, and up to the thirty-first day of December, together with a statement of the funds and effects and of the debts or liabilities of such society, and an estimate of the clear net profit or loss up to that period, which abstract, statement, and estimate shall be in such forms, and shall contain such particulars connected with the accounts and transactions of such society, as the barrister appointed to certify the rules of savings banks shall from time to time direct; and a copy of such abstract, statement, and estimate, duly certified to be correct by the secretary,
- Copy thereof to be laid**

treasurer, and at least one trustee, shall, during the month of January in each year, be delivered or sent to the said barrister, and shall be laid by him before both houses of Parliament; and every society which shall refuse or neglect to deliver such account as aforesaid, shall be liable to a penalty of fifty pounds, to be recovered, at the suit of the said barrister, against the trustees of the society, in any of her Majesty's superior courts of record: provided always, that the trustees shall not be liable, in their persons or goods, to the consequences of any judgment obtained against them in any such suit, but the same shall avail and be enforced only against the stock and goods of the society in their hands or within their control.

Loan Societies.
before Parlia-
ment.

**Trustees not
personally
liable.**

XXVIII. And be it enacted, that this act shall extend to England, Wales, Berwick-upon-Tweed, and the Islands of Guernsey, Jersey, and Isle of Man.

Extent of act.

XXIX. And be it enacted, that in the construction of this act, the word "writing" shall be construed to mean and include printing or engraving; and whenever in this act, in describing any person or thing, the word importing the singular number or the masculine gender only is used, the same shall be understood to include also several persons or things, and females as well as males; unless there be something in the subject or context repugnant to such construction.

**Interpretation
clause.**

XXX. And be it enacted, that this act shall continue in force until the thirty-first day of December, one thousand eight hundred and forty-one. (a)

**Duration of
act.**

(a) This act has been continued by 7 & 8 Vict. c. 54, "to the 1st of Oct. 1845, and, if Parliament be then sitting, to the end of the then session of Parliament."



(C.)

to wit. } To all constables and others, her Majesty's officers of the
 peace for the county of _____ and all others
 whom it may concern.

Whereas on the _____ day of _____ in the
 year of our Lord one thousand eight hundred and _____
 late of the parish of _____ in the county of _____
 was and is duly convicted before me _____ one of her
 Majesty's justices of the peace acting in and for the county, [or
 one of the police magistrates of the metropolis, sitting at the police
 court in _____, within the metropolitan district, or as the
case may be,] upon the oath of _____ [or as the case
may be,] to a certain loan society called _____ held at
 in the county of _____ enrolled under and by virtue of a
 certain act of Parliament, intituled [*here insert the title of this act*];
 for that on the _____ day of _____ in the year
 of our Lord one thousand eight hundred and _____ at the
 parish of _____ in the county of _____, the
 said _____ being the party liable to pay the money herein-
 after mentioned, did fail to make full payment in money to
 the treasurer of the said society, of the sum of _____
 pounds _____ shillings and _____ pence, being part of
 the sum of _____ pounds lent and advanced to
 and secured by note bearing date the _____ day of _____
 one thousand eight hundred and _____, entered
 into by the said _____ to the said treasurer of the said society,
 demand having been duly made on the said _____ for the said
 sum of _____ pounds _____ shillings and _____
 pence previous to the said _____ day of _____ on behalf
 of the said treasurer of the said society, contrary to the said statute;
 and the said _____ having been duly summoned before me the
 said justice [*or magistrate at the police court aforesaid*], on the
 said _____ day of _____ to answer the said complaint,
 and having [*or not, as the case may be,*] appeared before me in pur-
 suance of such summons, on the said _____ day of _____
 at _____ [*or at the police court aforesaid*], I, the said justice
 [*or magistrate*] did proceed to hear and determine the said com-
 plaint, and did adjudge and award the said _____ to pay the
 sum of _____ pounds _____ shillings and _____
 pence to the said treasurer, and which appeared to me to be due on
 the said note, and also the sum of _____ shillings and _____
 pence for the costs of the said summons, complaint, and hearing
 thereof, and making together the sum of _____: And whereas
 it appears to me the said justice [*or magistrate*] that the said sum
 of _____ pounds _____ shillings and _____ pence
 have been duly demanded of the said _____ and that he hath
 neglected to pay and satisfy the same: These are therefore to com-
 mand you to levy the said sum of _____ pounds
 shillings and _____ pence by the distress and sale of the
 goods and chattels of the said _____: And I do hereby
 order and direct the goods and chattels so to be distrained to be sold

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and disposed of within four days next after making such distress unless the said last-mentioned sum of money for which such distress shall be made, and all the costs and charges attending such distress shall be sooner paid, rendering the overplus, if any, on demand, to the said . And you are hereby commanded to certify to me the said justice [or magistrate] what you shall do by virtue of this warrant.

Given under my hand and seal at this
day of in the year of our Lord one thousand
eight hundred and

(D.)

Form of a Bond.

Know all men by these presents, that we, *A. B.* of society, treasurer [*as the case may be*] of the established at in the county of and *C. D.* of and *G. H.* of (as sureties on behalf of the said *A. B.*), are jointly and severally held and firmly bound to *E. F.* and *G. H.*, trustees of the loan society, in the sum of to be paid to the said *E. F.* and *G. H.*, as such trustees, or their successors, trustees of the said loan society for the time being, or their certain attorney; for which payment, well and truly to be made, we jointly and severally bind ourselves, and each of us by himself, our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals.

Dated the day of in the year of our Lord

Whereas the above-bounden *A. B.* hath been duly appointed treasurer [*or as the case may be*] of the loan society, established as aforesaid, and he, together with the above-bounden *C. D.* and *G. H.*, as his sureties, have entered into the above-written bond, subject to the condition herein-after contained: Now therefore the condition of the above-written bond is such, that if the said *A. B.* shall and do justly and faithfully execute his office of treasurer [*or as the case may be*] of the said society established as aforesaid, and shall and do render a just and true account of all monies received and paid by him, and shall and do pay over all the monies remaining in his hands, and assign and transfer or deliver all securities and effects, books, papers, and property of or belonging to the said society, in his hands or custody, to such person or persons as the said society shall appoint, according to the rules of the said society, together with the proper or legal receipts or vouchers for such payments, and likewise shall and do in all respects well and truly and faithfully perform and fulfil his office of treasurer [*or as the case may be*] to the said society, according to the rules thereof, then the above-written bond shall be void and of no effect, otherwise shall be and remain in full force and virtue.

(E.)

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

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

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

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

3 & 4 VICT. CHAP. 111. (a)

An Act to continue until the thirty-first day of August, one thousand eight hundred and forty-two, and to extend the provisions of an Act of the first and second years of her present Majesty, relating to legal proceedings by certain Joint Stock Banking Companies against their own Members, and by such Members against the Companies.

[11th August, 1840.]

**Banking
Companies.**

1 & 2 Vict.
c. 96.

Recited act
continued.

**Punishing
members of
banking com-
panies embez-
zling notes, &c.**

3 & 4 W. 4,
c. 98.

Whereas an act was passed in the first and second years of the reign of her present Majesty, intituled "An Act to extend, until the end of the next session of Parliament, the law relative to legal proceedings by certain Joint Stock Banking Companies against their own Members, and by such Members against the Companies:" and whereas the said act has been continued until the thirty-first day of August, 1840, by an act passed in the last session of Parliament, and it is expedient that the same should be further continued; be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present Parliament assembled, and by the authority of the same, that the said first recited act shall be further continued until the 31st day of August, 1842.

II. And whereas it is expedient to extend the provisions of the said act hereby continued, in manner hereinafter stated: be it enacted, that if any person or persons being a member or members of any banking copartnership within the meaning of the said act, or of any other banking copartnership, consisting of more than six persons, formed under or in pursuance of an act passed in the third and fourth years of the reign of King William the Fourth, intituled "An Act for giving to the corporation of the governor and company of the Bank of England certain privileges for a limited period under certain conditions," shall steal or embezzle any money, goods, effects, bills, notes, securities, or other property of or belonging to any such copartnership, or shall commit any fraud, forgery, crime, or offence against or with intent to injure or defraud any such copartnership, such member or members shall be liable to indictment, information, prosecution, or other proceeding in the name of any of the officers for the time being of any such copartnership, in whose name any action or suit might be lawfully brought against any member or members of any such copartnership for every such fraud, forgery, crime, or offence, and may thereupon be lawfully convicted, as if such person or persons had not been or was or were not a member or members of such copartnership; any law, usage, or custom to the contrary notwithstanding.

(a) Made perpetual by 5 & 6 Vict. c. 85.

4 VICT. CHAP. 14.

An Act to make good certain Contracts which have been or may be entered into by certain Banking and other Copartnerships.

[18th May, 1841.]

Whereas divers associations and copartnerships consisting of more than six members or shareholders have from time to time been formed, for the purpose of being engaged in and carrying on the business of banking, and divers other trades and dealings, for gain and profit, and have accordingly for some time past been and are now engaged in carrying on the same, by means of boards of directors or managers, committees, or other officers acting on behalf of all the members or shareholders of or persons otherwise interested in such associations or copartnerships; and whereas divers spiritual persons having or holding dignities, prebends, canonries, benefices, stipendiary curacies, or lectureships have been members or shareholders of or otherwise interested in divers of such associations and copartnerships; and whereas it is expedient to render legal and valid all contracts entered into by such associations or copartnerships, although the same may now be void by reason of such spiritual persons being or having been such members or shareholders or otherwise interested as aforesaid; be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that no such association or copartnership already formed, or which may be hereafter formed, nor any contract either as between the members, partners, or shareholders composing such association or copartnership for the purposes thereof, or as between such association or copartnership and other persons, heretofore entered into or which shall be entered into by any such association or copartnership already formed or hereafter to be formed, shall be deemed or taken to be illegal or void, or to occasion any forfeiture whatsoever, by reason only of any such spiritual person as aforesaid being or having been a member, partner, or shareholder of or otherwise interested in the same; but all such associations and copartnerships shall have the same validity, and all such contracts shall and may be enforced in the same manner, to all intents and purposes, as if no such spiritual person had been or was a member, partner, or shareholder of or interested in such association or copartnership: provided always, that it shall not be lawful for any spiritual person holding any cathedral preferment, benefice, curacy, or lectureship, or who shall be licensed or allowed to perform the duties of any ecclesiastical office, to act as a director or managing partner, or to carry on trade or such dealing as aforesaid in person.

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Companies.

No copartnership, or contract to be illegal by reason of spiritual persons being members.

No spiritual person to act as a director.

II. And be it enacted, that in all actions and suits which shall have been brought or instituted by or on behalf of any such association or copartnership which may have been formed since the end of the session of Parliament held in the second and third years of the reign of her present Majesty, in case any defendant therein shall, before the twenty-ninth day of March, one thousand eight hundred and

In all actions by copartnerships since the 2 & 3 Vict. the defendant to have taxed costs, &c.

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thirty-eight, by plea or otherwise, have insisted on the invalidity of any contract thereby sought to be enforced, by reason of any such spiritual person as aforesaid being or having been a member or shareholder in such association or copartnership, such defendant shall be entitled to the full costs of such plea or other defence to be paid by the plaintiff, and to be taxed as the court in which the said action or suit shall be depending, or any judge thereof shall direct, and in order fully to indemnify such defendant, it shall be lawful for such court or judge to order the plaintiff to pay to him such further costs (if any) of the said action or suit as the justice of the case may require.

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4 & 5 VICT. c. 50.

An Act to make further Provisions relative to the returns to be made by Banks of the amount of their Notes in Circulation.

[21st June, 1841.]

Banking
Companies.

3 & 4 W. 4,
c. 83.

Whereas by an act passed in the third and fourth years of the reign of his late Majesty King William the Fourth, intituled "An Act to compel Banks issuing promissory notes payable to bearer on demand to make returns of their Notes in circulation, and to authorize Banks to issue Notes payable in London for less than fifty pounds, all corporations and copartnerships carrying on banking business under the provisions of a certain act therein recited, passed in the seventh year of the reign of king George the Fourth, and all other persons carrying on banking business, and making and issuing promissory notes payable to bearer on demand, are required respectively to keep certain weekly accounts of the amount of notes in circulation, and to make up a quarterly account of the average amount of such notes in circulation, and to return and deliver such quarterly account to the commissioners of stamps, at the stamp office in London, at the times and in the manner by the said first recited act directed: and whereas it is expedient to amend the said first-recited act, and to require all such corporations, co-partnerships, and persons carrying on banking business in any part of the united kingdom to render more frequent returns of the amount of their notes in circulation:" be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal and commons, in this present Parliament assembled, and by the authority of the same, that from and after the first day of July one thousand eight hundred and forty-one all corporations and co-partnerships carrying on banking business under the provisions of the said act passed in the seventh year of the reign of king George the Fourth, and all other persons carrying on banking business in England and Wales, and making and issuing promissory notes payable to bearer on demand, and all corporations, co-partnerships, and persons carrying on such business, and making and issuing such promissory notes as aforesaid, in Scotland, and also the governor and company of the Bank of Ireland, and all corporations, co-partnerships, and persons carrying on such business, and making and issuing such promissory

Bankers in England, Scotland, and Ireland, respectively, issuing promissory notes payable to bearer on demand, to keep accounts of the amount in circulation,

notes as aforesaid, in Ireland, shall severally keep just and true accounts of the amount of notes in circulation at the close of the business in each week, and shall, at the end of every four weeks, make up from such weekly accounts a just and true account of the average amount of such notes in circulation during such four weeks; and shall also, within seven days after the conclusion of such four weeks, return and deliver such last-mentioned account for the four weeks immediately preceding, and so on every successive four weeks, such accounts being always verified in the manner herein-after directed, to the commissioners of stamps and taxes, at their head office in Westminster, upon pain that any corporation, company, co-partnership, or persons or person, who shall neglect or omit to keep, or to return and deliver any such account in the manner directed by this act, shall for every such neglect or omission, forfeit the sum of fifty pounds, to be recovered with full costs of suit, in the name of her Majesty's attorney or solicitor general in England or Ireland, or of her Majesty's advocate general in Scotland.

Banking
Companies.

and to make
returns thereof
every four
weeks.

Penalty for
default 50l.

II. And be it enacted, that every such account so to be returned and delivered to the commissioners of stamps and taxes as aforesaid, shall be verified by the affidavit or affirmation of the secretary, accountant, cashier, or other chief clerk or officer of the corporation, company, or co-partnership, or persons or person, so carrying on banking business and making such return; and such affidavit or affirmation shall be made before any justice of the peace in any part of the united kingdom, or before a Master extraordinary in Chancery, or any person authorized to take affidavits by any of the superior courts in England or Ireland; and no such affidavit or affirmation shall be liable to any stamp duty.

Accounts to be
verified by
affidavit or
affirmation.

III. And be it enacted, that from the accounts which shall be rendered by the governor and company of the Bank of England in pursuance of the act in that behalf, and also from the accounts which shall be rendered in pursuance of this act, there shall be made up an account of the average aggregate amount of promissory notes payable to bearer on demand which have been in circulation in the united kingdom, during the preceding four weeks, and so on every successive four weeks, distinguishing those circulated by the Bank of England, by private banks, and by joint stock banks in England and Wales, by the banks in Scotland, by the bank of Ireland, and by all other banks in Ireland, and of the average amount of the bullion in the Bank of England during the preceding four weeks; and such account shall be published in the *London Gazette* in every four weeks as soon as the same can conveniently be prepared for that purpose.

An account to
be made up
every four
weeks from the
accounts to be
rendered by the
Bank of Eng-
land, and by
other bankers.



5 & 6 VICT. c. 55.

An Act for the better Regulation of Railways, and for the Conveyance of Troops. [30th July, 1842.]

Railways.

3 & 4 Vict.
c. 97.Commence-
ment of act.Recited act
and this act to
be construed
together.Notice before
opening rail-
way repealed.Notice of
intended
opening of
railway.If railway
opened without
notice company
to forfeit 20l.

Whereas by an act passed in the third and fourth years of the reign of her present Majesty, intituled "An Act for regulating Railways," provision was made for the supervision of railways: and whereas it is expedient for the safety of the public to make further provision for that purpose; be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that this act shall come into operation on the passing thereof.

II. And be it enacted, that the provisions of the said recited act and of this act shall be construed together as one act, except so far as the provisions of the said recited act are hereby repealed, or shall be inconsistent with the provisions of this act.

III. And whereas by the said recited act it is enacted, that after two months from the passing of the said recited act no railway, or portion of any railway, shall be opened for the public conveyance of passengers or goods until one calendar month after notice in writing of the intention of opening the same shall have been given, by the company to whom such railway shall belong, to the lords of the committee of her Majesty's privy council appointed for trade and foreign plantations; and whereas by the said recited act it is also enacted, that if any railway or portion of any railway shall be opened without due notice as aforesaid, the company to whom such railway shall belong shall forfeit to her Majesty the sum of twenty pounds for every day during which the same shall continue open, until the expiration of one calendar month after the company shall have given the like notice as is hereinbefore required before the opening of the railway, and any such penalty may be recovered in any of her Majesty's courts of record; be it enacted, that the said recited provisions of the said act shall be and they are hereby repealed.

IV. And be it enacted, that no railway or portion of any railway shall be opened for the public conveyance of passengers until one calendar month after notice in writing of the intention of opening the same shall have been given, by the company to whom such railway shall belong, to the lords of the committee of her Majesty's privy council appointed for trade and foreign plantations, and until ten days after notice in writing shall have been given by the said company to the lords of the said committee of the time when the said railway or portion of railway will be, in their opinion, sufficiently completed for the safe conveyance of passengers, and ready for inspection.

V. And be it enacted, that if any railway or portion of any railway shall be opened without such notice as aforesaid, the company to whom such railway shall belong shall forfeit to her Majesty the sum

Railways.

of twenty pounds for every day during which the same shall continue open until the said notices shall have been duly given and shall have expired; and every such penalty may be recovered in any of her Majesty's courts of record, or in the court of session or in any of the sheriffs' courts in Scotland.

VI. And be it enacted, that if the officer or officers appointed by the lords of the said committee to inspect any such railway or portion of railway shall, after inspection thereof, report in writing to the lords of the said committee that, in his or their opinion, the opening of the same would be attended with danger to the public using the same, by reason of the incompleteness of the works or permanent way, or the insufficiency of the establishment for working such railway, together with the grounds of such opinion, it shall be lawful for the lords of the said committee, and so from time to time, as often as such officers shall after further inspection thereof so report, to order and direct the company to whom such railway shall belong to postpone such opening for any period not exceeding one calendar month at any one time, until it shall appear to the lords of the said committee that such opening may take place without danger to the public; and if any such railway, or any portion thereof, shall be opened contrary to any such order and direction of the lords of the said committee, the company to whom such railway shall belong shall forfeit to her Majesty the sum of twenty pounds for every day during which the same shall continue open contrary to such order and direction; and any such penalty may be recovered in any of her Majesty's courts of record, or in the court of session or in any of the sheriffs' courts in Scotland: provided always that no such order as aforesaid shall be binding upon any railway company unless therewith shall be delivered to the said company a copy of the report of the officer or officers on which such order shall be founded.

Board of Trade empowered to postpone the opening.

VII. And be it enacted, that every railway company shall, within forty-eight hours after the occurrence upon the railway belonging to such company of any accident attended with serious personal injury to the public using the same, give notice thereof to the lords of the said committee; and if any company shall wilfully omit to give such notice every such company shall forfeit to her Majesty the sum of five pounds for every day during which the omission to give the same shall continue; and every such penalty may be recovered in any of her Majesty's courts of record, or in the court of session or in any of the sheriffs' courts in Scotland.

Notice of accidents to be given to the Board of Trade.

VIII. And be it enacted, that the lords of the said committee may order and direct any railway company to make up and deliver to them returns of serious accidents occurring in the course of the public traffic upon the railway belonging to such company, whether attended with personal injury or not, in such form and manner as the lords of the said committee shall deem necessary and require for their information with a view to the public safety; and if any such returns shall not be so delivered within fourteen days after the same shall have been required, every such company shall forfeit to her Majesty the sum of five pounds for every day during which the said company shall neglect to deliver the same; and every such penalty may be recovered

Board of Trade empowered to direct returns.

Railways.

in any of her Majesty's courts of record, or in the courts of session or in any of the sheriffs' courts in Scotland: provided always, that all such returns shall be privileged communications, and shall not be evidence in any court whatsoever.

Gates at level crossings to be kept closed across the road.
2 & 3 Vict.
c. 45.

IX. And whereas by an act passed in the second and third years of her present Majesty, and intituled "An Act to amend an Act of the Fifth and Sixth Years of his late Majesty King William the Fourth relating to Highways," it was enacted, that whenever a railway crosses or shall hereafter cross any turnpike road, or any other highway or statute labour road for carts or carriages in Great Britain, the proprietors or directors of the said railway shall make and maintain good and sufficient gates across each end of such turnpike or other road at each end of the said crossings, and shall employ good and proper persons to open and shut such gates, so that the persons, carts, or carriages passing along such turnpike or other road shall not be exposed to any danger or damage by the passing of any carriages or engines along the said railway; and whereas by the acts relating to certain railways it is provided that such gates shall be kept constantly closed across the railway, except during the time when carriages or engines passing along the railway shall have to cross such turnpike or other road: and whereas experience has shown that it is more conducive to safety that such gates should be kept closed across the turnpike or other road instead of across the railway; be it therefore enacted, that notwithstanding any thing to the contrary contained in any act of Parliament heretofore passed, such gates shall be kept constantly closed across each end of such turnpike or other roads, in lieu of across the railway, except during the time when horses, cattle, carts, or carriages passing along such turnpike or other road shall have to cross such railway; and such gates shall be of such dimensions and so constructed as, when closed across the ends of such turnpike or other roads, to fence in the railway, and prevent cattle or horses passing along the road from entering upon the railway while the gates are closed; provided always, that it shall be lawful for the lords of the said committee, in any case in which they are satisfied that it will be more conducive for the public safety that the gates at any level crossing over any such turnpike or other road should be kept closed across the railway, to order and direct that such gates shall be kept so closed instead of across the road; and such order of the lords of the said committee shall be a sufficient authority for the directors or proprietors of any railway company to whom such order is addressed for keeping such gates closed, in the manner directed by the lords of the said committee.

Proviso.

Railway companies to erect and maintain fences.

X. And whereas it is expedient that further provision be made for the safety of the public in respect of the fences of railways; be it enacted, that all railway companies shall be under the same liability of obligation to erect, and to maintain and repair, good and sufficient fences throughout the whole of their respective lines, as they would have been if every part of such fences had been originally ordered to be made under an order of justices by virtue of the provisions to that effect in the acts of Parliament relating to such railways respectively.

XI. And be it enacted, that where two or more railway companies whose railways have a common terminus or a portion of the same line of rails in common, or which form separate portions of one continued line of railway communication, shall not be able to agree upon arrangements for conducting at such common terminus, or at the point of junction between them, their joint traffic with safety to the public, it shall be lawful for the lords of the said committee, upon the application of either of the parties, to decide the questions in dispute between them, so far as the same relate to the safety of the public, and to order and determine whether the whole or what proportion of the expenses attending on such arrangements shall be borne by either of the parties respectively; and if any railway company shall refuse or wilfully neglect to obey any such order made upon or against such company by the lords of the said committee pursuant to this provision, such company shall forfeit to her Majesty the sum of twenty pounds per day for every day during which such refusal or neglect shall continue; and every such penalty may be recovered in any of her Majesty's courts of record, or in the court of session or in any of the sheriffs' courts in Scotland.

Railways.

Disputes between connecting railways to be decided by the Board of Trade.

XII. And whereas powers of laying down branch lines opening into the ledges or flanches of main lines of railway, and of entering upon and passing along such main lines with carriages and waggons drawn by locomotive engines, or by other mechanical or animal power, and also powers to form roads or railways across existing railways on a level, have been given by various acts relative to railways to the owners or occupiers of lands adjoining the railway, and to other persons with their consent: and whereas experience has shown that the exercise of such powers without limitation would in many cases be attended with danger to the public using such railway; be it therefore enacted, that if, in the case of any railway on which passengers are conveyed by steam or other mechanical power, it shall appear to the lords of the said committee that such power as aforesaid cannot be so exercised without seriously endangering the public safety, and that an arrangement may be made with a due regard to existing rights of property, it shall be lawful for the lords of the said committee to order and direct that such powers shall only be exercised subject to such conditions as the lords of the said committee shall direct: provided always that no railway shall be considered a passenger railway if two-thirds or more of the gross annual revenue of such railway shall be derived from the carriage thereon of coals, ironstone, or other metals or minerals.

Powers of making branch communication with railways, and of entering upon them with locomotive engines, to be regulated by the Board of Trade.

Defining a passenger railway.

XIII. And whereas in many cases railways have been made to cross turnpike roads, highways, and private roads and tramways on the level, and the companies to whom such railways belong would in some cases be willing, at their own expense, to carry such roads and tramways over or under such railways by means of a bridge or archway for the greater safety of the public, but have no authority so to do: and whereas it would promote the public safety if railway companies were enabled, under the sanction and authority of the lords of the said committee, to substitute bridges or archways for such level crossings as aforesaid; be it therefore enacted, that in all cases where any railway company shall be willing, at their own expense, to carry

Alteration of dangerous level crossings.

Railways.

any turnpike road, highway, or private road or tramway over or under their railway by means of a bridge or arch in lieu of crossing the same on the level, it shall be lawful for the lords of the said committee, on the application of the said company, and after hearing the several parties interested, if it shall appear to the lords of the said committee that such level crossing endangers the public safety, and that the proposal of the company does not involve any violation of existing rights or interests without adequate compensation, to give the said company full power and authority for removing the danger at their own expense, either by building a bridge, or by such other arrangement as the nature of the case shall require, subject to such conditions as the lords of the said committee shall direct.

Power for railway companies to enter upon adjoining lands to repair accidents.

XIV. And whereas it is essential for the public safety, and also for the proper maintenance of railways in a state of efficiency for the public service, that railway companies should have the power, in case of accidents or slips happening or being apprehended to their cuttings and embankments or other works, to enter upon the lands adjoining their respective railways, for the purpose of repairing or renewing the same, and to do such works as may be necessary for the purpose; be it therefore enacted, that it shall be lawful for the lords of the said committee to empower any railway company in case of any accident or slip happening or being apprehended to any cutting, embankment, or other work belonging to them, to enter upon any lands adjoining their railway for the purpose of repairing or preventing such accident, and to do such works as may be necessary for the purpose: provided always, that in case of necessity it shall be lawful for any railway company to enter upon such lands and do such works as aforesaid, without having obtained the previous sanction of the lords of the said committee; but in every such case such railway company shall, within forty-eight hours after such entry, make a report to the lords of the said committee, specifying the nature of such accident or apprehended accident, and of the works necessary to be done, and such powers shall cease and determine if the lords of the said committee shall, after considering the said report, certify that their exercise is not necessary for the public safety: provided also, that such works shall be as little injurious to the said adjoining lands as the nature of the accident or apprehended accident will admit of, and shall be executed with all possible dispatch; and full compensation shall be made to the owners and occupiers of such lands for the loss or injury or inconvenience sustained by them respectively by reason of such works, the amount of which compensation, in case of any dispute about the same, shall be settled in the same manner as cases of disputed compensation are directed to be settled by the acts relating to the railway on which such works may become necessary: provided always, that no land shall be taken permanently by any railway company for such works without a certificate from the lords of the said committee as herein-after described.

Compulsory powers of taking land for the purposes of railways

XV. And whereas by various acts relating to railways compulsory powers are given to railway companies of purchasing and taking lands for the construction of such railways, and it is provided that such compulsory powers shall not be exercised after the expiration of certain limited periods from the passing of the said acts: and whereas

it is sometimes found necessary for the public safety that additional land should be taken after the expiration of such periods for the purpose of giving increased width to the embankments and inclination to the slopes of railways, or for making approaches to bridges or archways, or for doing such works for the repair or prevention of accidents as are herein-before described; be it therefore enacted, that, in every case in which the lords of the said committee shall certify that the public safety requires additional land to be taken by any railway company for such purposes as aforesaid, the compulsory powers of purchasing and taking land contained in the act or acts of such railway company, together with all the clauses and provisions relative thereto, shall, as regards such portion or portions of land as are mentioned in the certificate of the lords of the said committee, revive and be in full force for such further period as shall be mentioned in such certificate: provided always, that any railway company applying to the lords of the said committee for any such certificate shall give fourteen days' notice in writing, in the manner prescribed by the act or acts of such company for serving notices on land owners of their intention to make such application to all the parties interested in such lands, or such of them as shall be known to the company, and shall state in such notice the particulars of the lands required; and if any of such parties interested shall apply within the said period of fourteen days to the lords of the said committee, such party shall be heard by them before any such certificate is given: provided also, that where any such application shall have been made by any railway company to the lords of the said committee, upon which application any such certificate shall have been refused, the directors of such railway company shall, if required by the lords of the said committee, repay to the party resisting such application any expenses which he or they may have incurred in resisting such application.

Railways.
extended,
where thought
necessary for
safety by the
Board of
Trade.

XVI. And whereas by various acts relating to railways it is enacted, that no carriage or waggon shall carry or bear at any one time upon the railway (including the weight of such carriage) more than four tons, and experience has shown that it is in many cases more conducive to safety to use a heavier description of carriage or waggon upon railways than was originally contemplated; be it therefore enacted, that every provision contained in any such act or acts respectively limiting the weight to be carried or borne at any one time in any carriage or waggon upon any railway (including the weight of such carriage or waggon) to four tons shall be and the same is hereby repealed, and that notwithstanding any thing in any act contained, it shall be lawful for any railway company to use and to permit to be used upon any railway carriages or waggons carrying or bearing (including the weight of such carriage) a greater weight than four tons, subject to such regulations as may from time to time be made and be in force pursuant to any act or acts of Parliament already or hereafter to be passed in that behalf.

Carriages of
greater weight
than four tons
may be used
on railways.

XVII. And whereas by the said recited act for regulating railways provision is made for the punishment of servants of railway companies guilty of misconduct, and it is expedient to extend such provision; be it enacted, that it shall be lawful for any officer or agent of any

Punishment of
persons em-
ployed on rail-
ways guilty of
misconduct.

Railways.

railway company, or for any special constable duly appointed, and all such persons as they may call to their assistance, to seize and detain any engine driver, waggon driver, guard, porter, servant, or other person employed by the said or by any other railway company, or by any other company or person, in conducting traffic upon the railway belonging to the said company, or in repairing and maintaining the works of the said railway, who shall be found drunk while so employed upon the said railway, who shall commit any offence against any of the bye-laws, rules, or regulations of the said company, or who shall wilfully, maliciously, or negligently do or omit to do any act whereby the life or limb of any person passing along or being upon such railway or the works thereof respectively shall be or might be injured or endangered, or whereby the passage of any engines, carriages, or trains shall be or might be obstructed or impeded, and to convey such engine driver, guard, porter, servant, or other person so offending, or any person counselling, aiding, or assisting in such offence, with all convenient dispatch before some justice of the peace for the place within which such offence shall be committed, without any other warrant or authority than this act; and every such person so offending, and every person counselling, aiding, or assisting therein, as aforesaid, shall, when convicted upon the oath of one or more credible witness or witnesses before such justice as aforesaid (who is hereby authorized and required, upon complaint to him made upon oath, without information in writing, to take cognizance thereof, and to act summarily in the premises), in the discretion of such justice, be imprisoned, with or without hard labour, for any term not exceeding two calendar months, or, in the like discretion of such justice, shall for every such offence forfeit to her Majesty any sum not exceeding ten pounds, and in default of payment thereof shall be imprisoned, with or without hard labour, as aforesaid, for such period, not exceeding two calendar months, as such justice shall appoint, such commitment to be determined on payment of the amount of the penalty: and every such penalty shall be returned to the next ensuing court of quarter sessions in the usual manner.

Sheriffs to have jurisdiction in Scotland.

XVIII. And be it enacted, that in all cases in which by the present or the said recited act for regulating railways it is provided that offenders shall be taken before one or more justices of the peace for the place within which the offence was committed, it shall be lawful, in case the offence is committed in Scotland, to take such offenders before the sheriff of the county, or other magistrate acting for the district within which such offence shall be committed, or where such offender shall be apprehended, without any warrant or authority other than this act; and such sheriff or magistrate is hereby empowered and required, on the application of the railway company, to proceed in all respects as if the words "sheriff or magistrate" had been substituted for the word "justice" in the said acts, and shall be entitled summarily, and without a jury, to execute the powers thereby and hereby committed to him.

Communications to and from the Board of Trade, and

XIX. And be it enacted, that all notices, returns, and other documents required by this act or by the said recited act to be given to or laid before the lords of the said committee shall be delivered at or sent by the post to the office of the lords of the said committee; and

all notices, requisitions, orders, regulations, appointments, certificates, certified copies, and other documents in writing, signed by one of the secretaries of the said committee, or by some officer appointed for that purpose by the lords of the said committee, and purporting to be made by the lords of the said committee, shall, for the purposes of this and of the said recited act, be deemed to have been made by the lords of the said committee, and that in the absence of evidence to the contrary without proof of the authority of the person signing the same or of the signature thereto; and service of the same at one of the terminal offices of any railway company on the secretary or clerk of the said company, or by sending the same by post addressed to him at such office, shall be deemed good service upon the said company.

Railways.

service of notices, &c. on railway company.

XX. And be it enacted, that whenever it shall be necessary to move any of the officers or soldiers of her Majesty's forces of the line, ordnance corps, marines, militia, or the police force, by any railway, the directors thereof shall and are hereby required to permit such forces respectively, with their baggage, stores, arms, ammunition, and other necessaries and things, to be conveyed at the usual hours of starting, at such prices or upon such conditions as may from time to time be contracted for between the secretary-at-war and such railway companies for the conveyance of such forces, on the production of a route or order for their conveyance signed by the proper authorities.

Railway companies shall convey military and police forces at prices to be settled.

XXI. And be it enacted, that whenever the word "railway" is used in this or in the said recited act it shall be construed to apply to all railways used or intended to be used for the conveyance of passengers in or upon carriages drawn or impelled by the power of steam or by any other mechanical power; and whenever the word "company" is used in this or in the said recited act it shall be construed to extend to and include the proprietors for the time being of any such railway, whether a body corporate or individuals, and their lessees, executors, administrators, and assigns, unless in either of the above cases the subject or context be repugnant to such construction.

Meaning of the words "railway" and "company."

XXII. And be it enacted, that all penalties under this act, for the application of which no special provision is made, shall be recovered in the name and for the use of her Majesty, in the manner provided by the said recited act for regulating railways.

Application of penalties.

 7 & 8 Vict. c. 32.

An Act to regulate the Issue of Bank Notes, and for giving to the Governor and Company of the Bank of England certain Privileges for a limited Period.
[19th July, 1844.]

Whereas it is expedient to regulate the issue of bills or notes payable on demand; and whereas an act was passed in the fourth year of the reign of his late Majesty King William the Fourth,

Bank of England and Joint Stock Bank.

**Bank of
England and
Joint Stock
Banks.**

3 & 4 W. 4,
c. 98.

Bank to esta-
blish a separate
department for
the issue of
notes.

intituled, "An Act for giving to the Corporation of the Governor and Company of the Bank of England certain privileges for a limited Period, under certain Conditions;" and it is expedient that the privileges of exclusive banking therein mentioned should be continued to the said governor and company of the Bank of England, with such alterations as are herein contained, upon certain conditions: may it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that from and after the thirty-first day of August one thousand eight hundred and forty-four the issue of promissory notes of the governor and company of the bank of England, payable on demand, shall be separated and thenceforth kept wholly distinct from the general banking business of the said governor and company; and the business of and relating to such issue shall be thenceforth conducted and carried on by the said governor and company in a separate department, to be called "The Issue Department of the Bank of England," subject to the rules and regulations hereinafter contained; and it shall be lawful for the court of directors of the said governor and company, if they shall think fit, to appoint a committee or committees of directors for the conduct and management of such issue department of the Bank of England, and from time to time to remove the members, and define, alter, and regulate the constitution and powers of such committee, as they shall think fit, subject to any bye-laws, rules, or regulations which may be made for that purpose; provided nevertheless, that the said issue department shall always be kept separate and distinct from the banking department of the said governor and company.

**Management
of the issue
by Bank of
England.**

II. And be it enacted, that upon the thirty-first day of August one thousand eight hundred and forty-four there shall be transferred, appropriated, and set apart by the said governor and company to the issue department of the Bank of England securities to the value of fourteen million pounds, whereof the debt due by the public to the said governor and company shall be and be deemed a part; and there shall also at the same time be transferred, appropriated, and set apart by the said governor and company to the said issue department so much of the gold coin and gold and silver bullion then held by the Bank of England as shall not be required by the banking department thereof; and thereupon there shall be delivered out of the said issue department into the said banking department of the Bank of England such an amount of Bank of England notes as, together with the Bank of England notes then in circulation, shall be equal to the aggregate amount of the securities, coin, and bullion so transferred to the said issue department of the Bank of England; and the whole amount of Bank of England notes then in circulation, including those delivered to the banking department of the Bank of England as aforesaid, shall be deemed to be issued on the credit of such securities, coin, and bullion so appropriated and set apart to the said issue department; and from thenceforth it shall not be lawful for the said governor and company to increase the amount of securities for the time being in the said issue department, save as herein-after is mentioned, but it shall be lawful for the said governor and company to diminish the

amount of such securities, and again to increase the same to any sum not exceeding in the whole the sum of fourteen million pounds, and so from time to time as they shall see occasion; and from and after such transfer and appropriation to the said issue department as aforesaid it shall not be lawful for the said governor and company to issue Bank of England notes, either into the banking department of the Bank of England, or to any persons or person whatsoever, save in exchange for other Bank of England notes, or for gold coin or for gold or silver bullion received or purchased for the said issue department under the provisions of this act, or in exchange for securities acquired and taken in the said issue department under the provisions herein contained: provided always, that it shall be lawful for the said governor and company in their banking department to issue all such Bank of England notes as they shall at any time receive from the said issue department or otherwise, in the same manner in all respects as such issue would be lawful to any other person or persons.

Bank of
England and
Joint Stock
Banks.

III. And whereas it is necessary to limit the amount of silver bullion on which it shall be lawful for the issue department of the Bank of England to issue Bank of England notes; be it therefore enacted, that it shall not be lawful for the Bank of England to retain in the issue department of the said bank at any one time an amount of silver bullion exceeding one-fourth part of the gold coin and bullion at such time held by the Bank of England in the issue department.

Proportion of
silver bullion
to be retained
in the issue
department.

IV. And be it enacted, that from and after the thirty-first day of August one thousand eight hundred and forty-four all persons shall be entitled to demand from the issue department of the Bank of England Bank of England notes in exchange for gold bullion, at the rate of three pounds seventeen shillings and ninepence per ounce of standard gold: provided always, that the said governor and company shall in all cases be entitled to require such gold bullion to be melted and assayed by persons approved by the said governor and company at the expense of the parties tendering such gold bullion.

All persons
may demand of
the issue de-
partment notes
for gold
bullion.

V. Provided always, and be it enacted, that if any banker who on the sixth day of May one thousand eight hundred and forty-four was issuing his own bank notes shall cease to issue his own bank notes, it shall be lawful for her Majesty in council at any time after the cessation of such issue, upon the application of the said governor and company to authorize and empower the said governor and company to increase the amount of securities in the said issue department beyond the total sum or value of fourteen million pounds, and thereupon to issue additional Bank of England notes to an amount not exceeding such increased amount of securities specified in such order in council, and so from time to time: provided always, that such increased amount of securities specified in such order in council shall in no case exceed the proportion of two-thirds the amount of bank notes which the banker so ceasing to issue may have been authorized to issue under the provisions of this act; and every such order in council shall be published in the next succeeding *London Gazette*.

Power to
increase secu-
rities in the
issue depart-
ment, and issue
additional
notes.

VI. And be it enacted, that an account of the amount of Bank of Account to be

Bank of
England and
Joint Stock
Banks.

rendered by
the Bank of
England.

England notes issued by the issue department of the Bank of England, and of gold coin and of gold and silver bullion respectively, and of securities in the said issue department, and also an account of the capital stock, and the deposits, and of the money and securities belonging to the said governor and company in the banking department of the Bank of England, on some day in every week to be fixed by the commissioners of stamps and taxes shall be transmitted by the said governor and company weekly to the said commissioners in the form prescribed in the schedule hereto annexed marked (A.), and shall be published by the said commissioners in the next succeeding *London Gazette* in which the same may be conveniently inserted.

Bank of Eng-
land exempted
from stamp
duty upon their
notes.

VII. And be it enacted, that from and after the said thirty-first day of August one thousand eight hundred and forty-four the said governor and company of the Bank of England shall be released and discharged from the payment of any stamp duty, or composition in respect of stamp duty, upon or in respect of their promissory notes payable to bearer on demand; and all such notes shall thenceforth be and continue free and wholly exempt from all liability to any stamp duty whatsoever.

Bank to allow
180,000*l.* per
annum.

VIII. And be it enacted, that from and after the said thirty-first day of August one thousand eight hundred and forty-four the payment or deduction of the annual sum of one hundred and twenty thousand pounds, made by the said governor and company under the provisions of the said act passed in the fourth year of the reign of his late Majesty king William the Fourth, out of the sums payable to them for the charges of management of the public unredeemed debt, shall cease, and in lieu thereof the said governor and company, in consideration of the privileges of exclusive banking, and the exemption from stamp duties, given to them by this act, shall, during the continuance of such privileges and such exemption respectively, but no longer, deduct and allow to the public, from the sums now payable by law to the said governor and company for the charges of management of the public unredeemed debt, the annual sum of one hundred and eighty thousand pounds, anything in any act or acts of Parliament, or in any agreement, to the contrary notwithstanding: provided always, that such deduction shall in no respect prejudice or affect the rights of the said governor and company to be paid for the management of the public debt at the rate and according to the terms provided in an act passed in the forty-eighth year of the reign of his late Majesty king George the Third, intituled "An Act to authorize the advancing for the public service, upon certain conditions, a Proportion of the Balance remaining in the Bank of England, for the Payment of Unclaimed Dividends, Annuities and Lottery Prizes, and for regulating the Allowances to be made for the Management of the National Debt."

48 G. 3, c. 4.

Bank to allow
the public the
profits of in-
creased circu-
lation.

IX. And be it enacted, that in case, under the provisions hereinbefore contained, the securities held in the said issue department of the Bank of England shall at any time be increased beyond the total amount of fourteen million pounds, then and in each and every year in which the same shall happen, and so long as such increase shall continue, the said governor and company shall, in addition to the said annual sum of one hundred and eighty thousand pounds,

make a further payment or allowance to the public, equal in amount to the net profit derived in the said issue department during the current year from such additional securities, after deducting the amount of the expenses occasioned by the additional issue during the same period, which expenses shall include the amount of any and every composition or payment to be made by the said governor and company to any banker in consideration of the discontinuance at any time hereafter of the issue of bank notes by such banker; and such further payment or allowance to the public by the said governor and company shall, in every year while the public shall be entitled to receive the same, be deducted from the amount by law payable to the said governor and company for the charges of management of the unredeemed public debt, in the same manner as the said annual sum of one hundred and eighty thousand pounds is hereby directed to be deducted therefrom.

**Bank of
England and
Joint Stock
Banks.**

X. And be it enacted, that from and after the passing of this act no person other than a banker who on the sixth day of May one thousand eight hundred and forty-four was lawfully issuing his own bank notes shall make or issue bank notes in any part of the united kingdom.

**No new bank
of issue.**

XI. And be it enacted, that from and after the passing of this act it shall not be lawful for any banker to draw, accept, make, or issue, in England or Wales, any bill of exchange or promissory note or engagement for the payment of money payable to bearer on demand or to borrow, owe, or take up, in England or Wales, any sums or sum of money on the bills or notes of such banker payable to bearer on demand, save and except that it shall be lawful for any banker who was on the sixth day of May one thousand eight hundred and forty-four carrying on the business of a banker in England or Wales, and was then lawfully issuing, in England or Wales, his own bank notes, under the authority of a license to that effect, to continue to issue such notes to the extent and under the conditions hereinafter mentioned, but not further or otherwise; and the right of any company or partnership to continue to issue such notes shall not be in any manner prejudiced or affected by any change which may hereafter take place in the personal composition of such company or partnership, either by the transfer of any shares or share therein, or by the admission of any new partner or member thereto, or by the retirement of any present partner or member therefrom: provided always, that it shall not be lawful for any company or partnership now consisting of only six or less than six persons to issue bank notes at any time after the number of partners therein shall exceed six in the whole.

**Restriction
against issue of
bank notes.**

XII. And be it enacted, that if any banker in any part of the united kingdom who after the passing of this act shall be entitled to issue bank notes shall become bankrupt, or shall cease to carry on the business of a banker, or shall discontinue the issue of bank notes either by agreement with the governor and company of the Bank of England or otherwise, it shall not be lawful for such banker at any time thereafter to issue any such notes.

**Bankers
ceasing to issue
notes may not
resume.**

**Bank of
England and
Joint Stock
Banks.**

**Existing banks
of issue to con-
tinue under
certain limita-
tions.**

4 & 5 Vict.
c. 50.

XIII. And be it enacted, that every banker claiming under this act to continue to issue bank notes in England or Wales shall, within one month next after the passing of this act, give notice in writing to the commissioners of stamps and taxes at their head office in London of such claim, and of the place and name and firm at and under which such banker has issued such notes during the twelve weeks next preceding the twenty-seventh day of April last; and thereupon the said commissioners shall ascertain if such banker was on the sixth day of May one thousand eight hundred and forty-four carrying on the business of a banker, and lawfully issuing his own bank notes in England or Wales, and if it shall so appear then the said commissioners shall proceed to ascertain the average amount of the bank notes of such banker which were in circulation during the said period of twelve weeks preceding the twenty-seventh day of April last, according to the returns made by such banker in pursuance of the act passed in the fourth and fifth years of the reign of her present Majesty, intituled "An Act to make further Provisions relative to the Returns to be made by Banks of the Amount of their Notes in circulation;" and the said commissioners or any two of them shall certify under their hands to such banker the said average amount, when so ascertained as aforesaid; and it shall be lawful for every such banker to continue to issue his own bank notes after the passing of this act: provided nevertheless, that such banker shall not at any time after the tenth day of October one thousand eight hundred and forty-four have in circulation upon the average of a period of four weeks, to be ascertained as hereinafter mentioned, a greater amount of notes than the amount so certified.

**Provision for
united banks.**

XIV. Provided always, and be it enacted, that if it shall be made to appear to the commissioners of stamps and taxes that any two or more banks have, by written contract or agreement (which contract or agreement shall be produced to the said commissioners), become united within the twelve weeks next preceding such twenty-seventh day of April as aforesaid, it shall be lawful for the said commissioners to ascertain the average amount of the notes of each such bank in the manner hereinbefore directed, and to certify the average amount of the notes of the two or more banks so united as the amount which the united bank shall thereafter be authorized to issue, subject to the regulations of this act.

**Duplicate
certificate to be
published in
the *Gazette*.
Gazette to be
evidence.**

XV. And be it enacted, that the commissioners of stamps and taxes shall, at the time of certifying to any banker such particulars as they are hereinbefore required to certify, also publish a duplicate of their certificate thereof in the next succeeding *London Gazette* in which the same may be conveniently inserted; and the *Gazette* in which such publication shall be made shall be conclusive evidence in all courts whatsoever of the amount of bank notes which the banker named in such certificate or duplicate is by law authorized to issue and to have in circulation as aforesaid.

**In case banks
become united
commissioners**

XVI. And be it enacted, that in case it shall be made to appear to the commissioners of stamps and taxes, at any time hereafter, that any two or more banks, each such bank consisting of not more than

six persons, have, by written contract or agreement (which contract or agreement shall be produced to the said commissioners), become united subsequently to the passing of this act, it shall be lawful for the said commissioners, upon the application of such united bank, to certify, in manner hereinbefore mentioned, the aggregate of the amounts of bank notes which such separate banks were previously authorized to issue, and so from time to time; and every such certificate shall be published in manner hereinbefore directed; and from and after such publication the amount therein stated shall be and be deemed to be the limit of the amount of bank notes which such united bank may have in circulation: provided always, that it shall not be lawful for any such united bank to issue bank notes at any time after the number of partners therein shall exceed six in the whole.

Bank of
England and
Joint Stock
Banks.

to certify the
amount of bank
notes which
each bank was
authorized to
issue.

XVII. And be it enacted, that if the monthly average circulation of bank notes of any banker, taken in the manner hereinafter directed, shall at any time exceed the amount which such banker is authorized to issue and to have in circulation under the provisions of this act, such banker shall in every such case forfeit a sum equal to the amount by which the average monthly circulation, taken as aforesaid, shall have exceeded the amount which such banker was authorized to issue and to have in circulation as aforesaid.

Penalty on
banks issuing
in excess.

XVIII. And be it enacted, that every banker in England and Wales who, after the tenth day of October one thousand eight hundred and forty-four, shall issue bank notes, shall on some one day in every week after the nineteenth day of October one thousand eight hundred and forty-four (such day to be fixed by the commissioners of stamps and taxes) transmit to the said commissioners an account of the amount of the bank notes of such banker in circulation on every day during the week ending on the next preceding Saturday, and also an account of the average amount of the bank notes of such banker in circulation during the same week; and on completing the first period of four weeks, and so on completing each successive period of four weeks, every such banker shall annex to such account the average amount of bank notes of such banker in circulation during the said four weeks, and also the amount of bank notes which such banker is authorized to issue under the provisions of this act; and every such account shall be verified by the signature of such banker or his chief cashier, or, in the case of a company or partnership, by the signature of a managing director or partner or chief cashier of such company or partnership, and shall be made in the form to this act annexed marked (B.); and so much of the said return as states the weekly average amount of the notes of such bank shall be published by the said commissioners in the next succeeding *London Gazette* in which the same may be conveniently inserted; and if any such banker shall neglect or refuse to render any such account in the form and at the time required by this act, or shall at any time render a false account, such banker shall forfeit the sum of one hundred pounds for every such offence.

Issuing banks
to render
accounts.

XIX. And be it enacted, that for the purpose of ascertaining the monthly average amount of bank notes of each banker in circulation

Mode of ascer-
taining the

**Bank of
England and
Joint Stock
Banks.**

**average amount
of bank notes
in circulation
during the first
four weeks
after 10th Oct.
1844.**

**Commissioners
of stamps and
taxes empow-
ered to cause
the books of
bankers con-
taining ac-
counts of their
bank notes in
circulation to
be inspected.**

**Penalty for
refusing to
allow such
inspection.**

the aggregate of the amount of bank notes of each such banker in circulation on every day of business during the first complete period of four weeks next after the tenth day of October one thousand eight hundred and forty-four, such period ending on a Saturday, shall be divided by the number of days of business in such four weeks, and the average so ascertained shall be deemed to be the average of bank notes of each such banker in circulation during such period of four weeks, and so in each successive period of four weeks, and such average is not to exceed the amount certified by the commissioners of stamps and taxes as aforesaid.

XX. And whereas, in order to insure the rendering of true and faithful accounts of the amount of bank notes in circulation, as directed by this act, it is necessary that the commissioners of stamps and taxes should be empowered to cause the books of bankers issuing such notes to be inspected, as hereinafter mentioned; be it therefore enacted, that all and every the book and books of any banker who shall issue bank notes under the provisions of this act, in which shall be kept, contained, or entered any account, minute, or memorandum of or relating to the bank notes issued or to be issued by such banker, or of or relating to the amount of such notes in circulation from time to time, or any account, minute, or memorandum, the sight or inspection whereof may tend to secure the rendering of true accounts of the average amount of such notes in circulation, as directed by this act, or to test the truth of any such account, shall be open for the inspection and examination, at all seasonable times, of any officer of stamp duties authorized in that behalf by writing, signed by the commissioners of stamps and taxes or any two of them; and every such officer shall be at liberty to take copies of or extracts from any such book or account as aforesaid; and if any banker or other person keeping any such book, or having the custody or possession thereof, or power to produce the same, shall, upon demand made by any such officer, showing (if required) his authority in that behalf, refuse to produce any such book to such officer for his inspection and examination, or to permit him to inspect and examine the same, or to take copies thereof or extracts therefrom, or of or from any such account, minute, or memorandum as aforesaid kept, contained, or entered therein, every such banker or other person so offending shall for every such offence forfeit the sum of one hundred pounds: provided always, that the said commissioners shall not exercise the powers aforesaid without the consent of the commissioners of her Majesty's treasury,

**All bankers to
return names
once a year to
the stamp
office.**

XXI. And be it enacted, that every banker in England and Wales who is now carrying on or shall hereafter carry on business as such, shall on the first day of January in each year, or within fifteen days thereafter, make a return to the commissioners of stamps and taxes at their head office in London of his name, residence, and occupation, or, in the case of a company or partnership, of the name, residence, and occupation of every person composing or being a member of such company or partnership, and also the name of the firm under which such banker, company, or partnership carry on the business of banking, and of every place where such business is carried on; and if any such banker, company, or partnership shall omit or refuse to

make such return within fifteen days after the said first day of January, or shall wilfully make other than a true return of the persons as herein required, every banker, company, or partnership so offending shall forfeit and pay the sum of fifty pounds; and the said commissioners of stamps and taxes shall on or before the first day of March in every year publish in some newspaper circulating within each town or county respectively a copy of the return so made by every banker, company, or partnership carrying on the business of bankers within such town or county respectively, as the case may be.

**Bank of
England and
Joint Stock
Banks**

XXII. And be it enacted, that every banker who shall be liable by law to take out a license from the commissioners of stamps and taxes to authorize the issuing of notes or bills shall take out a separate and distinct license for every town or place at which he shall, by himself or his agent, issue any notes or bills requiring such license to authorize the issuing thereof, any thing in any former act, contained to the contrary thereof notwithstanding: provided always, that no banker who on or before the sixth day of May one thousand eight hundred and forty-four had taken out four such licenses, which on the said last mentioned day were respectively in force, for the issuing of any such notes or bills at more than four separate towns or places, shall at any time hereafter be required to take out or to have in force at one and the same time more than four such licenses to authorize the issuing of such notes or bills at all or any of the same towns or places specified in such licenses in force on the said sixth day of May one thousand eight hundred and forty-four, and at which towns or places respectively such bankers had on or before the said last-mentioned day issued such notes or bills in pursuance of such licenses or any of them respectively.

**Bankers to take
out a separate
license for
every place at
which they
issue notes or
bills. Proviso
in favour of
bankers who
had four such
licenses in
force on the 6th
of May, 1844.**

XXIII. And whereas the several bankers named in the schedule hereto annexed marked (C.) have ceased to issue their own bank notes under certain agreements with the governor and company of the Bank of England: and it is expedient that such agreements should cease and determine on the thirty-first day of December next, and that such bankers should receive by way of compensation such composition as hereafter mentioned; and a list of such bankers, and a statement of the maximum sums in respect of which each such banker is to receive compensation, hath been delivered to the commissioners of stamps and taxes, signed by the chief cashier of the Bank of England; be it therefore enacted, that the several agreements subsisting between the said governor and company and the several bankers mentioned in the schedule hereto relating to the issue of Bank of England notes shall cease and determine on the thirty-first day of December next; and from and after that day the said governor and company shall pay and allow to the several bankers named in the schedule hereto marked (C.), so long as such bankers shall be willing to receive the same, a composition at and after the rate of one pound per centum per annum on the average amount of the Bank of England notes issued by such bankers respectively and actually remaining in circulation, to be ascertained as follows; (that is to say,) on some day in the month of April one thousand eight hundred and forty-five, to be determined by the said governor and company, an account shall be taken of the Bank of England notes delivered to such

**Compensation
to certain
bankers named
in the schedule.**

**Bank of
England and
Joint Stock
Banks.**

bankers respectively by the said governor and company within three months next preceding, and of such of the said Bank of England notes as shall have been returned to the Bank of England, and the balance shall be deemed to be the amount of the Bank of England notes issued by such bankers respectively and kept in circulation; and a similar account shall be taken at intervals of three calendar months; and the average of the balances ascertained on taking four such accounts shall be deemed to be the average amount of Bank of England notes issued by such bankers respectively and kept in circulation during the year one thousand eight hundred and forty-five, and on which amount such bankers are respectively to receive the aforesaid composition of one per centum for the year one thousand eight hundred and forty-five; and similar accounts shall be taken in each succeeding year: but in each year such accounts shall be taken in different months from those in which the accounts of the last preceding year were taken, and on different days of the month, such months and days to be determined by the said governor and company; and the amount of the composition payable as aforesaid shall be paid by the said governor and company out of their own funds; and in case any difference shall arise between any of such bankers and the governor and company of the Bank of England in respect of the composition payable as aforesaid, the same shall be determined by the Chancellor of the Exchequer for the time being, or by some person to be named by him, and the decision of the Chancellor of the Exchequer, or his nominee, shall be final and conclusive; provided always, that it shall be lawful for any banker named in the schedule hereto annexed marked (C.) to discontinue the receipt of such composition as aforesaid, but no such banker shall by such discontinuance as aforesaid thereby acquire any right or title to issue banknotes.

**Bank of Eng-
land to be
allowed to
compound with
issuing banks.**

XXIV. And be it enacted, that it shall be lawful for the said governor and company to agree with every banker who under the provisions of this act, shall be entitled to issue bank notes, to allow to such banker a composition at the rate of one per centum per annum on the amount of Bank of England notes which shall be issued and kept in circulation by such banker, as a consideration for his relinquishment of the privilege of issuing his own bank notes: and all the provisions herein contained for ascertaining and determining the amount of composition payable to the several bankers named in the schedule hereto marked (C.) shall apply to all such other bankers with whom the said governor and company are hereby authorized to agree as aforesaid: provided that the amount of composition payable to such bankers as last aforesaid shall in every case in which an increase of securities in the issue department shall have been authorized by any order in council be deducted out of the amount payable by the said governor and company to the public under the provisions herein contained: provided always, that the total sum payable to any banker under the provisions herein contained, by way of composition as aforesaid, in any one year, shall not exceed, in case of the bankers mentioned in the schedule hereto marked (C.), one per centum on the several sums set against the names of such bankers respectively in the list and statement delivered to the commissioners of stamps as aforesaid, and in the case of other bankers shall not exceed one per centum on the amount of bank notes which such bankers respectively would otherwise be entitled to issue under the provisions herein contained.

**Limitation of
compositions.**

XXV. And be it enacted, that all the compositions payable to the several bankers mentioned in the schedule hereto marked (C.), and such other bankers as shall agree with the said governor and company to discontinue the issue of their own bank notes as aforesaid, shall, if not previously determined by the act of such banker as herein-before provided, cease and determine on the first day of August one thousand eight hundred and fifty-six, or on any earlier day on which Parliament may prohibit the issue of bank notes.

**Bank of
England and
Joint Stock
Banks.**

Compositions
to cease on 1st
August, 1856.

XXVI. And be it enacted, that from and after the passing of this act it shall be lawful for any society or company or any persons in partnership, though exceeding six in number, carrying on the business of banking in London, or within sixty-five miles thereof, to draw, accept, or endorse bills of exchange, not being payable to bearer on demand, any thing in the herein-before recited act passed in the fourth year of the reign of his said Majesty king William the Fourth, or in any other act, to the contrary notwithstanding.

Banks within
sixty-five miles
of London may
accept, &c.
bills.

XXVII. And be it enacted, that the said governor and company of the Bank of England shall have and enjoy such exclusive privilege of banking as is given by this act, upon such terms and conditions, and subject to the termination thereof at such time and in such manner as is by this act provided and specified; and all and every the powers and authorities, franchises, privileges, and advantages, given or recognised by the said recited act passed in the fourth year of the reign of his Majesty king William the Fourth, as belonging to or enjoyed by the said governor and company of the Bank of England, or by any subsequent act or acts of Parliament, shall be and the same are hereby declared to be in full force, and continued by this act, except so far as the same are altered by this act; subject nevertheless to redemption upon the terms and conditions following; (that is to say,) at any time upon twelve months' notice to be given after the first day of August one thousand eight hundred and fifty-five, and upon repayment by Parliament to the said governor and company or their successors of the sum of eleven million fifteen thousand and one hundred pounds, being the debt now due from the public to the said governor and company, without any deduction, discount, or abatement whatsoever, and upon payment to the said governor and company and their successors of all arrears of the sum of one hundred thousand pounds per annum, in the last-mentioned act mentioned, together with the interest or annuities payable upon the said debt or in respect thereof, and also upon repayment of all the principal and interest which shall be owing unto the said governor and company and their successors upon all such tallies, exchequer orders, exchequer bills, or Parliamentary funds which the said governor and company or their successors shall have remaining in their hands or be entitled to at the time of such notice to be given as last aforesaid, then and in such case, and not till then, the said exclusive privileges of banking granted by this act shall cease and determine at the expiration of such notice of twelve months; and any vote or resolution of the House of Commons, signified under the hand of the speaker of the said house in writing, and delivered at the public office of the said governor and company, shall be deemed and adjudged to be a sufficient notice.

Bank to enjoy
privileges, sub-
ject to redemp-
tion.

Bank of
England and
Joint Stock
Banks.

Interpretation
clause.

XXVIII. And be it enacted, that the term "bank notes" used in this act shall extend and apply to all bills or notes for the payment of money to the bearer on demand other than bills or notes of the governor and company of the Bank of England; and that the term "Bank of England notes" shall extend and apply to the promissory notes of the governor and company of the Bank of England payable to bearer on demand; and that the term "banker" shall extend and apply to all corporations, societies, partnerships, and persons, and every individual person carrying on the business of banking, whether by the issue of bank notes or otherwise, except only the governor and company of the Bank of England; and that the word "person" used in this act shall include corporations; and that the singular number in this act shall include the plural number, and the plural number the singular, except where there is any thing in the context repugnant to such construction; and that the masculine gender in this act shall include the feminine, except where there is any thing in the context repugnant to such construction.

SCHEDULES to which the Act refers.

SCHEDULE (A.)

BANK OF ENGLAND.

An Account pursuant to the Act 7 & 8 Vict. Cap. _____ for the Week
ending on the _____ Day of _____
Issue Department.

£		£
Notes issued	Government Debt -	
	Other Securities -	
	Gold Coin and Bullion -	
	Silver Bullion -	
_____		_____
£		£
_____		_____

Dated the _____ day of _____ 18 . _____ Cashier.

Banking Department.

£		£
Proprietors' Capital -	Government Securities	
Rest - - -	(including Dead	
Public Deposits (to in-	Weight Annuity) -	
clude Exchequer, Sa-	Other Securities -	
vings Banks, Commis-	Notes - - -	
sioners of National	Gold and Silver Coin -	
Debt, and Dividend		
Accounts) - - -		
Other Deposits - -		
Seven Day and other		
Bills - - -		
_____		_____
£		£
_____		_____

Dated _____ day of _____ 18 _____ Cashier.

SCHEDULE (B.)

Bank of
England and
Joint Stock
Banks.

Name and Title as set forth
in the License | _____ Bank.

Name of the Firm - _____ Firm.

Insert Head Office, or prin-
cipal Place of Issue - | _____ Place.

An Account pursuant to the act 7 & 8 Vict. Cap. _____ of the notes of
the said Bank in circulation during the week ending Saturday the
day of _____ 18 .

Monday - - -

Tuesday - - -

Wednesday - - -

Thursday - - -

Friday - - -

Saturday - - -

6)

Average of the Week - _____

[To be annexed to this account at the end of each period of four weeks.]

Amount of notes authorized by law - - £

Average amount in circulation during the }
four weeks ending as above - - } £

I, being [the banker, chief cashier, managing director, or partner
of the bank, *as the case may be*], do hereby certify, that the
above is a true account of the notes of the said bank in circulation
during the week above written.

(Signed)
Dated _____ day of _____ 18

SCHEDULE (C.)

Banks which have ceased to issue their own bank notes, under
certain agreements with the governor and company of the Bank of
England.

Bank of Liverpool.
J. Barned and Co.
Biddulph, Brothers and Co.
Birmingham Banking Company.
Birmingham Town and District Bank.
Birmingham and Midland Banking Company.
Burgess and Son.
Coopers and Purton.
Cunliffes, Brookes and Co.
Deane, Littlehales and Deane.
Dendy, Comper and Co.
Devon and Cornwall Banking Company.

**Bank of
England and
Joint Stock
Banks.**

Grants and Gillman.
Hampshire Banking Company.
James W. R. Hall.
J. M. Head and Co.
Henty, Upperton and Olliver.
Thomas Kinnersly and Sons.
R. J. Lambton and Co.
Liverpool Commercial Banking Company.
Liverpool Union Bank.
Liverpool Borough Bank.
Manchester and Liverpool District Banking Company.
Manchester and Salford Banking Company.
Monmouth and Glamorgan Banking Company.
Moss and Company.
Mangles, Brothers.
Newcastle Commercial Banking Company.
Newcastle-on-Tyne Joint Stock Banking Company.
North of England Joint Stock Banking Company.
Northumberland and Durham District Bank.
Portsmouth and South Hants Banking Company.
T. and R. Raikes and Co.
Robinson and Brodhust.
Sheffield Union Bank.
John Stoveld.
Sunderland Joint Stock Banking Company.
Tugwell and Co.
Union Bank of Manchester.
Vivian, Kitson and Co.
Watts, Whiteway and Co.
J. and J. C. Wright and Co.
Webb, Holbrook and Spencer.

7 & 8 VICT. c. 85.

An Act to attach certain Conditions to the Construction of future Railways authorized or to be authorized by any Act of the present or succeeding Sessions of Parliament; and for other Purposes in relation to Railways. [9th August, 1844.]

Railway.

Whereas it is expedient that the concession of powers for the establishment of new lines of railway should be subjected to such conditions as are herein-after contained for the benefit of the public : Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that if at any time after the end of twenty-one years from and after the first day of January next after the passing of any act of the present or of any future session of Parliament for the construction of any new line of passenger railway, whether such new line be a trunk, branch, or junction line, and whether such new line be con-

If, after twenty-one years from the passing of the act for the construction of any future railway, the profits shall exceed 10 per

structed by a new company incorporated for the purpose or by any existing company, the clear annual profits divisible upon the subscribed and paid-up capital stock of the said railway, upon the average of the three then last preceding years, shall equal or exceed the rate of ten pounds for every hundred pounds of such paid-up capital stock, it shall be lawful for the lords commissioners of Her Majesty's treasury, subject to the provisions herein-after contained, upon giving to the said company three calendar months' notice in writing of their intention so to do, to revise the scale of tolls, fares and charges, limited by the act or acts relating to the said railway and to fix such new scale of tolls, fares, and charges, applicable to such different classes and kinds of passengers, goods and other traffic on such railway, as in the judgment of the said lords commissioners, assuming the same quantities and kinds of traffic to continue, shall be likely to reduce the said divisible profits to the said rate of ten pounds in the hundred: provided always, that no such revised scale shall take effect, unless accompanied by a guarantee to subsist as long as any such revised scale of tolls, fares, and charges shall be in force, that the said divisible profits, in case of any deficiency therein, shall be annually made good to the said rate of ten pounds for every hundred pounds of such capital stock; provided also, that such revised scale shall not be again revised or such guarantee withdrawn, otherwise than with the consent of the company, for the further period of twenty-one years.

Railway.
cent., the
treasury may
revise the scale
of tolls, and fix
a new scale.

Provisions.

II. And be it enacted, that whatever may be the rate of divisible profits on any such railway it shall be lawful for the said lords commissioners, if they shall think fit, subject to the provisions herein-after contained, at any time after the expiration of the said term of twenty-one years, to purchase any such railway, with all its hereditaments, stock, and appurtenances, in the name and on behalf of her Majesty, upon giving to the said company three calendar months' notice in writing of their intention, and upon payment of a sum equal to twenty-five years' purchase of the said annual divisible profits, estimated on the average of the three then next preceding years: provided that if the average rate of profits for the said three years shall be less than the rate of ten pounds in the hundred, it shall be lawful for the company, if they shall be of opinion that the said rate of twenty-five years' purchase of the said average profits is an inadequate rate of purchase of such railway, reference being had to the prospects thereof, to require that it shall be left to arbitration, in case of difference, to determine what (if any) additional amount of purchase money shall be paid to the said company: provided also, that such option of purchase shall not be exercised, except with the consent of the company, while any such revised scale of tolls, fares and charges shall be in force.

Option of
purchase of
future railways.

Proviso.

III. Provided always, and be it enacted, that the option of revision or purchase shall not be applied to any railway made or authorized to be made by any act previous to the present session; and that no branch or extension of less than five miles in length of any such line of railway shall be taken to be a new railway within the provisions of this act; and that the said option of purchase shall not be exercised as regards any branch or extension of any railway, without including

Existing rail-
ways not to be
subjected to
the options.

Railway. such railway in the purchase in case the proprietors thereof shall require that the same be so included.

Reservation to Parliament of the consideration of future policy in regard to the said options.

IV. And whereas it is expedient that the policy of revision or purchase should in no manner be prejudged by the provisions of this act, but should remain for the future consideration of the Legislature, upon grounds of general and national policy: And whereas it is not the intention of this act that under the said powers of revision or purchase, if called into use, the public resources should be employed to sustain an undue competition against any independent company or companies: be it enacted, that no such notice as herein-before mentioned, whether of revision or purchase, shall be given until provision shall have been made by Parliament, by an act or acts to be passed in that behalf, for authorizing the guarantee or the levy of the purchase money herein-before mentioned, as the case may be, and for determining, subject to the conditions herein-before mentioned, the manner in which the said options or either of them shall be exercised; and that no bill for giving powers to exercise the said options, or either of them, shall be received in either house of Parliament unless it be recited in the preamble to such bill that three months' notice of the intention to apply to Parliament for such powers has been given by the said lords commissioners to the company or companies to be affected thereby.

Accounts to be kept, and to be opened to inspection.

V. And be it enacted, that, from and after the commencement of the period of three years next preceding the period at which the option of revision or purchase becomes available, full and true accounts shall be kept of all sums of money received and paid on account of any railway within the provisions herein-before contained, (distinguishing, if the said railway shall be a branch railway or one worked in common with other railways, the receipts, and giving an estimate of the expenses on account of the said railway, from those on account of the trunk, line, or other railways,) by the directors of the company to whom such railway belongs or by whom the same may be worked: and every such railway company shall once in every half-year during the said period of three years cause a half-yearly account in abstract to be prepared, showing the total receipt and expenditure on account of the said railway for the half-year ending the thirtieth day of June and the thirty-first day of December respectively, or such other convenient days as shall in each case be directed by the said lords commissioners, under distinct heads of receipt and expenditure, with a statement of the balance of such account, duly audited and certified under the hands of two or more directors of the said railway company, and shall send a copy of the said account to the said lords commissioners on or before the last days of August and February respectively or such other days as shall in each case be directed by the said lords commissioners, in each year; and it shall be lawful for the said lords commissioners, if and when they shall think fit, to appoint any proper person or persons to inspect the accounts and books of the said company during the said period of three years; and it shall be lawful for any person so authorized, at all reasonable times upon producing his authority, to examine the books, accounts, vouchers, and other documents of the company at the principal office or place of business of the company, and to take copies or extracts therefrom.

VI. And whereas it is expedient to secure to the poorer class of travellers the means of travelling by railway at moderate fares, and in carriages in which they may be protected from the weather: be it enacted, that on and after the several days hereinafter specified all passenger railway companies which shall have been incorporated by any act of the present session, or which shall be hereafter incorporated, or which by any act of the present or any future session have obtained or shall obtain, directly or indirectly, any extension or amendment of the powers conferred on them respectively by their previous acts, or have been or shall be authorized to do any act unauthorized by the provisions of such previous acts, shall, by means of one train at the least to travel along their railway from one end to the other of each trunk, branch, or junction line belonging to or leased by them, so long as they shall continue to carry other passengers over such trunk, branch, or junction line, once at the least each way on every week day, except Christmas Day and Good Friday (such exception not to extend to Scotland), provide for the conveyance of third class passengers to and from the terminal and other ordinary passenger stations of the railway, under the obligations contained in their several acts of Parliament, and with the immunities applicable by law to carriers of passengers by railway; and also under the following conditions; (that is to say,)

Railway.
Companies to provide one cheap train each way daily.

Such train shall start at an hour to be from time to time fixed by the directors, subject to the approval of the lords of the committee of Privy Council for trade and plantations:

Such train shall travel at an average rate of speed not less than twelve miles an hour for the whole distance travelled on the railway, including stoppages:

Such train shall, if required, take up and set down passengers at every passenger station which it shall pass on the line:

The carriages in which passengers shall be conveyed by such train shall be provided with seats, and shall be protected from the weather, in a manner satisfactory to the lords of the said committee:

The fare or charge for each third class passenger by such train shall not exceed one penny for each mile travelled:

Each passenger by such train shall be allowed to take with him half a hundred weight of luggage, not being merchandize or other articles carried for hire or profit, without extra charge; and any excess of luggage shall be charged by weight, at a rate not exceeding the lowest rate of charge for passengers' luggage by other trains:

Children under three years of age accompanying passengers by such train shall be taken without any charge, and children of three years and upwards, but under twelve years of age, at half the charge for an adult passenger.

And with respect to all railways subject to these obligations which shall be open on or before the first day of November next, these obligations shall come into force on the said first day of November; and with respect to all other railways subject to these obligations, they shall come into force on the day of opening of the railway, or the day after the last day of the session in which the act shall be passed by reason of which the company will become subject thereunto, which shall first happen.

Railway.

Penalty for non-compliance.

VII. And be it enacted, that if any railway company shall refuse or wilfully neglect to comply with the provisions of this act as to the said cheap trains within a reasonable time, or shall attempt to evade the operation of such order, such company shall forfeit to her Majesty a sum not exceeding twenty pounds for every day during which such refusal, neglect, or evasion shall continue.

Board of Trade to have a discretionary power of allowing alternative arrangements.

VIII. Provided always, and be it enacted, that, except as to the amount of fare or charge for each passenger by such cheap trains, which shall in no case exceed the rates hereinbefore in such case provided, the lords of the said committee shall have a discretionary power, upon the application of any railway company, of dispensing with any of the conditions hereinbefore required in regard to the conveyance of passengers by such cheap trains as aforesaid, in consideration of such other arrangements, either in regard to speed, covering from the weather, seats, or other particulars, as to the lords of the said committee shall appear more beneficial and convenient for the passengers by such cheap trains under the circumstances of the case, and shall be sanctioned by them accordingly; and any railway company which shall conform to such other conditions as shall be so sanctioned by the lords of the said committee shall not be liable to any penalty for not observing the conditions which shall have been so dispensed with by the lords of the said committee in regard to the said cheap trains and the passengers conveyed thereby.

When no tax to be levied.

IX. And be it enacted, that no tax shall be levied upon the receipts of any railway company from the conveyance of passengers at fares not exceeding one penny for each mile by any such cheap train as aforesaid.

Where companies run trains on the Sunday, cheap trains to be likewise provided.

X. And be it enacted, that whenever any railway company subject to the hereinbefore mentioned obligation of running cheap trains shall, from and after the days hereinbefore specified on which the said obligation is to accrue, run any train or trains on Sundays for the conveyance of passengers, it shall, under the obligations contained in its act or acts of Parliament, and with the immunities applicable by law to carriers of passengers by railway, by such train each way, on every Sunday, as shall stop at the greatest number of stations, provide sufficient carriages for the conveyance of third class passengers at the terminal and other stations at which such Sunday train may ordinarily stop; and the fare or charge for each third class passenger by such train shall not exceed one penny for each mile travelled.

Railway companies to afford additional facilities for the transmission of the mails. 1 & 2 Vict. c. 98.

XI. And whereas by an act passed in the second year of the reign of her Majesty, intituled an act to provide for the conveyance of the mails by railways, provision was made for the transmission of the mails by railway, and it is expedient that such provision should be extended; be it enacted, that it shall be lawful for the postmaster general to require, in the manner and subject to the conditions as to payment for service performed prescribed by the said act, that the mails be forwarded upon any such railway as is hereinbefore last mentioned at any rate of speed which the inspector general of railways

Railway.

for the time being shall certify to be safe, not exceeding twenty-seven miles in the hour including stoppages; and it shall be also lawful for the postmaster general to send any mail guard with bags not exceeding the weight of luggage allowed to any other passenger (or subject to the general rules of the company for any excess of that weight) by any trains or other than a mail train, upon the same conditions as any other passenger; provided that in such last-mentioned case nothing herein or in the last-recited act contained shall be construed to authorize the postmaster general to require the conversion of a regular mail train into an ordinary train, or to exercise any control over the company in respect of any ordinary train, nor shall the company be responsible for the safe custody or delivery of any mail bags so sent.

XII. And whereas by an act passed in the sixth year of the reign of her Majesty, intituled, "An Act for the better Regulation of Railways, and for the Conveyance of Troops," it was among other things enacted, that whenever it shall be necessary to move any of the officers or soldiers of her Majesty's forces of the line, ordnance corps, marines, militia, or the police force, by any railway, the directors thereof shall and are hereby required to permit such forces, respectively, with their baggage, stores, arms, ammunition, and other necessaries and things, to be conveyed at the usual hours of starting, at such prices or upon such conditions as may from time to time be contracted for between the secretary at war and such railway companies for the conveyance of such forces, on the production of a route or order for their conveyance signed by the proper authorities: and whereas it is expedient to amend such provision in regard to the prices and conditions of conveyance by any new railway or any railway obtaining new powers from Parliament; be it enacted, that all railway companies which have been or shall be incorporated by any act of the present or any future session, or which by any act of the present or any future session shall have obtained or shall obtain any extension or amendment of the powers conferred by their previous acts or any of them, or have been or shall be authorized to do any act unauthorized by the provisions of such previous acts, shall be bound to provide such conveyance as aforesaid for the said military, marine, and police forces, at fares not exceeding two-pence per mile for each commissioned officer proceeding on duty, such officer being entitled to conveyance in a first class carriage, and not exceeding one penny for each mile for each soldier, marine, or private of the militia or police force, and also for each wife, widow, or child above twelve years of age of a soldier entitled by act of Parliament or by competent authority to be sent to their destination at the public expense, children under three years of age so entitled being taken free of charge, and children of three years of age or upwards, but under twelve years of age, so entitled, being taken at half the price of an adult; and such soldiers, marines, and privates of the militia or police force and their wives, widows, and children so entitled, being conveyed in carriages which shall be provided with seats, with sufficient space for the reasonable accommodation of the persons conveyed, and which shall be protected against the weather; provided that every officer conveyed shall be entitled to take with him one hundred weight of personal luggage without extra charge, and every

Certain companies to convey military and police forces at certain charges, 5 & 6 Vict. c. 55.

Railway.

soldier, marine, private, wife, or widow shall be entitled to take with him or her half a hundred weight of personal luggage without extra charge, all excess of the above weights of personal luggage being paid for at the rate of not more than one halfpenny per pound, and all public baggage, stores, arms, ammunition, and other necessaries and things, (except gunpowder and other combustible matters, which the company shall only be bound to convey at such prices and upon such conditions as may be from time to time contracted for between the secretary at war and the company,) shall be conveyed at charges not exceeding twopence per ton per mile, the assistance of the military or other forces being given in loading and unloading such goods.

Companies to allow lines of electrical telegraph to be established.

XIII. And whereas electrical telegraphs have been established on certain railways, and may be more extensively established hereafter, and it is expedient to provide for their due regulation; be it enacted, that every railway company, on being required so to do by the lords of the said committee, shall be bound to allow any person or persons authorized by the lords of the said committee, with servants and workmen, at all reasonable times to enter into or upon their lands, and to establish and lay down upon such lands adjoining the line of such railway a line of electrical telegraph for her Majesty's service, and to give to him and them every reasonable facility for laying down the same, and for using the same for the purpose of receiving and sending messages on her Majesty's service, subject to such reasonable remuneration to the company as may be agreed upon between the company and the lords of the said committee, or in case of disagreement as may be settled by arbitration: provided always, that, subject to a prior right of use thereof for the purposes of her Majesty, such telegraph may be used by the company for the purposes of the railway, upon such terms as may be agreed upon between the parties, or, in the event of difference, as may be settled by arbitration.

Electrical telegraph established by private parties to be open to the public.

XIV. And be it enacted, that where a line of electrical telegraph shall have been established upon any railway by the company to whom such railway belongs, or by any company, partnership, person or persons, otherwise than exclusively for her Majesty's service, or exclusively for the purposes of the railway, or jointly for both, the use of such electrical telegraph, for the purpose of receiving and sending messages, shall, subject to the prior right of use thereof for the service of her Majesty and for the purposes of the company, and subject also to such equal charges and to such reasonable regulations as may be from time to time made by the said railway company, be open for the sending and receiving of messages by all persons alike, without favour or preference.

Appointment of inspectors by Board of Trade. 3 & 4 Vict. c. 97.

XV. And whereas by an act passed in the fourth year of the reign of her Majesty, intituled, "An Act to regulate Railways," power is given to the lords of the said committee to appoint any proper person or persons to inspect any railway, and the stations, works, and buildings, and the engines and carriages belonging thereto; and in order to carry the provisions of this act into execution it is expedient that the said power be extended; be it enacted, that the said power given to the lords of the said committee of appointing proper persons

to inspect railways shall extend to authorize the appointment by the lords of the said committee of any proper person or persons, for such purposes of inspection as are by the said act authorized, and also for the purpose of enabling the lords of the said committee to carry the provisions of this and of the said act and of any general act relating to railways into execution; and that so much of the last recited act as provides that no person shall be eligible to the appointment as inspector who shall, within one year of his appointment, have been a director, or have held any office of trust or profit under any railway company, shall be repealed; provided always, that no person to be appointed as aforesaid shall exercise any powers of interference in the affairs of the company.

XVI. And whereas by the said act of the fourth year of the reign of her Majesty, intituled "An Act for regulating Railways," it is among other things enacted, that whenever it shall appear to the lords of the said committee that any of the provisions of the several acts of Parliament regulating any railway companies, or the provisions of that act, have not been complied with on the part of any of the said companies or any of their officers, and that it would be for the public advantage that the due performance of the same should be enforced, the lords of the said committee shall certify the same to her Majesty's attorney general for England or Ireland, or to the lord advocate for Scotland, as the case may require; and thereupon the said attorney general or lord advocate shall, by information, or by action, bill, plaint, suit at law or in equity, or other legal proceeding (as the case may require), proceed to recover such penalties and forfeitures, or otherwise to enforce the due performance of the said provisions, by such means as any person aggrieved by such non-compliance, or otherwise authorized to sue for such penalties, might employ under the provisions of the said acts; provided always, that no such certificate as aforesaid shall be given by the lords of the said committee until twenty-one days after they shall have given notice of their intention to give the same to the company against or in relation to whom they shall intend to give the same: and whereas it is expedient that more effectual provision should be made, not only for enforcing a compliance on the part of railway companies with the provisions of their acts, but also for restraining railway companies from performing acts unauthorized by such provisions; be it enacted, that so much of the said act as is hereinbefore recited shall be repealed.

Repealing provision of 3 & 4 Vict. c. 97.

XVII. And be it enacted, that whenever it shall appear to the lords of the said committee that any of the provisions of the several acts of Parliament regulating any railway company or the provisions of this act or of any general act relating to railways, have not been complied with on the part of any railway company or any of its officers, or that any railway company has acted or is acting in a manner unauthorized by the provisions of the act or acts of Parliament relating to such railway, or in excess of the powers given and objects defined by the said act or acts, and it shall also appear to the lords of the said committee that it would be for the public advantage that the company should be restrained from so acting, the lords of the said committee shall certify the same to her Majesty's attorney general for England or Ireland, or to the lord advocate for Scotland, as the case may require;

If railway companies contravene or exceed the provisions of their acts, or of any general act, the Board of Trade to certify the same to the attorney general, &c. who shall proceed against them.

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and thereupon the said attorney general or lord advocate shall, in case such default of the railway company shall consist of non-compliance with the provisions of the act or acts relating thereto or of this act, or of any general act relating to railways, proceed by information, or by action, bill, plaint, suit at law or in equity, or other legal proceeding, as the case may require, to recover such penalties and forfeitures, or otherwise to enforce the due performance of the said provisions, by such means as any person aggrieved by such non-compliance, or otherwise authorized to sue for such penalties, might employ under the provisions of the said acts; and in case the default of the railway company shall consist in the commission of some act or acts unauthorized by law, then the said attorney general or lord advocate, upon receiving such certificate as aforesaid, shall proceed by suit in equity, or such other legal proceeding as the nature of the case may require, to obtain an injunction or order, (which the judge in equity or other judge to whom the application is made shall be authorized and required to grant, if he shall be of opinion that the act or acts of the railway company complained of is or are not authorized by law,) to restrain the company from acting in such illegal manner, or to give such other relief as the nature of the case may require.

Notice to be given to the company.

XVIII. Provided always, and be it enacted, that no such certificate as aforesaid shall be given by the lords of the said committee until twenty-one days after they shall have given notice to the company against or in relation to whom they shall intend to give such certificate of their intention to give such certificate; and that no legal proceedings shall be commenced under the authority of the lords of the said committee against any railway company for any offence against any of the several acts relating to railways, of this act, or any general act relating to railways, except upon such certificate of the lords of the said committee as aforesaid, and within one year after such offence shall have been committed.

Prosecutions to be under the sanction of the Board of Trade, and within one year after the offence.

Issue of loan notes, and other illegal securities, by railway companies prohibited.

XIX. And whereas many railway companies have borrowed money in a manner unauthorized by their acts of incorporation or other acts of Parliament relating to the said companies, upon the security of loan notes or other instruments purporting to give a security for the repayment of the principal sums borrowed at certain dates, and for the payment of interest thereon in the mean time: and whereas such loan notes or other securities issued otherwise than under the provision of some act or acts of Parliament have no legal validity, and it is expedient that the issue of such illegal securities should be stopped; but such loan notes or other securities having been issued and received in good faith as between the borrower and lender, and for the most part for the lawful purposes of the undertaking, and in ignorance of their legal invalidity, it is expedient to confirm such as have been already issued: be it enacted, that from and after the passing of this act any railway company issuing any loan note or other negotiable or assignable instrument purporting to bind the company as a legal security for money advanced to the said railway company otherwise than under the provisions of some act or acts of Parliament authorizing the said railway company to raise such money and to issue such security, shall for every such offence forfeit to her Majesty a

sum equal to the sum for which such loan note or other instrument purports to be such security : provided always, that any company may renew any such loan note or other instrument issued by them prior to the passing of this act for any period or periods not exceeding five years from the passing of this act.

Railway.

Loan notes already issued may be renewed.

XX. And be it enacted that where any railway company, before the twelfth day of July one thousand eight hundred and forty-four shall have issued or contracted to issue any such loan notes or other unauthorized instruments, the company may and shall pay off such loan notes or other instruments as the same may fall due, subject as herein before provided ; and until the same shall be so paid off the said loan notes or other instruments shall entitle the holders thereof to the payment by the company of the principal sum and interest thereby agreed to be paid.

Loan notes already issued to be paid when due.

XXI. And be it enacted, that a register of all such loan notes or other instruments shall be kept by the secretary ; and such register shall be open, without fee or reward, at all reasonable times, to the inspection of any shareholder or auditor of the undertaking, and of every person interested in any such loan note or other instrument, desirous of inspecting the same.

Register of loan notes.

XXII. And whereas the remedies now in force for the recovery of tithe commutation rent-charges are in many instances ineffectual for such parts thereof as are charged upon lands taken for the purposes of a railway, and it is therefore expedient to extend the said remedies when the said rent-charges may have been duly apportioned ; be it enacted, that in all cases in which any such rent-charge, or part of any rent-charge, has been or hereafter shall be duly apportioned under the provisions of the acts for the commutation of tithes in England and Wales, upon lands taken or purchased by any railway company for the purposes of such company, or upon any part of such lands, it shall be lawful for every person entitled to the said rent-charge or parts of such rent-charge in case the same has been or shall be in arrear and unpaid for the space of twenty-one days next after any half-yearly day fixed for the payment thereof, to distrain for all arrears of the said rent-charge upon the goods, chattels, and effects of the said company, whether on the land charged therewith, or any other lands, premises, or hereditaments of such company, whether situated in the same parish or elsewhere, and to dispose of the distress when taken, and otherwise to demean himself in relation thereto, as any landlord may for arrears of rent reserved on a lease for years : provided always, that nothing herein contained shall give or be construed to give a legal right to such rent-charge, when but for this act such rent-charge was not or could not be duly apportioned.

Remedy for recovery of tithe rent charged on railway land.

XXIII. And be it enacted, that all notices, requisitions, orders, regulations, appointments, certificates, certified copies, and other documents in writing, signed by some officer appointed for that purpose by the lords of the said committee, shall for the purposes of this act be deemed to have been made by the lords of the said committee ; and all certificates of anything done by the lords of the said committee in relation to this act, and certified copies of the minutes of proceedings

Communications to and from Board of Trade, service of notices, &c.

Railway.

or correspondence of the lords of the said committee in relation thereto, signed by such officer, shall be deemed sufficient evidence thereof, and that in the absence of evidence to the contrary, without proof of the authority of the person signing the same or of the signature thereto, and service of the same at one of the principal offices of any railway company on the secretary or clerk of the said company, or by sending the same, by post, addressed to him at such office, shall be deemed good service upon the said company; and all notices, returns, and other documents required by this act to be given to or laid before the lords of the said committee, shall be delivered at or sent by post addressed to the office of the lords of the said committee.

Penalties.

XXIV. And be it enacted, that all penalties under this act for the application of which no special provision is made shall be recovered in the name and for the use of her Majesty, and may be recovered in any of her Majesty's courts of record, or in the court of session, or in any of the sheriff courts in Scotland.

Interpretation of act.

XXV. And be it enacted, that where the word "railway" is used in this act it shall be construed to extend to railways constructed under the powers of any act of Parliament: and when the words "passenger railway" are used in this act, they shall be construed to extend to railways constructed under the powers of any act of Parliament upon which one-third or more of the gross annual revenue is derived from the conveyance of passengers by steam or other mechanical power; and whenever the word "company" is used in this act it shall be construed to extend to include the proprietors for the time being of any such railway; and that where a different sense is not expressly declared, or does not appear by the context, every word importing the singular number or the masculine gender shall be taken to include females as well as males, and several persons and things as well as one person or thing.

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7 & 8 VICT. CHAP. 110.

An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies. [5th September, 1844.]

Joint Stock Companies.

Whereas it is expedient to make provision for the due registration of Joint Stock Companies during the formation and subsistence thereof; and also, after such complete registration as is herein-after mentioned, to invest such companies with the qualities and incidents of corporations, with some modifications, and subject to certain conditions and regulations; and also to prevent the establishment of any companies which shall not be duly constituted and regulated according to the provisions of this act: now be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present Parliament assembled, and by the authority of the same, that this act shall come into operation at the following times; that is to

Operation of act as to time.

say, as to the officers to be appointed in pursuance hereof for the registration of companies, and the regulation of the office hereby provided for that purpose, immediately on the passing hereof; and as to all companies to which this act is to apply, and all other the provisions herein-after contained, except such as relate to such officers and office as aforesaid, on the first day of November in the year one thousand eight hundred and forty-four.

Joint Stock Companies.

II. And be it enacted, that this act shall apply to every Joint Stock Company, as herein-after defined, established in any part of the united kingdom of Great Britain and Ireland except Scotland, or established in Scotland, and having an office or place of business in any other part of the united kingdom, for any commercial purpose, or for any purpose of profit, or for the purpose of assurance or insurance (except banking companies, schools, and scientific and literary institutions, and also friendly societies, loan societies, and benefit building societies, respectively duly certified and enrolled under the statutes in force respecting such societies, other than such friendly societies as grant assurances on lives to the extent herein-after specified;) and that the term "Joint Stock Company" shall comprehend—

Operation of act as to companies.

Application of term "Joint Stock Company."

Every partnership whereof the capital is divided or agreed to be divided into shares, and so as to be transferrable without the express consent of all the copartners; and also,

Every Assurance Company, or Association for the purpose of assurance or insurance on lives, or against any contingency involving the duration of human life, or against the risk of loss or damage by fire, or by storm, or other casualty, or against the risk of loss or damage to ships at sea or on voyage, or to their cargoes, or for granting or purchasing annuities on lives; and also every institution enrolled under any of the Acts of Parliament relating to friendly societies, which institutions shall make assurances on lives, or against any contingency involving the duration of human life to an extent upon one life or for any one person to an amount exceeding two hundred pounds, whether such companies, societies, or institutions, shall be joint Stock Companies, or Mutual Assurance Societies, or both and also,

Every partnership which at its formation, or by subsequent admission (except any admission subsequent on devolution or other act in law), shall consist of more than twenty-five members:

And that, except where the provisions of this act are expressly applied to partnerships existing before the said first day of November, it shall be held to apply only to partnerships the formation of which shall be commenced after that date: provided nevertheless, that, except as herein-after specially provided, this act shall not extend to any company for executing any bridge, road, cut, canal, reservoir, aqueduct, waterwork, navigation, tunnel, archway, railway, pier, port, harbour ferry, or dock, which cannot be carried into execution without obtaining the authority of Parliament: provided also, that except as herein-after is specially provided, this act shall not extend to any company incorporated, or which may be hereafter incorporated, by statute or charter, nor to any company authorized, or which may be hereafter authorized, by statute or letters patent, to sue and be sued in the name of some officer or person.

Future companies.

Companies for executing Parliamentary works.

Incorporated companies.

Joint Stock
Companies.

Construction
of words.

III. And be it declared, that the following words and expressions are intended to have the meanings hereby assigned to them respectively, so far as such meanings are not excluded by the context or by the nature of the subject matter; that is to say,

The word "company" to mean any Joint Stock Company or other institution, as before defined :

The expression "assurance company" to mean any assurance company, association, or institution, as before defined :

The word "directors" to mean the persons having the direction, conduct, management, or superintendence of the affairs of a company :

The expression "promoter," or "promoter of a company," to apply to every person acting by whatever name in the forming and establishing of a company at any period prior to the company obtaining a certificate of complete registration as herein-after mentioned :

The word "subscriber" to mean any person who shall have agreed in writing to take or have taken any shares in a proposed company, or in a company formed, and who shall not have executed the deed of settlement, or a deed referring thereto :

The word "shareholder" to mean any person entitled to a share in a company, and who has executed the deed of settlement, or a deed referring to it, or, in the case of mutual assurance societies, any person who shall be an assured member thereof :

The word "person" to apply to bodies politic or corporate, whether sole or aggregate :

The expression "commissioners of the treasury" to apply to the Lord High Treasurer for the time being, or the commissioners of her Majesty's treasury for the time being, or any three or more of them :

The expression "committee of privy council for trade" to mean the lords of the committee of her Majesty's privy council for the consideration of all matters of trade and plantations :

The expression "secretary of the committee" to mean one of the joint assistant secretaries of the said committee of privy council for trade :

The word "justice" to mean a justice of the peace for the county, city, borough, liberty, or place where the matter requiring the cognizance of any justice shall arise, and who shall not be interested in the matter :

The expression "special authority" to mean any deed of settlement, bye-laws, letters patent, charter or local and personal act of Parliament, by which powers are conferred or regulations prescribed with reference to any individual company :

The word "prescribed" to mean provided for by special authority :

The word "month" to mean calendar month :

The expression "superior courts" to mean her Majesty's superior courts of law or equity in England or Ireland :

The word "occupation," when applied to any person, to mean his trade or following, and, if none, then his rank or usual title, as esquire, gentleman :

The expression "place of residence" to include the street, square, or place where the party shall reside, and the number (if any), or other designation of the house in which he shall so reside :

The word "oath" to include affirmation or other declaration lawfully substituted for an oath :

**Joint Stock
Companies.**

And generally, whensoever, with regard to any matter, or to any function in respect thereof, the name of an officer (whether a public officer or an officer of a company) ordinarily having cognizance of such matter, or ordinarily exercising such function, is mentioned, such reference is to be understood to apply as well to any other person or officer who may have cognizance of such matter, or exercise such function in respect of such matter :

And, subject as aforesaid to the context and to the nature of the subject matter, words denoting the singular number are to be understood to apply also to a plurality of persons or things, and words denoting the masculine gender are to be understood to apply also to persons of the feminine gender.

IV. And be it enacted, that before proceeding to make public, whether by way of prospectus, handbill, or advertisement, any intention or proposal to form any company for any purpose within the meaning of this act, whether for executing any such work as aforesaid under the authority of Parliament, or for any other purpose, it shall be the duty of the promoters of such company and they or some of them are hereby required to make to the office hereby provided for the registration of Joint Stock Companies (and herein-after called the registry office) returns of the following particulars according to the schedule (C.) hereunto annexed : that is to say,

**Provisional
registration.**

1. The proposed name of the intended company ; and also,
2. The business or purpose of the company ; and also,
3. The names of its promoters, together with their respective occupations, places of business (if any), and places of residence ;

**Returns by
promoters of
companies.**

And also the following particulars, either before or after such publication as aforesaid, when and as from time to time they shall be decided on ; viz.

4. The name of the street, square, or other place in which the provisional place of business or place of meeting shall be situate, and the number (if any) or other designation of the house or office ; and also,
5. The names of the members of the committee or other body acting in the formation of the company, their respective occupations, places of business (if any), and places of residence, together with a written consent on the part of every such member or promoter to become such, and also a written agreement on the part of such member or promoter, entered into with some one or more persons as trustees for the said company, to take one or more shares in the proposed undertaking, which must be signed by the member or promoter whose agreement it purports to be (but such agreements need not be on a stamp) ; and also,
6. The names of the officers of the company and their respective occupations, places of business (if any), and places of residence ; and also,
7. The names of the subscribers to the company, their respective occupations, places of business (if any), and places of residence ; and also, before it shall be circulated or issued to the public,

Joint Stock Companies.

8. A copy of every prospectus or circular, handbill or advertisement, or other such document at any time addressed to the public, or to the subscribers or others, relative to the formation or modification of such company :

9. And afterwards, from time to time, until the complete registration of such company, a return of a copy of every addition to or change made in any of the above particulars :

Certificate.

And that upon such registration of at the least the three particulars first before mentioned the promoters of such company shall be entitled to a certificate of provisional registration.

Penalty as to delaying registration.

V. And be it enacted, that if for a period of one month after the particulars hereby required to be registered, or any of them, shall have been ascertained or determined, the promoters of any company fail to register such particulars, then, on conviction thereof, any promoter as aforesaid shall be liable to forfeit for every such offence a sum not exceeding twenty pounds.

Relief from penalties by the appointment of a solicitor.

VI. Provided always, and be it enacted, that if the promoters of a proposed company appoint a person, being an attorney or solicitor of one of her Majesty's superior Courts of Law or Equity, to be solicitor for the promoters of such company, and return to the said registry office a duplicate of such appointment in writing, signed by some one or more of such promoters, together with a duplicate of the acceptance of such appointment, signed by the person so appointed, then, until a duplicate of the revocation or of the resignation of such appointment be returned in like manner, so signed as aforesaid, or until the decease of such solicitor, all returns by this act required to be made by such promoters shall be made by such solicitor in their behalf, and the penalty herein before imposed in respect of any failure to make such returns shall not be incurred by them ; and that if within the period of one month after the particulars hereby required to be registered, or any of them, shall have been ascertained or determined, such solicitor fail to make such returns, then he shall be liable to forfeit for every such offence a sum not exceeding twenty pounds ; and that if it be made to appear to the court to which he shall belong that he fraudulently omitted to make a return of any such particulars, then he shall be liable to be suspended from practice for any time to be appointed by the said court, or to be struck off the rolls of the said court.

Return of appointment and acceptance.**Penalty on solicitor.****Complete registration :**

VII. And be it enacted, that it shall not be lawful for any Joint Stock Company hereafter to be formed for any purpose within the meaning of this act, whether for executing any such work as aforesaid under the authority of Parliament, or for any other purpose, to act otherwise than provisionally in accordance with this act until such company shall have obtained a certificate of complete registration as hereinafter provided ; and no Joint Stock Company shall be entitled to receive a certificate of complete registration unless it be formed by some deed or writing under the hands and seals of the shareholders therein ; and in or by such deed there must be appointed not less than three directors, and also one or more auditors ; and such deed must set forth in a schedule thereto, in a tabular manner, according to the order hereinafter mentioned, the following particulars ; that is to say,

Constitution of companies.**Provisions of deeds of settlement.**

1. The name of the company ; and also,
2. The business or purpose of the company ; and also,
3. The principal or only place for carrying on such business, and every branch office (if any), and also,
4. The amount of the proposed capital, and of any proposed additional capital, and the means by which it is to be raised ; and where the capital shall not be money, or shall not consist entirely of money, then the nature of such capital and the value thereof shall be stated ; and also,
5. The amount of money (if any) to be raised or authorized to be raised by loan ; and also,
6. The total amount of the capital subscribed or proposed to be subscribed at the date of such deed ; and also,
7. The division of the capital (if any) into equal shares, and the total number of such shares, each of which is to be distinguished by a separate number in a regular series ; and also,
8. The names and occupations and (except bodies politic) the places of residence of all the then subscribers, according to the information possessed by the officers of the company in respect of such names and occupations and places of residence ; and also,
9. The number of the shares which each subscriber holds, and the distinctive numbers thereof, distinguishing the numbers of the shares on which the deposit has been paid from those on which it has not been paid ; and also,
10. The names of the then directors of the company, and of the then trustees of the company (if any), and of the then auditors of the company, together with their respective places of business (if any), occupations, and places of residence ; and also,
11. The duration of the company, and the mode or condition of its dissolution :

And that such deed must contain a covenant on the part of every shareholder, with a trustee on the part of the company, to pay up the amount of the instalments on the shares taken by such shareholder, and to perform the several engagements in the deed contained on the part of the shareholders ; and that such deed must also make provision for such of the purposes set forth in schedule (A.) to this act annexed as the nature and business of the company may require, and either with or without provision for such other purposes (not inconsistent with law) as the parties to such deed shall think proper ; and that every such deed of settlement must be signed by at least one-fourth in number of the persons who at the date of the deed have become subscribers, and who shall hold at least one-fourth of the maximum number of shares in the capital of the company ; and that every such deed must be certified by two directors of the company, by writing endorsed thereon in the form contained in the Schedule (B.) to this act annexed ; and that on the production of such deed, setting forth such matters and making such provisions as are hereby required to be provided for, and being so signed and certified, together with a complete abstract or index thereof, to be previously approved by the registrar of Joint Stock Companies, and also a copy of such deed, for the purpose of registering the same, or as soon after such production as conveniently may be, the registrar of Joint Stock Companies shall grant a certificate of complete registration, according to the pro-

Covenant to pay instalments.

Provision in deed for purposes in schedule (A.)

Execution of deed of settlement.

Authentication.

Registration of deed.

Joint Stock Companies.**Supplementary deed.**

visions of this act in that behalf; and unless such deed and other matters be so produced, and such conditions be so performed, it shall not be lawful for him to grant such certificate; and that after such certificate shall be granted it shall be taken as evidence of the proper provisions being inserted in such deed, and of the performance of the conditions hereby required previously to the granting such certificate of complete registration; and that any defect or omission as regards the matters hereby required in any deed of settlement may from time to time be supplied by a supplementary deed or deeds; and that if any such supplementary deed be not inconsistent with or repugnant to this act, or any act respecting Joint Stock Companies, and if it be duly registered, then it shall have the same effect as if there were only one deed for the purposes of this act; and that unless the same shall be registered it shall be of no force or effect.

Notification of incompleteness of deeds of settlement.

VIII. And be it enacted, that if any deed of settlement or supplementary deed of settlement, whether made before or after the granting of the certificate of complete registration, appear to such registrar of Joint Stock Companies to be insufficient by reason of the omission or incompleteness of any of the provisions therein contained for the purposes set forth in the said schedule (A.), or if the deed contain provisions which appear to such registrar to be inconsistent with or repugnant to this act, or any act for the time being in force respecting Joint Stock Companies, then as soon thereafter as conveniently may be such registrar shall notify the same in writing to the persons or to the company by whom the deed shall have been presented for registration, specifying in such notification the particulars wherein such deed of settlement or supplementary deed of settlement is incomplete, or inconsistent with or repugnant to any such act as aforesaid.

Companies for executing Parliamentary works to register copies of documents required to be deposited by the standing orders.

IX. Provided always, and be it enacted, that if any company for executing any bridge, road, cut, canal, reservoir, aqueduct, water-work, navigation, tunnel, archway, railway, pier, port, harbour, ferry, or dock, which cannot be carried into execution without the authority of Parliament, deposit at the proper offices of the two houses of Parliament, in compliance with the standing orders of such houses respectively, and at or within the time required by such standing orders, such deeds of partnership or subscription contracts as shall be required to be deposited by such standing orders, and also return to the said registry office a copy of such deeds of partnership or subscription contracts, together with such certificate of the receipt of such plans, sections, and books of reference as shall be appointed by the said committee of privy council for trade, then it shall be lawful for the registrar of Joint Stock Companies, and he is hereby required to accept the same instead of the deed of settlement by this act required to be returned for the purpose of obtaining a certificate of complete registration; and thereupon such company shall be entitled to a certificate of complete registration accordingly.

Certificate of complete registration.**Further registration: Returns of further deeds and changes.**

X. And be it enacted, that throughout the continuance of any Joint Stock Company completely registered under this act, except such companies as shall have been incorporated by act of Parliament after complete registration, and within one month after the date of

any new or supplementary deed of settlement, there shall be transmitted by the directors of every such company to the registrar of Joint Stock Companies a copy of such new or supplementary deed of settlement, together with a complete abstract thereof so approved of as aforesaid; and within six months after any change shall have taken place in any of the particulars herein-before required to be set forth in the schedule to the deed of settlement, except so far as respects the shareholders thereof and their respective shares, there shall be transmitted returns of such particulars, so far as the same shall have been changed; and if within such period any such return be not made, then, on conviction thereof, every director of such company shall be liable to pay a sum not exceeding twenty pounds.

Joint Stock
Companies.

Penalty.

XI. And be it enacted, that in the months of January and July in every year the directors of every Joint Stock Company completely registered under this act, except companies which shall have been incorporated by act of Parliament after complete registration, shall make or cause to be made the following returns to the registrar of Joint Stock Companies; namely,

Half-yearly
returns of
changes and
additions of
members.

A return according to the schedule (E) hereunto annexed, and containing the particulars therein set forth, of every transfer of any share in such company which shall have been made since the preceding half-yearly return (or, in the case of the first of such returns made by such company since the complete registration thereof), and which shall have come to the knowledge of the directors:

And also a return according to the schedule (F.) hereunto annexed, and containing the particulars therein set forth, of the names and places of abode of all persons who shall either have ceased to be shareholders of such company, or have become shareholders of such company otherwise than by a transfer as aforesaid, since the preceding half-yearly return, or since the complete registration of the company, as the case may require, and also of the changes in the names of all shareholders of such company whose names shall have been changed by marriage or otherwise since the last preceding half-yearly return, or since the complete registration of the company, as the case may require:

And if within any such period any such return be not made, then, on conviction thereof, every director of such company shall be liable to pay a sum not exceeding twenty pounds.

Penalty.

XII. And be it enacted, that if at any time any party to a transfer of a share request in writing the directors of any such company to make a return thereof, then forthwith on such request the directors shall make the same accordingly; and that on proof of such transfer and such request to the satisfaction of the registrar of Joint Stock Companies it shall be lawful for any such party to make a return of such transfer, which shall be received, marked, and registered, and with the same effect, as hereby provided in the case of returns made by such companies.

Returns made
by request.

XIII. And be it enacted, that until the return of the transfer or other fact or event whereby a person becomes the holder of any

Non-registra-
tion of shares
transferred.

- Joint Stock Companies.** shares be made, pursuant to the provisions herein-before contained, it shall not be lawful for such company, its directors or officers, if such fact or event be known to them respectively, to pay to any such person any part of the profits of the concern, nor for any such person to sue for or recover any part of the profits arising in respect of such share, or in anywise to act as a shareholder; and that until the return of the transfer of any share shall have been made pursuant to the provisions herein-before contained the person whose share shall have been thereby transferred shall, so far as respects his liability to the debts and engagements of the company, and also as respects the reimbursement of any loss, damages, costs, and charges he may incur thereby, be deemed to continue a shareholder of such company.
- Continuance of liability.**
- Periodical registration of companies.** XIV. And be it enacted, that annually in the month of January in every year every company completely registered under this act, except companies which shall have been incorporated by Act of Parliament after complete registration, shall make to the said registry office a return of the name and business of the company; and that on the receipt of such return the registrar of Joint Stock Companies shall give a certificate thereof; and that if within the further period of one month such return be not made, then, on conviction thereof, such company shall be liable to pay a sum not exceeding twenty pounds: Provided always, that it shall be lawful for the lords of the said committee, on the application of any company, to appoint any other period of the year for the making of such annual return as aforesaid.
- Penalty.**
- Returns generally: evidence of registration.** XV. And be it enacted, that when the particulars and documents severally by this act required to be returned to the said registry office shall have been so returned, it shall be the duty of the said registrar of Joint Stock Companies, and he is hereby required to cause to be written on every such document and return of particulars brought to him for registration the day of the receipt thereof, and to cause to be marked on every such return or document, in writing or otherwise, a number denoting the order in which the same was received, and also, upon demand, to cause an acknowledgment of the receipt of such return or document to be given to the person by whom the same shall be so brought; and that if such returns or documents be conformable to the provisions of this act, or of any regulations in that behalf, then it shall be the duty of the registrar and he is hereby required forthwith to register the same, and, on demand, to grant to such company a certificate of provisional or complete registration, as the case may require, signed by him, and sealed with the seal of his office; which certificate must set forth whether the company has been constituted provisionally or completely; and that, in the absence of evidence to the contrary, any such certificate, or a copy of any such return as aforesaid, shall be received in evidence, without proof of the signature thereto, or of the seal of office affixed thereto.
- Certificates of registration.**
- Effect of certificate as evidence.**
- Authentication of returns.** XVI. And be it enacted, that until the company shall have obtained its certificate of complete registration the promoters of the company, or their solicitor as aforesaid, shall make or cause to be made every return by this act required to be made; and after such company shall have obtained a certificate of complete registration the

directors of the company shall make or cause to be made every such return; and one or more of such promoters, or their solicitor, or such directors, as the case may be, shall sign such return; and every such return which shall be made after complete registration of the company shall be sealed with the seal of the company.

**Joint Stock
Companies.**

XVII. And be it enacted, that if the committee of privy council for trade shall deem it expedient, then it shall be lawful for the said committee and they are hereby authorized from time to time to make regulations respecting the form of any such returns as are hereby directed to be made, and the manner and time of making them, and for those purposes to alter and vary the schedules annexed to this act, and to dispense with any of the returns hereby made necessary, or any of the forms of returns prescribed by this act; and that every such regulation shall be published in the *London Gazette*, and there-upon shall be of the like force as if the same were contained in this act: provided always, that nothing herein contained shall be construed to permit the said committee to make any such regulations which shall not apply alike to all such companies as may be registered under the authority of this act, so far as the same may be applicable to them.

**Regulations as
to returns.**

**Regulations to
apply to all
companies.**

XVIII. And be it enacted, that every person shall be at liberty to inspect the returns, deeds, registers, and indexes which shall be made to or kept by the said registrar of Joint Stock Companies; and that there shall be paid for such inspection such fees as may be appointed by the commissioners of her Majesty's treasury in that behalf, not exceeding one shilling for each such inspection; and that any person shall be at liberty to require a copy or extract of any such return or deed, to be certified by the said registrar; and there shall be paid for such certified copy or extract such fee as the commissioners of her Majesty's treasury may appoint in that behalf, not exceeding sixpence for each folio of such copy or extract; and that in all courts of law and equity and elsewhere every such copy or extract so certified shall be received in evidence, without proof of the signature thereto, or of the seal of office affixed thereto.

**Inspection of
returns at
registry office.**

**Certified copies
of extracts.**

XIX. And be it enacted, that it shall be lawful for the committee of privy council for trade and they are hereby empowered to appoint a person to be and to be called the registrar of Joint Stock Companies, and, if the said committee see fit, an assistant registrar, clerks, and other necessary officers and servants; and that every such registrar and assistant registrar, clerks, and officers, shall be entitled to hold their offices during the pleasure only of the said committee; and that from time to time it shall be lawful for the commissioners of her Majesty's treasury and they are hereby authorized to fix the salary or remuneration of such registrar, assistant registrars, clerks officers, and servants; and that, subject to the provisions of this act, it shall be lawful for the said committee of privy council for trade, and they are hereby authorized to make rules for regulating the execution of the office of the said registrar; and that such registrar shall have a seal of office to be by him used in the authentication of all matters relating to his said office in respect of which such authentication is by this act required; and that such assistant registrar

**Office for
registration:**

**Appointment
of registrar.**

Joint Stock Companies.**Assistant registrar.****Leave of absence.****Registrar's office attendance.****Fees of registration****Commissioners of treasury may fix other fees.****Balance to go to consolidated fund.****Fees.**

shall, in the absence of the registrar, be competent to do all things which the registrar is authorized or empowered, directed, or required to do, as fully and effectually, to all intents and purposes, as the registrar himself may do; and all provisions in this act relating to the signature and seal of office of the said registrar shall apply to the said assistant registrar: Provided always, that the registrar shall not be absent from the duties of his office, except on account of ill health or other urgent cause, without express leave in writing of the said committee of privy council for trade for that purpose previously obtained.

XX. And be it enacted, that from the hour of ten of the clock in the morning until five of the clock in the afternoon, and at such other times as the said committee of privy council for trade shall appoint, such registrar, or in the unavoidable, or, as aforesaid, permitted absence of the registrar, then such assistant registrar, shall give his attendance at the said office every day throughout the year, except Sundays, Good Friday, Christmas day, and any other general holiday or fast day appointed by her Majesty in council.

XXI. And be it enacted, that every company shall pay the following fees; (that is to say.)

For a certificate of provisional registration the sum of five pounds:

For a certificate of complete registration the sum of five pounds; and one shilling additional in respect of every thousand pounds value of capital, as declared on the formation of the company in the deed of settlement, or by any other special authority:

For an annual certificate the sum of one pound:

And also such other fees as shall be appointed to be paid in respect of any other services to be performed by the said registrar; and that from time to time it shall be lawful for the commissioners of her Majesty's treasury, and they are hereby authorized, in addition to the fees herein-before required to be paid in respect of such certificates, to fix such other fees to be paid for the services to be performed by the registrar of Joint Stock Companies as they shall deem requisite to defray both the expenses of the said office and the salaries or other remuneration of the said registrar and of any other person employed under him, with the sanction of the said commissioners of her Majesty's treasury, in the execution of this act; and that the balance, if any, shall be carried to the consolidated fund of the United Kingdom of Great Britain and Ireland, and be paid accordingly into the receipt of her Majesty's Exchequer at Westminster; and that it shall be lawful for the said commissioners of her Majesty's treasury to regulate the manner in which such fees are to be received, and in which they are to be kept, and in which they are to be accounted for: Provided always, that if within two years after a company shall have obtained a certificate of complete registration such company shall obtain an act for the incorporation thereof, then three-fourths of the fee paid by or on behalf of such company on such complete registration in respect of the capital of the company shall be reimbursed and repaid to the said company, and that it shall be lawful for the said commissioners of her Majesty's treasury and they are hereby authorized and empowered to repay the same accordingly.

XXII. And be it enacted, that if either the said registrar of Joint Stock Companies, or any person employed under him, either demand or receive any gratuity or reward in respect of any service performed by him, other than the fees aforesaid, then for every such offence every such registrar or person shall be guilty of a misdemeanor.

Joint Stock
Companies.

Extortion a
misdemeanor.

XXIII. And be it enacted, that on the provisional registration of any company being certified by the registrar of Joint Stock Companies it shall be lawful for the promoters of any company so registered to act provisionally, but not for any longer period than twelve months from the date of the certificate, unless such certificate shall be renewed, which may be done on application for that purpose; and no such renewed certificate shall be in force for a longer period than twelve months from the date thereof; and it shall be lawful for the promoters of such company,—

On provisional
registration :

To assume the name of the intended company, but coupled with the words "Registered provisionally;" and also,

Effect of
provisional
registration.

To open subscription lists; and also,

To allot shares, and receive deposits by way of earnest thereon, at a rate not exceeding ten shillings for every one hundred pounds on the amount of every share in the capital of the intended company; and also, in the case of companies for executing any bridge, road, cut, canal, reservoir, aqueduct, waterwork, navigation, tunnel, archway, railway, pier, port, harbour, ferry, or dock, which cannot be carried into execution without the authority of Parliament, in addition to and exclusive of such sum of ten shillings *per* hundred pounds, such further sum *per* hundred pounds on the amount of every such share as may be required by the standing orders of either House of Parliament to be deposited before the obtaining of an act of Parliament for enabling the company to execute such work; and also,

To perform such other acts only as are necessary for constituting the company, or for obtaining letters patent, or a charter, or an act of Parliament;

But not to make calls, nor to purchase, contract for, or hold lands, nor to enter into contracts for any services, or for the execution of any works, or for the supply of any stores, except such services and stores or other things as are necessarily required for the establishing of the company, and except any purchase or other contract to be made conditional on the completion of the company, and to take effect after the certificate of complete registration, act of Parliament, or charter or letters patent, shall have been obtained, and, except in the case of companies for executing such works as aforesaid, contracts for services in making surveys and performing all other acts necessary for obtaining an act of incorporation or other act for enabling the company to execute such works.

XXIV. And be it enacted, that if before a certificate of provisional registration shall be obtained, the promoters or any of them, or any person employed by or under them, take any monies in consideration of the allotment either of shares or of any interest in the concern, or by way of deposit for shares to be granted or allotted; or issue, in the name or on behalf of the company, any note or scrip, or letter of

Proceedings
of companies
before registra-
tion.

Joint Stock Companies.

Penalty.

allotment, or other instrument or writing to denote a right or claim, or preference or promise, absolute or conditional, to any shares; or advertise the existence or proposed formation of the company; or make any contract whatsoever for or in the name or on behalf of such intended company; then every such person shall be liable to forfeit for every such offence a sum not exceeding twenty-five pounds: and that it shall be lawful for any person to sue for and recover the same by action of debt.

On complete registration.
Powers and privileges.

Incorporation.

XXV. And be it enacted, that on the complete registration of any company being certified by the registrar of Joint Stock Companies such company and the then shareholders therein, and all the succeeding shareholders, whilst shareholders, shall be and are hereby incorporated as from the date of such certificate by the name of the company as set forth in the deed of settlement, and for the purpose of carrying on the trade or business for which the company was formed, but only according to the provisions of this act, and of such deed as aforesaid, and for the purpose of suing and being sued, and of taking and enjoying the property and effects of the said company; and thereupon any covenants or engagements entered into by any of the shareholders or other persons with any trustee on the behalf of the company, at any time before the complete registration thereof, may be proceeded on by the said company and enforced in all respects as if they had been made or entered into with the said company after the incorporation thereof; and such company shall continue so incorporated until it shall be dissolved, and all its affairs wound up; but so as not in anywise to restrict the liability of any of the shareholders of the company, under any judgment, decree or order for the payment of money which shall be obtained against such company, or any of the members thereof, in any action or suit prosecuted by or against such company in any court of law or equity; but every such shareholder shall in respect of such monies, subject as after mentioned, be and continue liable as he would have been if the said company had not been incorporated; and thereupon it shall be lawful for the said company, and they are hereby empowered, as follows: that is to say,

Without restriction of liability.

Company empowered to act.

1. To use the registered name of the company, adding thereto "registered;" and also,
2. To have a common seal, (with power to break, alter, and change the same from time to time), but on which must be inscribed the name of the company; and also,
3. To sue and be sued by their registered name in respect of any claim by or upon the company upon or by any person, whether a member of the company or not, so long as any such claim may remain unsatisfied: and also,
4. To enter into contracts for the execution of the works, and for the supply of the stores, or for any other necessary purpose of the company; and also,
5. To purchase and hold lands, tenements, and hereditaments in the name of the said company, or of the trustees or trustee thereof, for the purpose of occupying the same as a place or places of business of the said company, and also (but nevertheless with a license, general or special, for that purpose, to be granted by the committee of the privy council for trade, first had and obtained,) such other lands, tenements, and heredita-

- ments as the nature of the business of the company may require: and also,
6. To issue certificates of shares; and also,
 7. To receive instalments from subscribers in respect of the amount of any shares not paid up; and also,
 8. To borrow or raise money within the limitations prescribed by any special authority; and also,
 9. To declare dividends out of the profits of the concern; and also,
 10. To hold general meetings periodically, and extraordinary meetings upon being duly summoned for that purpose; and also,
 11. To make from time to time, at some general meeting of shareholders specially summoned for the purpose, bye-laws for the regulation of the shareholders, members, directors, and officers of the company, such bye-laws not being repugnant to or inconsistent with the provisions of this act or of the deed of settlement of the company; and also,
 12. To perform all other acts necessary for carrying into effect the purposes of such company, and in all respects as other partnerships are entitled to do:

And the said company are hereby empowered and required,—

13. To appoint from time to time, for the conduct and superintendence of the execution of the affairs of the company, a number of directors, not less than three, for a period not greater than five years, with or without eligibility to be re-elected at the expiration of the term, as may be prescribed by any deed of settlement or bye-law; and also,
14. To appoint and remove one or more auditors, and such other officers as the deed of settlement under which the company shall be constituted may authorize:

Subject nevertheless, with respect to all such powers and privileges, to the provisions of this act, and subject also to the provisions of the deed of settlement of the company or any other special authority: provided always, with regard to any company for executing any bridge, road, cut, canal, reservoir, aqueduct, waterwork, navigation, tunnel, archway, railway, pier, port, harbour, ferry, or dock, which cannot be carried into execution without obtaining the authority of Parliament, that on the complete registration of any such company, and before such company shall have obtained its act of incorporation or other act whereby the authority of Parliament shall be granted for executing such work, it shall not be lawful for any such company or the directors or officers thereof to exercise the herein-before mentioned power to enter into contracts, otherwise than conditionally upon obtaining such act, or to exercise the power to purchase and hold lands as aforesaid, or to exercise the power to receive instalments from shareholders beyond the sum or per-centage necessary to be deposited in compliance with the standing orders of either House of Parliament, or such other sum as may be requisite for obtaining the act of incorporation or other act for granting the authority of Parliament to execute such work, or to exercise the power to borrow money, as aforesaid, or to exercise the power to declare dividends, as aforesaid; and, subject to these last-mentioned exceptions, all the powers by this enactment herein-before given to any company completely registered, except the general power to perform all acts necessary for carrying on the business of the company, may be exer-

Restriction of powers of companies for executing Parliamentary works before obtaining an act.

Joint Stock Companies.

Power to obtain act.

cised as fully by any such company so completely registered, as by any other company so completely registered: provided always, that it shall be lawful for any such company to perform all acts which may be necessary for obtaining an act of incorporation or other act for obtaining the authority of Parliament to execute its works as aforesaid, any thing herein contained to the contrary notwithstanding: and that upon obtaining such act of incorporation or other such act as aforesaid, or at the time of the coming into operation of such act, as shall be thereby appointed, all the powers which any such company shall obtain by virtue of this act, and all the provisions and regulations of this act which shall apply to such company, shall cease and determine, except so far as shall be otherwise provided by such act of incorporation or other such act as aforesaid.

Shareholders.

Restriction of rights prior to execution of deed of settlement.

Rights thereafter.

XXVI. And be it enacted, that no shareholder of any Joint Stock Company completely registered under this act shall be entitled to receive any dividends or profits, or be entitled to the remedies or powers hereby given to shareholders, until he shall have executed the deed of settlement of the said company, or some deed referring thereto, and also have paid up all instalments or calls due from him, and shall have been registered in the registry office aforesaid; and further, that it shall be lawful for every shareholder who shall have signed such deed, and paid up such instalments or calls, and shall have been registered, and he is hereby entitled,—

To be present at all general meetings of the company; and also,

To take part in the discussions thereat; and also,

To vote in the determination of any question thereat, and that either in person or by proxy, unless the deed of settlement shall preclude shareholders from voting by proxy; and also,

To vote in the choice of directors, and of every auditor to be elected by the shareholders:

Restriction on disposal of shares.

Subject nevertheless to the provisions of this act, and of the deed of settlement of the company or other special authority, so far as such provisions shall either regulate or restrict the exercise of such powers, but not so as to deprive such shareholders thereof; and further, with regard to subscribers and every person entitled or claiming to be entitled to any share in any Joint Stock Company, the formation of which shall be commenced after the first day of November, one thousand eight hundred and forty-four, that until such Joint Stock Company shall have obtained a certificate of complete registration, and until any such subscriber or person shall have been duly registered as a shareholder in the said registry office, it shall not be lawful for such person to dispose, by sale or mortgage, of such share, or of any interest therein, and that every contract for or sale or disposal of such share or interest shall be void, and that every person entering into such contract shall forfeit a sum not exceeding ten pounds; and that for better protecting purchasers it shall be the duty of the directors of the company by whom certificates of shares are issued to state on every such certificate the date of the first complete registration of the company, as before provided: and that if any such director or officer knowingly make a false statement in that respect, then he shall be liable to the pains and penalties of a misdemeanor.

Certificates of shares.

XXVII. And be it enacted, that with regard to the powers and duties of directors it shall be lawful for the directors of any Joint Stock Company registered under this act,—

Joint Stock Companies.

Powers of directors.

1. To conduct and manage the affairs of the company according to the provisions and subject to the restrictions of this act, and of the deed of settlement, and of any bye-law, and for that purpose to enter into all such contracts and do and execute all such acts and deeds as the circumstances may require; and also,
2. To appoint the secretary, if any; and also,
3. To appoint the clerks and servants; and also from time to time, as they see fit,
4. To remove such secretary, clerks, and servants, and to appoint others, as occasion shall require; and also,
5. To appoint other persons for special services as the concerns of the company may from time to time require; and also,
6. To hold meetings periodically and from time to time as the concerns of the company shall require; and also,
7. To appoint a chairman to preside at all such meetings, and in his absence to appoint a chairman at each such meeting;

Subject nevertheless to the provisions and restrictions of this act, and to the provisions of the deed of settlement of the company or other special authority, but not so as to enable the shareholders to act in their own behalf in the ordinary management of the concerns of the company otherwise than by means of directors; provided always, that it shall not be lawful for the directors to purchase any shares of the company, nor to sell any such shares, except shares forfeited on the nonpayment of calls or instalments, nor to lend to any one of their number, or to any officer of the company, any money belonging to the company without the authority and sanction of a general meeting of shareholders duly convened.

Restriction as to lending money.

XXVIII. And be it enacted, that henceforth, notwithstanding any thing to the contrary in any deed of settlement or other instrument by which a Joint Stock Company shall be constituted or regulated, it shall not be lawful to appoint any person to be or to act as a director, whether honorary or otherwise, or to hold the office of patron or president, or any other office of the like description; nor shall it be lawful for any person to act in any such capacity unless at the time of such his appointment or of such his acting he hold in his own right at least one share in the capital of such company; and that if, without having such share, any person be or become or act as director, patron, or president of such company, or in any office of such or the like nature, then he shall forfeit for every such offence a sum not exceeding twenty pounds; and that if any person be announced or held out by or on behalf of the company, as a director, patron, or president, or as holding any office of such or the like description, without having so consented or acted, then each director of such company knowingly concurring in such representation shall forfeit a sum not exceeding twenty pounds.

Qualification of directors, &c.

XXIX. And be it enacted, that if any director of a Joint Stock Company registered under this act be either directly or indirectly concerned or interested in any contract proposed to be made by or

Disqualification of directors.

Joint Stock Companies.**As to contracts.**

on behalf of the company, whether for land, materials, work to be done, or for any purpose whatsoever, during the time he shall be a director, he shall, on the subject of any such contract in which he may be so concerned or interested, be precluded from voting or otherwise acting as a director; and that if any contract or dealing (except a policy of assurance, grant of annuity, or contract for the purchase of an article or of service, which is respectively the subject of the proper business of the company, such contract being made upon the same or the like terms as any like contract with other customers or purchasers), shall be entered into, in which any director shall be interested, then the terms of such contract or dealing shall be submitted to the next general or special meeting of the shareholders to be summoned for that purpose; and that no such contract shall have force until approved and confirmed by the majority of votes of the shareholders present at such meeting; and that if at any time any director cease to be a holder of the prescribed number of shares in the company, or shall become a bankrupt or insolvent, or shall have suspended payment, or compromised with his creditors, or be declared a lunatic, then it shall be unlawful for any such director to continue as a director, or to act as such, and the office of such director shall be and is hereby declared to be vacant.

Approval of general meeting of shareholders.**As to shares, &c****Validity of acts of directors.**

XXX. And be it enacted, that notwithstanding it may be afterwards discovered that there was some defect or error in the appointment of any person acting or who may have acted as a director of a Joint Stock Company registered under this act, or that such person was disqualified, yet all acts done by him as such director before the discovery of such defect or error, either solely or with other directors, shall be as binding on him, and on the company, and the directors and officers thereof, as if such person had been duly appointed or qualified, and if such acts were done *bonâ fide*, shall be as binding on all persons whomsoever as if such person had been duly appointed or qualified.

Acts of fraud, &c., by directors, &c., a misdemeanor.

XXXI. And be it enacted, that if any such director or other officer of any Joint Stock Company registered under this act wrongfully do or omit any act, with intent to defraud the company or any shareholder therein, or falsify or fraudulently mutilate or fraudulently make any erasure in the books of account or books of register, or any document belonging to the company, then such director or officer shall be deemed to be guilty of a misdemeanor.

Authentication and legal effect of books of record.

XXXII. And be it enacted, that if the entry of the proceedings of any meeting of the shareholders or of the directors of any Joint Stock Company registered under this act purport to be signed by the chairman duly presiding at such meeting, and sealed with the seal of the company, then it shall be the duty of all courts of justice, justices, and others, and they are hereby required, to receive the book in which such entry shall be made as *primâ facie* evidence, not only of the proceedings of the meeting of which entry shall be so made, but of such meetings having been duly convened, and of the persons making or entering such orders or proceedings being shareholders or directors, and of the signature of the chairman.

XXXIII. And be it enacted, that the books of any such company wherein the proceedings of the company are recorded shall be kept at the principal or only place of business of the company, and at all reasonable times such books shall be open to the inspection of any shareholder of the company; subject nevertheless to the provisions of the deed of settlement or of any bye-law.

Joint Stock
Companies.

Inspection
of books of
registry.

XXXIV. And be it enacted, that the directors shall cause the accounts of such company to be duly entered in books to be provided for the purpose.

Account books.

XXXV. And be it enacted, that fourteen days at the least before the period at which the accounts are required to be delivered to the auditors as hereinafter provided the directors of such company shall cause the books of the company to be balanced, and a full and fair balance sheet to be made up; and that previously to such balance sheet being delivered to the auditors, as hereinafter provided, the directors, or any three of their number, shall examine such balance sheet, and sign it as so examined; and that when the balance sheet shall have been so examined the chairman of the directors shall sign such balance sheet, and that thereupon the directors shall cause the same to be recorded in the books of the company.

Balancing of
books.

XXXVI. And be it enacted, that at each ordinary meeting of the shareholders the directors shall produce such balance sheet to the shareholders assembled thereat.

Balance sheet.

XXXVII. And be it enacted, that during the space of fourteen days previously to such ordinary meeting, and also during one month thereafter, every shareholder of the company may, subject to the provisions of the deed of settlement, or of any bye-law, inspect the books of account and the balance sheet of the company, and take copies thereof and extracts therefrom; and that if at any other time three directors authorize in writing any shareholder to make such inspection, then at such other time the shareholder so authorized may make such inspection.

Inspection of
accounts.

XXXVIII. And be it enacted, that every Joint Stock Company completely registered under this act shall annually at a general meeting appoint one or more auditors of the accounts of the company (one of whom at least shall be appointed by the shareholders present at the meeting in person or by proxy), and shall return the names of such auditors to the registrar of Joint Stock Companies; and that if an auditor be not appointed on behalf of the shareholders, or if he shall die, or become incapable of acting, or shall decline to act at the prescribed period, or if such return be not made, then on application of any shareholder of the company it shall be the duty of the committee of Privy Council for trade, and they are hereby authorized to appoint an auditor on behalf of the shareholders; and that such auditor shall continue to act till the next general meeting; and the due appointment of such auditor shall be returned to the registrar of Joint Stock Companies, and that thereupon it shall be his duty to register the same; and that it shall be lawful for the commissioners of the treasury and they are hereby empowered to appoint that the

Auditors :
Appointment
of auditors.

Salary of such
auditor.

Joint Stock Companies.

company shall pay to such auditor such salary or remuneration as to the said commissioners shall appear suitable, having regard to the duties of his office, and that thereupon such auditor shall be entitled to recover such salary from the company as and when it shall become due, according to the terms of the appointment thereof.

Delivery of accounts to auditors.

XXXIX. And be it enacted, that twenty-eight days at least before the ensuing ordinary meeting at which such balance sheet is required to be produced to the shareholders the directors shall deliver to the auditors the half-yearly or other periodical accounts, and the balance sheet required to be presented to the shareholders; and that the auditors shall receive from the directors such accounts and balance sheet, and examine the same.

Powers of auditors.

XL. And be it enacted, that throughout the year and at all reasonable times of the day it shall be lawful for the auditors and they are hereby authorized to inspect the books of account and books of registry of such company; and that the auditors may demand and have the assistance of such officers and servants of the company and such documents as they shall require for the full performance of their duty in auditing the accounts.

Report by auditors.

XLI. And be it enacted, that within fourteen days after the receipt of such balance sheet and accounts the auditors shall either confirm such accounts, and report generally thereon, or shall, if they do not see proper to confirm such accounts, report specially thereon, and deliver such accounts and balance sheet to the directors of the company.

Publication of reports.

XLII. And be it enacted, that ten days before the ordinary meeting of such company the directors shall, subject to the provisions of any deed of settlement or bye-law in that behalf, send or cause to be sent a printed copy of the balance sheet and auditors' report to every shareholder, according to his registered address, and shall, at such meeting of the company, cause such report to be read, together with the report of the directors.

Balance sheet and auditors' report to be registered.

XLIII. And be it enacted, that within fourteen days after such meeting it shall be the duty of such directors and they are hereby required to return to the said registry office a copy of the balance sheet, and of the report of the auditors thereon; and that thereupon it shall be the duty of the registrar of Joint Stock Companies, and he is hereby required to register or file the same with the other documents relating to such company.

Contracts. Requisites of contracts.

XLIV. And for the purpose of regulating contracts entered into on behalf of any Joint Stock Company completely registered under this act (except contracts for the purchase of any article the payment or consideration for which doth not exceed the sum of fifty pounds, or for any service the period of which doth not exceed six months, and the consideration for which doth not exceed fifty pounds, and except bills of exchange and promissory notes), be it enacted, that every such contract shall be in writing, and signed by two at least of the directors of the company on whose behalf the same shall be

entered into, and shall be sealed with the common seal thereof, or signed by some officer of the company on its behalf, to be thereunto expressly authorized by some minute or resolution of the board of directors applying to the particular case; and that in the absence of such requisites or of any of them any such contract shall be void and ineffectual (except as against the company on whose behalf the same shall have been made): and that every such contract for the purchase of any article the consideration of which doth not exceed the sum of fifty pounds, or for any services the period of which doth not exceed six months, and the consideration for which doth not exceed fifty pounds, entered into on behalf of any Joint Stock Company completely registered under this act, may be entered into by any officer authorized by a general bye-law in that behalf: and that every such contract, whether under seal or not, shall immediately after the same shall have been entered into be reported to the secretary or other appointed officer of the company on whose behalf the same shall have been entered into, who shall enter the same in proper books to be kept for that purpose: and that if any such contract be not so reported and entered, then the officer by whose default such contract shall not be so reported or entered shall be liable to repay to the company on whose behalf such contract may be made the amount of the consideration agreed to be paid by or on behalf of such company in respect of such contract.

Joint Stock Companies.

Report to secretary.

Liability.

XLV. And be it enacted, with regard to bills of exchange and promissory notes made, accepted, or endorsed on the behalf or account of any such company, so far as relates to the mode of making, accepting or endorsing the same, and to the liability of any such company thereon, that if the directors of the company be authorized by deed of settlement or bye-law to issue or accept bills of exchange or promissory notes, then every such bill of exchange or promissory note shall be made or accepted (as the case may be) by and in the names of two of the directors of the company on whose behalf or account the same may be so made or accepted, and shall be by such directors expressed to be made or accepted by them on behalf of such company: and that every such bill of exchange and promissory note so made or accepted as aforesaid shall be countersigned by the secretary or other appointed officer of the company in whose behalf the same is expressed to be made or accepted; and that every bill of exchange so made as aforesaid, or received by or on behalf of the company, may be endorsed in the name of the company by any officer authorized by deed of settlement or bye-law in that behalf; and that every such bill of exchange or promissory note so made, accepted, or endorsed as aforesaid shall, immediately after the making, accepting, or endorsing of the same, be reported to the proper officer of the company on whose behalf the same shall have been made, accepted or endorsed, and such last mentioned officer shall enter the same in proper books to be kept for that purpose; and that if any such bill of exchange or promissory note be not so reported and entered, then the officer by whose default such bill or note shall not be so reported or entered shall be liable to repay to the company the amount which the company shall pay or be liable to pay in respect of such bill or note: provided always, that nothing herein contained shall be deemed to make any such secretary or officer personally liable upon any such

Requisites of bills and notes by company:

Report and entry thereof.

Liability.

Joint Stock Companies.

bill of exchange or promissory note, nor be deemed to make any such directors personally liable thereon, except as shareholders of the company; and that every such company on whose behalf or account any bill of exchange or promissory note shall be made, accepted, or endorsed, in manner and form aforesaid, shall and may sue and be sued thereon, as fully and effectually, and in the same manner, as in the case of any contract, made and entered into under their common seal.

Deeds, &c. to be signed.

XLVI. And be it enacted, that all deeds and instruments bearing the seal of the company shall be signed by two at the least of the directors of the company.

Bye-laws.

XLVII. And be it enacted, that all bye-laws made by any Joint Stock Company completely registered under this act in pursuance of the power hereinbefore given, must be reduced into writing, and must have affixed thereto the common seal of the company; and that such bye-laws must be registered at the office for registering Joint Stock Companies, and until they be so registered they shall not be of any force; and that such bye-laws must be printed and circulated for the use of the shareholders, and a copy thereof must be given to every officer of the company, and to every shareholder who shall require the same.

Bye-laws to be evidence.

XLVIII. And be it enacted, that in all actions, suits, and other legal proceedings for the enforcement of such bye-laws, or other penalties for the breach thereof, the production of a written or printed copy of the bye-laws of the company, having the seal of office of the registrar of Joint Stock Companies affixed thereto, shall be sufficient evidence of such bye-laws.

Capital: Register of shareholders.

XLIX. And be it enacted, that it shall be the duty of the directors of every Joint Stock Company registered under this act to keep or cause to be kept a book, to be called the "Register of Shareholders," and from time to time in such book to enter the following particulars; that is to say,

The names and addresses of all persons or corporations being shareholders of the company; and also,

The number of shares to which such shareholders shall be respectively entitled, distinguishing each share by its number; and also,

The amount of the instalments paid on such shares.

Inspection of register of shareholders.

L. And be it enacted, that it shall be lawful for every shareholder, or if such shareholder be a corporation then the clerk or principal officer of such corporation, at all convenient times to search the register of shareholders gratis, and to require a copy thereof or of any part thereof; and that the company may demand a sum not exceeding sixpence for every one hundred words so required to be copied.

Requisites of certificates of shares.

LI. And be it enacted, that, on demand of the holder of any share in any Joint Stock Company completely registered under this act, the company shall cause a certificate of the proprietorship of such share to be delivered to such shareholder, specifying the share in the

undertaking to which such shareholder is entitled, and the amount paid up in respect of such share at the date of such certificate, and shall have the common seal of the company affixed thereto; and for such certificate the company may demand any sum not exceeding one shilling; and that such certificate must be according to the form in the schedule (I.) to this act annexed, or to the like effect.

Joint Stock
Companies.

LII. And be it enacted, that it shall be the duty of all courts of justice, judges, justices, and others to admit such certificate as prima facie evidence of the title of the shareholder to the share therein specified; nevertheless the want of such certificate shall not prevent the holder of any share from disposing thereof.

Effect of certificate as evidence.

LIII. And be it enacted, that if any such certificate be worn out or damaged, then, upon such certificate being produced at some meeting of the directors, it shall be lawful for them to order such certificate to be cancelled; and that thereupon another similar certificate shall, if he require the same, be given to the party in whom the property of such certificate and of the share therein mentioned shall at the time be vested; or if such certificate be lost or destroyed, then, upon proof thereof, a similar certificate shall, if he require the same, be given to the party entitled to the certificate so lost or destroyed; and that in either case it shall be the duty of the secretary, and he is hereby required to make a due entry of the substituted certificate in the register of shareholders; and for every such certificate so given or exchanged the company may demand any sum not exceeding the sum of one shilling.

Renewal of certificate.

LIV. And be it enacted, that, subject to the regulations herein contained, and to be contained in any deed of settlement of any Joint Stock Company completely registered under this act, it shall be lawful for every shareholder of such company and he is hereby entitled to sell and transfer his shares therein by deed duly stamped, in which the full amount of the pecuniary consideration for such sale shall be truly expressed, and which instrument of transfer must be according to the form in the schedule (K.) to this act annexed or to the like effect; and that the directors of the company shall cause a memorial of such instrument of transfer, when produced at the office of the company, to be entered in a book to be called "The Register of Transfers," and the entry thereof to be endorsed on the instrument of transfer; and for every such entry and endorsement the company may demand any sum not exceeding one shilling; and that until such instrument of transfer shall have been so produced at the office of the company the purchaser of the share shall not be entitled to receive any of the profits of the company, or to vote in respect of such share: provided always, that if at the time of such transfer the shareholder shall not have paid the full amount due and payable to the company on every share held by him, then he shall not be entitled to transfer any share, unless there be a provision to the contrary in the deed of settlement.

Transfer of shares.

LV. And be it enacted, that if any shareholder fail to pay any instalment of capital due upon or in respect of any share held by him, when the same shall become due, it shall be lawful for any such com-

Proceedings to recover instalments of capital.

Joint Stock Companies.**Form of declaration for instalments.**

pany and they are hereby authorized to sue such shareholder for the amount in an action of debt in any court having competent jurisdiction in respect of the same; and that in the declaration in any such action it shall be sufficient to state only that at the time of the commencement of the suit the defendant, as the holder of certain shares (stating how many) in a certain company or undertaking, as the case may be, (naming it,) was indebted to the company in a certain sum (stating the amount of the instalments, or so much thereof as is sought to be recovered,) for certain instalments of capital then due and payable in respect of the said shares, and that the defendant hath not paid the same; and that if upon the trial of any such action it shall be proved that the defendant was the holder of any share when such instalments, or any of them, in respect of the same, and for which the action is brought, became due, then such company shall recover such instalments, or so much thereof as is due, together with interest for the same at the rate of five pounds per centum per annum, to be computed from the day on which such instalment shall have become due.

Notification to joint proprietors.

LVI. And be it enacted, that if any share be held jointly by several persons, then any notice required to be given shall be given to such of the said persons whose name shall stand first on the register of shareholders, and notice so given shall be sufficient notice to all the proprietors of such share, and the person so standing first shall be entitled to vote, and to have all the privileges hereby conferred on shareholders.

Abstract of deed of settlement :

LVII. And be it enacted, that at every principal place of business of any Joint Stock Company completely registered under this act, it shall be the duty of the directors and officers of the company and they are hereby respectively required to have written or printed copies of an index or abstract of the deed of settlement, approved by the registrar of Joint Stock Companies, and a list of the shareholders of the company, and the number of shares held by each, and also a list of the directors and officers thereof, and a copy of the bye-laws sealed with the seal of the company, as returned to the said registry office; and that if at any reasonable time any shareholder, or any person authorized in writing by him, apply at any such place of business of the company, to inspect the same, then, on demand thereof made during the usual hours of business, it shall be the duty of the directors or officers, and they respectively are hereby required to permit such inspection; and that if on such demand any such director or officer to whom such demand is made do not thereupon permit such inspection, then, on conviction thereof, he shall be liable to pay for every such offence a sum not exceeding forty shillings.

List of shareholders :**Copy of bye-laws.****Existing companies :
Registration of existing companies.**

LVIII. And be it enacted, with regard to all Joint Stock Companies to which this act is hereinbefore made to apply, and which shall exist on the first day of November one thousand eight hundred and forty-four, whether incorporated by act of Parliament or by charter, or privileged by letters patent, or established by virtue of a deed of settlement, or of any other instrument, or by virtue of any authority whatever, or in any other way whatever, that within three months from the said first day of November the directors, managers, officers,

or others having the direction, management, conduct, superintendence, or execution of the affairs of any such company, shall register such company at the office for the registration of Joint Stock Companies, and for that purpose shall make or cause to be made a return of the following particulars, according to the schedule (I.) hereunto annexed; that is to say,

1. The name or style of the company; and also,
2. The purpose of the company; and also,
3. The principal or only place for carrying on its business:

And that on such registration every such company shall be entitled to have a certificate of registration, without paying any fee either for such registration or for such certificate, but such certificate shall be for the purpose of showing that such company had registered, and shall not be considered as a certificate of complete registration, so as to confer on any such company the powers and privileges of this act; and that if within the said period the persons hereby required to register any such company fail so to do, then, on conviction thereof, every such company so failing shall forfeit for every such offence a sum not exceeding fifty pounds.

Joint Stock
Companies.

Returns of
matters for
registration.

Certificate of
registration
gratis.

Penalty.

LIX. And be it enacted, with regard to such existing companies as aforesaid (except Assurance Companies), that if any such existing company be so constituted as is by this act required with regard to any future company, or if the deed or deeds of settlement of such existing company contain the particulars by this act required to be contained in some one or other deed of settlement of such future company, and if any other conditions required to be fulfilled by or in respect of any such future company, in order to obtain a certificate of complete registration, be fulfilled in respect of any such existing company, then such existing company shall be entitled to obtain a certificate of complete registration; but if such existing company be not so constituted, or if such deed of settlement do not contain such particulars, or if such other conditions be not fulfilled, then, on such existing company returning a deed or deeds according to the provisions of this act, and also, in addition to any other matters by this enactment required to be returned by such existing company, such other matters as are by this act required to be returned by any future company in order to obtain or before obtaining a certificate of complete registration as aforesaid, or such modification of the said deeds or returns, or of any of them, as the committee of privy council for trade shall direct by any regulation to be made in that behalf, either on the part or in respect of any one company or of any class of companies, and signed by one of the secretaries of the said committee, such existing company shall be entitled to a certificate of complete registration; and on such certificate of complete registration being granted by the registrar of Joint Stock Companies it shall be lawful for such existing company, its shareholders, its directors, and its officers, and they are respectively hereby empowered to have and exercise all such powers and privileges as are by this act conferred upon Joint Stock Companies to be hereafter formed, subject nevertheless with respect to all such powers and privileges to the provisions of this act, or of any other act to be hereafter passed for regulating the same; and that every such company not incorporated shall be incorporated for the purposes of this act, as from the date of

Privileges of
existing
companies.

Effect of
certificate of
complete
registration.

Incorporation.

Joint Stock Companies.**Alteration of deeds of settlement.**

the certificate of complete registration, in such manner as herein-before provided with regard to companies to be formed after the first day of November next; and that any directors or other managers of any such company as last aforesaid, with the consent of at least three-fourths in number and value of the shareholders of such company present at a general meeting summoned for that purpose, may at any time or times hereafter make any alterations in the constitution of the said company or otherwise as shall be necessary for enabling such company to come within the provisions of this act, so as the same shall be approved of by the said committee of privy council for trade; and the order of such committee, signed as aforesaid, shall be sufficient evidence of such provisions having been complied with, and that any such company has come within the provisions of this act: Provided always, with regard to existing companies, that in the event of any such company becoming entitled to a certificate of complete registration as aforesaid, it shall not be necessary to pay in respect of such certificate any higher fee than the sum of five pounds, and also the sum of sixpence additional in respect of every thousand pounds value of capital, as declared on the formation of the company in the deed of settlement, or by any other special authority.

Fees.**Registration of new companies.**

LX. And be it enacted, that so much of the provisions of this act as are applicable to companies formed after the first day of November next shall apply to companies begun or formed since the passing of this act, so far as such provisions shall on or after the said first day of November be applicable to such last-mentioned companies.

Effect of incorporation of existing companies.

LXI. Provided always, and be it enacted, that, notwithstanding the incorporation of any existing company in pursuance of this act, every such company, and the members and officers of every such company, shall be liable to be sued in respect of any valid obligation incurred before such incorporation, in the same manner and with the same legal consequences as if such company had not been incorporated.

Modification of conditions and regulations as to companies.

LXII. And be it enacted, that if at any time during the period of five years from the said first day of November a memorial be presented to the committee of privy council for trade, by or on the part of any company, whether now existing or hereafter formed, except Assurance Companies, making application that any of the conditions and regulations prescribed by this act be dispensed with or modified, and setting forth the special grounds of such application, and if such application be registered at the office of the registrar of Joint Stock Companies, and if, before such application be granted, the same be three times advertised, at intervals not less than one week, in the *London Gazette*, then from time to time during the said period of five years, and six months after the expiration thereof, it shall be lawful for the said committee and they are hereby empowered, both as regards companies formed before this act shall come into operation and afterwards, either to dispense with or modify such of the conditions by this act required to be fulfilled by any future company for the purpose of obtaining a certificate of complete registration, and such of the regulations by this act made for the government or ma-

Board of Trade to receive and decide applications.

management of such companies, as to the said committee shall seem fit for facilitating the application of this act to the constitution and arrangements of any such company, but so that nevertheless the order or instrument by which such dispensation or such modification shall be made be in writing, and be registered at the office for registering Joint Stock Companies; and this act shall be construed as if such modifications or alterations were herein contained; and further, that annually it shall be the duty of the said committee to cause to be laid before both Houses of Parliament a return of all such applications for such dispensation or modification, and of the orders made on such application.

Joint Stock Companies.

LXIII. Provided always, and be it enacted, that nothing in this act contained shall extend or be construed to extend to any partnership formed for the working of mines, minerals, and quarries, of what nature soever on the principle commonly called the cost book principle.

Mining partnerships.

LXIV. Provided always, and be it enacted, that nothing in this act contained shall extend or be construed to extend to partnerships in Ireland commonly called "anonymous partnerships," formed under and by virtue of an act passed in the Parliament of Ireland in the twenty-first and twenty-second years of the reign of his late Majesty King George the Third, intituled "An Act to promote Trade and Manufactures by regulating and encouraging partnerships."

Irish anonymous partnerships.

LXV. And forasmuch as great injury has been inflicted upon the public by companies falsely pretending to be patronized or directed or managed by eminent or opulent persons; now for the purpose of preventing such false pretences, be it enacted, with regard to every company or pretended company whatsoever, whether registered or not, and whether now existing or not, that if any person shall make any such false pretences, knowing the same to be false, in any advertisement or other paper, whether printed or written, and whether published in any newspaper, or handbill, or placard, or circular, then every such person shall forfeit for every such offence a sum not exceeding ten pounds.

Fraudulent companies.

LXVI. Provided always, and be it enacted, that every judgment and every decree or order which shall be at any time after the passing of this act obtained against any company completely registered under this act, except companies incorporated by Act of Parliament or charter, or companies the liability of the members of which is restricted by virtue of any letters patent, in any action, suit, or other proceeding prosecuted by or against such company in any court of law or equity, shall and may take effect and be enforced, and execution thereon be issued, not only against the property and effects of such company, but also, if due diligence shall have been used to obtain satisfaction of such judgment, decree, or order, by execution against the property and effects of such company, then against the person, property, and effects of any shareholder for the time being, or any former shareholder of such company, in his natural or individual capacity, until such judgment, decree, or order shall be fully satisfied: provided, in the case of execution against any former share-

Judgments against a company.

Former shareholders.

Joint Stock Companies.

holder, that such former shareholder was a shareholder of such company at the time when the contract or engagement for which such judgment, decree, or order may have been obtained was entered into, or became a shareholder during the time such contract or engagement was unexecuted or unsatisfied, or was a shareholder at the time of the judgment, decree, or order being obtained: provided also, that in no case shall execution be issued on such judgment, decree, or order against the person, property, or effects of any such former shareholder of such company after the expiration of three years next after the person sought to be charged shall have ceased to be a shareholder of such company.

Reimbursement of shareholders.

LXVII. Provided always, and be it enacted, that every person against whom, or against whose property or effects, execution upon any judgment, decree, or order obtained as aforesaid shall have been issued as aforesaid shall be entitled to recover against such company all loss, damages, costs, and charges which such person may have incurred by reason of such execution; and that after due diligence used to obtain satisfaction thereof against the property and effects of such company, such person shall be entitled to contribution for so much of such loss, damages, costs, and charges as shall remain unsatisfied, from the several other persons against whom execution upon such judgment, decree, or order, obtained against such company, might also have been issued under the provision in that behalf aforesaid; and that such contribution may be recovered from such persons as aforesaid in like manner as contribution in ordinary cases of co-partnership.

Contribution.

Execution against shareholder.

LXVIII. And be it enacted, that in the cases provided by this act for execution on any judgment, decree, or order in any action or suit against the company, to be issued against the person or against the property and effects of any shareholder or former shareholder of such company, or against the property and effects of the company, at the suit of any shareholder or former shareholder, in satisfaction of any monies, damages, costs, and expenses paid or incurred by him as aforesaid in any action or suit against the company, such execution may be issued by leave of the court, or of a judge of the court, in which such judgment, decree, or order shall have been obtained, upon motion or summons for a rule to show cause, or other motion or summons consistent with the practice of the court, without any suggestion or scire facias in that behalf; and that it shall be lawful for such court or judge to make absolute or discharge such rule, or allow or dismiss such motion, (as the case may be,) and to direct the costs of the application to be paid by either party, or to make such other order therein as to such court or judge shall seem fit; and in such cases such form of writs of execution shall be sued out of the courts of law and equity respectively for giving effect to the provision in that behalf aforesaid as the judges of such courts respectively shall from time to time think fit to order; and the execution of such writs shall be enforced in like manner as writs of execution are now enforced: provided that any order made by a judge as aforesaid may be discharged or varied by the court, on application made thereto by either party dissatisfied with such order: provided also, that no such motion shall be made, nor summons granted, for the purpose of

charging any shareholder or former shareholder, until ten days' notice thereof shall have been given to the person sought to be charged thereby.

Joint Stock Companies.

LXIX. And be it enacted, that all penalties and forfeitures inflicted or authorized to be imposed by this act, and all costs and expenses for which any person may be liable under this act or by virtue of any bye-law, and the recovery of which has not been otherwise specially herein-before provided, shall and may be recovered, by any person who shall proceed for the same, before any two of her Majesty's justices of the peace of the county, city, or place where the offender or person liable to pay such costs or expenses shall reside or where the offence shall be committed.

Recovery of penalties.

LXX. Provided always, and be it enacted, that all penalties and forfeitures recovered under this act, and not otherwise specially appropriated, shall be applied as follows; one-half thereof shall be paid to the person who shall sue or proceed for the same, and the other half to her Majesty's use, and shall be paid to the sheriff of the county, city, or town where the same shall have been imposed; and that all convictions before justices shall be returned to the court of Quarter Sessions under the provisions of an act passed in the third year of the reign of his late Majesty King George the Fourth, intitled "An Act for the more speedy Return and levying of Fines, Penalties, and Forfeitures, and Recognizances estreated," and shall be paid to the sheriff of the county, city, or town, and shall be duly accounted for by him.

Appropriation of penalties.

LXXI. And be it enacted, that in all cases in which any penalty or forfeiture, or any costs or expenses are recoverable before two justices of the peace under this act, it shall and may be lawful for any one justice of the peace to whom complaint shall be made of any such offence to summon the party complained of, and the witnesses on each side, before any two such justices; and at the time and place mentioned in such summons, or at any adjournment of such summons, the said two justices may hear and determine the matter of such complaint, and upon due proof thereof, either by confession of the party or by the oath of one or more credible witness or witnesses, give judgment or sentence on such complaint, with costs to be allowed by such justices, although no information in writing shall have been exhibited or taken; and all such proceedings by summons without information shall be as good, valid, and effectual to all intents and purposes as if an information in writing had been exhibited; and all penalties, forfeitures, and costs so adjudged may be levied by distress and sale of the goods and chattels of the party offending, by warrant under the hand and seal of any one justice; and in default of such distress the offender may be committed to prison by any one justice, by warrant under his hand and seal, there to remain for any time not exceeding three months, unless such penalties, forfeitures, and costs shall be sooner paid.

Hearing of summons.

LXXII. And be it enacted, that if any person shall be summoned as a witness to give evidence before such justices of the peace touching any matter which such justices are hereby authorized to inquire into,

Compulsory attendance of witnesses.

Joint Stock Companies.

and shall neglect or refuse to appear at the time and place to be for that purpose appointed, without a reasonable excuse for such neglect or refusal, to be allowed by such justices, or appearing shall refuse to be examined on oath and give evidence before such justices, then every such person shall forfeit for every such offence a sum not exceeding five pounds, to be levied and paid in such manner and by such means as are herein-before directed as to other penalties recoverable before justices under this act.

Limitation as to penalties.

LXXIII. And be it enacted, that every proceeding for any offence punishable on summary conviction by virtue of this act shall be commenced within six months after the commission of the offence, and not after.

Appeal to Quarter Sessions.

LXXIV. And be it enacted, that if any person shall think himself aggrieved by the judgment of such justices, he may, within one month next after such conviction, and upon giving ten days' notice of appeal in writing to the party in whose favour such judgment shall have been given, stating the nature and grounds of appeal, and upon entering into recognizances with two sufficient sureties to the amount of the value of such penalty and costs, together with such further costs as shall be awarded in case such judgment shall be affirmed, appeal to the next general Quarter Sessions of the peace for the county, city, or place where such conviction shall have been made; and the justices at such sessions are hereby empowered to summon and examine witnesses on oath, and to hear and finally determine the matter of such appeal, and to award such costs as the court shall think reasonable to the party in whose favour such appeal shall be determined.

Certiorari.

LXXV. And be it enacted, that no conviction or other proceeding before justices under this act shall be set aside for want of form, nor be removed by certiorari or otherwise into any of her Majesty's superior courts of record.

Recovery of penalties.

LXXVI. And be it enacted, that in any case to which a penalty is annexed by this act the whole or any part of such penalty may be recovered by action of debt in any court now or hereafter having competent jurisdiction, by any person who shall sue for the same; and that in every such action for the recovery of such penalty, so much of such penalty as is sought to be recovered shall be endorsed on the writ of summons, and the plaintiff shall not be entitled to recover a greater sum than the sum so endorsed; and if the party suing for any such penalty recover the same or any part as aforesaid, he shall be entitled to full costs of suit.

Actions, &c. for penalties.

LXXVII. And be it enacted, that it shall not be lawful for any person to commence or prosecute any action, bill, plaint, information, or prosecution in any of her Majesty's superior courts, for the recovery of any penalty or forfeiture incurred by reason of any offence committed against this act, unless the same be commenced or prosecuted in the name and with the consent of her Majesty's attorney-general; and that if any action, bill, plaint, information, or prosecution, or any proceeding before any justices as aforesaid, shall be

Attorney-general's consent.

commenced or prosecuted in the name of any other person than is in that behalf before mentioned, the same shall be and are hereby declared to be null and void.

Joint Stock Companies.

LXXVIII. And be it enacted, that with regard to every act, instrument, or writing by this act required or authorized to be done or to be made or executed by the Committee of Privy Council for Trade, that if the same purport to be so done made or executed by or on behalf of the said committee, and be signed by one of the secretaries of the said committee, and (if it require a seal) be sealed by the seal of the said committee, then it shall be deemed to be sufficiently done, made, or executed, to all intents and purposes.

Authentication of acts by committee of Privy Council.

LXXIX. And be it enacted, that it shall be the duty of the registrar of Joint Stock Companies to make a report annually to the said Committee of Privy Council for Trade, setting forth,—

Annual report to Parliament.

1. A list of companies provisionally registered during the past year :
2. A list of companies completely registered during the past year :
3. A list of cases in which application shall have been made for the enforcement of penalties for failure to register, and the proceedings, whether by prosecution or otherwise, taken in consequence of such applications, and the results of such proceedings :
4. A list of companies which shall have been provisionally registered, but which have not obtained complete registration :
5. A return of the regulations made by the said committee with regard to the returns required to be made by companies :
6. A return of persons appointed to the office of registrar of Joint Stock Companies, and other officers and clerks, and of their salaries or other remuneration, and of the rules made for the regulation of the said office :
7. A return of the amount of all fees paid for certificates of provisional or complete registration, and for every other purpose :
8. A return of the scale of fees appointed by the Commissioners of her Majesty's treasury for the services to be performed by the registrar, and of the respective amounts of such fees :
9. A return of the cases in which the companies had failed to appoint auditors, and of the proceedings taken thereon :
10. A return of prosecutions under this act for any offences not herein-before specified :
11. A return of the number of bankruptcies of Joint Stock Companies, and of the amount of the debts and assets of such companies respectively :
12. A return of modifications made by the Committee of Privy Council for Trade, in pursuance of this act, in the conditions and regulations to be observed by companies, whether existing or future ;

And that, within six weeks after the meeting of Parliament next after the first day of January in every year, such report shall be laid before both Houses of Parliament.

SCHEDULES to which this Act refers.

SCHEDULE (A).—See § 7.

LIST of PURPOSES for which Provision is required to be made by the Deed of Settlement of a Company before such Company can obtain a certificate of complete Registration.

I.—*For the holding of Meetings, and the Proceedings thereat; viz.*

1. For holding ordinary general meetings of the company once at the least in every year, at some appointed place and time.
2. For holding extraordinary meetings, either upon the convening of the directors of the company, or upon the requisition of not less than five shareholders.
3. For the adjournment of meetings.
4. For the advertisement and notification of meetings, and the business to be transacted thereat.
5. For defining the business which may be transacted at meetings, ordinary and extraordinary, or at adjournments thereof.
6. For the appointment of the chairman at any meeting of the company.
7. For ensuring that each shareholder shall have a vote; and where it is not provided that each shareholder is to have a vote in respect of each share, the appointment of the number of votes to be given by shareholders in respect of any number of shares held by them.
8. For enabling guardian, trustees, and committees to vote in respect of the interests of infants, cestui que trusts, lunatics, and idiots.
9. For ascertaining what shall be the majorities or numbers of votes requisite to carry all or any questions, and where a simple majority is to decide.
10. For prescribing the mode and form of the appointment of proxies to vote in the place of absent shareholders, and for limiting the number of proxies which may be held by any one person.
11. For determining questions where the votes are equally divided, whether by the casting vote of the chairman or otherwise.

II.—*For the Direction of the Execution of the Affairs of the Company, and the Registration of its Proceedings; viz.*

12. For prescribing the maximum number of directors to be appointed; the number of shares or the amount of interest by which they are to be qualified; the period for which they are to hold office, so that at least one-third of such directors, or the nearest number to one-third, shall retire annually, subject

- to re-election if thought fit; and for the determination of the persons who shall so retire in each year.
13. For filling up vacancies in the office of the directors as they occur; but not so as to enable the board of directors (if the filling up be assigned to them) to fill up such vacancy for a longer period than until the next general meeting of the company.
 14. For the continuance in office of directors in default of election of new directors.
 15. For regulating the meetings of directors, the quorum thereof, the proceedings thereat, and the adjournment thereof.
 16. For recording the attendances of directors, and reporting the same to the shareholders.
 17. For the determination of questions upon which the votes of the directors may be equally divided.
 18. For the appointment of a person to take the chair of the directors, and for supplying any vacancy in the office of chairman.
 19. For the appointment of the chairman of the directors at meetings at which the permanent chairman may not be present.
 20. For regulating the appointment by the directors of officers, clerks, and servants.
 21. For recording the proceedings of the directors.
 22. For keeping and entering of minutes of such proceedings.
 23. For ensuring the safe custody of the seal of the company, and for regulating the authority under which it is to be used.
 24. For providing for the remuneration of the auditors of the accounts of the company.
 25. For providing for the appointment of a secretary or clerk (if any) of the directors.
 26. For providing for the receipt, custody, and issue of monies belonging to the company.
 27. For providing for the keeping of books of account, and for periodically balancing the same.
 28. For keeping the records and papers of the company.
 29. For prescribing and regulating the duties and qualifications of officers.
 30. For determining what books of account, books of registry, and other documents may be inspected by the shareholders of the company, and for regulating such inspection.

III. *For the Distribution of the Capital of the Company into Shares, or for the Apportionment of the Interest in the Property of the Company; viz.*

31. For determining whether calls or instalments of payments (if any) are to be made in certain amounts and at fixed periods, and if so, what amounts and at what periods.
32. For determining whether, on failure to pay any instalments or calls, the share shall or shall not be forfeited, and if forfeited, whether and on what conditions the property in such share may be recovered by the shareholder.
33. For determining whether, and under what circumstances, and

APPENDIX.—STATUTES.

on what conditions the capital of the company may be augmented, by the conversion of loans into capital or otherwise, or by the issue of new shares or otherwise.

34. For determining whether the amount of new capital shall or shall not be divided so as to allow such amount to be apportioned amongst the existing shareholders.

IV.—For the borrowing of Money; viz.

35. For the determining whether the company may borrow money and if so, whether on bond or mortgage, or any other and what security.
36. For determining whether the directors may contract debts in conducting the affairs of the company, and if so, whether to any definite extent.
37. For determining whether and to what extent the directors may make or issue promissory notes.
38. For determining whether and to what extent the directors may accept bills of exchange.

SCHEDULE (B).—See § 7.

CERTIFICATE required to be endorsed on the Deed of Settlement and signed by two Directors.

We do hereby certify, that the within-written Deed is the Deed of Settlement of _____ Company, and that to the best of our knowledge the particulars therein contained are correctly set forth.

SCHEDULE (C).—See § 4.

RETURN made pursuant to the JOINT STOCK COMPANIES REGISTRATION and REGULATION ACT, 7 & 8 Vict. c. 110, 1844.

FOR PROVISIONAL REGISTRATION.

Name and Business of the Company.

Name of the proposed Company.	Business or Purpose.	Place of Business (if any.)

Promoters of the Company.

Names.	Occupations.	Places of Business (if any.)	Places of Residence.

* * The names of the Provisional Officers may be added to this return under a separate Head, and the subscribers may be given in a similar Manner.

Provisional Committee or Provisional Directors.

Names.	Occupations.	Places of Business (if any.)	Places of Residence.	Signature of consent to act on Committee or as a director.

Dated this

day of

18

[Signature.]

SCHEDULE (D.)

RETURN made pursuant to the JOINT STOCK COMPANIES REGISTRATION and REGULATION ACT, 7 & 8 Vict. c. 110, 1844.

Change of Place of Business.

Name of Company.	Business or Purpose.	Former Place [or principal Place, if more than one,] of Business.	Present Place [or principal Place] of Business.

[Date.]

[Signature.]

Joint Stock Companies.

SCHEDULE (E.)—See § 11.

RETURN made pursuant to the JOINT STOCK COMPANIES REGISTRATION and REGULATION ACT, 7 & 8 Vict. c. 110, 1844.

Transfer of Shares.

Name of Company.	Business or Purpose.	Place [or principal Place, if more than one,] of Business.	
Name and Place of Abode of Person by whom Transfer is made.	Name and Place of Abode of Person to whom Transfer is made.	The Distinctive Numbers of the Shares transferred.	Date of transfer.

[Date.]

[Signature.]

SCHEDULE (F.)—See § 12.

RETURN made pursuant to the JOINT STOCK COMPANIES REGISTRATION and REGULATION ACT, 7 & 8 Vict. c. 110, 1844.

Change of Shareholders.

Name of Company.	Business or Purpose.	Place [or principal Place, if more than one,] of Business.

Persons known to have ceased to be Shareholders (except by transfer) since the last Return, dated the _____ day of _____

Name.	Place of Abode.	Distinctive number of Shares.

Persons known to have become Members (except by transfer) since the last Return, dated the _____ day of _____

Joint Stock Companies.

Name.	Place of Abode.	Distinctive number of Shares.

Persons whose names have become changed by marriage or otherwise.

Former name.	Former Place of Abode.	Present Name.	Present Place of Abode.	Distinctive number of Shares.

[Date.]

[Signature.]

SCHEDULE (G).—See § 56.

RETURN made pursuant to the JOINT STOCK COMPANIES REGISTRATION and REGULATION ACT, 7 & 8 Vict. c. 110, 1844.

For Registration of existing Companies, name of the Company, Business, &c.

Name of the Company.	Business or Purpose.	Place of Business with the Branches (if any).

SCHEDULE (H).

RETURN made pursuant to the JOINT STOCK COMPANIES REGISTRATION and REGULATION ACT, 7 & 8 Vict. c. 110, 1844.

CORRECTED RETURN.

[Copy of former incorrect Return.]

Copy.

Amended Return, with correct Names and Descriptions [in such of the preceding Forms as are applicable to the Case under the Provisions of the foregoing Act.]

[Date.]

[Signature.]

Joint Stock
Companies.

SCHEDULE (I).—See § 50.

CERTIFICATE OF SHARE.

The Company, first completely registered on the day
of 18
Number
This is to certify, that *A. B.* of is the Proprietor of the
Share, number of the Company, subject to the
Regulations of the said Company, and that up to this day there has
been paid up, in respect of such Share, the sum of
Given under the Common Seal of the said Company, the day
of in the year 18
[Signature of Secretary.] (L.S.)

SCHEDULE (K).—See § 53.

TRANSFER OF SHARES.

I A. B. of in consideration of the sum
of paid to me by *C. D.* of
do hereby transfer to the said Share [*or Shares*],
numbered in the undertaking called the Com-
pany, to hold unto the said his Executors, Adminis-
trators, and Assigns, [*or Successors and assigns,*] subject to the
several conditions on which I hold the same at the time of the execu-
tion hereof. And I the said do hereby agree to take
the said share [*or Shares*], subject to the same conditions, and to the
provisions of the Deed or Deeds of Settlement of the said Company.
As witness our hands and seals, the day of
[Signature.]

7 & 8 VICT. c. 111.

*An Act for facilitating the winding up the Affairs of Joint Stock Com-
panies unable to meet their pecuniary engagements.*

[5th September, 1844.]

WHEREAS it is expedient to extend the remedies of creditors against the property of such Joint Stock Companies or bodies as hereinafter mentioned when unable to meet their pecuniary engagements, and to facilitate the winding up of their concerns; and it may also be for the benefit of the public to make better provision for discovery of the abuses that may have attended the formation or management of the affairs of any such companies or bodies, and for ascertaining the causes of their failure; be it enacted by the Queen's most excellent Majesty by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that if any commercial or trading company now or at any time hereafter incorporated by charter or act of Parliament,

Flats in bank-
ruptcy may
issue against
companies.

Joint Stock Companies.

or any company or body of persons now or at any time hereafter associated together for any commercial or trading purposes, and to which any privilege or privileges or power or powers shall, before or after the passing of this act, have been granted under the authority of the statute made and passed in the first year of the reign of her present Majesty, intituled "An Act for better enabling her Majesty to confer certain Powers and Immunities on trading and other Companies, or by any Act of Parliament," or any commercial or trading company or body which by the said statute made and passed in the first year of the reign of her present Majesty is to be considered as subsisting, and to be subject to the provisions of the said statute in manner therein mentioned, or any company or body of persons now or at any time hereafter associated together for any commercial or trading purposes, and registered either provisionally or completely under the provisions of any act passed or to be passed in the present session of Parliament, for the registration and regulation of Joint Stock Companies, or any Joint Stock Company now existing and comprehended within the definition therein contained of a Joint Stock Company, shall commit any act which by this act is to be deemed an act of bankruptcy on the part of any such company or body, a fiat in bankruptcy may issue against such company or body by the name or style of the said company or body, upon the petition of any creditor or creditors of such company or body (whether a member or members of such company or body or not), to such amount as is now by law requisite to support a fiat in bankruptcy; and the court authorized to act in the prosecution of such fiat, and all persons acting under such fiat, may proceed thereon in like manner as against other bankrupts, subject always to the provisions hereinafter made.

II. Provided always, and be it enacted, that the bankruptcy of any such company or body in its corporate or associated capacity (as the case may be) shall not be construed to be the bankruptcy of any member of such company or body in his individual capacity.

But not to affect any member individually.

III. And be it enacted, that the duplicate of the adjudication of bankruptcy under a fiat against any such company or body shall be served on the person who was at the date of such fiat a chief clerk or secretary or registrar of such company or body, or (if there be no such person) on any person who was at such date a director of such company or body personally, or by leaving the same at the head office for the time being of such company or body: and the surrender to such fiat for the purpose of consenting to, and the consent to, the advertisement of such adjudication before the expiration of the five days allowed for showing cause against the validity thereof, may be made on behalf of such company or body by such person; provided such person shall, at the time of such surrender, make a deposition, and swear that he was, at the date of such fiat, such chief clerk or secretary or registrar, as the case may be, and that he is authorized to make such surrender.

Adjudication of bankruptcy and surrender, how made.

IV. And be it enacted, that if any such company or body shall, by virtue of a resolution to be duly passed in that behalf at a board of directors of such company or body duly summoned for that purpose, file or cause to be filed in the office of the Lord Chancellor's secretary

Declaration of insolvency to be an act of bankruptcy.

Joint Stock Companies.

of bankrupts a declaration in writing, in the form specified in the schedule (A.) No. 1, hereunto annexed, that the said company or body is unable to meet its engagements, and also a minute of such resolution in the form specified in the said schedule (A.) No. 2, such declaration and minute of resolution respectively being under the common seal of such company or body, and if such company or body have no common seal, then signed by the chairman of the board of directors who was present at the passing of such resolution, and in either case such declaration and minute of resolution being respectively attested by the attorney or solicitor of the said company or body for the time being, every such company or body shall be deemed thereby to have committed an act of bankruptcy at the time of filing such declaration, provided a fiat in bankruptcy shall issue against such company or body within two calendar months from the filing of such declaration; and a copy of such declaration and minute of resolution respectively purporting to be certified by the said secretary or his clerk, as a true copy, shall be received as evidence of such declaration and minute of resolution respectively having been filed by such company or body, and that upon such evidence being given, and upon proof by the attesting witness of the sealing or signature, as the case may be, of the said declaration and minute of resolution, no further evidence shall be required of the said act of bankruptcy.

Company not paying a judgment debt, within fourteen days, an act of bankruptcy.

V. And be it enacted, that if any plaintiff shall recover judgment in any action personal for the recovery of any debt or money demand, in any of her Majesty's courts of record, against any such company or body, or against any person duly authorized to be sued as the nominal defendant on behalf of such company or body, and shall be in a situation to sue out execution upon such judgment, and there be nothing due from such plaintiff by way of set off, or which may be legally set off against such judgment, and such company or body shall not, within fourteen days after notice in writing, served upon the said company or body, by service of the same on a chief clerk or secretary or registrar of the said company or body, or (if there be no officer of such denomination) on any director of the said company or body, personally, or by the same having been left at the head office for the time being of such company or body, requiring immediate payment of such judgment debt, pay, secure, or compound for the same to the satisfaction of such plaintiff, such company or body shall be deemed to have committed an act of bankruptcy on the fifteenth day after service of such notice: provided always, that if such execution shall in the meantime be suspended or restrained by any rule, order, or proceeding of any court of justice having jurisdiction in that behalf, no further proceeding shall be had on such notice, but that it shall be lawful nevertheless for such plaintiff, when he shall again be in a situation to sue out execution on such judgment, to proceed again by notice in manner before directed.

Company disobeying order of any court of equity, &c., for payment of money, an act of bankruptcy.

VI. And be it enacted, that if any decree or order shall be pronounced in any cause depending in any court of equity, or any order shall be made in any matter of bankruptcy or lunacy against any such company or body, or against any person duly authorized to be sued as the nominal defendant on behalf of such company or body, ordering any sum of money to be paid by such company or body, and such

company or body shall disobey such decree or order, the same having been served upon such company or body, by service of the same on a chief clerk or secretary or registrar of the said company or body, or (if there be no officer of such denomination) on any director of the said company or body, personally, or by the same having been left at the head office for the time being of such company or body, the person entitled to receive such sum under such decree or order, or interested in enforcing the payment thereof pursuant thereto, may apply to the court by which the same shall have been pronounced, to fix a peremptory day for the payment of such money, which shall accordingly be fixed by an order for that purpose; and if such company or body, being served in manner aforesaid with such last-mentioned order fourteen days before the day therein appointed for payment of such money, shall neglect to pay the same, such company or body shall be deemed to have committed an act of bankruptcy on the fifteenth day after the service of such order.

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VII. And be it enacted, that if any creditor or creditors of any such company or body to such amount as is now by law requisite to support a fiat shall file an affidavit or affidavits in any of her Majesty's superior courts of law at Westminster that such debt or debts is or are justly due to him or them respectively from the said company or body, and that such company or body, as he or they verily believe, is a commercial or trading company, or body incorporated or associated as aforesaid (as the case may be), and shall sue out of the same court a writ of summons against such incorporated company, or against any person duly authorized to be sued as the nominal defendant on behalf of such associated company or body, as the case may be, and serve a chief clerk or secretary or registrar of such incorporated or associated company or body, as the case may be, or (if there be no officer of such denomination) any director of the said company or body, personally, with a copy of such summons, if such company or body shall not, within one calendar month after service of such summons, pay, secure, or compound for such debt or debts to the satisfaction of such creditor or creditors, or make it appear to the satisfaction of one of the judges of the court out of which such writ of summons shall issue that it is the intention of such company to defend the action upon the merits, and within one calendar month next after service of such summons, cause an appearance or appearances to be entered to such action or actions in the proper court or courts in which the same shall have been brought, every such company or body shall be deemed to have committed an act of bankruptcy from the time of the service of such summons.

Creditor filing an affidavit of debt, &c. if the company do not, within a month, pay, &c. an act of bankruptcy.

VIII. And be it enacted, that it shall be lawful for the assignees of the estate and effects of any such company or body to maintain any action, suit, or other proceeding against any person or persons (whether a member or members of such company or body or not) to recover any debt or demand on behalf of the said company or body against such person or persons, and for any person or persons, to prove or claim under the fiat against such company or body such debt or demand as may be due to him or them (whether a member or members of such company or body or not) on the balance of accounts between him or them, and the said company or body.

Assignees of the estate of a company may maintain action to recover a debt, &c.

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Member's share not to be set off against a demand of assignees.

IX. Provided always, and be it enacted, that no claim or demand which any member of any such company or body may have in respect of his share of the capital or joint-stock thereof, or of any dividends, interest, profits, or bonus payable or apportionable in respect of such share, shall be capable of being set off, either at law or in equity, against any demand which the assignees of the estate and effects of such company or body may have against such member on account of any other matter or thing whatsoever, but all proceedings in respect of such matter or thing may be carried on as if no claim or demand existed in respect of such capital or joint stock, or of any dividends, interest, profits, or bonus payable or apportionable in respect thereof.

No action, &c. by a creditor of a company to affect his right to issue or prove under a fiat against the company and a fiat, &c. not to affect any action by a creditor.

X. And be it enacted, that no action, suit, or other proceeding by any creditor or creditors of any such company or body shall, so far as concerns or may be necessary for the recourse of such creditor or creditors against the person, property, or effects of any member or members thereof for the time being, or any former member or members thereof, be deemed to prejudice or in any manner affect the right of such creditor or creditors to sue out or prosecute a fiat against such company or body, or his or their right to prove or claim under any fiat against such company or body any debt or demand remaining unsatisfied; and that no such fiat, or proof or proceeding thereunder, shall be deemed to prejudice or in any manner affect the right of any creditor or creditors of such company or body to institute or maintain any action, suit, or other proceeding, so far as concerns or may be necessary for the recourse of such creditor or creditors, against the person, property, or effects of any member or members thereof for the time being, or any former member or members thereof: provided always, that nothing herein contained shall prevent remedy against copartners: provided also, that no execution in respect of any debt or demand proveable under the fiat against any such company or body adjudged bankrupt shall be issued against the person, property, or effects of any member or members for the time being of such company or body, or any former member or members thereof, until after such debt or demand shall have been proved under such fiat, nor shall any such execution be issued after the appointment of a receiver in manner hereinafter mentioned, without leave of the high court of chancery.

The law and practice in bankruptcy applicable to fiats under this act.

XI. And be it enacted, that the law and practice in bankruptcy now in force shall extend, so far as the same may be applicable, to this act, and to fiats in bankruptcy issued by virtue of this act, and to all proceedings under such fiats, save and except as may be otherwise directed by this act.

The court may order the directors of a company to prepare and file a balance sheet.

XII. And be it enacted, that it shall be lawful for the court authorized to act in the prosecution of a fiat in bankruptcy against any such company or body, at any time after the advertisement of the bankruptcy in the *London Gazette*, to order that the persons who were at the date of such fiat directors of such company or body, or such of them as such court in its discretion shall think fit, or if there be no directors then such members of the company as such court in its discretion shall think fit, shall prepare such balance sheet and accounts, and in such form as such court shall direct, and shall sub-

scribe such balance sheet and accounts, and file the same in such court, and deliver a copy thereof to the official assignee ten days at least before the last examination under such fiat; and such balance sheet and accounts, before such last examination, may be amended from time to time as occasion shall require, and such court shall direct; and such persons shall make oath of the truth of such balance sheet and accounts whenever they shall be duly required so to do; and such court may from time to time make such allowance out of the estate of such company or body for the preparation of such balance sheet and accounts, and to such person or persons, as such court shall think fit.

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XIII. And be it enacted, that every such person ordered as aforesaid to prepare such balance sheet and accounts shall be under the like obligation to surrender to the court authorized to act in the prosecution of such fiat, at the hour and upon the day allowed for finishing the last examination under such fiat, and to sign and subscribe such surrender, and to submit to be examined before such court from time to time upon oath, and to make a full and true discovery of the estate and effects of such company or body, and shall incur such danger or penalty for not surrendering, or for not signing or subscribing such surrender, or for not coming before the court, or for refusing to be sworn and examined, or for not fully answering to the satisfaction of the court, or for refusing to sign or subscribe his examination, or for not delivering up at the last examination under such fiat all such part of the estate of such company or body, and all books, papers, and writings relating thereunto, as shall be in his possession, custody, or power, or for removing, concealing, or embezzling any part of such estate to the value of ten pounds or upwards, or any books of account, papers, or writings relating thereto, with intent to defraud the creditors of such company or body, as is now by the law in force concerning bankrupts provided as to a bankrupt for not conforming to the like requisitions for the discovery of and in relation to the estate and effects of such bankrupt.

Persons ordered to prepare the balance sheet to surrender at the last examination under the fiat, and to submit to be examined, &c.

XIV. And be it enacted, that every such person so ordered as aforesaid to prepare such balance sheet and accounts shall have such freedom from arrest and imprisonment in coming to surrender to such fiat, and such discharge, if arrested in coming to surrender, as a bankrupt now has or may have under a fiat in bankruptcy against him; and such person or persons, if in prison, may be brought before such court, by warrant, in like manner as such bankrupt now may.

Persons ordered to prepare the balance sheet to have the same freedom from arrest, &c. as a bankrupt.

XV. And be it enacted, that it shall be lawful for the court authorized to act in the prosecution of a fiat in bankruptcy, issued against any such company or body, before adjudication, to summon before such court any person (whether a member of such company or body or not) whom such court shall believe capable of giving any information concerning the commercial dealings or trading of, or any act or acts of bankruptcy, within the meaning of this act, committed by, such company or body, and also to require such person so summoned to produce any books, papers, deeds, writings, and other documents in the custody, possession, or power of such person which may appear to such court to be necessary to establish such dealings, trading, or act

The court before and after adjudication, may summon any person.

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or acts of bankruptcy ; and it shall be lawful for such court to examine every such person upon oath, by word of mouth or interrogatories in writing, concerning the dealings or trade of, or any act or acts of bankruptcy, within the meaning of this act, committed by such company or body ; and it shall also be lawful for such court, after adjudication, to summon before it any person (whether a member of such company or body or not) known or suspected to have any of the estate of such company or body in his possession, or who is supposed to be indebted to such estate, or any person (whether a member of such company or body or not) whom such court believes capable of giving information concerning any person or persons who was or were a member or members of such company or body at or before the date of the fiat, or concerning the trade, dealings, or estate of such company or body, or concerning any act or acts of bankruptcy, within the meaning of this act, committed by such company or body, or any information material to the full disclosure of the dealings of such company or body ; and it shall be lawful for such court to examine, in manner aforesaid, every such person so summoned concerning the person of any such member, or concerning the trade, dealings, or estate of such company or body, and also to require every such person so summoned to produce any books, papers, deeds, writings, or other documents in his custody, possession, or power which may appear to such court necessary to the verification of the deposition of such person, or to the full disclosure of any of the matters which such court is authorized to inquire into ; and every such person so summoned shall incur such danger or penalty for not coming before the court, or for refusing to be sworn and examined, or for not fully answering to the satisfaction of such court, or for refusing to sign or subscribe his examination, or for refusing to produce or for not producing any such book, paper, deed, writing, or document, as is now provided against persons summoned to be examined under a fiat in bankruptcy.

Costs of persons summoned and being member of a company.

XVI. And be it enacted, that where any person who, at or before the date of a fiat in bankruptcy issued against any such company or body, was a member of such company or body, shall be summoned to attend before the court authorized to act in the prosecution of such fiat, every such person shall have such costs and charges only (if any) as such court in its discretion shall think fit.

Penalty on persons wilfully concealing the estate of the company.

XVII. And be it enacted, that if any person who, at or before the date of the fiat against any such company or body, was a member of such company or body, but not being a person so ordered as aforesaid to prepare such balance sheet and accounts, or if any other person shall wilfully conceal any real or personal estate of any such company or body, and shall not within thirty days after the issuing of the fiat against such company or body discover such estate to the court authorized to act in the prosecution of such fiat, or to the assignees, every such person shall forfeit the sum of one hundred pounds, and double the value of the estate so concealed ; and any person, other than a person having been a member of such company or body, who shall, after the time allowed for finishing the last examination under such fiat, voluntarily discover to such court or the assignees any part of the estate of such company or body not before come to the knowledge of the assignees, shall be allowed five pounds per centum, there-

upon, and such further reward as the major part in value of the creditors present at any meeting called for that purpose shall think fit to be paid out of the estate recovered on such discovery.

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XVIII. And be it enacted, that, after the adjudication of bankruptcy under any fiat already issued or hereafter to be issued shall have been advertised in the *London Gazette*, it shall be lawful for the court authorized to act in the prosecution of such fiat to order any treasurer or other officer, or any attorney or solicitor, or other agent of the company or body, or person or persons, adjudged bankrupt under such fiat, to pay and deliver over to the official assignee appointed under such fiat, or to the Bank of England, or any of the branches thereof, to the credit of the accountant in bankruptcy, according to the rules now or hereafter in force with respect to payments into the Bank of England of monies due to any bankrupt's estate, all monies or securities for money in his custody, possession, or power, as such officer or agent, and which he is not by law entitled to retain as against the bankrupt or bankrupts, or his or their assignees.

The court may order any treasurer, &c. or solicitor of the company to deliver up monies and securities in his custody.

XIX. And it is hereby declared and enacted, that if any person shall disobey any rule or order of the court authorized to act in the prosecution of any fiat in bankruptcy, duly made by such court for enforcing any of the purposes and provisions of this act, or of any other act relating to bankruptcy or insolvency, now or hereafter to be in force, or made or entered into by consent of such person for carrying into effect any of such purposes or provisions, it shall and may be lawful for such court, by warrant under hand and seal, to commit the person so offending to the Queen's prison, or to the common gaol of any county, city, or place where he shall be found, or where he shall usually reside, there to remain without bail or mainprize until such person shall have fulfilled the duty required by such rule or order, or until such court or the Lord Chancellor shall make order to the contrary.

If any person disobey any rule or order of the court the court to commit.

XX. And be it enacted, that it shall be lawful for the court authorized to act in the prosecution of any such fiat in bankruptcy to direct the creditors' assignees of the estate and effects of any such company or body to apply to the High Court of Chancery, by petition in a summary way to the Lord Chancellor or the Master of the Rolls, praying that all such orders and directions may be given as shall be necessary for the final winding up and settling the affairs of such company or body, and to compel a just contribution from all the members of such company or body towards the full payment of all the debts and liabilities of such company or body, and of the costs of winding up and finally settling the affairs of such company or body; and that upon the hearing of such petition it shall be lawful for the said High Court of Chancery to refer it to one of the Masters of the High Court of Chancery to take all such accounts and make all such inquiries as shall be required for the purpose of ascertaining what sum of money in the whole, and what sums of money as proportionate parts of the whole, or what sum or sums of money from time to time on account, will (having regard to the deed of settlement of such company, and the calls, contributions, debts, or demands

The court may direct the assignees to petition the Court of Chancery for directions for winding up the affairs of the company.

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actually paid by the several and respective members thereof, and also having regard to any proceedings in the Court of Bankruptcy, or any District Court of Bankruptcy,) be necessary and proper to be raised by calls or contributions from the respective members of such company or body for the payment and satisfaction of all the debts and liabilities of such company or body, and also of all the costs of winding up and settling the affairs of the said company; and that the High Court of Chancery, upon confirmation of the Master's report made upon any such reference, or upon making such reference, or otherwise, may order the payment of the several and respective sums of money which by such report are found necessary and proper to be paid, and may refer it to the Master to appoint a receiver to collect and receive such sums of money, and either to pay the same into the Bank of England, in the name and to the account of the Accountant-General of the High Court of Chancery, to the credit of such company or body, and may, upon the petition of such assignees, order such sums of money to be paid in or towards satisfaction of the debts which by the proceedings in bankruptcy shall have been found to be due to the creditors of such company or body, and all persons having claims and demands thereon, and also in satisfaction of costs, or may order such receiver to pay such sums of money in satisfaction of such debts, claims, and demands, and costs, in the first instance.

The Court of Chancery may make order in individual claims of members in respect of the transactions of the company.

XXI. And be it enacted, that if it shall appear that any individual members of such company or body have claims against each other in respect of the affairs or transactions of such company or body, it shall be lawful for the Court of Chancery, upon the petition of any member of such company or body, alleging that he hath any such claim against any other member of the said company or body, to make all such orders as shall be just for the purpose of finally settling and determining such claim, and may order the payment of such sum of money (if any) as shall appear to be due in respect of any such claim.

The Lord Chancellor to make rules and orders as to mode of proceeding for enforcing contribution by members of company.

XXII. And whereas the law is defective in the means of making the members of Joint Stock Companies contributaries for paying their debts in full, and in the means of giving relief where execution may have been had in respect of a debt due from any such company against one or a very few members of such company, and also in the means of adjusting the rights of the members of any such company amongst themselves, and finally winding up the affairs of such company; be it enacted, that it shall be lawful for the Lord Chancellor, with the advice and consent of the Master of the Rolls and the Vice-Chancellors for the time being, or any two of them, from time to time, and as often as circumstances shall require, to make and prescribe such rules and orders touching and concerning the form and mode of proceeding to be had and taken in the Court of Chancery for settling and enforcing the contribution to be paid by any member or members for the time being of any such company, or any former member or members thereof, or any real or personal representative, or other persons liable in that behalf, and the practice to be observed by such court in or relating to such proceeding, or any matters incident thereto, and the form and mode of proceeding to be had and taken

before any one of the Masters of the said court, primarily or by reference from the said court, in any matter for or relating to contribution, as shall from time to time seem necessary and proper for the advancement of justice in such cases, and for adjusting and determining the rights and equities of the parties concerned, and for suing for and getting in the assets, and for ascertaining and discharging the liabilities of such companies, and requiring the creditors thereof to claim their debts, and finally winding up the affairs thereof, with as little delay, expense, and uncertainty as possible: provided always, that such rules and orders shall be laid before both Houses of Parliament within one month from the making thereof, if Parliament be then sitting, or, if Parliament be not then sitting, within one month from the commencement of the then next session of Parliament; and every rule and order so made shall be binding and obligatory, and be of like force and effect as if the provisions contained therein had been expressly enacted by Parliament.

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XXIII. And be it enacted, that an act passed in the forty-first year of the reign of King George the Third, intituled "An Act for the more speedy and effectual Recovery of Debts due to His Majesty, His Heirs and Successors, in right of the Crown of the United Kingdom of Great Britain and Ireland, and for the better Administration of Justice within the same," shall extend to decrees or orders made by the said Court of Chancery in any suit, proceeding, or matter under or by virtue of this act.

The act 41
Geo. 3, (U.K.)
c. 90, to extend
to decrees
under this act.

XXIV. And be it enacted, that on production of an office copy of any decree or order of the Court of Chancery made in any proceeding under or by virtue of this act, and of an affidavit that application has been duly made to the person mentioned in such decree or order for payment of the sum thereby ordered to be paid by him, and that default has been made in payment thereof, to one of the principal clerks of the Court of Session in Scotland, or his deputy, for registration there, such decree or order shall thereupon be registrable and registered there in like manner as a bond executed according to the law of Scotland, with a clause of registration therein contained, and execution shall and may pass upon a decree to be interponed thereto in like manner as execution passes upon a decree interponed to such bond, and shall have the like effect upon and against the person named in such decree or order of the said Court of Chancery as if he had executed such bond.

Decrees under
this act may be
registered in
Scotland.

XXV. And be it enacted, that previous to passing the last examination under a fiat against any such company or body adjudged bankrupt it shall be the duty of the court authorized to act in the prosecution of such fiat to inquire, by the examination of such person or persons as such court shall think fit, into the cause of the failure of such company or body; and after the passing of such last examination, or after the time allowed by such court for that purpose shall have elapsed, such court shall cause a copy of the balance sheet filed in the court under such fiat to be transmitted to the Committee of Privy Council for Trade and Plantations, and such court shall at the same time certify in writing to the said committee what, in the opinion of such court, was the cause of the failure of such company or body,

Previous to
passing the last
examination
the court shall
inquire into the
cause of the
failure of a
company, and
certify the
cause of the
failure, and
special circum-
stances.

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and shall have liberty to state any special circumstances relating to the formation or management of the affairs of such company or body, and shall cause to be annexed to such certificate a copy of the examination of any person or persons taken under such fiat, and which such court shall deem material, relating to the formation or management of the affairs of such company or body.

After the court shall have so certified to the Board of Trade, the Queen may revoke and make void privileges granted to the company.

XXVI. And be it enacted, that after the court shall have certified to the Committee of Privy Council for Trade and Plantations the cause of the failure of any such company or body adjudged bankrupt it shall and may be lawful for her Majesty, her heirs and successors, upon the recommendation of the said committee, by any instrument in writing under her or their Great Seal of Great Britain, or Privy Seal, to signify her or their pleasure for revoking and making void, and thereby to revoke and make void, all the powers, privileges, and advantages at any time, by any charter or letters patent or act of Parliament, granted to such company or body, and to determine the same; and thereupon the said powers, privileges, and advantages shall accordingly be revoked, and the same company or body shall be determined, without any inquisition, scire facias, or any matter or thing to make void or determine the same, any thing in such charter or letters patent or act of Parliament contained to the contrary notwithstanding.

After the court shall have so certified the board may institute prosecution.

XXVII. And be it enacted, that after the court shall have certified to the Committee of Privy Council for Trade and Plantations the cause of the failure of any such company or body adjudged bankrupt the said committee may, whenever it shall think fit, cause all the papers relating to such failure, and to the formation and management of such company or body, and to the conduct of any of the directors or other officers of the said company or body therein, or to any or either of such matters, to be laid before her Majesty's Attorney-General, who shall direct whether any and what proceedings shall be taken thereupon against any person who was a director or other officer of such company or body, or any other person; and any prosecution or other proceeding which shall be thereupon directed by the Attorney-General shall be conducted by or under the direction of the commissioners of her Majesty's treasury.

Until determination of company by the crown, it shall be considered as subsisting.

XXVIII. Provided always, and be it enacted, that until the determination of such company or body by her Majesty, her heirs or successors, such company or body, and the persons who were officers thereof at the time of such determination, shall respectively be considered as subsisting, and as continuing such officers as aforesaid, for all the purposes for which the same was originally constituted, and that, notwithstanding such determination as aforesaid, the same shall be considered as subsisting and continuing respectively so long and so far as may be necessary for the winding up of the concerns of such company or body under the fiat issued against such company or body.

If determined in any other manner the same to be sub-

XXIX. And be it enacted, that notwithstanding the determination of any company or body incorporated or associated within the meaning of this act, as the case may be, by any other means than as

last aforesaid, such company or body, and the persons who were officers thereof at the time of such determination, shall respectively be considered as subsisting, and as continuing such officers as aforesaid, for all the purposes of this act, so long and so far as any matters relating to such company or body shall remain unsettled.

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subsisting so long as any matters remain unsettled.

XXX. And be it enacted, that if any person, being a member of any such company or body which shall be adjudged bankrupt, shall, after and with knowledge of an act of bankruptcy within the meaning of this act committed by such company or body, or in contemplation of the bankruptcy of such company or body, have destroyed, altered, mutilated, or falsified any of the books, papers, writings, or securities of such company or body, or made or been privy to the making of any false or fraudulent entry in any book of account or other document, with intent to defraud the creditors of such company or body, or to defeat the object of this or any other statute relating to bankrupts, every such person shall be deemed to be guilty of a misdemeanor, and being convicted thereof shall be liable to be imprisoned in any common gaol or house of correction for any term not exceeding three years, with or without hard labour.

Any member of a company adjudged bankrupt, destroying books, &c. of the company, guilty of a misdemeanor.

XXXI. And be it enacted, that in construing this act all powers given or duties directed to be performed by the Lord Chancellor may be performed by the Lord Keeper or Lords Commissioners of the Great Seal; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing, and bodies corporate as well as individuals: and every word importing the plural number shall extend and be applied to one person or thing as well as several persons or things; and every word importing the masculine gender only shall extend and be applied to a female as well as a male; and the words "fiat in bankruptcy" shall mean also and include any commission of bankrupt; unless (in the cases above specified) a different construction shall be provided, or the construction be repugnant to the subject matter or context.

**Construction
of the act.**

XXXII. And be it enacted, that this act shall commence and take effect on the first day of November next.

**Commence-
ment of act.**

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SCHEDULE to which the foregoing Act refers.

SCHEDULE (A.)

No. 1.

Declaration of Insolvency by incorporated or associated Commercial or Trading Company.

By virtue of a resolution duly passed in that behalf on the day of _____ at a Board of Directors of [*here state the name or style of the company*], duly summoned for that purpose, it is hereby declared, that the said company [*or society, &c., as the case may be,*] is unable to meet its engagements.

Dated this _____ day of _____ in the year _____
(*Common Seal of the Company, or, if the Company have no Common Seal, the signature of the Chairman of the Board of Directors who was present at the passing of the Resolution.*)

Witness *G. H.*, Attorney [*or Solicitor*]
of the Court of _____ and Attorney [*or Solicitor*]
of the said company, and attesting witness to the execution hereof as such Attorney [*or Solicitor*].

SCHEDULE (A.)

No. 2.

Minute of Resolution of a Board of Directors of incorporated or associated Commercial or Trading Company, authorizing a Declaration of Insolvency.

A RESOLUTION was duly passed on the _____ day of _____ at a Board of Directors of [*here state the name or style of the company*], duly summoned for that purpose, that the said company was then unable to meet its engagements, and that a declaration of insolvency should be forthwith filed in the office of the Lord Chancellor's Secretary of Bankrupts, in the form directed by the statute in that case made and provided.

(*Common Seal of the Company, or, if the Company have no Common Seal, the signature of the Chairman of the Board of Directors who was present at the passing of the Resolution*)

Witness *G. H.*, Attorney [*or Solicitor*]
of the Court of _____ and Attorney [*or Solicitor*]
of the said Company, and attesting witness to the execution hereof as such Attorney [*or Solicitor*].

An Act to regulate Joint Stock Banks in England.

[5th September, 1844.]

Whereas the laws in force for the regulation of copartnerships of bankers in England need to be amended: be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that it shall not be lawful for any company of more than six persons to carry on the trade or business of bankers in England, after the passing of this act, under any agreement or covenant of copartnership made or entered into on or after the sixth day of May last passed, unless by virtue of letters patent to be granted by her Majesty according to the provisions of this act; but nothing herein contained shall be construed to restrain any such company established before the said sixth day of May, for the purpose of carrying on the said trade or business of bankers in England, from continuing to carry on the same trade and business as legally as they might have done before the passing of this act, until letters patent shall have been granted to them severally on their application, as hereinafter provided, to be made subject to the provisions of this act.

As to Joint
Stock Banks
established
before and
after 6th May
last.

II. And be it enacted, that before beginning to exercise the said trade or business every such company shall present a petition to her Majesty in council, praying that her Majesty will be graciously pleased to grant to them letters patent under this act; and every such petition shall be signed by seven at least of the said company, and shall set forth the following particulars; (that is to say)

Company to
petition for
letters patent.

First, the names and additions of all the partners of the company, and the name of the street, square, or other place where each of the said partners reside:

Second, the proposed name of the bank:

Third, the name of the street, square, or other local description of the place or places where the business of the bank is to be carried on:

Fourth, the proposed amount of the capital stock, not being in any case less than one hundred thousand pounds, and the means by which it is to be raised:

Fifth, the amount of capital stock then paid up, and where and how invested:

Sixth, the proposed number of shares in the business:

Seventh, the amount of each share, not being less than one hundred pounds each:

III. And be it enacted, that every such petition shall be referred by her Majesty to the committee of privy council for trade and plantations, and so soon as the lords of the said committee shall have reported to her Majesty that the provisions of this act have been complied with on the part of the said company, it shall thereupon be lawful for her Majesty, if her Majesty shall so think fit, with the advice of her privy council, to grant the said letters patent.

Letters patent
to be granted
on report of
Board of
Trade.

**Joint Stock
Banks.****Deed of settle-
ment.**

IV. And be it enacted, that the deed of partnership of every such Banking Company shall be prepared according to a form to be approved by the lords of the said committee, and shall, in addition to any other provisions which may be contained therein, contain specific provisions for the following purposes; (that is to say.)

First, for holding ordinary general meetings of the company once at least in every year, at an appointed time and place:

Second, for holding extraordinary general meetings of the company, upon the requisition of nine shareholders or more, having in the whole at least twenty-one shares in the partnership business:

Third, for the management of the affairs of the company, and the election and qualification of the directors:

Fourth, for the retirement of at least one-fourth of the directors yearly, and for preventing the re-election of the retiring directors for at least twelve calendar months:

Fifth, for preventing the company from purchasing any shares or making advances of money, or securities for money, to any person on the security of a share or shares in the partnership business:

Sixth, for the publication of the assets and liabilities of the company once at least in every calendar month:

Seventh, for the yearly audit of the accounts of the company by two or more auditors chosen at a general meeting of the shareholders, and not being directors at the time:

Eighth, for the yearly communication of the auditors' report, and of a balance sheet, and profit and loss account, to every shareholder:

Ninth, for the appointment of a manager or other officer to perform the duties of manager:

And such deed, executed by the holders of at least one-half of the shares in the said business, on which not less than ten pounds on each such share of one hundred pounds, and in proportion for every share of larger amount, shall have been then paid up, shall be annexed to the petition; and the provisions of such deed, with such others as to her Majesty shall seem fit, shall be set forth in the letters patent.

**No company
to commence
business till
deed executed
and all the
shares sub-
scribed for.**

V. Provided always, and be it enacted, that it shall not be lawful for any such company to commence business until all the shares shall have been subscribed for, and until the deed of partnership shall have been executed, personally or by some person duly authorized by warrant of attorney to execute the same on behalf of such holder or holders, by the holders of all the shares in the said business, and until a sum of not less than one-half of the amount of each share shall have been paid up in respect of each such share; and it shall not be lawful for the company to repay any part of the sum so paid up without leave of the lords of the said committee.

**Company to be
incorporated.**

VI. And be it enacted, that it shall be lawful for her Majesty in and by such letters patent to grant that the persons by whom the said deed of partnership shall have been executed, and all other persons who shall thereafter become shareholders in the said banking business, their executors, administrators, successors, and assigns respectively, shall be one body politic and corporate, by such name as shall be given to them in and by the said letters patent, for the purpose of carrying on the said banking business, and by that name

shall have perpetual succession and a common seal, and shall have power to purchase and hold lands of such annual value as shall be expressed in such letters patent; and such letters patent shall be granted for a term of years, not exceeding twenty years, and may be made subject to such other provisions and stipulations as to her Majesty may seem fit.

Joint Stock
Banks.

VII. Provided always, and be it enacted, that notwithstanding such incorporation the several shareholders for the time being in the said banking business, and those who shall have been shareholders therein, and their several executors, administrators, successors, and assigns, shall be and continue liable for all the dealings, covenants, and undertakings of the said company, subject to the provisions hereinafter contained, as fully as if the said company were not incorporated.

Incorporation
not to limit
liability.

VIII. And be it enacted, that no action or suit by or against the company shall be in anywise affected by reason of the plaintiff or defendant therein being a shareholder or former shareholder of the company; but any such shareholder, either alone or jointly with another person as against the company, or the company as against any such shareholder, either alone or jointly with any other person, shall have the same action and remedy in respect of any cause of action or suit whatever which such shareholder or company might have had if such cause of action or suit had arisen with a stranger.

Actions by or
against share-
holders.

IX. And be it enacted, that every judgment, decree, or order of any court of justice in any proceeding against the company may be lawfully executed against, and shall have the like effect on, the property and effects of the company, and also, subject to the provisions hereinafter contained, upon the person, property, and effects of every shareholder and former shareholder thereof, as if every individual shareholder and former shareholder had been by name a party to such proceeding.

Decree, &c. to
be enforced
against com-
pany, &c.

X. And be it enacted, that it shall be lawful for the plaintiff to cause execution upon any judgment, decree, or order obtained by him in any such action or suit against the company to be issued against the property and effects of the company; and if such execution shall be ineffectual to obtain satisfaction of the sums sought to be recovered thereby, then it shall be lawful for him to have execution in satisfaction of such judgment, decree, or order against the person, property, and effects of any shareholder, or, in default of obtaining satisfaction of such judgment, decree, or order from any shareholder against the person, property, and effects of any person who was a shareholder of the company at the time when the cause of action against the company arose: provided always, that no person having ceased to be a shareholder of the company shall be liable for the payment of any debt for which any such judgment, decree, or order shall have been so obtained, for which he would not have been liable as a partner in case a suit had been originally brought against him for the same, or for which judgment shall have been obtained, after the expiration of three years from the time when he shall have ceased to be a shareholder of such company; nor shall this act be

Execution
against com-
pany to pre-
cede execution
against present
or former
shareholders.

Liability of
former share-
holders.

**Joint Stock
Banks.**

deemed to enable any party to a suit to recover from any individual shareholder of the company, or any other person whomsoever, any other or greater sum than might have been recovered if this act had not been passed.

**Reimburse-
ment of indi-
vidual share-
holders.**

XI. And be it enacted, that every person against whom or against whose property or effects any such execution shall have issued shall be reimbursed out of the property and effects of the company for all monies paid, and for all damages, costs, and expenses incurred by him by reason of such execution, or of the action or suit in which the same shall have issued, or, in default of such reimbursement, by contribution from the other shareholders of the company.

**Individuals
paying under
execution to
recover against
the company.**

XII. And be it enacted, that if any such execution be issued against any present or former shareholder of the company, and if, within fourteen days next after the levying of such execution, he be not reimbursed, on demand, out of the property and effects of the company, all such monies, damages, costs, and expenses as he shall have paid or incurred in consequence of such execution, it shall be lawful for such shareholder, or his executors or administrators, to have execution against the property and effects of the company in satisfaction of such monies, damages, costs, and expenses; and the amount of such monies, damages, costs, and expenses shall be ascertained and certified by one of the masters or other officer of the court out of which such execution shall issue.

**How such
execution is
to be had.**

XIII. And be it enacted, that in the cases provided by this act for execution on any judgment, decree, or order in any action or suit against the company, to be issued against the person or against the property and effects of any shareholder or former shareholder of such company, or against the property and effects of the company at the suit of any shareholder or former shareholder, in satisfaction of any monies, damages, costs, and expenses paid or incurred by him as aforesaid in any action or suit against the company, such execution may be issued by leave of the court, or of a judge of the court in which such judgment, decree, or order shall have been obtained, upon motion or summons for a rule to show cause, or other motion or summons consistent with the practice of the court, without any suggestion or scire facias in that behalf, and that it shall be lawful for such court or judge to make absolute or discharge such rule, or allow or dismiss such motion, (as the case may be,) and to direct the costs of the application to be paid by either party, or to make such order therein as to such court or judge shall seem fit; and in such cases such form of writs of execution shall be sued out of the courts of law and equity respectively, for giving effect to the provision in that behalf aforesaid, as the judges of such courts respectively shall from time to time think fit to order, and the execution of such writs shall be enforced in like manner as writs of execution are now enforced; provided that any order made by a judge as aforesaid may be discharged or varied by the court, on application made thereto by either party dissatisfied with such order; provided also, that no such motion shall be made nor summons granted for the purpose of charging any shareholder or former shareholder until ten days' notice thereof shall have been given to the person sought to be charged thereby.

XIV. And be it enacted, that if such shareholder be not by the means aforesaid fully paid all such monies, with interest, damages, costs, and expenses, as he shall have paid or incurred by reason of any such execution, it shall be lawful for him, his executors or administrators, to divide the amount thereof, or so much thereof as he shall not have been reimbursed, into as many equal parts as there shall then be shares in the capital stock of the company (not including shares then under forfeiture); and every shareholder for the time being of the company, and the executors or administrators of every deceased shareholder, shall, in proportion to the number of shares which they may hold in the company, pay one or more of such parts, upon demand, to the shareholder against whom such execution shall have been issued, or to his executors or administrators; and upon neglect or refusal so to pay, it shall be lawful for such shareholder, his executors or administrators, to sue for and recover the same against the shareholder, or the executors or administrators of any shareholder, who shall so neglect or refuse as aforesaid, in any of her Majesty's Courts of Record at Westminster, or in any other court having jurisdiction in respect of such demand.

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Banks.
Contribution
to be recovered
from other
shareholders.

XV. And be it enacted, that if the shareholder or former shareholder against whom any such execution shall have issued, his executors or administrators, shall, by reason of the bankruptcy or insolvency of any shareholder, or from any other cause, but without any neglect or wilful default on his own part, be prevented from recovering any proportion of the monies, costs, or expenses which he shall have so paid, it shall be lawful for him, his executors or administrators, again to divide the amount of all such monies, costs, and expenses as shall not have been recovered by him or them into as many equal parts as there shall then be shares in the capital stock of the company (not including the shares then under forfeiture), except the shares in respect of which such default shall have happened; and every shareholder for the time being of the company, and the executors or administrators of every deceased shareholder, except as aforesaid, shall rateably, according to the number of shares which they shall hold in the company, upon demand, pay one or more such last-mentioned parts to the shareholder against whom such execution shall have issued, his executors or administrators; and in default of payment he or they shall have the same remedies in all respects for the recovery thereof as under the provisions herein-before mentioned are given in respect of the original proportions of such monies, damages, costs, and expenses; and if any proportion of the said monies, damages, costs and expenses shall remain unpaid by reason of any such bankruptcy, insolvency, or other cause as aforesaid, such shareholder, his executors or administrators, shall have in like manner, from time to time, and by way of accumulative remedy, the same powers, according to the circumstances of the case, of again dividing and enforcing payment of the amount of such proportion, until he or they shall, in the end, if a former shareholder, be fully reimbursed the whole of the said monies, costs, and expenses, and if then a shareholder, the whole, excepting the portions belonging to the shares held by him.

Further
remedy in case
of bankruptcy,
&c. of com-
pany's share-
holders.

XVI. And be it enacted, that within three months after the grant of the said letters patent, and before the company shall begin to carry

Memorial to
be registered.

**Joint Stock
Banks.**

on their business as bankers, an account or memorial shall be made out, according to the form contained in the schedule marked (A.) to this act annexed, wherein shall be set forth the true title or firm of the company, and also the names and places of abode of all the members of such company as the same respectively shall appear on the books of such company, and also the name and place of abode of every director and manager or other like officer of the company, and the name or firm of every bank or banks established or to be established by such company, and also the name of every town or place where the business of the said company shall be carried on; and a new account or memorial of the same particulars shall be made by the said company in every year, between the twenty-eighth day of February and the twenty-fifth day of March, while they shall continue to carry on their business as bankers; and every such memorial shall be delivered to the commissioners of stamps and taxes at the stamp office in London, who shall cause the same to be filed and kept in the said stamp office, and an entry or registry thereof to be made in a book or books to be there kept for that purpose by some person or persons to be appointed by the said commissioners in that behalf, which book or books any person or persons shall from time to time have liberty to search and inspect on payment of the sum of one shilling for every search; and the company shall from time to time cause to be printed and kept, in a conspicuous place accessible to the public in their office or principal place of business, a list of the registered names and places of abode of all the members of such company for the time being.

**Memorials of
occasional
changes.**

XVII. Provided also, and be it enacted, that the manager or one of the directors of every such company shall, from time to time as occasion shall require, make out in manner herein-before directed, and cause to be delivered to the commissioners of stamps and taxes as aforesaid, a further account or memorial, according to the form contained in the schedule marked (B.) to this act annexed, of the name and place of abode of every new director, manager, or other like officer of such company, and also of the name or names of any person or persons who shall have ceased to be members of such company, and also of the name or names of any person or persons who shall have become a member or members of such company, either in addition to or instead of any former member or members thereof, and of the name or names of any new or additional town or towns, place or places, where the business of the said company is carried on; and such further account or memorial shall from time to time be filed and kept and entered and registered at the stamp office in London, in like manner as is herein-before required with respect to the original or annual account or memorial herein-before directed to be made.

**Form of
memorials.**

XVIII. And be it enacted, that the several memorials aforesaid shall be signed by the manager or one of the directors of the company, and shall be verified by a declaration of such manager or director before a justice of the peace, or a master or master extraordinary of the high Court of Chancery, made pursuant to the provisions of an act passed in the sixth year of his late Majesty's reign, intituled "An Act to repeal an Act of the present Session of Parliament, intituled 'An Act for the more effectual Abolition of Oaths and Affirmations taken and made in various Departments of the State, and to substitute De-

clarations in lieu thereof, and for the more entire Suppression of voluntary and extra-judicial Oaths and Affidavits, and to make other Provisions for the Abolition of unnecessary Oaths;" and if any declaration so made shall be false in any material particular the person wilfully making such false declaration shall be guilty of a misdemeanor.

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Banks.

XIX. And be it enacted, that a true copy of any such memorial, certified under the hand of one of the commissioners of stamps and taxes for the time being, upon proof made that such certificate has been signed with the handwriting of the person certifying the same, whom it shall not be necessary to prove to be a commissioner of stamps and taxes, shall be received in evidence as proof of the contents of such memorial, and proof shall not be required that the person by whom the memorial shall purport to be verified was, at the time of such verification, the manager or one of the directors of the company.

Evidence of
memorials.

XX. And be it enacted, that the said commissioners of stamps and taxes for the time being shall, upon application made to them by any person or persons requiring a copy, certified according to this act, of any such account or memorial as aforesaid, in order that the same may be produced in evidence, or for any other purpose, deliver to the person or persons so applying for the same such certified copy, he, she, or they paying for the same the sum of ten shillings and no more.

Commissioners
of stamps to
give certified
copies.

XXI. And be it enacted, that the persons whose names shall appear from time to time in the then last delivered memorial, and their legal representatives, shall be liable to all legal proceedings under this act, as existing shareholders of the company, and shall be entitled to be reimbursed, as such existing shareholders only, out of the funds or property of the company, for all losses sustained in consequence thereof.

Existing lia-
bilities to con-
tinue till new
memorials.

XXII. And be it enacted, that all bills of exchange or promissory notes made, accepted, or endorsed on behalf of the said company may be made, accepted, or endorsed (as the case may be) in any manner provided by the deed of partnership, so that they be signed by one of the managers or directors of the company, and be by him expressed to be so made, accepted, or endorsed by him on behalf of such company; provided always, that nothing herein contained shall be deemed to make any such manager or director liable upon any such bill of exchange or promissory note to any greater extent or in a different manner than upon any other contract signed by him on behalf of any such company; and that every such company, on whose behalf any bill of exchange or promissory note shall be made, accepted, or endorsed in manner and form as aforesaid may sue and be sued thereon as fully as in the case of any contract made and entered into under their common seal.

Bills and notes
to be signed by
one director or
manager.

Manager not
personally
liable.

XXIII. And be it enacted, that subject to the regulations herein contained, and to the provisions of the deed of settlement, every shareholder may sell and transfer his shares in the said company by deed duly stamped, in which the consideration shall be truly stated;

Transfers of
shares to be
registered, &c.

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Banks.**

and such deed may be according to the form in the schedule marked (C.) annexed to this act, or to the like effect; and the same (when duly executed) shall be delivered to the secretary, and be kept by him; and the secretary shall enter a memorial thereof in a book, to be called the "register of transfers," and shall endorse such entry on the deed of transfer, and for every such entry and endorsement the company may demand any sum not exceeding two shillings and sixpence; and until such transfer have been so delivered to the secretary as aforesaid the purchaser of the share shall not be entitled to receive any share of the profits of the said business, or to vote in respect of such share.

**Transfer; calls
to be paid.**

XXIV. And be it enacted, that no shareholder shall be entitled to transfer any share until he shall have paid all calls for the time being due on every share held by him.

**Closing of
transfer books.**

XXV. And be it enacted, that the directors may close the register of transfers for a period not exceeding fourteen days previous to each ordinary meeting, and may fix a day for the closing of the same, of which seven days' notice shall be given by advertisement in some newspapers as after mentioned; and any transfer made during the time when the transfer books are so closed shall, as between the company and the party claiming under the same, but not otherwise, be considered as made subsequently to such ordinary meeting.

**Transmission
of shares by
other means
than transfer
to be authen-
ticated by a
declaration.**

XXVI. And with respect to the registration of shares the interest in which may have become transmitted in consequence of the death or bankruptcy or insolvency of any shareholder, or in consequence of the marriage of a female shareholder, or by any other legal means than by a transfer according to the provisions of this act, be it enacted, that no person claiming by virtue of any such transmission shall be entitled to receive any share of the profits of the said business, or to vote in respect of any such share as the holder thereof, until such transmission have been authenticated by a declaration in writing as hereinafter mentioned, or in such other manner as the directors shall require; and every such declaration shall state the manner in which and the party to whom such share shall have been so transmitted, and shall be made and signed by some credible person before a justice of the peace, or before a master or master extraordinary in the High Court of Chancery; and such declaration shall be left with the secretary, and thereupon he shall enter the name of the person entitled under such transmission in the register book of shareholders of the company; and for every such entry the company may demand any sum not exceeding two shillings and sixpence.

**Proof of trans-
mission by
marriage, will,
&c.**

XXVII. And be it enacted, that if such transmission be by virtue of the marriage of a female shareholder, the said declaration shall contain a copy of the register of such marriage, or other particulars of the celebration thereof, and shall declare the identity of the wife with the holder of such share; and if such transmission have taken place by virtue of any testamentary instrument, or by intestacy, the probate of the will or letters of administration, or an official extract therefrom, shall, together with such declaration, be produced to the secretary; and upon such production, in either of the cases aforesaid,

the secretary shall make an entry of the declaration in the said register of transfers.

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XXVIII. And be it enacted, that with respect to any share to which several persons may be jointly entitled, all notices directed to be given to the shareholders shall be given to such of the said persons whose names shall stand first in the register of shareholders; and notice so given shall be sufficient notice to all the proprietors of such share.

**Notices to
joint proprie-
tors of shares.**

XXIX. And be it enacted, that if any money be payable to any shareholder, being a minor, idiot, or lunatic, the receipt of the guardian of such minor, or the receipt of the committee of such idiot or lunatic, shall be a sufficient discharge to the company for the same.

**Receipts for
money, minors,
&c.**

XXX. And be it enacted, that the company shall not be bound to see to the execution of any trust, whether express, implied, or constructive, to which any of the said shares may be subject; and the receipt of the party in whose name any such share shall stand in the books of the company shall from time to time be a sufficient discharge to the company for any dividend or other sum of money payable in respect of such share, notwithstanding any trusts to which such share may then be subject, and whether or not the company have had notice of such trusts; and the company shall not be bound to see to the application of the money paid upon such receipt.

**Company not
bound to re-
gard trusts.**

XXXI. And be it enacted, that from time to time the directors may make such calls of money upon the respective shareholders, in respect of the amount of capital stock respectively subscribed by them, as they shall think fit: and whenever execution upon any judgment against the company shall have been taken out against any shareholder, the directors, within twenty-one days next after notice shall have been served upon the company of the payment of any money by such shareholder, his executors or administrators, in or toward satisfaction of such judgment, shall make such calls upon all the shareholders as will be sufficient to reimburse to such shareholder, his executors or administrators, the money so paid by him or them, and all his or their damages, costs and expenses by reason of such execution, and shall apply the proceeds of such calls accordingly; and every shareholder shall be liable to pay the amount of every call, in respect of the shares held by him, to the persons, and at the times and places, from time to time appointed by the directors.

**Power to make
calls.**

XXXII. And be it enacted, that if, before or on the day appointed for payment, any shareholder do not pay the amount of any call to which he may be liable, then such shareholder shall be liable to pay interest for the same at the yearly rate of five pounds in the hundred from the day appointed for the payment thereof to the time of the actual payment.

**Interest on
calls unpaid.**

XXXIII. And be it enacted, that if at the time appointed by the directors for the payment of any call the holder of any share fail to pay the amount of such call, the company may sue such shareholder for the amount thereof in any court of law or equity having compe-

**Enforcement
of calls by
action.**

- Joint Stock Banks.** tent jurisdiction, and may recover the same, with interest, at the yearly rate of five pounds in the hundred from the day on which such call may have been payable.
- Declaration in action for calls.** XXXIV. And be it enacted, that in any action to be brought by the company against any shareholder to recover any money due for any call, it shall not be necessary to set forth the special matter, but it shall be sufficient for the company to declare that the defendant is a holder of one share or more in the company (stating the number of shares), and is indebted to the company in the sum of money to which the calls in arrear shall amount, in respect of one call or more upon one share or more (stating the number and amount of each of such calls), whereby an action hath accrued to the company by virtue of this act.
- Matter to be proved in action for calls.** XXXV. And be it enacted, that on the trial of such action it shall not be necessary to prove the appointment of the directors who made such call, or any other matter, except that the defendant at the time of making such call was a holder of one share or more in the company, and that such call was in fact made, and such notice thereof given, as is directed by this act; and thereupon the company shall be entitled to recover what shall be due upon such call, with interest thereon.
- Proof of proprietorship.** XXXVI. And be it enacted, that the production of the register book of shareholders of the company shall be evidence of such defendant being a shareholder, and of the number and amount of his shares.
- Forfeiture of shares for non-payment of calls.** XXXVII. And be it enacted, that if the holder of any share fail to pay a call payable by him in respect thereof, with the interest, if any, that shall have accrued thereon, the directors, at any time after the expiration of six calendar months from the day appointed for payment of such call, may declare such share forfeited, and that whether the company have sued for the amount of such call or not; but the forfeiture of any such share shall not relieve any shareholder, his executors or administrators, from his and their liability to pay the calls made before such forfeiture.
- Notice of forfeiture to be given before declaration thereof.** XXXVIII. And be it enacted, that before declaring any share forfeited the directors shall cause notice of such intention to be left at the usual or last place of abode of the person appearing by the register book of shareholders to be the proprietor of such share; and if the holder of any such share be not within the united kingdom, or if the interest in any such share shall be known by the directors to have become transmitted otherwise than by transfer, as herein-before mentioned, but a declaration of such transmission shall not have been registered as aforesaid, and so the address of the parties to whom the same may have been transmitted shall not be known to the directors, the directors shall give public notice of such intention in the *London Gazette*; and the several notices aforesaid shall be given twenty-one days at least before the directors shall make such declaration of forfeiture.

XXXIX. And be it enacted, that such declaration of forfeiture shall not take effect, so as to authorize the sale or other disposition of any share, until such declaration have been confirmed at some general meeting of the company, to be held after the expiration of two calendar months at the least from the day on which such notice of intention to make such declaration of forfeiture shall have been given; and it shall be lawful for the company to confirm such forfeiture at any such meeting, and by an order at such meeting, or at any subsequent general meeting, to direct the share so forfeited to be sold or otherwise disposed of; and after such confirmation the directors shall sell the forfeited share, either by public auction or private contract, within six calendar months next after the confirmation of the forfeiture, and if there be more than one such forfeited share, then either separately or together, as to them shall seem fit; and any shareholder may purchase any forfeited share so sold.

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Forfeiture to be confirmed by a general meeting.

Sale of forfeited shares.

XL. And be it enacted, that a declaration in writing by some credible person not interested in the matter, made before any justice of the peace, or before any master or master extraordinary in the high Court of Chancery, that the call in respect of a share was made, and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was declared and confirmed in manner herein-before required, shall be sufficient evidence of the facts therein stated; and such declaration, and the receipt of a director or manager of the company for the price of such share shall constitute a good title to such share, and thereupon such purchaser shall be deemed the holder of such share discharged from all calls made prior to such purchase: and a certificate of proprietorship shall be delivered to such purchaser, and he shall not be bound to see to the application of the purchase money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to any such sale.

Evidence as to forfeiture of shares.

XLI. And be it enacted, that the company shall not sell or transfer more of the shares of any such defaulter than will be sufficient, as nearly as can be ascertained at the time of such sale, to pay the arrears then due from such defaulter on account of any calls, together with interest, and the expenses attending such sale and declaration of forfeiture; and if the money produced by the sale of any such forfeited share be more than sufficient to pay all arrears of calls, and interest thereon, due at the time of such sale, and the expenses attending the declaration of forfeiture and sale thereof, the surplus shall, on demand, be paid to the defaulter.

No more shares to be sold than sufficient for payment of calls.

XLII. And be it enacted, that if payment of such arrears of calls, and interest and expenses, be made before any share so forfeited and vested in the company shall have been sold, such share shall revert to the party to whom the same belonged before such forfeiture, in such manner as if such calls had been duly paid.

On payment of calls, forfeited shares to revert.

XLIII. And be it enacted, that in all cases wherein it may be necessary for any person to serve any notice, writ, or other proceeding at law or in equity, or otherwise, upon the company, service thereof respectively on the manager or any director for the time being of

Service of notice on the company.

**Joint Stock
Banks.**

the company, by leaving the same at the principal office of the company, or, if the company have suspended or discontinued business, by serving the same personally on such manager or director, or by leaving the same with some inmate at the usual or last abode of such manager or director, shall be deemed good service of the same on the company.

Existing companies may continue their trades until twelve months after the passing of this act.

XLIV. Provided always, and be it enacted, that every company of more than six persons, for the formation or establishment of which proceedings had been begun or taken before the sixth day of May last, and which before the fourth day of July then next following was registered at the stamp office, and on the fourth day of July actually carried on the said trade or business of bankers in England, although under a covenant or agreement of copartnership made or entered into on or after the sixth day of May last, may continue to carry on the said trade or business under any such agreement or covenant of copartnership for any time not exceeding twelve calendar months next after the passing of this act, in the same manner in all respects as they legally might have done before the passing of this act, and after the expiration of the said twelve calendar months, in case the company shall not be incorporated under this act, shall have, for the purpose of closing their trade or business, but for no other purpose, the same powers and privileges which they would have had if this act had not been passed.

Existing companies may be brought under this act.

XLV. And be it enacted, that it shall be lawful for any company of more than six persons carrying on the trade or business of bankers in England before the said sixth day of May, or any company which by the provision hereinbefore in that behalf contained is enabled to carry on the said trade or business of bankers in England for a time not exceeding twelve calendar months next after the passing of this act, to present a petition to her Majesty, praying that her Majesty will be pleased to grant to them letters patent under this act; and if upon the compliance with the provisions hereinbefore contained with respect to companies formed after the said sixth day of May, her Majesty shall be pleased to grant to them letters patent under this act as aforesaid, it shall be lawful for them thereafter to carry on their trade and business of bankers as aforesaid according to this act, and not otherwise: provided always, that a majority of the directors of any such company for the time being, with the consent of three-fourths in number and value of the shareholders present at a general meeting of the company, to be specially called for the purpose, may resolve to make any alterations in the constitution of such company, or otherwise, which may be deemed necessary or expedient for enabling such company to come within the provisions of this act; and the majority of the directors of such company may, in pursuance of the resolution of such meeting as aforesaid, execute a new deed of partnership on behalf of such company, and it shall not be necessary for such deed to be executed by any other shareholder of such company; and it shall thereupon be lawful for such company to present such petition as aforesaid, and a copy of such resolution and of such new deed of partnership so executed by a majority of the directors of the company as aforesaid shall be annexed to such petition; and if her Majesty shall thereupon grant letters patent to such company

under this act, all the shareholders of such company at the time of the grant of such letters patent shall be deemed to be incorporated under such letters patent, and to be the first shareholders in such incorporated company; and the said new deed of partnership so executed by a majority of the directors as aforesaid shall have such and the same effect, to all intents and purposes, as if it had been executed by all the shareholders.

Joint Stock
Banks.

XLVI. And be it enacted, that notwithstanding the incorporation of any company under this act all contracts and agreements entered into by and with such company shall continue in force as between such incorporated company and the parties with which the company entered into such contracts and agreements before the incorporation thereof, and may be enforced in like manner as if the company had been incorporated before the making of any such contract or agreement, and that no suit at law or in equity by or against such company shall be abated by reason of such incorporation; but on the application of either of the parties to such suit to the court in which such suit is pending, at any time before execution on any judgment in such suit shall have issued, it shall be lawful for the court to order that the corporate name of such company be entered on the record, instead of the name of the plaintiff or defendant representing such company before the incorporation thereof, and thereupon such suit may be prosecuted and defended in the same manner as if the same had been originally instituted by or against the said incorporated company: and where execution on any judgment in such suit shall have issued before such application, execution of such judgment may be had as if such company were not incorporated as if this act had not been passed.

Agreements
with companies
after incorpora-
tion to be en-
forced as if
made before
incorporation.

XLVII. And be it enacted, that after the passing of this act every company of more than six persons established on the said sixth day of May, for the purpose of carrying on the said trade or business of bankers within the distance of sixty-five miles from London, and not within the provisions of this act, shall have the same powers and privileges of suing and being sued in the name of any one of the public officers of such copartnership as the nominal plaintiff, petitioner, or defendant on behalf of such copartnership; and that all judgments, decrees, and orders made and obtained in any such suit may be enforced in like manner as is provided with respect to such companies carrying on the said trade or business at any place in England exceeding the distance of sixty-five miles from London under the provisions of an act passed in the seventh year of the reign of King George the Fourth, intituled "An Act for the better regulating Copartnerships of certain Bankers in England; and for amending so much of an Act of the Thirty-ninth and Fortieth Years of the Reign of His late Majesty King George the Third, intituled 'An Act for establishing an Agreement with the Governor and Company of the Bank of England, for advancing the sum of Three Millions towards the Supply for the Service of the Year One Thousand Eight Hundred,' as relates to the same;" provided that such first-mentioned company shall make out and deliver from time to time to the commissioners of stamps and taxes the several accounts or returns required by the last-mentioned act; and all the provisions of the last-recited act as to

Existing com-
panies to have
the powers of
suing and
being sued.

7 G. 4, c. 46.

**Joint Stock
Banks.**

such accounts or returns shall be taken to apply to the accounts or returns so made out and delivered by such first-mentioned companies, as if they had been originally included in the provisions of the last-recited act.

**Banking com-
panies to be
deemed trading
companies.**

XLVIII. And be it declared and enacted, that every company of more than six persons carrying on the trade or business of bankers in England, shall be deemed a trading company within the provisions of an act passed in this session of Parliament, intituled “An Act for facilitating the winding up of the Affairs of Joint Stock Companies unable to meet their pecuniary Engagements.”

**Interpretation
of act.**

XLIX. And be it enacted, that in this act the following words and expressions shall have the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number:

Words importing the masculine gender shall include females:

The word “plaintiff” shall include pursuer and petitioner:

The word “defendant” shall include defender and respondent;

The word “execution” shall include diligence or other proceeding proper for giving effect to any judgment, decree, or order of a court of justice.

SCHEDULES referred to by the foregoing act.

SCHEDULE (A.)

MEMORIAL or Account to be entered at the Stamp Office in London in pursuance of an Act passed in the Eighth Year of the Reign of Queen Victoria, intituled [*here insert the title of this act*]; viz.

Firm or name of the Banking Company; viz. [*set forth the firm or name.*]

Names and places of abode of all the members of the company; viz. [*set forth all the names and places of abode.*]

Names and places of the bank or banks established by such company; viz. [*set forth all the names and places.*]

Names and places of abode of the directors, managers, and other like officers of the said Banking Company; viz. [*set forth all the names and places of abode.*]

Names of the several towns and places where the business of the said company is to be carried on; viz. [*set forth the names of all the towns and places.*]

A. B. of _____ Manager [*or other officer, describing the office*] of the above-mentioned company, maketh oath and saith, that the above written account doth contain the name, style, and firm of the said company, and the names and places of the abode of the

several members thereof, and of the banks established by the said company, and the names, titles, and descriptions of the directors, managers, and other like officers of the said company, and the names of the towns and places where the business of the company is carried on, as the same respectively appear in the books of the said company, and to the best of the information, knowledge, and belief of this deponent.

Sworn before me, the day of
at in the county of
C. D., Justice of the Peace in and for the
County of [or Master or Master
Extraordinary in Chancery.]

SCHEDULE (B.)

MEMORIAL or Account to be entered at the Stamp Office in London on behalf of [*name of the company*], in pursuance of an Act passed in the Eighth Year of the Reign of Queen Victoria, intituled [*insert the title of this act*]; viz.

Names and places of abode of every new or additional director, manager, or other like officer of the said company; viz. *A. B.* in the room of *C. D.*, deceased or removed, [*as the case may be*]; [*set forth every name and place of abode.*]

Names and places of abode of every person who has ceased to be a member of such company: viz. [*set forth every name and place of abode.*]

Names and places of abode of every person who has become a new member of such company; viz. [*set forth every name and place of abode.*]

Names of any additional towns or places where the business of the company is carried on; viz. [*set forth the names of all the towns and places.*]

A. B. of Manager [*or other officer*] of the above-named company, maketh oath and saith, that the above-written account doth contain the name and place of abode of every person who hath become or been appointed a director, manager, or other like officer of the above company, and also the name and place of abode of any and every person who hath ceased to be a member of the said company, and of every person who hath become a member of the said company since the registry of the said company on the day of last, as the same respectively appear on the books of the said company, and to the best of the information, knowledge, and belief of this deponent.

Sworn before me, the day of
at in the county
C. D., Justice of the Peace in and for the
county of [or Master or Master
Extraordinary in Chancery.]

Joint Stock
Banks.

SCHEDULE (C.)

Form of Transfer of Shares.

I of in consideration of the
sum of paid to me by
of do hereby transfer to the said
share [or shares], numbered in the business called
“ The Banking Company,” to hold unto the said his
executors, administrators, and assigns [or successors and assigns],
subject to the several conditions on which I held the same at the time
of the execution hereof. And I the said do
hereby agree to take the said share [or shares], subject to the same
conditions. As witness our hands and seals, the day
of

THE
FOLLOWING FORMS
RELATING TO
Provisional and Complete Registration
HAVE BEEN FURNISHED
BY THE
REGISTRAR OF JOINT STOCK COMPANIES.

LIST OF FORMS OF RETURNS

WITH REFERENCE TO PROVISIONAL REGISTRATION.

1. Return as to the Name of Company.
2. the Business of the Company.
3. the Promoters of the Company.
4. the Place of Business of the Company.
5. the Provisional Committee or Directors.
Consent to Act as Directors, and Agreement
to take Shares.
6. Return as to the Provisional Officers.
7. the Subscribers.
8. List of the Titles of Documents returned.
9. Duplicate of the Appointment of a Solicitor to the Provisional Company.
..... Acceptance of Office by the Solicitor.
10. Revocation of the Appointment by the Provisional Directors.
11. Resignation of Office by the Solicitor.

N. B. The first three (at the least) of these Returns are requisite for obtaining a Certificate of Provisional Registration (§ 4);

And must be made before publishing any prospectus or advertisement of the proposed Company; or receiving money on Shares, or issuing scrip or Share-letters, or contracting on behalf of the Company;

Under a penalty not exceeding 25*l.* (§ 24.)

The first eight of these Returns must be made within one month after the particulars required to be returned have been ascertained or determined (§ 5.)

Under a penalty not exceeding 20*l.* (§ § 4, 5.)

Every addition to or change in those particulars must be returned within a like interval,

Under a similar penalty (§ § 4, 5.)

All Returns must be signed by one or more of the Promoters of the Company or their registered Solicitor. (§ § 6, 16.)

Duplicates of the appointment or revocation of the appointment of such Solicitor, and of his acceptance or resignation of the office, must be returned to the Registrar (§ 6,) the two former being signed by one or more of the Promoters, and the two latter by the Solicitor;

For which purposes form 9, 10 and 11 are provided.

Joint Stock
Companies.

Nos. 1, 2, 3.

PROVISIONAL REGISTRATION.

Return of the Name, Business, and Promoters of the Company.

PURSUANT TO SECTION 4.

Date of Receipt at the Registry Office, 18
 Serial Number of the Return.....
 Fee on Registry.....

N.B.—These items are not to be filled up by the Company.

Upon this Return being made, a Certificate of Provisional Registration may be obtained.

Each Sheet required for this Return should be signed by one or more of the Promoters.

The Date within should be that of the period up to which the Return is made out.

1, 2, 3. The Name, Business, and Promoters of the Company. Provisional } { Date Registration. } 18	
1. Name of the Proposed Company.	2. Business or Purpose.

3. The Promoters of the Company.

Name.	Occupation, Rank, or usual Title.	Place of Business (if any).	Place of Residence. (As the Street, Square, or Place, and No. of the House).

Signature.

No. 4.

PROVISIONAL REGISTRATION.

Return of the Place of Business of the Company.

PURSUANT TO SECTION 4.

Date of Receipt at the Registry Office, 18

Serial Number of the Return

Fee on Registry.

N.B.—These items are not to be filled up by the Company.

This Return must be signed by one or more of the Promoters or their registered Solicitor.

The Date on the other side should be that of making the Return.

4.—The Place of Business of the Provisional } Registration. }		Company. { Date 18
County, City, or Town.	Name of the Street, Square, or Place in which the Provisional Place of Bu- siness or Place of Meeting is situate.	Number (if any) or other designation of the House or Office.

Dated 18

Signature.

**Joint Stock
Companies.**

No. 5.

PROVISIONAL REGISTRATION.

Return of the Provisional of the Company.

PURSUANT TO SECTION 4.

Date of Receipt at the Registry Office, 18
 Serial Number of the Return
 Fee on Registry

N.B.—These items are not to be filled up by the Company.

This is a Return of the body of Persons acting in the formation of the Company; they should return themselves under the name which they may have determined to assume—"Provisional Committee," "Provisional Directors," or otherwise.

The Return must be accompanied by the Consent and Agreement, for which a Form is provided in Sheet D.

The Return must be made within a month after the Provisional Direction or Committee is constituted (§ 5).

Under a penalty not exceeding 20*l*.

Each sheet of this return must be signed by one or more of the Promoters of the Company, or their registered Solicitor.

The Date within should be that of the day up to which the Return it made out.

5.—The Provisional of the Company.			Company.
Provisional } Registration. }			{ Dated 18
Name.	Occupation, Rank, or usual Title.	Place of Business (if any).	Place of Residence. (As Street, Square, or Place, and No. of the House.)

Signature.

*Consent to Act, and Agreement to take Shares by the Provisional
of the Company.*

Provisional }
Registration. }

{ Dated
18.

We, the undersigned, Promoters of the* Company,
do, and each of us doth hereby declare his consent to be Provisional
† of the said Company, and each of us doth hereby separately
for himself agree with † as Trustees for the said Company, to
take one or more Share or Shares in the said proposed undertaking,
upon such Share or Shares being allotted to him, according to the
Provisions of the said Company.

Provisional †	Provisional †

* Here insert, before the name of the Company, the words "Proposed" or "Provisionally Registered," as the case may be.

† Here insert the appellation assumed by the persons acting in the formation of the Company, "Provisional Directors," or otherwise.

‡ Here insert the names of the Trustees of the Company.

Joint Stock
Companies.

No. 6.

PROVISIONAL REGISTRATION.

Return of the Provisional Officers of the _____ of the
Company.

PURSUANT TO SECTION 4.

Date of Receipt at the Registry Office, _____ 18
Serial Number of the Return.....
Fee on Registry.....

N.B.—These items are not to be filled up by the Company.

This return must be made within one month after the first of the
Provisional Officers is appointed (§ § 4, 5).

Under a penalty not exceeding 20*l*.

Each sheet of this return must be signed by one or more of the
Promoters of the Company, or their registered Solicitor.

The Date within should be that of the period up to which the
return is made out.

6.—The Provisional Officers of the Provisional } Registration. }		Company. { Dated 18		
Description of Office.	Name of Officer.	Occupation, Rank, or usual Title.	Place of Business (if any).	Place of Residence. (As the Street, Square, or Place, and No. of House.)

Signature.

No. 7.

PROVISIONAL REGISTRATION.

Return of the Names, &c. of the Subscribers to the Company.

PURSUANT TO SECTION 4.

Date of Receipt at the Registry Office, 18

Serial Number of the Return.....

Fee on Registry

N.B.—These items are not to be filled up by the Company.

The Surnames in this Return must be stated before the Christian Names, and in alphabetical order.

This return must be made within a month after any one person shall have agreed, in writing, to take any shares in the proposed Company (§ § 4, 5).

Under a penalty not exceeding 20*l.* (§ 5).

The first and last Columns are not to be filled up by the Company.

Every Sheet of this Return must be signed by one or more of the Promoters of the Company, or by their registered Solicitor (§ § 6, 16).

7.—The Names, &c. of the Subscribers to the Company.

Provisional }
Registration. }

{ Dated 18

Serial Number.	Name.	Occupation, Rank, or usual Title.	Place of Business (if any.)	Place of Residence. (As the Street, Square, or Place, and No. of the House.)	Reference to Return of subsequent changes by Death, Marriage, &c.

Signature.

Joint Stock Companies.

No. 8.

PROVISIONAL REGISTRATION.

List of Titles of Documents returned by the Company.

PURSUANT TO SECTION 4.

Date of Receipt at the Registry Office, 18
 Serial Number of the Return.
 Fee on Registry

N.B.—These items are not to be filled up by the Company.

A copy of every Prospectus, Circular, Hand-bill, Advertisement, or other such Document, relative to the formation or modification of the proposed Company, and of every addition to or change in the same, must be returned previous to their circulation (§ 4).

And if any Document so returned be a modification of one previously registered, a reference must be given on this paper to the title and date of registry of such previous Document; and the additions and omissions must be signified by marks, in ink, upon the Document presented for registration.

This Return must be signed by one or more of the Promoters of the Company, or their registered Solicitor (§§ 6, 16).

The date on the other side should be that of making up the Return.

8.—List of the Titles of the Documents Returned by the Company.	
Provisional } Registration. }	{ Dated 18
Title and Date of previous Document.	Title of Document now returned.

Signature.

No. 9.

PROVISIONAL REGISTRATION.

Duplicate of the Appointment of a Solicitor for the Promoters of the Company, and of his Acceptance thereof.

PURSUANT TO SECTION 6.

Date of Receipt at the Registry Office, 18
 Serial Number of the Return.....
 Fee on Registry

N.B.—These items are not to be filled up by the Company.

Duplicates of the Appointment of such Solicitor, and of his Acceptance of the office, must be returned to the Registrar.

The Duplicate of the Appointment must be signed by one or more of the Promoters of the Company.

That of the Acceptance must be signed by the Solicitor.

Until registration of the appointment of a Solicitor all the Returns prescribed for provisionally registered Companies must be signed by one or more of the Promoters of the Company.

Subsequently to such Registration, and until the Revocation or Resignation of the appointment, they must be signed by the registered Solicitor.

For these purposes the annexed Forms are provided.

Provisional }
 Registration. } 9.—Duplicate of the appointment of a Solicitor for
 the Promoters of the Company, and of his acceptance thereof.

We, Promoters of the Company, do hereby appoint
 Gentleman,* of Her Majesty's Court of to be
 Solicitor for the Promoters of the said Company, for the Purposes
 specified in the Sixth Section of the Act for the Registration, Incorporation, and Regulation of Joint Stock Companies (7 & 8 Vict. c. 110).

Signed on behalf of the }
 Promoters of the said } Promoters of the said
 Company, by } Company.

Dated this day of 18

I, the undersigned, do hereby accept the Office of Solicitor for the Promoters of the Company, for the purposes specified in the Sixth Section of the Act for the Registration, Incorporation, and Regulation of Joint Stock Companies (7 & 8 Vict. c. 110).

Dated this day of 18

Signature.

* Insert "Attorney," or "Solicitor," as the case may be.

Joint Stock
Companies.

No. 10.

PROVISIONAL REGISTRATION.

Duplicate of the Revocation of the Appointment of a Solicitor for the Promoters of the Company.

PURSUANT TO SECTION 6.

Date of Receipt at the Registry Office, 18
Serial Number of the Return.
Fee on Registry

N.B.—These items are not to be filled up by the Company.

This Duplicate should be signed by one or more of the Promoters of the Company.

Provisional } 10.—*Duplicate of the Revocation of the Appointment of*
Registration. } *a Solicitor for the Promoters of the Company.*

We, the undersigned, Promoters of the Company, do hereby Revoke the Appointment of to be Solicitor for the Promoters of the said Company, for the purposes specified in the Sixth Section of the Act for the Registration, Incorporation, and Regulation of Joint Stock Companies (7 & 8 Vict. c. 110.)

Signed on behalf of the }
Promoters of the said } *Promoters of the said*
Company by } *Company.*

Dated this day of 18

PROVISIONAL REGISTRATION.

No. 11.

Duplicate of Resignation of Office by the Solicitor for the Promoters of the Company.

PURSUANT TO SECTION 6.

Date of Receipt at the Registry Office, 18
Serial Number of the Return.
Fee on Registry

N.B.—These items are not to be filled up by the Company.

This Duplicate should be signed by the Solicitor.

Provisional } 11.—*Duplicate of Resignation of Office by the Solicitor*
Registration. } *for the Promoters of the Company.*

I, the undersigned, do hereby resign the Office of Solicitor for the Promoters of the Company, for the purposes specified in the Sixth Section of the Act for the Registration, Incorporation, and Regulation of Joint Stock Companies (7 & 8 Vict. c. 110.)

Dated this day of 18

Signature.

FORMS OF RETURNS

WITH REFERENCE TO

COMPLETE REGISTRATION.

Return of Copy of the Deed of Settlement of the Company.
Schedule appended to the Deed, containing—

PART 1.—The Name, Business, and Places of Business, of the Company.

2.—The Capital of the Company.

3.—The Names, &c. of the Subscribers.

4.—The Names, &c. of the Directors and Officers of the Company.

5.—The Duration and Mode of Dissolution of the Company.

These Returns must be signed by one or more of the Promoters of the Company, or by their registered Solicitor (§§ 6, 16.)

And the Certificate thereon must be obtained previous to acting otherwise than provisionally, or exercising any of the powers to be obtained through Complete Registration (§ 25).

Joint Stock Companies.

COMPLETE REGISTRATION.

Return of Copy of Deed of Settlement of the Company.

PURSUANT TO SECTION 4.

Date of Receipt at the Registry Office, 18
 Serial Number of the Return.....
 Fee on Registry

N.B.—These items are not to be filled up by the Company.

The Copy of Deed of Settlement, required by § 7, must be written in a distinct hand, with a marginal abstract in the column provided for that purpose.

Printed copies will be accepted, if on foolscap paper, and accompanied by the marginal abstract.

The purposes required by Schedule A. to be provided for, should be so provided for in the order set forth in that Schedule, and under the headings there supplied.

The Deed must be signed by at least one-fourth of the Subscribers, holding one-fourth of the maximum number of shares, and must be certified by two Directors as required by the Act.

The Deed must be accompanied by a schedule in the annexed Form, and by an index or abstract previously approved by the Registrar.

The original Deed and Schedules must be sent to the Registrar, together with the copies intended for registration.

Any supplementary Deed must be returned, in like manner, within one month after its date, under a penalty not exceeding 20*l.*, on every Director of the Company (§ 10).

Changes in the particulars required to be set forth in the Deed of Settlement (other than as to Shareholders and their shares), must be returned, in like manner, within six months after such changes have occurred (§ 10), under a similar penalty.

The date within must be that of making the Return.

The Returns comprised in the Schedule must be made up to that date.

The same Form may be used for copies of Subscription Contracts or Deeds of Partnership, on making the requisite change in the heading.

Copy of the Deed of Settlement of the	Company.
Complete } Registration. }	{ Dated 18

COMPLETE REGISTRATION.

Schedule to the Deed of Settlement of the _____ Company.

PART 1.—The Name and Business of the Company.

2.—The Capital of the Company.

PURSUANT TO SECTION 7.

Schedule to the Deed of Settlement of the _____ Company.

Complete }
Registration. }

{ Dated
18

PART 1.—The Name, Business, and Places of Business of the Company.

General Heads.

Particulars.

Name of the Company .

Business or Purpose

Principal or only Place of Business, and
Branch Offices (if any)

Signature.

Schedule to the Deed of Settlement of the _____ Company.

Complete }
Registration. }

{ Dated
18

PART 2.—The Capital of the Company.

General Heads.	Particulars.
Amount of the proposed Capital.....	
Proposed additional Capital	
Means by which it is to be raised	
Nature and Value of the Capital where not entirely money	
Amount (if any) to be raised or authorized to be raised by Loan	
Amount of Capital Subscribed or proposed to be Subscribed at the Date of the Deed	
Division of the Capital (if any) into equal shares (or amount of each share)	
Total number of shares	

Signature.

COMPLETE REGISTRATION.

Schedule to the Deed of Settlement of the Company.

PART 4.—The Names, &c., of the Directors, Trustees, and Auditors of the Company.

5.—The Duration, &c., of the Company.

PURSUANT TO SECTION 7.

Schedule to the Deed of Settlement of the Company. Complete Registration. } } Dated 18		PART 4.—The Names, &c., of the Directors and Officers of the Company.	
Name.	Occupation.	Place of Business (if any.)	Place of Residence.
<i>Directors.</i>			
<i>Trustees.</i>			
<i>Auditors.</i>			
PART 5.—The Duration of the Company.		Mode or Condition of its Dissolution.	

Signature.

AFTER COMPLETE REGISTRATION.

1.—*Changes in or Additions to the List of Shareholders of the Company.*

After Complete }
Registration. }

{ Dated
18

II. By Signature to the Deed of Settlement, or Deed referring thereto.

Date of Signature.	Name of Subscriber.

AFTER COMPLETE REGISTRATION.
 Return of Changes in or Additions to the List of Shareholders in the
 Pursuant to SECTION 11. Company.

PART 3.—By acquisition of Shares.

Date of Receipt at the Registry Office, 18
 Serial Number of the Return.....
 Fee on Registry

N.B.—These items are not to be filled up by the Company.

This Return must be made half-yearly, in the Months of January and July, by every Company completely Registered under the Act, except Companies incorporated by Act of Parliament (§ 11).

Under a penalty not exceeding 20*l.* upon every Director (§ 11).

None of the rights of a shareholder can be exercised prior to his registration (§ 13).

But any party to a transfer may cause it to be returned for registration by the Directors before the time for the half-yearly Return, on a request in writing to that effect; or may himself make the Return, with proof of the transfer and request.

The Form here supplied may be rendered applicable to that purpose by marking under the Name of the Company the words, "by request."

The party making such request should be indicated.

The first and last Columns in this Return are not to be filled up by the Company.

The event by which the Shares have been acquired (as marriage—death—bankruptcy—subscription—transfer, &c.) must be entered in the 7th column.

The Surnames must be stated before the Christian Names, and those in the second column in alphabetical order. The date must be that of the day up to which the Return is made out.

1.—Changes in or Additions to the List of Shareholders in the After Complete } Registration. }		3.—By Acquisition of Shares.		Company. { Dated 18			
Serial Number.	Name and Place of Abode of New Shareholder.	Aggregate No. of Shares acquired.	Distinctive Number of Shares acquired.	Name of former Shareholder (if any) with No. of Shares remaining in his Name.	Nature of Change.	Date of Entry in Company's Books.	Reference to subsequent Changes.

ANNUAL RETURN.

Return of the Name and Business of the Company.

PURSUANT TO SECTION 14.

Date of Receipt at the Registry Office, 18
 Serial Number of the Return.....
 Fee on Registry

N.B.—These items are not to be filled up by the Company.

This Return must be made annually in the Month of January or February by every Company completely Registered under the Act, except Companies incorporated by Act of Parliament.

Under a penalty not exceeding 20*l.* (§ 14).

It is in the power of the Board of Trade on the application of any Company to appoint any other period of the year for making this Return.

After Complete } Registration. } Annual Return of the Name and Business of the	{ Dated 18 Company.
Name of the Company.	Business.
	<p style="text-align: right;"><i>Signature of one or more Directors.</i></p>

**Joint Stock
Companies.**

AFTER COMPLETE REGISTRATION.

**Return of the Appointment and Names of Auditors of the
Company.**

PURSUANT TO SECTION 38.

Date of Receipt at the Registry Office, 18
Serial Number of the Return.....
Fee on Registry

N.B.—These items are not to be filled up by the Company.

This Return must be made upon every appointment of Auditors (§§ 7, 10).

It should especially specify if any and which of the Auditors were appointed by the Shareholders present at a general meeting (§ 38).

On the appointment of an Auditor by the Board of Trade a Return in like form must be made (§ 38).

3.—Auditors of the Company.		
After Complete } Registration. }		{ Dated 18
Name of Auditor.	By whom appointed.	Date of Appointment.

Return of the Balance Sheets and Auditors' Report of the Company.

PURSUANT TO SECTION 43.

- PART 1.—Receipts and Expenditure.
- 2.—Liabilities and Assets.
- 3.—Report by the Auditors.

Date of Receipt at the Registry Office, 18
 Serial Number of the Return.
 Fee on Registry

N.B.—These items are not to be filled up by the Company.

These Returns must be made by the Directors of the Company within fourteen days after the Meeting at which the Accounts shall have been produced (§ 43).

After Complete } Registration. }	{ Dated 18
4.—PART 1.—Balance Sheet of the from 18 to 18	Company,

Dr. RECEIPTS. EXPENDITURE. *Cr.*

[An additional ruled sheet of Part 1, if required, should be stitched *inside* of this sheet.]

Signature.

After Complete } Registration. }	{ Dated 18 Company,																																								
4.—PART 2.—Balance Sheet of the from 18 to 18																																									
Dr. LIABILITIES.	ASSESTS. Cr.																																								
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		How invested.		Value accord- ing to last Estimate.																																					
	Signature.																																								
	An additional ruled Sheet of Part 2, if required, should be placed be- tween this and the pre- ceding Sheet.																																								

After Complete } Registration. }	{ Dated 18
4.—PART 3.—Copy of the Report by the Auditors of the Company.	

Return of Copy of the Bye Laws of the Company.

PURSUANT TO SECTION 47.

Date of Receipt at the Registry Office, 18
 Serial Number of the Return.....
 Fee on Registry

N.B.—These items are not to be filled up by the Company.

The Bye Laws of the Company returned for registration must be written in a distinct hand, with a marginal abstract in the column provided for that purpose.

A printed copy will be accepted, if on foolscap paper and accompanied by a marginal abstract.

The date on the other side must be that of making the Return.

<i>5.—Copy of the Bye Laws of the Company.</i>	
Passed on the	day of 18 . Dated 18

EXISTING COMPANIES.

Return of the Name, Business, and place of Business of the Company.

PURSUANT TO SECTION 58.

Date of Receipt at the Registry Office, 18
 Serial Number of the Return.....

N.B.—These items are not to be filled up by the Company.

This Return must be made by the Directors or Managers of every Joint Stock Company existing on 1st November, 1844, within three months of that day.

Under a penalty not exceeding 50*l.* (§ 58.)

No fee is payable, and no privileges are obtained by this registration.

But Companies so registered may obtain the privileges conferred by the Act, on complying with its provisions as to complete Registration (§ 59.)

<i>Name and Business, &c. of the</i>	<i>Company.</i>
Existing Companies. }	{ Dated 18
1. Name of the Company....	
2. Business or Purpose	
3. Place of Business, with } the Branches (if any)... }	

COMPLETE REGISTRATION OF PARLIAMENTARY
COMPANIES.

*Certificates of Receipt of Subscription Contract, Plans and Sections,
and Copy of Subscription Contract of the Company.*

PURSUANT TO SECTION 9.

Date of Receipt at the Registry Office, 18
Serial Number of the return
Fee on Registry

N.B.—These items are not to be filled up by the Company.

Companies "for executing any Bridge, Road, Cut, Canal, Reservoir, "Aqueduct, Waterwork, Navigation, Tunnel, Archway, Railway, "Pier, Port, Harbour, Ferry, or Dock which cannot be carried into "execution without obtaining the authority of Parliament," will be entitled to a Certificate of complete Registration.

1. On depositing at the Proper Offices of the two Houses of Parliament and within the proper time such Deeds of Partnership or Subscription Contracts as shall be required by the Standing Orders of the two Houses.
2. On returning to the Registrar Copies of such Deeds of Partnership or Subscription Contracts.
3. And on returning the annexed Certificates (appointed by the Board of Trade) of the due receipt of the required Plans, Sections, and Books of Reference, § 9.

The first of these Certificates must be signed by some person authorized on behalf of the Clerk of the Parliaments, and the second by the first or other Clerk of the Private Bill Office.

The Copy of the Subscription Contract or Deed of Partnership must be written distinctly on foolscap paper, headed "Subscription Contract, (or Deed of Partnership, as the case may be,) of the Company."

The Return must be signed by one or more of the Promoters of the Company, or their registered Solicitor.

Complete Registration of Parliamentary Companies. { *Certificate of the Receipt of the Subscription Contract, Plans, &c., of the Company, at the Offices of the two Houses of Parliament.* } Dated 18

I hereby certify that the Promoters of the Company have duly deposited at the Office of the Clerk of the Parliaments the Copies of the Subscription Contract, and the Plans, Sections, and Books of Reference required by the Standing Orders of the House of Lords to be so deposited in order to their obtaining the Authority of Parliament for their proposed undertaking.

Signed.

I hereby certify, that the Promoters of the _____ Company, have duly deposited at the Private Bill Office of the House of Commons the Subscription Contract, and the Plans, Sections, and Books of Reference, required by the Standing Orders of the House to be so deposited, in order to their obtaining the authority of Parliament for their proposed undertaking.

Joint Stock Companies.

Signed.

Complete Registration of Parliamentary Companies.	} <i>Copy of the Subscription Con- tract of the</i>	} Dated _____ 18



INSTRUCTIONS FOR REGISTRATION.

Provisionally Registered Companies will materially facilitate the process of Registration by adopting the following mode of presenting their Deeds of Settlement to the Registrar.

The "Abstract or Index" of the proposed Deed, which the above Act requires to be "previously approved by the Registrar of Joint Stock Companies," (§ 7) should first be sent to the Registrar in Draft.

This Abstract should contain all the matter of the Deed clearly stated, classified under certain general heads, and following, as nearly as may be (consistently with such classification) the order pursued in Schedule A. to the Joint Stock Companies' Act.

It should sufficiently appear, on the face of the Abstract, that the Provisions of the Act are complied with.

The Abstract will be returned with the Registrar's observations.

The Company will then return an amended Copy of the Abstract, together with a Copy of the Deed of Settlement and Schedule, (§ 7) all made out in the form prescribed for Registration. With these must also be sent the original Draft Copy of the Abstract bearing the Registrar's observations.

The Deed (like the Abstract) should follow as near as may be the arrangement of Schedule A.

The *marginal* Abstract of the Deed may then be almost a transcript of the approved "Abstract or Index."

The sufficiency or insufficiency of the Deed will then be notified to the Company, and after the necessary alteration, (if any) the Deed may be engrossed, executed, and sent in for final Registration in the Form already prescribed by authority.

This course is not obligatory in all its particulars, but much trouble and delay will be saved by an adherence to it.

The following is suggested as a list of heads under which the Provisions of a Deed of Settlement may not unusually be classed:—

Name—Business—Place of Business—Capital—General Meetings—Directors—Auditors—Treasurer—Secretary—Officers (generally)—Shares—Shareholders—Dissolution.

Existing Companies desirous of Complete Registration, and having yet to frame their Deeds of Settlement, will do well to pursue the same course as that here recommended.

When a Deed of Settlement already exists which it is not intended to supersede, it will be best to send in at once a Copy of such Deed made out as for complete Registration, with a Draft Copy of the Abstract. The Registrar will then notify to the Company the alterations required, which will be made by a supplementary Deed. Corresponding corrections, if then necessary, must be made in the Abstract.

FREDERIC ROGERS,

Registrar of Joint Stock Companies.

Serjeants' Inn, Feb. 8, 1845.

List of Fees payable in the Office for the Registration of Joint Stock Companies.

	£	s.	d.	Joint Stock Companies.
CERTIFICATES.				
For a Certificate of Provisional Registration	5	0	0	<hr/>
For a Renewed Certificate of Provisional Registration. . .	2	0	0	
For a Certificate of Complete Registration.	5	0	0	
And on every £1,000 value of declared Capital				
in the case of Companies formed previously to the				
1st day of November, 1844	0	0	6	
in the case of Companies formed subsequently to				
that day	0	1	0	
<i>N. B. But three-fourths of this fee in respect of Capital will be repaid by H. M. Treasury if the Company obtain an Act of Incorporation within two years after Complete Registration.</i>				
For an Annual Certificate.	1	0	0	
<i>N. B. The Certificate of Formal Registration applicable to Companies formed previously to the 1st of November, 1844, is given gratis.</i>				
REGISTRATION OF RETURNS.				
Upon the first Sheet of every Return (except those of				
Changes in the List of Shareholders)	0	1	0	
Upon every subsequent Sheet	0	0	6	
And (unless a second Copy is returned) for every folio of				
72 words contained in such Return	0	0	3	
For Returns of Changes or Additions to the List of Share- holders				
upon every Change Registered.	0	1	0	
SEARCHES.				
For inspection of each Office Index (except the Alpha- betical Index of Companies).	0	0	6	
" " Volume of the Companies Re- gisters	0	1	0	
" " Original Document in the General Register	0	1	0	
<i>N. B. The Alphabetical Index of Companies may be in- spected gratis.</i>				
OFFICE COPIES OR EXTRACTS.				
For every folio of 72 words	0	0	4	
REVISION OF DOCUMENTS:				
For every folio of 72 words contained in the Text of the Deed if written	0	0	6	
" " " " " if printed	0	0	4	
No charge is laid upon the Tabular Schedule pre- scribed by the Act.				

Outline of a Deed of Settlement of a Joint Stock Bank Company. (a)

**Banking Com-
pany—Deed of
Settlement.**

PARTIES.**RECITALS.**—Agreement to form a joint stock bank company.

Capital and division of shares.

Shares subscribed for.

Allotment of future shares.

Instalment of £5 paid.

Meaning of certain expressions in the deed.

Covenants by members.

CLAUSE.

1. Title of the company. Covenant not to act as a corporate body.
2. Capital 2,000,000*l.*
3. Allotment of Shares not subscribed for.
4. Limitation of number of shares to be subscribed for or held by one individual.
5. Persons disqualified from being shareholders.
6. Profit and loss to be divided amongst shareholders in proportion to their shares.
7. The business, and where to be carried on.
8. Nature of the business.
9. Business to be under the control of directors.
10. Names and descriptions of the present directors.
11. Three directors to retire annually by rotation. The order in which directors are to vacate their office to be decided by lot, and afterwards by the rotation so established.
12. Appointment of directors to supply the three vacancies, to be by the general meeting. The retiring directors eligible to be re-elected.
13. List of persons qualified to be directors to be posted up fourteen days before general meeting.
14. 15. Disqualification of directors.
16. Disqualification of directors, which shall not be notorious, not to affect proceedings of the board.
17. Board of directors may expel any one of their body.
18. Two-thirds in number and value of shareholders may remove directors and appoint others.
19. Directors to testify acceptance of office, and, on neglect or refusal, others to be appointed.
20. Directors, &c., may resign.
21. Interim directors may be appointed by the board.
22. Directors to sign declaration of secrecy. (b)
23. Board of directors to act in conformity with these presents, but may make bye-laws.
24. Remuneration to directors.
25. Meetings of directors; not less than four directors to constitute a board.

(a) This deed regulates the concerns of an extensive Banking Company in London, together with its various branches.

(b) For a form of this, see *post*, 263.

CLAUSE.

26. As to chairman and deputy chairman of directors, and proceedings at meetings of directors.
27. Book of the proceedings of the board of directors to be kept.
28. Power to board of directors to purchase or erect, or take, suitable offices.
29. Power to board of directors to appoint manager and other officers, and to displace them, and pay them suitable salaries, and take security from them.
30. Board of directors may authorize manager to sign notes, &c.
31. Power to board of directors to make advances, &c., but the votes of any director to the contrary to be final, and the advance immediately recalled.
32. Directors not to vote when interested personally, or through family connection.
33. Board of directors may establish branch banks.
34. Power to appoint boards of local directors.
35. Power to choose three or more trustees from their own body, or otherwise, in whose names contracts, &c., to be made, who may sue and be sued on behalf of the company, and who are to be under the control of the directors.
36. The trustees and others to be indemnified by a fund set apart, if necessary.
37. In all contracts stipulations may be made with parties to look to the capital stock, and so avoid the necessity of such indemnity fund.
38. Power in the directors to appoint new trustees in cases of vacancies, by death, &c.
39. Trustees, on their appointment, to execute an irrevocable power of attorney, in order that actions and suits may be prosecuted or defended in their names.
40. Receipts of trustees or officers, authorized by the directors, to be good discharges.
41. Proper books to be kept, and balanced twice a-year.
42. Board of directors to have the control of the property of the bank, with a power of entering into, varying and discharging, and enforcing contracts.
43. Power in the directors to commence actions for the recovery of debts, &c., and to discontinue same.
44. Directors to manage and direct all suits by or against trustees or shareholders, &c., and the consequence in case of refusal by the trustees, &c., so to confide.
45. A member indebted to the company to pay his debt upon demand, without requiring or seeking the accounts of the partnership to be taken; and in case of default, his debt may be recovered as liquidated damages, under this deed.
46. In actions at law, and suits in equity by the company, against any of its proprietors, and *vice versa*, the partnership to form no bar to the action proceeding, and this clause may be read on the trial, as an admission to that effect, if required.
47. Power to directors to bring actions for breach, or refusal, or neglect, to perform covenants, &c. in this deed.
48. Power to directors to issue notes payable on demand, if permitted by law.

Banking Com-
pany—Deed of
Settlement.

**Banking Com-
pany—Deed of
Settlement.**

CLAUSE.

49. Directors may apply for a charter or act of Parliament.
50. Directors to appoint public officers pursuant to any act of Parliament that may be obtained, for suing or being sued.
51. Power to board of directors to submit to arbitration, to compound debts, and sign bankrupts' certificates.
52. Directors may execute, or depute officers to execute, letters of attorney.
53. General power to board of directors to invest surplus funds, and to change securities.
54. Directors may return capital advanced, and again call for it.
55. Power to directors, to make calls and to enforce them.
56. Calls on future subscriptions.
57. Shares to be forfeited on non-payment of calls, unless the directors decide otherwise. Power to the directors to extinguish all forfeited shares.
58. Shareholders not permitted to vote until calls paid up.
59. Annual general meeting of shareholders to be held on the first Thursday in the month of February, in every year.
60. Power to board of directors to call an extraordinary meeting of shareholders.
61. Power to shareholders holding collectively two thousand shares to request the board of directors to call extraordinary general meetings, and provision in case the board refuse.
62. No business to be transacted at a special meeting, except that for which it is called.
63. Appointment of chairman at all meetings of shareholders.
64. Mode of voting at all meetings of shareholders.
65. No questions to be gone into at meetings of shareholders, unless twenty shareholders present, who shall be holders of at least one thousand shares.
66. Power to adjourn meetings of shareholders if requisite number do not attend within one hour of the time appointed.
67. Power to adjourn meeting of shareholders after business commenced.
68. Directors to exhibit statement of the affairs of the company at annual general meeting.
69. First named of two joint holders to vote.
70. Power to shareholders at two meetings to decrease or increase the capital and the number of the directors, and to make new laws, &c.
71. Power to general meeting to appoint auditors or inspectors.
72. Profits to be divided among shareholders subject to guarantee fund.
73. Profits up to the end of present year to form part of the guarantee fund.
74. Guarantee fund to meet extraordinary demands by bad debts or otherwise. When it exceeds one-half of the paid-up capital, excess may either be divided among the shareholders, or suffered to accumulate, or be added to capital.
75. Notice of dividend or bonus to be given to shareholders.
76. Dividends and bonuses not paid in six months to go to account of unclaimed dividend fund.
77. List of shareholders to be kept and from time to time amended.

CLAUSE.

78. The registered owner to be deemed the beneficial one, and the company not to be affected by notice of trust, &c.
79. Receipts of trustees of shares to be sufficient discharges to the company.
80. Shareholders, as such, not permitted to inspect books.
81. Shares to be in the first place liable to the debts due to the bank.
82. Power to shareholders to sell and transfer their shares, subject to the approbation of directors.
83. Board of directors to decide upon form of transfer.
84. Transferee of shares entitled to the same privileges and subject to the same liabilities as the persons were in whose places they stand. Owners of shares which have been sold to be free from further calls and liabilities.
85. Title of representatives, &c., to be evidenced.
86. Representatives, as such, not to become members, but may sell their shares.
87. Executors, administrators, legatees, trustees, guardians, assignees, or committees, may be admitted shareholders.
88. Persons entitled to shares, but not members, not to have dividends accruing after the commencement of their title.
89. Proprietor's title to shares, and the profits thereof, perfected, upon his execution of this deed.
90. Proprietors not to be required to execute more than once, in respect of shares to which they became entitled at different times.
91. Shares to be forfeited by non-execution of the deed of settlement.
92. Directors, on payment of a fine, may remit the forfeiture of shares.
93. Power to board of directors to purchase and sell shares for the benefit of the company.
94. Indemnity to directors when acting legally.
95. Company to be dissolved whenever one-third of the paid-up capital be lost.
96. Company may be dissolved by consent of three or more directors, and two-thirds in number and value of the shareholders, voting at two successive meetings.
97. Mode of giving notices.
98. Mode of reckoning number of days in notices.
99. Deed may be inrolled and deposited, as directors may appoint.
100. In disputes and differences regarding this deed, or the matters of the company, the decision of the directors, when confirmed by a general meeting, to be binding and conclusive on every member or subscriber; such decision to be final, unless reversed by the next general meeting.
101. All disputes and differences between proprietors not so settled to be submitted to arbitrators, to be appointed as hereinafter mentioned.
102. To avoid all necessity for suits for contribution in equity, if a shareholder pays a debt of the company, and it is not adjusted, his claim to be referred to an arbitrator, being a barrister of five years' standing, to be appointed as herein mentioned.
103. The arbitrator to have power of examining witnesses, the parties, &c.; the submission thereby made to be made a rule of court,

Banking Company—Deed of Settlement.

CLAUSE.

**Banking Com-
pany—Deed of
Settlement.**

104. If the arbitrator shall by his award direct a sum to be paid out of the funds of the company to the shareholders mentioned in clause 103, and if the same be not paid, it shall be lawful for such proprietor to require a general meeting to be called to dissolve the company, and the same shall be then dissolved, unless the debt be forthwith paid.—In witness, &c.

◆

Form of Attestation.

**Form of
Attestation.**

The above written Indenture or Deed of Settlement was signed, sealed, and delivered, (being first duly stamped) by the several parties thereto, in the presence of the several persons whose names are respectively written on the dexter side of the seals, opposite to which the parties so executing have respectively subscribed their names.

◆

*Outline of another Deed of Settlement of a Joint Stock Banking
Company. (a)*

CLAUSE.

**Banking Com-
pany—another
Form of Deed.**

1. Covenant to form the Company.
2. Business where to be carried on, and in what manner. The capital not to be invested in mining concerns, &c., or in merchandise.
3. Capital £250,000, in 10,000 shares of £25 each.
4. Limitation of number of shares to be held by any proprietor. Exception in favour of the manager for the time being.
5. No person to hold shares jointly.
6. No survivorship between proprietors. Shares to be personal property. Distribution of profit and loss.
7. Company not to be affected with trusts.
8. Receipt of trustees to be a sufficient discharge to the company.
9. Number of his shares to be subscribed on deed by each proprietor, and a certificate given him.
10. The certificate to be evidence of his title.
11. Names of proprietors and numbers of shares to be entered in a register. Proprietors to give notice of change of abode or name.
12. Payment of instalments.
13. In default of payment for one month, instalments to carry interest.
14. In default of payment for two months, shares to be forfeited.
15. Power to directors to allow discount on instalments.
16. Power to proprietors to transfer shares.
17. Regulation for transfer of shares.
18. Directors to regulate the form of transfers. Fees thereon.
19. Transfers to convey all the right and interest of party making the same.

(a) Both this and the following outline are taken from deeds in use by Banking Companies carrying on their businesses in one of the largest manufacturing towns in the kingdom.

CLAUSE.

20. Shares not to be transferred till all calls are paid.
21. Assignees in law not to be proprietors as such, but to sell.
22. Husband, executor, administrator, legatee, or next of kin, may become proprietors, with consent of directors.
23. Evidence of the title of assignees in law to be produced.
24. Assignees in law to receive only dividends due before their title accrued.
25. On transfer of shares, old certificate to be cancelled, and new one granted. Lost certificates may be renewed.
26. Proprietor acquiring new shares, to give to directors a receipt, which shall be evidence of his being the proprietor.
27. New proprietors to execute or accede to these presents.
28. Title of new proprietors not complete until execution of, or accession to, these presents.
29. Title of proprietors to additional shares complete on obtaining certificate and giving receipt.
30. Parties selling shares to execute all proper deeds, &c.
31. Shares to be forfeited on non-execution of, or accession to, these presents.
32. Liability of proprietor to cease, after forfeiture or transfer of his shares.
33. Business to be managed by a board of nine directors.
34. Qualification for the office of director.
35. Disqualified director acting, to forfeit £500.
36. Nomination of the present directors.
37. Three directors in rotation to retire at every annual general meeting.
38. Vacancies in the board to be filled up at annual general meeting. The election to be by ballot.
39. List of persons qualified to be directors, to be sent to each proprietor.
40. Retiring directors to continue in office until conclusion of the meeting, and until their places are supplied.
41. Directors to signify acceptance of office.
42. Director neglecting to attend for six months, to forfeit his office.
43. Directors may resign.
44. The board may remove a director for misconduct.
45. Vacancies, occurring more than one month prior to annual general meeting, to be supplied by the board.
46. Meetings of the board.
47. Four directors to constitute a board. Mode of voting.
48. Six directors requisite to alter any former resolution.
49. Directors to act faithfully. And sign declaration of secrecy. (a)
50. Board to elect chairman and deputy chairman.

Banking Com-
pany—another
Form of Deed.

(a) The following is the covenant sometimes inserted in these deeds:—
“That each of the present and future directors shall, previously to entering on the duties of his office, sign a declaration in a book to be kept for that purpose, that he will not reveal or make known any of the matters, affairs, or concerns, which may come to his knowledge as a director of the company, to any person or persons whomsoever, except when officially required by the board of directors for the time being, or by any general or extraordinary meeting of the company.”

CLAUSE.

**Banking Com-
pany—another
Form of Deed.**

51. Proceedings of board to be entered in a book, and to be conclusive evidence, as between proprietors.
52. Board to have the entire management of the affairs of the company. No proprietor, or director, unless appointed by the board, to use the name of the company. No proprietor to have access to the books or securities of the company.
53. Manager alone, or with one or more directors, may receive or refuse bills; but the board may prohibit the reception of specified paper.
54. Power to board to establish branch banks.
55. Power to board to make bye laws.
56. Power to board to appoint committees.
57. Power to board to rent or purchase premises.
58. The board to appoint London bankers, managers, officers, and servants, with power of removal; and to take security.
59. Seven directors to concur in the removal of the manager.
60. The board to appoint public officers.
61. Power to sign bills vested exclusively in such persons as the board shall appoint.
62. Board to make advances, provided one-fourth of directors present do not object. Vote to be by ballot.
63. No director to vote as to advances, when interested.
64. Books of account to be kept; half-yearly statement to be made, and exhibited at annual general meeting. Proprietors not to inspect books of account.
65. Power to board to remit forfeitures.
66. Power to board to buy and sell shares.
67. Power to board to compound for stamps.
68. Power to board to institute proceedings at law and in equity.
69. Power to board to arbitrate, compound, and prove for debts.
70. Power to board to execute letters of attorney.
71. The board to appoint trustees.
72. Trustees may resign; or be removed for misconduct.
73. Power to board to appoint new trustees.
74. Trustees to be under the control of the board.
75. Receipt of officers, trustees, or directors, to be a sufficient discharge.
76. Annual general meeting of proprietors to be held in January.
77. Power to board, or to twelve proprietors, to call special general meetings.
78. Board to give notice of general meetings. Power of adjournment.
79. Appointment of chairman of general meetings.
80. Twelve proprietors, holding 300 shares, requisite to form a general meeting.
81. Mode of voting at general meetings. Scale of votes. Proprietors disqualified to vote.
82. Proceedings of general meetings to be entered in a book, which shall be conclusive evidence, as between proprietors.
83. Powers of general meetings.
84. Power to annual general meeting to appoint auditors. Auditors to subscribe declaration of secrecy.
85. Balance sheets to be exhibited to annual general meeting, and to be binding on the proprietors.

CLAUSE.

86. Profits, subject to guarantee fund, to be divided at annual general meeting.
87. Guarantee fund to be reserved out of the profits. Dividend or bonus not be due till payable.
88. Notice of dividend or bonus to be given.
89. Unclaimed dividends to be invested for the benefit of the company.
90. Power to board of directors to return useless capital.
91. Grant of lien to the company on the shares of the proprietors.
92. Officers of the company to be indemnified, except in cases of wilful default.
93. General arbitration clause.
94. Provision for dissolution of the company, if one-fourth of the paid-up capital be lost.
95. General provision for dissolution of the company.
96. Provision for winding up the affairs of the company on its dissolution.
97. Evidence of proprietors to be admissible, as against the company or other proprietors.
98. Notice to proprietors how to be given.
99. Language of this deed, construction of.
100. This deed to be inrolled, and produced at the request of any proprietor.
101. Provisions for obtaining charter, or act of Parliament. General covenant to observe all the provisions of the deed. Reciting expediency of having duplicates of this deed. Power of attorney to the manager to sign the other part. Contract to be deemed to commence on 1st September, 1834.

Banking Com-
pany—another
Form of Deed.

◆

*Outline of Deed of Settlement for a Joint Stock Banking Company ;
with examples of Clauses relative to the transfer of Shares, making of
Calls, &c.*

PARTIES.

RECITALS.—7th Geo. 4, c. 46.

The parties mutually covenant with each other.

Banking Com-
pany—another
Form of Deed.

CLAUSE.

1. Title of the company.
2. Capital.
3. Limitation of number of shares to be subscribed for or held by one individual.
4. Persons disqualified from being shareholders.
5. Profit and loss to be divided among shareholders in proportion to their shares.
6. That each of the parties hereto shall and will pay unto the board of directors, for the time being of the company, the sum of ten pounds on each and every share of the capital fund, or joint stock subscribed for by him or her, at the times and in manner following, that is to say, five pounds per share on the day of

Present and
future calls.

CLAUSE.

**Banking Com-
pany—another
Form of Deed.**

the date of these presents; five pounds per share on the first day of February then next or at such ulterior or postponed day as the board of directors may appoint for the payment thereof; and the remaining forty pounds per share shall be paid up and advanced by the respective shareholders in such sums, and at such times as the board of directors shall call for the same; provided that no such call shall be made before the first day of _____, nor shall any call exceed five pounds per share in any one year; and three calendar months' notice, in writing, of each call, shall be given to each shareholder, in manner hereinafter provided for giving notice to each shareholder, previous to the day on which the same is required to be paid; and the board of directors for the time being is hereby empowered, when, and as the board may deem it advisable, to make such calls and orders upon the shareholders for the payment of the said forty pounds per share, but subject to the restrictions above mentioned.

**Calls on future
subscriptions.**

7. That if at the time when any share shall hereafter be subscribed for more than one instalment shall have been payable on the shares then already taken, all such instalments shall also be paid into the bank of the company, in respect of such future shares so to be subscribed for, at the time of such future subscription.

**Shares to be
forfeited on
non-payment
of calls, unless
the directors
decide other-
wise.**

8. That in case any of the shareholders for the time being of the company, or their respective heirs, executors, or administrators, shall refuse, neglect, or decline to pay the second instalment hereinbefore mentioned, or any future calls or instalments hereinbefore authorized to be made by the board of directors for the time being, for the space of thirty days after the days hereinbefore appointed or hereinafter to be appointed by the said board for payment thereof; then and in every such case, the share or shares, estate and interest of and in the company of the respective shareholders, or their respective executors or administrators so refusing, neglecting, or declining as aforesaid, and all benefit and advantage therefrom shall, so far as respects the shares in respect of which such default shall have been made, and all previous payments made in respect thereof, thenceforth (unless a board of directors shall within two calendar months decide otherwise) become forfeited to the said company, nevertheless without prejudice to the right of the board of directors to enforce payment of such call or calls, and to recover damages for the non-payment thereof; and each share which shall be so forfeited by default shall at the discretion of the board of directors be extinguished for the benefit of the other shareholders, or be sold and issued to some other person or persons desirous of holding shares, in the place or stead of the person or persons making such default; and the purchaser of each such share shall for all the purposes of these presents, and for the covenants, regulations, and agreements to be entered into in conformity with these presents, in respect of each such share respectively, be considered as the proprietor or holder of that share, and as if in respect of such share he were the assignee of the person making such default, and thenceforth such substitute or succeeding proprietor or share-

**Power to
directors to
extinguish all
forfeited shares.**

CLAUSE.

- holder, his or her heirs, executors, or administrators, shall be liable to all the acts to be done, and the covenants and agreements to be observed and performed, in respect of such share, and shall execute a deed to the trustee or trustees for the time being of the said company, containing covenants, binding himself and herself, and his and her heirs, executors, and administrators, to observe and perform the same covenants and agreements, and to make such payments.
9. The nature of the business to be transacted.
 10. Business to be under the control of twelve shareholders as a board of directors.
 11. Present directors.
 12. Not less than four directors to constitute a board.
 13. Chairman and deputy chairman of board of directors to be appointed and to have a casting vote.
 14. Book of the proceedings of the board of directors to be kept.
 15. Power to board of directors to purchase, erect, or take suitable offices; and to insure the same.
 16. Power to board of directors to appoint London banker, manager, and other officers, and to displace them and pay them suitable salaries; and to take security from them.
 17. Power to board of directors to appoint public officers, pursuant to statute 7th Geo. 4, for the purpose of suing and being sued, and also to appoint trustees for the company.
 18. Power to board of directors to make advances, &c., but the votes of any four to be final.
 19. Directors not to vote when interested personally, or through family connexion.
 20. Proper books to be kept and balanced twice a year.
 21. Annual general meeting of shareholders to be held on the second Wednesday in February, in every year.
 22. Directors to exhibit statement of the affairs.
 23. Profits to be divided amongst shareholders, subject to guarantee fund.
 24. Guarantee fund to meet extraordinary demands by bad debts or otherwise, when it exceeds one-half of the paid up capital, excess may either be divided amongst shareholders, or suffered to accumulate, or added to capital.
 25. Notice of dividend or bonus to be given to shareholders.
 26. Dividends and bonuses not paid in six months to go to account of unclaimed dividend fund.
 27. Mode of directors retiring from office and of electing new directors.
 28. List of persons qualified to be directors to be sent to each shareholder.
 29. A bill-committee to be appointed.
 30. Persons disqualified from becoming directors.
 31. Board of directors may expel any one of their body.
 32. Directors, &c., may resign.
 33. Interim directors may be appointed by the board.
 34. Directors to sign declaration of secrecy. (a)

**Banking Com-
pany—another
Form of Deed.**

(a) See *ante*, p. 263.

CLAUSE.

**Banking Com-
pany—another
Form of Deed.**

35. Board of directors to act in conformity with these presents but may make bye-laws.
36. Remuneration to directors to be fixed by general annual meeting.
37. Board of directors may authorize manager to sign notes, &c.
38. List of shareholders to be kept and from time to time amended.
39. Mode of giving notices.
40. Board of directors may establish branch banks.
41. Board of directors to have the conduct of all actions brought against the public officers, &c.

**Power to board
of directors to
proceed against
any persons
whether share-
holders or not.**

42. That when, and so often as any person or persons, whether shareholders in the company or not, shall break, or refuse, or neglect to perform, or comply with any of the covenants, conditions, stipulations or agreements contained in these presents, or other the supplemental or subsisting deed of settlement of the company, and which on his, her, or their part ought to be performed, or complied with, or to pay and discharge any sum of money, debt, claim, or demand due or claimed to be due to the company, or otherwise to satisfy any cause of action which the company may possess, it shall be lawful for the board of directors for the time being, to direct an action or suit or other proceeding at law, or in equity, to be commenced in the name or names of the person or persons who the said board may be advised ought to be plaintiff or plaintiffs, against the person or persons for the time being committing such breach, or refusing or neglecting as aforesaid, or liable to pay such sum of money, debt, claim or demand, or satisfy such cause of action, his, her or their heirs, executors, or administrators; and the person or persons in whose name or names any such action or suit shall be so commenced shall not discontinue, release, or become nonsuit in such action or suit, without the consent of some board of directors for the time being of the company; and provided such person or persons obey the directions of the directors in and about such actions, suits, and proceedings, he and they shall be indemnified out of the funds, or property of the company against all expenses, damages and losses which they, he or she may incur or sustain in consequence of such action or suit in like manner as herein provided concerning the public officer or officers of the company; and the sum or sums of money to be recovered and received in any such action or suit shall form part of the funds of the company.
43. Power to board of directors to submit to arbitration, to compound debts and sign bankrupts' certificates.
44. General power to board of directors to invest surplus funds and to change securities.
45. Appointment of chairman at all meetings of shareholders.
46. Mode of voting at all meetings of shareholders.
47. Proxy votes admissible in certain cases.
48. Shareholders not permitted to vote until calls paid up.
49. No questions to be gone into at meetings of shareholders, unless twenty shareholders present, who shall be holders of at least fifteen hundred shares.

CLAUSE

50. Power to adjourn meetings of shareholders if requisite number do not attend within one hour of time appointed. **Banking Company—another Form of Deed.**
51. Power to adjourn meeting of shareholders after business commenced.
52. Shareholders not permitted to inspect books.
53. That all debts and engagements to the company of any shareholder or shareholders either for cash advances, or balances, or running bills or notes, being direct bills, notes, or indorsements passed to the company by such shareholder or shareholders, his, her or their partner or partners or otherwise howsoever; shall be at all times and in all cases set off against all shares and stock of such shareholder or shareholders; whether such debts and engagements be the debts and engagements of such shareholder or shareholders individually, or jointly, or in partnership with any other person or persons; and the board of directors for the time being, may extinguish or dispose of such share or shares, either entirely or partially as the case may seem to require, by way of, or towards satisfaction or payment of all or any part of such debts or engagements. **Shares to be in the first place liable to the debts due to the bank**
54. That no share in the stock of the company shall be transferrable until all calls, or instalments in respect thereof, have been duly paid up; but from and after that time, if any shareholder, or his or her legal representative or representatives whether by marriage, or as executors, administrators, legatees, guardians, committees, assignees under bankruptcy or insolvency, shall be desirous of selling or disposing of any share or shares in the company, he, she, or they shall state in writing to the board of directors for the time being, the name or names of the person or persons who is or are willing to become the purchaser or purchasers thereof, and the real price which such proposed purchaser or purchasers have agreed to give for the same, and shall also leave at the banking-house of the company, the written consent of such proposed purchaser or purchasers to become a member or members of the company, subject to the rules and regulations thereof: and if the said board of directors shall approve of such proposed purchaser, they shall notify the same to the proposed vendor, within fourteen days after receiving such notice; and such purchaser or purchasers may then take a transfer of the same share or shares, and shall have the like advantages in the same, and be subject to the like liabilities in respect thereof, as the previous owner or owners had therein, and was or were subject in respect thereof; but no transfer shall be made without such approval of the board of directors as aforesaid, or in any other form than is hereinafter provided. **Power to shareholders to sell and transfer their shares subject to the approbation of directors.**
55. Executors, administrators, legatees, trustees, guardians, committees and assignees, may receive dividends due at death, bankruptcy, or lunacy of those whom they represent. But not to receive future dividends until they are admitted shareholders.
56. That the husband of any female shareholder or any such executors, administrators, legatees, trustees, guardians, committees, or assignees, who shall be desirous of retaining the share or **Executors, administrators, legatees, trus-**

CLAUSE.

Banking Company—another Form of Deed.

tees, guardians, assignees or committees to be admitted shareholders.

Board of Directors to decide upon Form of Transfer.

Transferees of shares entitled to same privileges, &c., as the persons in whose places they stand.

Owners of shares which may have been sold by directors to be free from further calls.

shares of his wife, or of the person or persons whom he, she, or they represent, and of having the same transferred into his, her, or their name or names, shall give notice in writing of such desire to the board of directors for the time being, (in manner as mentioned in article 54, with regard to the sale of shares) and he, she, or they may, on the approval of the board of directors, be admitted and become a shareholder or shareholders in the company, in respect of such share or shares, and have the same transferred into his, her, or their name or names accordingly.

57. That the board of directors for the time being shall be at liberty to decide upon the form and manner of the transfer, to be made and executed upon the sale or transfer of shares in the company; and shall from time to time, and at all times hereafter, make such further rules, orders, and regulations respecting such transfers and by whom the same shall be prepared, as shall appear to them necessary and advisable for the security of the company, and the due assignment of the said shares; but so that all transfers shall be signed by three of the directors, and so that all transfers, sales, or assignments of any share or shares in the company which shall not be made conformably to the provision of these presents, and any supplemental or subsisting deed of settlement of the company, and according to the regulations of the directors, shall be null and void.
58. The present shareholders omitting to execute these presents, and the future shareholders omitting to execute deed to abide by same, within a limited time, their shares to be sold.
59. That from and immediately after the completion of any sale and transfer, in the manner aforesaid, the person or persons to whom such sale and transfer may be made, shall have and be subject to all the same privileges and liabilities, as the person or persons by or from whom such sale and transfer was or were made; and every person or persons whose share or shares shall, by the board of directors for the time being, have been sold, by virtue of any of the powers hereinbefore contained, shall, in respect of such share or shares, cease to be shareholder or shareholders in the company; and shall for ever thenceforth be acquitted and discharged from all further obligations in respect of such share or shares, and from all the covenants, agreements, regulations, and stipulations, to which by this or any supplemental or other subsisting deed of settlement of the company, he, she, or they would have been liable in respect of the same share or shares, if the same had not been sold as aforesaid; provided nevertheless that nothing in this article contained shall extend, or be meant or construed to extend to release such shareholder or shareholders from his, her, or their proportion of the losses (if any) sustained by the company up to the period of his, her, or their ceasing to be such shareholder or shareholders as aforesaid.
60. Power to board of directors to sell purchased shares.
61. Power to general meeting to appoint inspectors.

CLAUSE.

62. Power to shareholders at two extraordinary meetings to increase the capital, the number of directors, displace directors, and make new laws, &c.
63. Power to board of directors to call an extraordinary meeting of shareholders.
64. Power to twenty shareholders to request board of directors to call extraordinary general meetings, and provision in case the board refuses.
65. Receipts of trustees for shares to be sufficient discharges.
66. Securities taken in names of trustees to be subject to control of directors, and trustees to execute declaration of trust if required.
67. Receipts of trustees or directors to be sufficient discharges.
68. Mode of appointing new trustees.
69. Indemnity to directors, &c., when acting legally.
70. Disputes between shareholders to be referred to arbitration.
71. Company to be dissolved whenever one-fourth of the paid-up capital be lost.
72. Company may be dissolved by consent of three or more directors, and of two-thirds in number and value of the shareholders voting at two successive meetings. Mode of winding up affairs, in case of dissolution.
73. This deed may be inrolled and deposited as directors may appoint.
74. Charter or act of Parliament may be applied for.

Banking Com-
pany—Share
Certificate.

—◆—
————— *Joint Stock Banking Company.*

No.

THIS IS TO CERTIFY, that _____ of _____ in the county of _____ is a proprietor of _____ shares of one hundred pounds each, in the capital stock of the “ _____ Joint Stock Banking Company,” on which _____ pounds per centum have been paid; and that as the proprietor of the said shares, he hath become entitled to all the benefits and emoluments thereof, upon the terms and stipulations contained in the deed of settlement of the company, bearing date the _____ day of _____, 18 _____, with power to transfer the same shares, subject to the restrictions contained in the said deed, regulating transfers of shares.

Banking Com-
pany—Share
Certificate.

As WITNESS our hands, the _____ day of _____ one thousand eight hundred and _____
Registered.

} Two of the Directors.

[I have seen on the back of some certificates of shares the following printed extracts from the deed of settlement, for the information of holders of shares.]

—◆—

Extracts from the Deed of Settlement, relative to the sale and acquisition of Shares, and the admission of new Proprietors.

CLAUSE.

1. No transfer of shares shall be made till after the annual general meeting, in _____, 18 _____; but after that period, proprietors

Extracts from
Deed of Settlement
indorsed
upon certificates
of shares.

CLAUSE.

- or their legal representatives, may transfer their shares, subject to the approbation of the directors; and for obtaining such approbation, the existing holder of any shares proposed to be transferred, shall give a written notice to the directors, to be left with the manager, at the bank, in _____, containing the respective names and address of the existing holder, and of the proposed transferee.
2. No person shall transfer any shares upon which any calls remain unpaid.
 3. The directors shall fix upon the form of the deed of transfer; and by whom and in what manner it shall be prepared, and how registered. All transfers not made accordingly, shall be void. Fees on transfers are not to exceed one shilling per share.
 4. The assignees of a bankrupt or insolvent proprietor, and the executor, administrator, or legatee of a deceased proprietor, and the husband of a female proprietor, shall not sell any shares, or receive any dividends, until they shall have produced, at the bank in _____, the deed of assignment, probate of the will, letters of administration, or certificate of marriage, under which they claim.
 5. Such husband, executor, administrator, or legatee, may either sell his shares, or become a qualified proprietor, but assignees of a bankrupt or insolvent proprietor must sell in all cases.
 6. Such husband, executor, administrator, or legatee, who may be desirous of becoming a qualified proprietor, shall give notice at the bank of such his desire; in which notice shall be expressed the name and place of abode of the person giving the same, and the name of the proprietor in whose place or right he claims, and the number of shares in respect whereof he is desirous of becoming a proprietor.
 7. Dividends due on the shares of all such representatives, shall be suspended until they become proprietors or sell.
 8. All persons, in whom any shares shall, by original subscription, purchase, marriage, bequest or otherwise, become vested, must execute the deed of settlement; and the shares of persons neglecting, for six calendar months after notice, to execute the deed, shall be forfeited.
 9. Proprietors are not required to execute the deed of settlement more than once, in respect of shares acquired at different times.
 10. Upon the transfer of any shares, this certificate shall be given up to be cancelled, and a new one shall be issued to the transferee; and if any shares included in this certificate are retained by the old proprietor, a new certificate in respect thereof shall be issued to him.

Certificates may be renewed by order of the directors, on being damaged or lost.

A fee of not more than two shillings and sixpence shall be payable for every new certificate.

N.B.—This certificate must also be renewed on each future call being paid.

Forms of transfers and notices may be had, on application at the bank.

*Form of Writ of Scire Facias.*Form of Writ
of Scire Facias.

Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to the Sheriffs of London, Greeting. Whereas J. E., H. B., F. B., C. G. and H. H., lately in our court, before the Barons of our Exchequer at Westminster, by the judgment of the said court recovered against Joseph Wood, one of the public officers for the time being of and for certain persons united in copartnership for the purpose of and carrying on the trade and business of bankers in England, according to the statute made and passed in the seventh year of his late Majesty King George the Fourth, intituled "An Act for the better regulating of Copartnerships of certain Bankers in England, and for amending so much of an Act of the thirty-ninth and fortieth years of the reign of his late Majesty King George the Third, intituled 'An Act for Establishing an Agreement with the Governor and Company of the Bank of England for advancing the sum of three millions towards the supply for the service of the year one thousand eight hundred, as relates to the same, and called the Yorkshire Agricultural and Commercial Banking Company,' and which said Joseph Wood, at the time of his appointment, was a member of the said copartnership, and resident in England, and hath been duly nominated and appointed, and now is one of the public officers for the time being of the said copartnership according to the force, effect, and provisions of the said Act of Parliament, as well a certain debt of thousand pounds for money borrowed by the said company of the said J. E., H. B., F. B., C. G., and H. H., as £ , which in our said Court were awarded to the said J. E., H. B., F. B., C. G. and H. H., for their damages which they sustained as well by the reason of the detaining the said debt as for their costs and charges by them about their suit in that behalf expended, whereof the said Joseph Wood (as such public officer as aforesaid) is convicted as by the record and proceedings thereof still remaining in our said Court manifestly appears. And whereas in and by the said act of Parliament it is enacted (amongst other things) that all and every judgment and judgments, decree or decrees, which should at any time after the passing of the said act be had or recovered or entered up as therein mentioned in any action, suit, or proceeding in law or equity, against any public officer of any corporation or copartnership carrying on the trade and business of bankers under and by virtue and according to the provisions of the said act should have the like effect and operation upon and against the property of such copartnership, and upon and against the property of every such member thereof as if such judgment or judgments had been recovered or obtained against such copartnership, and that execution upon any judgment in any action obtained against any public officer for the time being of any such corporation or copartnership carrying on the business of banking as aforesaid, under the provisions of the said act of Parliament, whether as plaintiff or defendant may be issued against any member or members for the time being of such corporation or copartnership. And whereas J. S. of , near York, at the time of such judgment being recovered against him, the said Joseph Wood, as such public officer as aforesaid, was and still is a member of the said copartnership so

Form of Writ
of Scire Facias.

carrying on the trade and business of bankers in England under the provisions of the said act of Parliament as aforesaid as by the information of the said J. E., H. B., F. B., C. G., and H. H., in our said court before the barons of our Exchequer at Westminster, we have been given to understand. And now on the behalf of the said J. E., H. B., F. B., C. G., and H. H., in our said court, before the barons of our Exchequer at Westminster, we have been given to understand that although judgment be thereupon given, yet execution of the debt and damages aforesaid, still remains to be made to them. Wherefore the said J. E., H. B., F. B., C. G., and H. H., have humbly besought us to provide them a proper remedy in this behalf, and we being willing that what is just in this behalf should be done, command you that by honest and lawful men of your bailiwick, you make known to the said J. S., that he be before the barons of our Exchequer at Westminster, the twenty-second day of November instant to shew if he has or knows of anything to say for himself why the said J. E., H. B., F. B., C. G., and H. H., ought not to have their execution against him of the debt and damages aforesaid according to the force, form, and effect of the said recovery if it shall seem expedient to them so to do. And further to do and receive what our said Court, before the barons of our Exchequer at Westminster, shall then and there consider of him in that behalf. And have you there the names of those by whom you shall so make known to him and this writ. Witness, James Lord Abinger, at Westminster, this day of in the year of our reign.

◆

Form of Notice to be served with the preceding Writ.

Form of notice
to be served
with the pre-
ceding writ.

IN THE EXCHEQUER.

Between J. E., H. B., F. B., C. G., and H. H., plaintiffs,
and

Joseph Wood, one of the public officers of and for a certain banking company or copartnership, called the Yorkshire Agricultural and Commercial Banking Company, defendant.

Sir,

Herewith you will receive a copy of a writ of scire facias issued in this case, which was issued on the day of instant, and was left in the Sheriffs' of London Public Office, on the day of instant, where the same is now lodged, and in default of your appearing thereto, judgment will be obtained thereon against you.

Dated this day of , 184 .

Yours, &c.

A. B., plaintiff's attorney,

Street, London.

To Mr. J. S.,
of
near York.

Form of Affidavit of Service.

Form of Affidavit of Service.

IN THE EXCHEQUER OF PLEAS.

Between J. E., H. B., F. B., C. G., and H. H., plaintiffs,
and

Joseph Wood, one of the public officers of and for a certain banking company or copartnership, called the Yorkshire Agricultural and Commercial Banking Company, defendant.

T. A., of the city of York, bookbinder, maketh oath and saith, that he, this deponent, did on the _____ day of _____ instant, serve J. S., of _____, in the county of York, _____, with the notice and copy writ of scire facias hereunto annexed by delivering a true copy of the same notice and writ to the said J. S.

Sworn at the city of York, }
the _____ day of _____ in } T. A.
the year of our Lord 184 }

Before G. D. Seymour, a Commissioner for taking affidavits in the Court of Exchequer of Pleas.

Form of Judgment in Scire Facias.

IN THE QUEEN'S BENCH.

Form of Judgment in Scire Facias.

As yet of Michaelmas Term, 7th Victoria, the 11th day of December, in the year of our Lord 1843.

County of } To wit, our Lady the Queen sent to her Sheriff of
Southampton. } the county of Southampton her writ, closed in these words (that is to say)
"Victoria.*"

* Copy the writ verbatim.

At which day, before our Lady the Queen, at Westminster, came the said H. B., &c., in their proper persons and the Sheriff, to wit, † _____, sheriff of the county of Southampton aforesaid, thereupon now here returned to our said Lady the Queen, that by R. M., &c., good and lawful men of his bailiwick, he had given notice to the said J. B., &c., to appear before our Sovereign Lady the Queen, at Westminster, on the day in the said writ contained to shew cause as by the said writ they are respectively required, and as the said sheriff is thereby commanded; and that the said G. A., &c., had not nor had either of them anything in his bailiwick whereby he could make known to them, or any or either of them, as by the said writ he, the said sheriff, was commanded, nor were they, the said G. A., &c., nor any or either of them found in the same. And the said G. A.,

† Name of the sheriff.

Form of Judgment in Scire Facias.

*Those only who appeared.
 †The plaintiffs.
 ‡Those who appeared.

&c., at that day being solemnly demanded, the said* J. B., &c., respectively come in their own persons. And, hereupon, the said H. B., &c., †pray that execution may be adjudged to them against the said J. B., &c., ‡upon the said judgment so obtained as aforesaid, of the debt and damages aforesaid, according to the force, form, and effect of the said recovery, and of the statute aforesaid. And the said J. B., &c., respectively say nothing to bar or preclude the said H. B., &c., from having execution adjudged to them against the said J. B., &c., upon the said judgment so obtained as aforesaid, according to the force, form, and effect of the said recovery, and of the statute aforesaid. Therefore it is considered that the said H. B., &c., have execution against the said J. B., &c. of the debt and damages aforesaid, according to the force, form, and effect of the said recovery, and of the statute aforesaid, by the default of the said J. B., &c. &c.

*Form of Writ of Fieri Facias against Shareholders' Goods after judgment against Public Officers.*Form of Writ of Fieri Facias.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To the sheriff of Middlesex, greeting, whereas, by our writ, we lately commanded our sheriff of the county of Southampton, that he should cause to be made of the goods and chattels in his bailiwick, of J. B., &c., a certain debt of £30,000 which H. B., &c., lately in our court, before us, recovered against H. G. one of the public officers, of and for the time being, of and for certain persons united in copartnership by the name and description of the Southern District Banking Company for Hants, the Isle of Wight, and the Channel Islands, for the purpose of and carrying on the trade and business of bankers in England, under and by virtue, and according to the form and effect of a certain act of Parliament, made and passed in the seventh year of the reign of his Majesty King George the Fourth, and also seventy shillings, which in our said court were awarded to the said H. B., &c. for their damages, which they had sustained, as well by reason of detaining the said debt, as for their costs and charges by them about their suit in that behalf expended, whereof the said H. G., one of the said public officers as aforesaid, and sued as such in the said suit in which such judgment was recovered as aforesaid, by the said H. B., &c. in that behalf according to the said statute, was convicted as appears to us of record, together with interest* upon the said sum of £30,000, at the rate of four per cent. per annum, from the † day of A. D. 18 , on which day the aforesaid judgment was entered up. Whereupon on behalf of the said H. B. &c., in the said court it had been suggested and given to the court here, to understand and be informed, that at the time of the giving of the said judgment against the said H. G., as such public officer as aforesaid, the said J. B., &c. were respectively and from thence have been, and still are members of the said partnership so carrying on the trade and business of bankers as aforesaid, and that, although judgment was thereupon given as aforesaid, yet that execution of the debt and damages aforesaid remained

*Interest.

†Day of signing judgment.

Form of Writ
of Fieri Facias.

to be made to the said H. B., &c., who thereupon heretofore prayed us in our said court, that execution might be adjudged to them against the said J. B., &c., upon the said judgment so obtained as aforesaid of the debt and damages aforesaid according to the force, form, and effect of the said recovery, and of the statute aforesaid. And such proceedings were thereupon had in our said court before us by scire facias against the said J. B., &c., upon the said judgment that it was therefore lately considered in and by our said court, that, the said H. B., &c., should have execution against the said J. B., &c., of the debt and damages aforesaid, according to the force, form and effect, of the said recovery, and of the statute aforesaid. And that he the said sheriff of the said county of Southampton, should have that money, together with such interest as aforesaid, before us at Westminster, immediately after the execution thereof, to render to the said H. B., &c., for their said debt, damages, and interest. And that he should do all such things as by the statute passed in the second year of our reign, he was authorized and required to do in that behalf. And our said sheriff of the county of Southampton on the day of A. D. 18 , returned to us, that the said J. B., &c., had not nor had any or either of them, any goods, chattels, money, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money in his bailiwick, whereof he could cause to be levied the debt and damages and interest aforesaid or any part thereof. Whereupon on the behalf of the said H. B., &c., it is testified in our said court, that the said J. B., &c., have goods and chattels sufficient within your bailiwick, whereof you may cause to be levied the debt and damages and interest aforesaid. Therefore we command you, that you cause to be made of the goods and chattels in your bailiwick of the said J. B., &c., the debt and damages aforesaid together with the interest upon the said sum of £30,000 at the rate of £4 per cent. per annum, from the day of A. D. 18 , on which day the judgment aforesaid, was entered up, and have that money with such interest as aforesaid, before us at Westminster, immediately after the execution hereof to render to the said H. B., &c., for their debt and damages, and interest, and that you do all such things as by the statute passed in the second year of our reign, you are authorized and required to do in this behalf, and in what manner you shall have executed this our writ, make appear to us at Westminster immediately after the execution thereof, and have you there then this writ. Witness, Thomas Lord Denman at Westminster, the day of A. D. 18

INDORSEMENT.

Levy £ with interest from at 4l. per cent.
The defendants T. G. and I. Y. reside at in the

Form of Writ
of Testamen-
tum Capias ad
Satisfacien-
dum.

Form of Writ of Testatum Capias ad Satisfaciendum against Shareholder after judgment recovered against Public Officer.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to the Sheriff of Yorkshire, greeting. Whereas by our writ we lately commanded our Sheriffs of London that they should not omit by reason of any liberty of their bailiwick but that they should enter the same and take J. S. wheresoever he should be found in their bailiwick, and him safely keep, so that they might have his body before the Barons of our Exchequer at Westminster immediately after the execution thereof, to satisfy J. E. &c., as well a certain debt of 50,000*l.* which the said J. E. &c. lately in our Court before the Barons of our Exchequer at Westminster recovered against one J. W., as also 9*l.* 4*s.* which were adjudged to the said J. E., &c. in our said Court for the damages which they sustained, as well as on occasion of the detaining the said debt as for their costs and charges by them about their suit in that behalf expended, whereof the said J. W. was convicted, as by inspecting the rolls of our said Exchequer appeared to us, and whereupon it was considered in our said Court that the said J. E. &c. have their execution against the said J. S. of the debt and damages aforesaid, according, to the force, form, and effect of the said recovery, as also appeared to us by inspecting the rolls of our said Exchequer. And our said sheriffs of London on the day of in the * year of our reign returned to our Barons of our Exchequer at Westminster, that the said J. S. was not found in their bailiwick. Whereupon on behalf of the said J. E. &c., it is testified in our said Court that the said J. S. wanders up and down, and secretes himself in your county. Therefore we command you that you omit not by reason of any liberty in your bailiwick, but that you enter the same and take the said J. S. if he shall be found in your bailiwick, and him safely keep, so that you may have his body before the Barons of our Exchequer at Westminster immediately after execution hereof, to satisfy the said J. E. &c. for their debt and damages aforesaid, and have you there this writ. Witness James Lord Abinger, at Westminster, the day of in the year of our reign.

*Date of day of
return of ca. sa.

INDORSEMENT.

Take £ besides, &c.
The defendant is a residing at

RAILWAY DEEDS AND FORMS.

Parliamentary or Subscription Contract.

Parliamentary
or Subscription
Contract.

THIS INDENTURE, made the day of , one thousand eight hundred and forty- , between the several persons whose names are hereunto subscribed and seals affixed in the schedule hereto of the first part, and W. T. C. of , in the county of

Gentlemen, and W. H. of _____, in the city of Westminster, Gentleman, (trustees named and appointed for the purpose of enforcing and giving effect to the covenants hereinafter contained,) of the second part: Witnesseth, That each of them the said several parties hereto of the first part, doth hereby for himself, his heirs, executors, administrators and assigns, and to the extent only of the sum or amount in money set opposite to his name, and not further or otherwise, covenant, promise, and agree to and with the said W. T. C. and W. H., their executors and administrators in manner following: (that is so say), that each of them the said several persons, parties hereto of the first part, hath subscribed the sum set opposite to his name in the said schedule hereto, towards making and establishing a railway from and out of the _____ railway, in the parish of _____, in the county of _____, to the town of _____ in the county of _____ with all proper works and conveniences connected therewith, to be called by the name of "_____ railway," or by such other name or names as may at any time hereafter be adopted by the provisional committee or the directors of the undertaking hereby contemplated: and with full power for the said provisional committee or directors from time to time, to alter and vary as well the site or spot at which the said railway and other works shall commence or be constructed, as also the site or spot at which the said railway shall terminate, and the intermediate course, route, or line thereof, and also from time to time to determine and fix upon, and from time to time to alter and vary the same sites, spots, route, course, or line respectively, or to abandon any part or parts of the said undertaking, and to concur, if they see fit, in the amalgamation of the said undertaking with any other railway or undertaking now or at any time hereafter to be established or undertaken, and to make application to Parliament in the present session for all or any of the purposes aforesaid, as the said provisional committee or directors shall think fit, or to confine the application in the present session to any portion of the said works; And this indenture further witnesseth, that each of them the said several persons, parties hereto of the first part, doth hereby for himself and his heirs, executors, and administrators, and as concerning himself only and his own acts, deeds, and defaults respectively, covenant with the said W. T. C. and W. H., their executors and administrators, that each of them the said persons, parties hereto of the first part respectively, his heirs, executors, or administrators, shall and will, well and truly pay or cause to be paid, the amount subscribed by each of them respectively, or such part thereof as shall not have been paid by them respectively at the date of their respective signatures to these presents, within four years from the date hereof, in such sums and at such places and times as shall be required by any act of Parliament to be applied for as aforesaid, or as the directors or others authorised by the said act shall lawfully direct or appoint. In witness whereof, the said parties to these presents have hereunto set their hands and seals the day and year first above written.



**Parliamentary
or Subscription
Contract.**

Parliamentary or Subscription Contract. Another Form.

This indenture, made the day of one thousand eight hundred and forty , between the several persons whose names and seals are hereunto respectively subscribed and affixed in the schedules hereunto marked respectively A. and B. of the first part, and J. B. B. of the city of Esquire, and C. A. S., of in the county of Esquire, of the second part: Witnesseth, That each of them the several persons parties hereto of the first part, doth hereby for himself and herself, his and her heirs, executors, and administrators respectively, covenant with the said J. B. B., and C. A. S., their executors and administrators, in manner following, (that is to say,) That each of them the said several persons parties to these presents of the first part, respectively, hath subscribed the sum set opposite to his or her name in the said schedules hereto, or one of them, as the sum subscribed by him or her for the purpose of making and establishing a railway to be called "The Railway," or by such other name as may at any time hereafter be adopted by the directors hereinafter referred to; such railway to commence at or near the terminus of the and Railway in the city of ; and to terminate in the borough of in the county of ; but with full power for the said directors to determine, and from time to time to alter and vary, the site or spot at which the said intended railway shall commence and terminate, and the intermediate course, route, or line thereof, and the extent and situation of the approaches thereto; and the stations, branch railways or extensions, buildings, works, and conveniences to be connected therewith, and to make application to Parliament in the next session, for all or any part of the said undertaking as the said directors shall think fit; and also with full power and authority for the said directors to enter into any arrangement which they may think proper and expedient for the purchase or renting or for the use of any other railway or tramway or portion of a railway or tramway, and for the alteration of such railway or tramway if necessary for adapting the same to the purposes of the said intended undertaking; and also with full power to the said directors to permit any other company to hold shares in the said intended undertaking, or to enter into and make any other agreement, contract, or arrangement with any other company or companies, person or persons whomsoever, giving an interest in the said intended undertaking, and a control in the direction and management thereof, to such company or companies, person or persons, to such extent, on such terms and subject to such stipulations, provisions, and conditions, as the said directors may think fit: And the said persons, parties hereto of the first part, do hereby respectively acknowledge the following persons to be such directors as aforesaid, until an act of Parliament shall have been obtained authorizing the construction of the said undertaking, (that is to say), T. G., &c. And to give to and confer on such directors full power and authority to add to their number, and fill up from time to time any vacancies that may occur in their number by the death or resignation of any such directors, and to appoint and remunerate professional agents, officers, servants, and others out of the funds hereby subscribed, and to make bye-laws and regulations for their own government, and the government of

such officers and servants, and to make agreements with land owners and others for the purchase of lands and otherwise, and generally to do and perform all such acts as to them may seem expedient in the promotion of the said undertaking, and for obtaining an act of Parliament authorising the same: And this indenture further witnesseth, That each of them the said several persons parties hereto of the first part doth hereby for himself and herself, his and her heirs, executors, and administrators, and as concerning himself and herself only, his and her own acts, deeds, and defaults respectively, covenant with the said J. B. B., and C. A. S., their executors and administrators, that each of them the said persons parties hereto of the first part respectively, his or her heirs, executors, or administrators, shall and will forthwith pay to such person or persons as the said directors shall appoint the sum of ten pounds per centum upon the amount of money subscribed by each of them respectively: And also shall and will well and truly pay, or cause to be paid, the residue of the amount so subscribed within three years from the date hereof in such sums, and at such places and times, as shall be or be authorised to be required according to the provisions of any act to be applied for as aforesaid, which act shall also provide that none of the shareholders in the said undertaking shall be liable in any event to the payment of any greater sum of money than the amount of their respective subscriptions: And the said parties hereto of the first part, whose names are inserted in the schedule (A) aforesaid, hereby farther covenant and agree on behalf of themselves and their several and respective heirs, executors, and administrators, that in the event of the said intended act authorising the Railway Company, the and Railway Company, and the and Railway Company, or any or either of them, to subscribe or contribute towards the formation of the said intended undertaking, they the said last mentioned parties, their heirs, executors, and administrators respectively, in the event of the said companies or any or either of them being in pursuance of such authority enabled and desirous so to subscribe or contribute as aforesaid, shall and will, if called on so to do at any time within twelve months from the passing of the said intended act by the parties hereto of the second part respectively, relinquish in favour of the company or companies, who may be so enabled and desirous to subscribe or contribute as aforesaid, such number of the shares to which they the said last-mentioned parties hereto of the first part respectively would be entitled in the said undertaking by virtue of their several subscriptions, as the said companies or any or either of them may be so enabled and desirous to subscribe for as aforesaid: And it is hereby declared and agreed between and by the parties to these presents, that the said J. B. B., and C. A. S., their executors and administrators, shall be trustees of the covenants hereinbefore contained, for the purposes and in furtherance of the said undertaking: in witness whereof, the said parties to these presents have hereunto set their hands and seals.

Subscribers'
Agreement.*Form of Subscribers' Agreement.*

We the several persons who have hereunto subscribed our names, being severally subscribers to an undertaking for making and constructing a railway or railways, to be called the _____ or by such other name or names as may from time to time be adopted by the directors for the time being engaged in promoting such undertaking, do hereby recognise and acknowledge the following persons, and such of them as shall from time to time be willing to act as such directors; viz. A. B. of _____ in the county of _____ esquire; C. D., of _____ in the county of _____ esquire; E. F., of _____ in the county of _____ esquire; G. H., of _____ in the county of _____ esquire; J. K., of _____ in the county of _____ esquire; L. M., of _____ in the county of _____ esquire; N. O., of _____ in the county of _____ esquire; P. Q., of _____ in the county of _____ esquire; R. S., of _____ in the county of _____ esquire; T. U., of _____ in the county of _____ esquire; V. W., of London, banker; X. Y., of London, esquire; and Z. Z., of London, merchant: and moreover we do hereby, in furtherance of the said measure, and in addition to a certain deed or Parliamentary contract (a) and engagement bearing even date herewith, under our respective hands and seals, severally and respectively, and for our several and respective heirs, executors, administrators, and assigns, and so far as relates to our and their acts, mutually and reciprocally engage, and do also separately declare and agree to and with the said directors and with the directors for the time being of the said undertaking, that we severally and our several and respective executors, administrators, and assigns, shall and will faithfully conform to and abide by the several rules and regulations hereinafter contained for the management and conduct of the said undertaking, until an act or acts of Parliament shall be obtained for that purpose; viz.

First, That the said directors, or any board or meeting thereof constituted according to the provisions herein contained, shall have full and ample power for carrying all or any part of the said undertaking, as described in the said Parliamentary contract, into effect, and for that purpose to cause such surveys to be made or completed, to obtain such estimates and to make such contracts for surveys or estimates, and such arrangements and contracts with canal and railway proprietors, land-owners, and others, and generally to adopt all such measures as such board of directors, or the several committees of management constituted and authorized for that purpose, as hereinafter mentioned, may in their judgment consider necessary or expedient, or may be advised to adopt, and particularly to apply for and seek to obtain, as early as may be, an act or acts of Parliament, with such enactments and provisions as they shall think most expedient for the establishment, promotion, or advancement of the said undertaking.

Second, That the majority of members at any meeting of a board of directors, such meeting consisting of not less than five members, shall bind all the members whether present or absent; and the mem-

(a) See the Forms, *ante*, pp. 278—81.

ber presiding at any meeting of a board of directors shall, if he think fit, have a casting vote.

Third, That the said board of directors shall have power from time to time to add to its number from among the subscribers to the undertaking, holding each twenty shares at the least, and to supply any vacancies that may occur in the board, and also to appoint committees of management in the various towns to, through, or near which it is proposed to carry the said railway or railways, delegating to such committees of management, and to any proportion of the members of such committees, such duties and powers as the said directors may from time to time think proper.

Fourth, That the said directors shall have full power to appoint, suspend, or remove and re-appoint bankers, solicitors, engineers, surveyors, secretaries, clerks, agents, servants and workmen for the establishment, promotion, or purposes of the said undertaking, and also, if, and as they shall think proper to appoint and remove any acting director or manager, directors or managers, and to pay and allow all such salaries and recompenses for services or works, whether already rendered or done, or hereafter to be rendered or done, as the said directors shall think right; and also to apply all or any part of the monies which have been paid or shall be paid by way of deposit, as hereinafter mentioned, in payment of all or any such salaries or recompenses as aforesaid, and of the expenses incurred or to be incurred in or about the obtaining of any such surveys or estimates as aforesaid, or in or about or with reference to the soliciting or obtaining an act or acts of Parliament as aforesaid, and all other costs, charges, and expenses incident to the said undertaking, or which have been or may be incurred in respect or on account thereof, or preparatory or relating thereto, and generally in such manner as the said directors shall consider most conducive to the advantageous establishment and advancement or promotion of the said undertaking.

Fifth, That the directors shall have full power from time to time to make and establish all such bye-laws as they may think necessary or expedient for the good government of themselves and the committees.

Sixth, That a capital not exceeding pounds shall be raised in shares of pounds each, for all the purposes mentioned in the said Parliamentary contract, and such a proportion only of the same capital as the said directors shall think necessary, according to the estimates obtained or to be obtained by them for any limited portion of the said purposes.

Seventh, That a deposit of pounds per share shall be paid by each subscriber at the time of subscribing, but that no further deposit or sum shall be called for on account of expenses or otherwise until the proposed act or acts of Parliament shall be obtained.

Eighth, That it shall be distinctly provided in such act or acts of Parliament that no call shall be made upon the subscribers to the said undertaking, or any of them, which shall exceed the sum of pounds per share at any one time, and also that no more than calls shall be made in any one year, and that there shall be an interval of two months between every two calls. As WITNESS the hands of the said parties to these presents, the day of in the year of our Lord one thousand eight hundred and

Subscribers' Agreement.

Subscribers' Agreement. Another Form.

We the several persons who have hereunto subscribed our names, being severally subscribers to an undertaking for the making and constructing of a railway, to be called "The _____ Railway," or by such other name or names as may be adopted at any time hereafter, by the directors or provisional committee for the time being engaged in promoting such undertaking, do hereby recognise and acknowledge the following persons as such directors or provisional committee, namely, A. B., of _____ in the county of _____ esquire; C. D., of _____ in the county of _____ esquire; E. F., of _____ in the county of _____ esquire; G. H., of _____ in the same county, esquire; I. J., of _____ in the city of London, esquire; K. L., of _____ in the county of _____ esquire; M. N., of _____ in the city of London, aforesaid, esquire; O. P., of _____ in the county of _____ esquire; Q. R., of _____ in the same county, esquire; and S. T., of _____ in the same county, esquire. And moreover we do hereby, in furtherance of the said measure, and in addition to a certain deed or Parliamentary contract (a) and engagement, bearing even date herewith, under our respective hands and seals severally and respectively, and for our several and respective executors and administrators, promise and agree to and with the said A. B., C. D., E. F., G. H., I. J., K. L., M. N., O. P., Q. R., and S. T., that we severally, and our several and respective executors and administrators, shall and will faithfully conform to and abide by the several rules and regulations hereinafter next mentioned and set forth, as devised by the said directors or provisional committee for the management and conduct of the said undertaking, until an act or acts of Parliament shall be obtained; namely,

That the said directors or provisional committee, or any board or meeting thereof, constituted according to the provisions herein contained, shall have full and ample power to carry the undertaking, as described in the said Parliamentary contract, into effect, and for that purpose to cause the requisite surveys to be made, to obtain estimates, to make arrangements with canal proprietors, landowners and others, and generally to adopt all measures which such board of directors or provisional committee may in their judgment consider or be advised as necessary or expedient for obtaining an act or acts of Parliament for the establishment of the said undertaking.

That the majority of members at any meeting of a board of directors or provisional committee, such meeting consisting of not less than three members, shall bind all the members, whether present or absent; and the chairman, or other member presiding at any meeting of the board of directors or provisional committee shall have a casting vote.

That the said board of directors or provisional committee shall have power, from time to time, to add to its number from among the subscribers to the undertaking, holding each twenty-five shares, at the least, and to supply any vacancies that may occur in the board.

That the said directors or provisional committee shall have full

(a) See the Form of the Contract, *ante*, pp. 278—81.

power to appoint, suspend, or remove, and to re-appoint, bankers, solicitors, engineers, surveyors, clerks, agents, servants, and workmen, and to pay and allow all such salaries and recompenses, as the said directors or provisional committee shall think right; and to enter into contracts and agreements for the undertaking and completion of the proposed surveys, and all other matters incident to the obtaining the proposed act or acts: and also to apply all or any part of the monies which shall be paid by way of deposit as hereinafter mentioned, in payment as well of all salaries, recompenses, and engagements as aforesaid, as of the expenses of soliciting and obtaining an act or acts of Parliament as aforesaid, and all other costs, charges and expenses incident to the said undertaking, or which they have been or may be put to in respect or on account thereof, or relating thereto.

That the directors or provisional committee shall have full power from time to time, to make and establish all such bye-laws as they may think necessary or expedient.

That a capital of thousand pounds shall be raised in shares of pounds each, and that the directors or provisional committee shall not recognise the transfer of any share or shares in the said undertaking, until an act or acts of Parliament for authorizing the said undertaking or some parts thereof, shall have been obtained.

That each subscriber shall pay a deposit of pounds per share at the time of subscribing these presents, but that no further deposit or sum shall be called for on account of expenses or otherwise until the proposed act or acts of Parliament shall be obtained.

That it shall be distinctly provided in such act or acts of Parliament that no call shall be made upon the subscribers to the said undertaking, or any of them, which shall exceed the sum of per share, at any one time; and also that no more than calls shall be made in any one year, and that there shall be an interval of months between every two calls.

That the directors or provisional committee shall be empowered, if they see fit, to invest such deposits in any of the government or other public funds, or in the purchase of exchequer bills.

That the directors or provisional committee shall be accountable for all income and profits which may arise from such investment or purchase, but shall not be answerable for any loss, if any such shall be occasioned thereby.

And lastly, they the said several persons, parties hereto, respectively, do hereby severally, for themselves and for their several and respective executors, administrators and assigns, undertake and agree to and with the said A. B., C. D., E. F., G. H., I. J., K. L., M. N., O. P., Q. R., and S. T., that in the event of such act or acts not being passed into a law, each of them the said parties severally and respectively shall and will well and truly bear, pay, allow, and discharge the expenses already incurred, or hereafter to be incurred, relative to the surveys and estimates for the said railway or branches, solicitors' and counsels' fees, travelling expenses, and all other costs and charges of every description incident to the proposed undertaking, and to the application or applications to Parliament; such expenses, costs, and charges to be computed and assessed rateably upon the amount of shares or sums subscribed by each of the said several persons, parties to these presents, and to a certain other agreement or instrument in

Subscribers' Agreement.

writing, bearing even date herewith, and to the like purport or effect. As witness our hands this day of one thousand eight hundred and thirty-six.

—◆—
Form of Notice of taking Land for temporary purposes.

Form of Notice of taking Land for temporary purposes.

The Company do hereby give you notice, that under the powers vested in them by virtue of the several acts relating to the Railway, and particularly of an act of Parliament passed in the year of the reign of intituled, "An Act, &c."—Whereby, after reciting that in making and executing the said railway, and the several other works by that act authorized, it might be necessary for the said Company their agents and workmen to enter upon and take temporary possession of some parts of the land adjoining to the line of the said railway and other works for the purposes therein-mentioned, and that for the reasons therein referred to, it was expedient that the said Company, their agents and workmen, should be empowered to enter upon such adjoining lands for the purposes aforesaid without having previously made such payment, tender or investment of money as therein-before mentioned, it was therefore enacted, that it should be lawful for the said Company, their agents and workmen, and they were thereby empowered to enter upon the lands of any person or corporation whatsoever adjoining or lying near to the said railway and other works thereby authorized to be made and maintained, or any of them or any part thereof respectively for the purposes therein mentioned (a),—that it is the intention of the said Company at the expiration of fourteen days from the service of this notice, by their agents and workmen, and for the purposes hereinbefore referred to, or some of them, to enter upon the lands described or referred to, in the plan hereunto annexed and therein coloured , and which adjoin or lie near to the said railway, and other works by the said acts authorized to be made and maintained, and that the said company will separate and set apart by sufficient railings and fencings the said lands from the other lands adjoining thereto.

Dated this day of one thousand eight hundred and forty-

To	A. B. B. C.	}	D. M.	<i>Secretary.</i>
And to all others whom it may concern.				

—◆—
Notice to take Lands—Particulars of Claim for Compensation.

THE RAILWAY.

Notice to deliver particulars of claim for compensation.

In pursuance of the provisions contained in an act of Parliament, passed in the year of the reign of his late Majesty king William the Fourth, intituled, "An Act, &c.," and in an act passed in the

(a) This will of course vary according to the particular phraseology of the act of Parliament, under which the notice may be given.

year of the reign of her present Majesty, intituled, "An Act, &c.," and two other acts relating to the railway, passed in the last session of Parliament,"—I do hereby, as agent duly authorized, and for and on behalf of the Railway Company established and incorporated by the said first mentioned act, give you notice, that the line of the said railway will pass through the pieces of land in the parishes of _____ and _____ in the county of _____ distinguished in the map or plan and book of reference deposited in the office of the clerk of the peace for the said county, and referred to by the said acts, or one of them, with the numbers _____ and which belong or are reputed to belong to you, or some or one of you, or in which you or some or one of you have or claim to have some estate or interest, the line, or direction of such railway being marked out upon the land by stakes denoting the centre of such intended railway. AND I FURTHER GIVE YOU NOTICE, that it is the intention of the said Company to take and use the parts of the same pieces of land containing _____ acres, _____ roods, and _____ perches, more particularly described in a plan thereof, left at the _____ Railway Office, at _____, (which will be produced for the inspection of yourself or your respective agents) for the purposes of the said act or acts; and that it is the intention of the said Company to contract for, and they are now willing to treat and agree, for the purchase thereof, and of all subsisting leases, terms, estates, and interests therein. AND FURTHER, that you are hereby required, on or before the expiration of one calendar month next after this notice, to deliver or cause to be delivered at the office of the said Company, No. _____ Street, London, a statement, in writing, of the particulars of the estate, share, interest, or charge, which you claim to be entitled to or to be authorized to receive satisfaction and compensation for, and of the injury or damage sustained by you, and of the amount of the sum of money which you may expect and be willing to receive in satisfaction and compensation for the value of such lands, estate, share, interest, or charge, and for such injury or damage respectively. AND that you are hereby also required, within the same period, to deliver or cause to be delivered to the said Company or their agent, at the said office, a true schedule or list, in writing, of all the instruments by which you propose to establish your documentary title to any lands or interests which, or a release or appointment whereof, entitling you to any compensation claimed by you under the said act or acts, shall be required for the purposes thereof; and that you state in whose custody the said instruments respectively now are, in order that the said Company or their agents may be at liberty to inspect the same instruments or any of them.

Dated the _____ day of _____ 184

To
A. B.
C. D.
H. M.

J. K.

and to all and every person and persons whom it may concern. } *Solicitor and Agent to the said Company.*

In order to assist you in complying with the provisions of the act, a schedule of claim to be filled in and signed by you is annexed to this notice.

Notice to deliver particulars of claim for compensation.

Form of
Schedule of
Claim.

FORM OF SCHEDULE OF CLAIM.

THE ——— RAILWAY COMPANY.

To be filled in and signed by occupiers of property required for the purposes of an Act of Parliament passed in the year of the reign of ——— intitled "An Act, &c."

APPENDIX.—FORMS.

Names and descriptions of parties claiming.	Situation and description of property.	Nature of interest, whether lease, tenant from year to year or otherwise: state particulars, such as landlord's name, term, rent, &c.	Particulars of claim; specify amount, claims for value of interest, and for compensation separately.	Dates and other short particulars of documents of title.	Names of persons having the custody of documents and place or places where the same may be inspected.

*Form of Warrant or Precept to the Sheriff to summon a jury.
Compensation.*

Form of war-
rant or precept
to the sheriff to
summon a jury.
Compensation.

Essex to wit.

To the sheriff of the county of Essex.

We, The Railway Company, established and incorporated by an act of Parliament passed in the 6th year of the reign of his Majesty King William the 4th, intituled "An Act, &c."

Do by this our warrant pursuant to the power for that purpose given to us by the said act or by another act passed in the first year of the reign of her present Majesty, intituled "An Act, &c."

and another act passed in the second year of the reign of her present Majesty, intituled "An Act, &c."

require you, the said sheriff, or your deputy, to summon, impanel, and return a jury of at least eighteen sufficient and indifferent men, qualified according to the laws of this realm, to be returned for trials of issues in her Majesty's Courts of Record at Westminster, to be and appear before you, the said sheriff, at the town hall at the borough of
in the said county of Essex, on the day of

by ten of the clock in the forenoon of the same day, and there to attend from day to day until duly discharged; and by this our warrant we further require you the said sheriff to cause to be drawn out of the persons so to be summoned, impanelled, and returned, or out of such of them as may appear upon such summons in such manner as juries for trials of issues joined in her Majesty's Courts of Record at Westminster, are by law directed to be drawn, a jury of twelve men, and in case a sufficient number of jurymen shall not appear at the time and place as aforesaid, that you the said sheriff do return other honest and indifferent men of the standers by, or of others that can speedily be procured to attend that service (being so qualified as aforesaid) to make up the said jury to the number of twelve, subject to such lawful challenge as in the said firstly recited act mentioned and such jury summoned and drawn shall upon their oaths, or being Quakers, upon their solemn affirmations, inquire of and assess and give a verdict for the sum of money to be paid by the said Company for the purchase of certain lands, pieces or parcels of land, and hereditaments, containing together

in the said county of Essex, and all which premises are parts of the pieces of lands and hereditaments distinguished by the numbers in the map or plan and book of reference deposited in the office of the clerk of the peace for the said county of Essex, and referred to by the said firstly above mentioned act, and are about to be purchased, taken, and used for the purposes and under the authority of the said acts or some or one of them, except for such interest therein as shall have been of right purchased by the said Company from any other person, and also the sum of money to be paid by way of satisfaction, recompense, or compensation, to claiming to be owner of the said lands and hereditaments, either for the damages, if any, which shall before that time have been done to or sustained by him by reason of the execution of any of the works, by the said acts or any or either of them authorized, or by reason of the severing or

Form of warrant or precept to the sheriff to summon a jury. Compensation.

dividing of any of his lands, or for the future temporary or perpetual or for any recurring damages, if any, to be so done or sustained as aforesaid and the cause or occasion of which shall have been in part only obviated, removed, or repaired by the said Company, and which cannot or will not be further wholly obviated, removed, or repaired by them, which satisfaction, recompense, or compensation for such damages or loss, shall be inquired into and assessed separately and distinctly from the value of the said lands and premises so to be taken and used as aforesaid; and the said jury shall further upon their oath or affirmation as aforesaid, as the case may be, inquire of and by their verdict settle and ascertain, all such other matters and things as they may by virtue of the provisions of the said acts, or any or either of them, be lawfully required to do. Given under our common seal, this day of in the year of our Lord, 184 .

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Form of Notice of Jury.—Compensation.

Form of Notice of Jury.—Compensation.

In pursuance of an act of Parliament passed in the year of the reign of his Majesty King William the Fourth, intituled "An Act for making a Railway from and another act passed in the 1st year of the reign of her present Majesty, intituled 'An Act, &c.' and another act passed in the second year of the reign of her present Majesty, intituled 'An Act, &c.'" Notice is hereby given to you, that a jury to be summoned, impanelled and returned according to the provisions of the said acts, or some or one of them will attend and appear before the sheriff of the county of , at the Town Hall of the Borough of , in the said county, on the day of at ten of the clock in the forenoon of the same day, then and there to inquire of and assess and give a verdict for the sum of money to be paid by the Railway Company for the purchase of certain lands, pieces or parcels of land and hereditaments, containing acres, roods, and perches, situate in the parish of , and all which premises are parts of the pieces of land and hereditaments distinguished by the numbers in the map or plan and book of reference deposited in the office of the clerk of the peace for the said county of , and referred to by the said firstly above mentioned act, and are about to be purchased, taken and used for the purposes and under the authority of the said acts or some or one of them, except for such interest therein as shall have been of right purchased by the said Company from any other person, and also the sum of money to be paid by way of satisfaction, recompense, or compensation either for the damages, if any, which shall before that time have been done to or sustained by you by reason of the execution of any of the works by the said acts, or any or either of them authorized or by reason of the severing or dividing of any of your lands, or for the future temporary or perpetual or for any recurring damages, (if any,) to be so done or sustained as aforesaid, and the cause or occasion of which shall have been in part only obviated, removed or repaired by the said Company, and which cannot or will not be further wholly obviated, removed or repaired by them, which satisfaction recompense

or compensation for such damage or loss shall be inquired into and assessed separately and distinctly from the value of the said land and premises so to be taken and used as aforesaid, or compensation for damages which shall be awarded as aforesaid, shall be allowed to you for your interest, and also to inquire of and by their verdict settle and ascertain all such other matters and things as they may by virtue of the provisions of the said acts or any or either of them be lawfully required to do.

Form of Notice
of Jury.—
Compensation.

Dated this day of in the year of our Lord 184

To A. B.

and all others whom it may }
concern.

Form of Inquisition by Sheriff in Compensation Cases, where the Party whose land is taken does not appear.

Devon } An inquisition indented, taken pursuant to the act herein-
to } after mentioned, at, &c., on the 27th of November, in the 1st
wit. } year, &c., before me, A. A., Esquire, sheriff of the county
aforesaid, by virtue of a certain warrant hereunto annexed, under the
hands and seals of J. B., J. G., and W. M., being three of the directors
of the Railway Company, established and incorporated by an
act of Parliament, passed, &c., on the oath of C. G. &c., &c., good and
lawful men of my said county, qualified, according to the laws of this
realm, to serve on juries in her Majesty's courts of record at West-
minster, notice in writing having been heretofore duly given to
C. H. P., by or on behalf of the said Company, according to the said
act, that the lands, hereditaments, and premises hereinafter mentioned
were required by the said Company, for the purposes of the said act,
and the said C. H. P., not having, within the space of twenty-one
days and more after the giving of such notice, agreed with the said
Company for the sale, conveyance, or release of the said lands, here-
ditaments, and premises, or of his estate and interest therein, and
notice in writing of the time and place at which the jury were
required to be returned, having been duly given fourteen days and
more before the said 27th day of November, which said C. G. &c., &c.,
being sworn to inquire of and concerning the matters mentioned in the
said warrant, and thereby directed to be inquired of, assessed, and as-
certained by them in manner therein mentioned, and the said Company,
by their counsel, having at the time and place aforesaid, appeared
before me and the said jurors, and having adduced evidence before me
and the said jurors touching the matters in question, and the said
C. H. P. in the said warrant named, having also appeared, but having
declined to adduce any evidence, or otherwise to take part in the pro-
ceedings, then and there had before me and the said jurors; the said
jurors on their oath aforesaid say, that they do assess and give a
verdict for the sum of £ ; to be paid to the said C. H. P., for the

Form of Inqui-
sition.—Com-
pensation.

Form of Inquisition.—Compensation.

purchase of the estate, right, title, and interest of the said C. H. P. of and in such certain arable and pasture ground, portions of certain lands and premises, containing in the whole by admeasurement acres, roods, perches, little more or less, being parts of three certain pieces or parcels of land, situate and being in the parish of in the said county of Devon, distinguished in the map or plan, and book of reference, deposited in the office of the clerk of the peace of the said county, and referred to by the said act, by the numbers and , as regards lands in the said parish of , and of all clay-stone, mines, and minerals, under the same, necessary to be dug or carried away, or used for the purposes of the said act, and found not deeper than the line of the section in the said act mentioned, and referred to, and in the same warrant mentioned, about to be taken and used in execution of certain of the powers granted by the said act, and the said jurors do in like manner assess and give a verdict for the further sum of £ , to be paid to the said C. H. P., by the said Company, as well by way of satisfaction, recompense, or compensation, for the damages which have, before the said 27th day of November, been done to, or sustained by the said C. H. P., by reason of the execution of any of the works by the said act authorized, as for the damage to be by the said C. H. P., sustained by reason of the severing or dividing the lands aforesaid. And I, the said sheriff, do hereby, pursuant to the said act, adjudge and order the several sums of £ , and £ , making together the sum of £ , to be paid by the said Company to the said C. H. P. In witness, &c.

Form of Inquisition.—Compensation.

Form of Inquisition in Compensation Cases, where they are heard before the Quarter Sessions, instead of the Sheriff.

[CAPTION—to make inquisition a record of Quarter Sessions.]

GLAMORGANSHIRE.

At the General Quarter Sessions of the Peace, &c., held at, &c., before, &c., justices, &c.,

Thomas Starling Benson,
and

The Trustees of the Swansea Harbour,

Claim for compensation, &c., under the provisions of an act passed in the 6 & 7 Wm. 4.

An inquisition taken by virtue and under the powers of an act of Parliament, made and passed, &c., intituled, &c., on the oaths of, &c., good and lawful men, &c. The trustees of the said harbour by their counsel, A. B., Esq., and the said Thomas Starling Benson, by his counsel, C. D., Esq., duly appearing before this Court (the said T. S. B., being the owner of, or the person otherwise interested in, the lands and premises hereinafter described), the said jurors, being sworn to inquire of, assess, and ascertain the sum of money to be paid by the said trustees for the purchase of certain pieces, or parcels of land, &c., containing, &c., being part of certain lands and heredita-

ments, situate, &c., now or late in the several occupations of E. G. and W. W., or in which the said several parties, or some, or one of them have, or claim to have, some estate or interest, about to be taken and used in the execution of certain of the powers granted by the said act, or by certain other acts therein recited or referred to; and, also, the sum of money to be paid by way of recompense to be made for the damage which shall, or may be sustained, by reason of the execution of any of the works by the said acts authorized, do assess and give a verdict for the sum of 2865*l.*, to be paid by the said trustees for the fee-simple and inheritance of and in the lands, &c., hereinbefore particularly described; and do also assess and give a verdict for the further sum of 7476*l.* to be paid by the said trustees by way of recompense for the damage which shall, or may be sustained by reason of the execution of any of the works by the said acts authorized. Whereupon this Court doth adjudge and order the said several sums of 2865*l.* and 7476*l.* to be paid by the said trustees according to the provisions of the said act.

By the Court,
Wood, *Clerk of the Peace (a)*.

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Form of Inquisition in Compensation Case, where the inquiry is held at the request of the Claimant.

MIDDLESEX. An inquisition indented taken pursuant to a certain act of Parliament passed in the _____ year of the reign of his late Majesty King William the Fourth, intituled an "Act for making a Railway from the Minories to Blackwall, with branches, to be called the Commercial Railway, and of a certain other act of Parliament passed in the third year of the reign of her present Majesty, intituled an 'Act for extending the line of Railway between London and Blackwall, called the Commercial Railway, and for amending the Acts relating thereto,' " at the house known by the name of the Sheriff's Office in Red Lion Square, in the said county, on the _____ day of _____ in the year of our Lord 184 _____, before me John Kennersley Hooper, Esquire, and Jeremiah Pilcher, Esquire, sheriff of the said county, by virtue of the Queen's writ to me directed and delivered, and of a certain precept or request in writing therein mentioned and hereunto annexed, signed by S. W., in the said writ and precept named and described, and sent to me according to the tenor of the said act of Parliament, passed in the _____ year of the reign of his late Majesty King William the Fourth, on the oaths of [*names of Jurors*] good and lawful men of my said county, qualified according to the laws of this realm, to be returned for trials of issues in her Majesty's Courts of Record at Westminster, who being sworn to inquire of and concerning the matter mentioned in the said precept or request in writing and thereby directed to be inquired of, assessed, and ascertained by them in manner therein also mentioned, and the said S. W. and the London and Blackwall Railway Company in the said precept or request in

Form of Inquisition. — Compensation.

Form of Inquisition.—Compensation.

writing, also named by their respective counsel, attorneys or agents, having at the time and place aforesaid appeared before me, the said sheriff, and the said jurors, the said jurors do on their oaths aforesaid, give a verdict and determine that the dwelling-house now used and occupied by the said S. W. as a public house, and called or known by the name of the in the said precept or request in writing mentioned and therein described as situated in the road called the New Road, in the parish of Saint George in the East, in the county of Middlesex, within fifty feet of the London and Blackwall Railway, and as having been and being deteriorated in value by reason of the construction of the said Railway and as property which the said Company by notice in writing have been duly required to purchase according to the provisions of the said acts, and in respect of which the said S. W. claims to receive compensation as in the said precept or request in writing mentioned, has been deteriorated in value by the construction of the Railway, and the jurors aforesaid on their said oaths, and by their said verdict do assess and determine the sum of £ as the sum to be paid to the said S. W. by the said Company for the purchase of the said property; and the jurors aforesaid on their said oath, and by their said verdict do in like manner also assess and determine the sum of £ as the sum to be paid to the said S. W. by the said Company by way of compensation in respect of the said premises according to the said claim of the said S. W. in that behalf. And I the said sheriff do hereby pursuant to the said acts adjudge and order the said sums of £ and £ making together the sum of £ to be paid by the said London and Blackwall Railway Company to the said S. W. according to the provisions of the said acts. In witness whereof I, the said sheriff, have hereunto set my hand and seal, and the jurors aforesaid their seals the day, year, and place first above written.

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Form of Declaration that One Moiety of the Capital authorized to be raised has been paid up.

Form of Declaration as to Capital.

I, of King William-street, in the city of London, accountant to the Railway Company, solemnly and sincerely declare that the sum of 1,100,000*l.*, being one moiety of the sum of 1,400,000*l.*, and 800,000*l.* the capital of the said Company authorized to be raised by an act of Parliament passed in the sixth year of the reign of his late Majesty King William the Fourth, intituled "An Act, &c.;" and by another act of Parliament passed in the fifth year of the reign of her present Majesty, intituled, "An Act, &c.," and being the proportion of such capital required to be paid up before the exercise of the powers created by the lastly above-mentioned act of raising money by loan or mortgage, has been paid up; and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an act made and passed in the fifth and sixth years of the reign of his late Majesty King William the Fourth, intituled, "An Act to repeal an Act of the present session of Parliament, intituled, 'An Act for the more effectual abolition of oaths

and affirmations taken and made in various departments of the state, and to substitute declarations in lieu thereof, and for the more entire suppression of voluntary and extrajudicial oaths and affidavits, and to make other provisions for the abolition of unnecessary oaths."

Form of Declaration as to Capital.

Delivered at
in the county of
this day of
184 . Before me

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Form of Certificate of Justices that One Moiety of the Capital has been paid up.

I, of in the county of Esquire,
one of the justices for the said county of in pursuance of
the authority given to me by an act of Parliament passed in the fifth
year of the reign of her present Majesty, intituled "An Act to alter,
&c." on application to me by the Railway Company,
incorporated by an act passed in the sixth year of the reign of his
late Majesty king William the Fourth, intituled, "An Act, &c.," do
hereby certify that the sum of one million five hundred pounds, being
one moiety of the sums of £ and £ , the capital of the said
Company, and being the proportion of such capital required to be
paid up before the exercise of the powers created by the first before-
recited act of raising money by loan or mortgage has been paid up.
As witness my hand, the day of 184

Form of Certificate of Justices, as to Capital paid.

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Form of Certificate of Justices, that the whole of the Capital has been subscribed for.

— RAILWAY.

We A. B. of , in the county of Esquire, and C. D. of
in the same county, Esquire, two of her Majesty's justices of
the peace for the said county of , in petty sessions assembled,
in pursuance of the authority given to, and required of us by an act
of Parliament, passed in the year of the reign of his late Majesty
king William the Fourth, intituled "An Act, &c." on the applica-
tion to us by the said Company incorporated by the said act and on
production of the subscription Deeds of the said Company, do hereby
certify that the whole sum of million hundred thousand
pounds hath been subscribed for, by persons under a contract binding
themselves, their heirs, executors, administrators, and assigns, for the
payment of the several sums by them respectively subscribed for.

Form of Certificate of Justices as to Capital subscribed.

As witness our hands and seals this day of 184

A. B. (L. S.)
C. D. (L. S.)

Form of proceedings. Forfeiture of shares.

the hand of the secretary of the said Company that such shares had been declared forfeited, was given or sent by the post, or delivered to some inmate of the last known usual place of abode of the respective owners of such shares ; and that the declaration of forfeiture of the said shares of the said directors was confirmed at a General Meeting of the said Company, held the day of , 184 , being after the expiration of calendar months from the day on which such notices of forfeiture were given as aforesaid. And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an act made and passed in the session of Parliament held in the fifth and sixth years of the reign of his late Majesty king William the Fourth, intituled "An Act for the Effectual Abolition of Oaths and Affirmations taken and made in various Departments of the State, and to substitute Declarations in lieu thereof, and for the more entire Suppression of Voluntary and Extra-judicial Oaths and Affidavits, and to make other Provisions for the Abolition of Unnecessary Oaths."

The above declaration was made by the said A. B. at the public office, Southampton Buildings, in the county of Middlesex, this day of 18 Before me.

MINING DEEDS.

Assignment of in part of the Estate of in the Parish of in the County of Cornwall, for the Residue of two several Terms of twenty-one years each, with the view of forming a Tin and Copper Mining Company.

This INDENTURE, made the day of 18 , Mining Com- BETWEEN A. B. of , of the one part, and the said A. B. pany-Deed. and C. D. of , E. F. of , G. H. of , and I. J. of , of the other part. Whereas, by an indenture of lease bearing date the day of , and made or expressed, to be made between R. L. G., therein described, of the one part, and the said E. F. of the other part, the said R. L. G. did, for the considerations therein mentioned, give and grant unto the said E. F., his executors, administrators, and assigns, full liberty and power to dig, work, mine, and search for tin and tin-ore, copper and copper-ore, lead and lead-ore, and all other ores, metals, and minerals in and throughout all that part of the estate and land called or known by the name of situate, lying and being in the parish of , in the county of Cornwall, which is bounded eastward, northward, and southward by the extent of the said estate and lands in those directions, and westward by a line supposed to be drawn by the eastern edge of common moor, to the northern corner of the north-western field in the said estate, occupied by , where a stone post is fixed, and from thence in a northerly direction

Mining Com-
pany—Deed.

to the eastern end of a dwelling-house on the said estate and lands occupied by

And the tin and tin-ore, copper and copper-ore, lead and lead-ore, and other ores, metals, and minerals there found, to raise and bring to grass, and there to spall, dress, cleanse, stamp, and make merchantable, and the same to take, carry away, and dispose of to his and their own use, and at his and their will and pleasure (subject to the reservations hereinafter contained), and within the limits of the said sett thereby granted, to dig and make such adits, shafts and drifts, and to erect such sheds, houses, engines, and other machinery and buildings, as he the said E. F., his executors, administrators and assigns should from time to time think necessary or convenient for the more effectual exercise of the liberties, powers and authorities thereby granted, with the full and free use of all such waters and watercourses arising or running within the limits of the sett thereby granted, and liberty to divert and turn all such other waters and watercourses, and to cut and make any leats or channels for conducting or conveying the same into, throughout, or over any part of the lands within the same limits, excepting and always reserving unto the said R. L. G., his heirs or assigns, and his and their workmen, servants and agents, free liberty and authority, at any time or times during the term thereby granted, to drive any new adit or adits from any adit, shaft, or drift, adits, shafts, or drifts, driven or sunk, or thereafter to be driven or sunk, within the limits of the sett thereby granted, and peaceably to enter into and drive such new adit or adits in or through the said land within the same limits, at his and their will and pleasure, and to keep open, repair, and use the same. And also, excepting and reserving unto the said R. L. G., his heirs and assigns, full liberty, power and authority to convey any waters or watercourses in, through, or over the said land, within the limits of the sett thereby granted, or any part thereof, in such manner as he or they should think fit for any purpose whatsoever; but so, nevertheless, and in such manner as not to interfere with, lessen, impede or obstruct the benefit and exercise of all or any of the rights, liberties and authorities mentioned and intended to be thereby given and granted. And also, excepting liberty to and for the said R. L. G., his heirs and assigns, or his or their agent, either alone or with any other person or persons, at all reasonable times during the term thereby granted, to go into, examine and measure all the shafts, adits, and workings of the said mine or adventure so to be made by virtue of the now reciting indenture, and for that purpose to use the tackle and other conveniences then and there being, for going to and returning from the same: To hold, exercise, and enjoy the several liberties, licenses, powers, and authorities therein mentioned and granted unto the said E. F., his executors, administrators, and assigns, from the day of the date of the said indenture now in recital, for and during the term of twenty-one years, upon the terms, and under and subject to the payments, covenants, conditions, agreements, and provisoes in the same indenture mentioned or contained, and on the part of the said E. F., his executors, administrators, or assigns, to be paid, given, observed, and performed. And whereas, by another indenture of lease, bearing date the day of , and made or expressed to be made between the said R. L. G. of the one part, and the said E. F. of the other part, the said R. L. G. did, for the considerations therein mentioned, give and grant unto the said E. F., his executors, administra-

tors, and assigns, full liberty and power to dig, work, mine, and search for tin, tin-ore, copper, copper-ore, lead, lead-ore, and all other metals and minerals in and throughout all that part of the estate and lands called or known by the name of _____, situate, lying, and being in the parish of _____, in the county of Cornwall, which is bounded, westward, northward, and southward, by the extent of the said lands called _____, and eastward by the western boundary of the sett of mine lately granted by the said R. L. G. to the said E. F., and bearing even date with the said indenture now in recital, and the tin, tin-ore, copper, copper-ore, lead, lead-ore, and other ores, metals, and minerals there found, to raise and bring to grass, and there to spall, dress, cleanse, stamp, and make merchantable, and the same to take, carry away, and dispose of to his and their own use, and at his and their will and pleasure, and subject to the reservations thereafter contained, and within the limits of the said sett thereby granted to dig and make such adits and shafts and drifts, and to erect such sheds, houses, engines, and other machinery and buildings, as he the said E. F., his executors, administrators and assigns, should from time to time think necessary or convenient for the more effectual exercise of the liberties, powers and authorities thereby granted, with the full and free use of all such waters and watercourses arising or running within the limits of the sett thereby granted, and liberty to divert and turn all such other waters and watercourses, and to cut and make any leats or channels for conducting or conveying the same into, through, or over any part of the lands within the same limits, excepting and always reserving unto the said R. L. G., his heirs or assigns, and his and their workmen, servants and agents, free liberty and authority, at any time or times during the term thereby granted, to drive any new adit or adits from any adit, shaft or drift, adits, shafts or drifts, driven or sunk, or thereafter to be driven or sunk within the limits of the sett thereby granted, and peaceably to enter into and drive such new adit or adits in or through the said land within the same limits, at his and their will and pleasure, and to keep open, repair and use the same; and also, excepting and reserving unto the said R. L. G., his heirs and assigns, full liberty, power and authority to convey any water or watercourses in, through, or over the said land within the limits of the sett thereby granted, or any part thereof, in such manner as he or they should think fit for any purpose whatsoever; but so, nevertheless, and in such manner as not to interfere with, lessen, impede, or obstruct the benefit and exercise of all or any of the rights, liberties or authorities mentioned and intended to be thereby given and granted; and also, excepting liberty, to and for the said R. L. G., his heirs and assigns, or his and their agent, either alone or with any person or persons, at all seasonable times during the term thereby granted, to go into, examine and measure all the shafts, adits, and workings of the said mine or adventure, to be made by virtue of the now reciting indenture, and for that purpose to use the tackle and other conveniences then and there being, for going to and returning from the same, to have, hold, exercise and enjoy the several liberties, licenses, powers and authorities by the said indenture now in recital granted, and every of them, unto the said E. F., his executors, administrators and assigns, from the day of the date of the same indenture for and during the term of twenty-one years, upon the terms and under and subject to

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the payments, covenants, conditions, agreements and provisoes in the same indenture mentioned or contained, and on the part of the said E. F. to be paid, given, observed and performed. And whereas the said A. B. hath contracted and agreed with the said E. F. for the purchase of the mine and other the premises comprised in and demised by the said two several herein-before recited indentures, and all the materials, tools, ores, buildings, workshops, and all fixtures and appurtenances now in, upon or belonging to the said mine, for all the residue of the said respective terms of twenty-one years and twenty-one years, by the said herein-before recited indentures respectively granted, at or for the price or sum of £ sterling. And whereas, by an indenture bearing date the day next before the day of the date of these presents, the said E. F. did assign all and every the rights, powers and privileges mentioned, given and comprised in the said two respective hereinbefore recited indentures of the 1st day of December, 1835, and all the materials, tools, ores, buildings, workshops, and all fixtures and appurtenances now in, upon, or belonging to the said A. B., his executors, administrators and assigns: To hold the said premises and their appurtenances unto the said A. B., his executors, administrators and assigns, from thenceforth and for and during the residue of the said two several terms of twenty-one years and twenty-one years, at, under, upon, and subject to the payments, reservations, or charges, and to the observance and performance of the covenants, conditions, provisoes and agreements in and by the said herein-before recited indentures of lease respectively reserved, made payable and contained, and which, on the part of the tenant or lessee ought to be paid, observed, and performed. And whereas it hath been agreed that a company to be called the

Tin and Copper Mining Company, should be formed for the purpose of effectually working the said mine and premises, with a capital of £ , and that the sum of £ should be paid to the said A. B. in consideration of his assigning the said mine and premises to the said A. B., C. D., E. F., G. H., and I. J., who are appointed the directors of the said company, and the said A. B. has agreed to assign the mine and premises comprised in and assigned by the herein-before recited indenture of assignment to the said A. B., C. D., E. F., G. H., and I. J., as such directors as aforesaid, upon trust for the proprietors and shareholders of the said company, according to the share and interest which such proprietors and shareholders may respectively have or hold in the said company. Now this indenture witnesseth, that in consideration of the premises, and of the sum of £ sterling to the said A. B., and of shares allotted or given to the said A. B. in the said mining company, he the said A. B. hath granted, bargained, sold, assigned, transferred, and set over, and by these presents doth grant, bargain, sell, assign, transfer and set over, all and every the rights, powers, and privileges mentioned, given, and comprised in and by the herein-before recited indentures of the day of , and the day of , respectively, and all the materials, tools, ores, buildings, workshops, and all fixtures and appurtenances now in, upon or belonging to the said mine: And all the right, title, interest, property, profit, possession, claim, and demand whatsoever, both at law and in equity, of him the said A. B., in, to, out of, or upon the same premises, and every part and parcel thereof, unto the said A. B., C. D., E. F., G. H.,

and I. J., their executors, administrators, and assigns: To have and to hold the said premises hereby assigned, or intended so to be, with their and every of their appurtenances, unto the said A. B., C. D., E. F., G. H., and I. J., their executors, administrators, and assigns, for and during all the residue and remainder, which is now to come and unexpired of the said two several terms of twenty-one years and twenty-one years so respectively created by the said two several herein-before recited indentures of the day of respectively, at, under, upon, and subject to the payments, dues, reservations, and charges, and to the observance and performance of the covenants, conditions, provisos and agreements in and by the said two several herein-before recited indentures of lease respectively reserved, made payable, and contained, and which, from henceforth on the tenant or lessee's part ought to be paid, observed and performed; upon the trusts expressed and declared in and by a certain deed-poll of even date with these presents, and made by the said A. B., C. D., E. F., G. H. and I. J. And the said A. B. doth hereby for himself, his heirs, executors and administrators, covenant, promise and agree with and to the said A. B., C. D., E. F., G. H. and I. J., and each and every of them, and their and each and every of their executors, administrators and assigns, that for and notwithstanding any act, deed, matter or thing, whatsoever, by him the said A. B. made, done, committed, executed, or knowingly or wittingly suffered to the contrary, the said two several herein-before recited indentures of the 1st day of December, 1835, are respectively, at the time of the sealing and delivery of these presents, good and effectual leases and demises in the law, and not forfeited, surrendered, assigned, or become void or voidable, and that the rents, payments, covenants, conditions, clauses and agreements therein reserved and contained have on the tenant or lessee's part been duly observed and performed, up to the day of the date of these presents. And that it shall and may be lawful for the said A. B., C. D., E. F., G. H. and I. J., each and every of them, their and each of their executors, administrators and assigns, from time to time and at all times hereafter, peaceably and quietly to enter into, hold, occupy, possess and enjoy the said mine and premises hereby assigned, or intended so to be, with their appurtenances, to have, receive, and take the issues and profits thereof, and of every part thereof, to and for his and their own use and benefit, without any lawful suit, let, trouble, denial, claim, demand, interruption, or eviction whatsoever, of or by him the said A. B., his executors or administrators, or of, from, or by any other person or persons whomsoever lawfully or equitably claiming or to claim, by, from, or under or in trust for him, them, or any of them, save and except the rents, payments, reservations, covenants, conditions and agreements, in and by the said herein-before recited indentures of lease respectively reserved and made payable and contained, and which, on the tenant or lessee's part are to be paid, observed and performed; and that free and clear, and freely and clearly, and absolutely acquitted, exonerated, released, and for ever discharged, or otherwise by the said A. B., his executors and administrators, well and sufficiently saved, defended, kept harmless, indemnified, of, from, and against all and all manner of former and other gifts, grants, bargains, sales, uses, trusts, wills, mortgages, leases, statutes merchant or of the staple, recognizances, judgments, executions, extents, rents, arrears of rent,

Mining Com-
pany—Deed.

annuities, legacies, sums of money, yearly payments, forfeitures, re-entry, cause and causes of forfeiture, re-entry, debts of record, debts due to the King's Majesty, and of, from, and against all other estates, titles, troubles, charges, debts and incumbrances whatsoever, either already had and made, executed, and occasioned and suffered, or hereafter to be had, made, executed, occasioned and suffered by the said A. B., or his executors or administrators, or by any other person or persons lawfully or equitably claiming, or to claim, by, from, or under or in trust for him, them, or any of them, or by his or their acts, means, defaults or procurements. And further, that he the said A. B., and his executors, administrators, and all and every other person or persons having or claiming, or who shall or may hereafter have or claim any estate, right, title, interest, property, claim or demand whatsoever, either at law or in equity, of, in, to, or out of the said mine and premises hereby assigned or intended so to be, or any of them, or any part thereof, by, from, or under or in trust for him the said A. B., or his executors or administrators, shall and will from time to time and at all times hereafter, upon every reasonable request to be made for that purpose, by and at the proper costs and charges of the said A. B., C. D., E. F., G. H., and I. J., their executors, administrators or assigns, make, do, and execute, or cause or procure to be made, done, and executed, all such further and other lawful and reasonable acts, deeds, things, assignments and assurances in the law whatsoever, for the further, better, more perfectly and absolutely assigning and assuring of the said mine and premises, hereby assigned, or intended so to be, and every part thereof, with their appurtenances, unto and to the use of the said A. B., C. D., E. F., G. H. and I. J., their executors, administrators and assigns, in manner aforesaid, and according to the true intent and meaning of these presents, as by the said A. B., C. D., E. F., G. H. and I. J., or any of them, their or any of their executors, administrators, or assigns, or their or any of their counsel in the law, shall be reasonably devised, advised and required, so as no such further assurance or assurances contain or imply any further or other covenant or warranty than against the person or persons who shall be required to make or execute the same, and his executors and administrators acts and deeds, and so as the party or parties who shall be required to make such further assurance or assurances be not compelled or compellable, for the making thereof, to go or travel from his or their usual place or respective places of abode.

In witness, &c.



Declaration of Trust by the Directors of the Tin and Copper Mining Company referred to in the preceding precedent.

Declaration of Trust.

TO ALL to whom these presents shall come,
 A. B. of C. D. of E. F. of and G. H. of
 send greeting. WHEREAS by an indenture of assignment, bearing even date with these presents and made, or expressed to be made, between the said A. B. of the one part, and the said A. B., C. D., E. F., and G. H. of the other part, certain liberties, licenses, powers, and authorities to work certain mines called the Tin and Copper Mines, in the parish of in the county of Cornwall, and to erect engines and other edifices and to sink shafts, were for the consideration therein mentioned, assigned by the said A. B. to the said A. B., C. D., E. F., and G. H., their executors, administrators, and assigns, to hold the same unto the said A. B., C. D., E. F., and G. H., their executors, administrators, and assigns for and during all the residue and remainder of two several terms of twenty-one years, and twenty-one years, created by two respective indentures of lease therein respectively recited, and bearing date respectively the 1st day of December, 1835, and the 1st day of December, 1835, at, under, upon, and subject to the payments, dues, reservations, and charges, and to the observance and performance of the covenants, conditions, provisoes, and agreements in and by the said two several therein recited indentures of lease respectively reserved, made payable and contained, and which from thenceforth, on the tenant or lessee's part ought to be paid, observed and performed; upon the trusts to be expressed and declared, in and by a certain deed poll to bear even date with the now reciting indenture to be made by the said A. B., C. D., E. F., and G. H. AND WHEREAS the said A. B., C. D., E. F., and G. H., in pursuance of the said hereinbefore recited indenture, have agreed to make and execute the declaration of trust hereinafter contained: NOW THESE PRESENTS WITNESS that the said A. B., C. D., E. F., and G. H., shall stand and be possessed of and interested in the liberties, licenses, powers, authorities, and hereditaments comprised in the said two several terms of twenty-one years and twenty-one years, and by the said recited indenture of assignment of even date assigned to them as aforesaid, for and during all the residue and remainder which is now to come and unexpired of the said terms of twenty-one years and twenty-one years respectively. And also of and in the engines, rods, tackle, tools, erections, fixtures, and other articles and things by the same indenture of assignment of even date assigned to them as aforesaid, or which may hereafter be erected, placed, and used in or upon the said mine, in trust for the proprietors of the said Tin and Mining Company, according to their respective shares and interests therein, and under and subject to the rules and regulations already made, and hereafter to be made for the management of the said company.

IN WITNESS, &c.

**Outline of
Deed of
Settlement.**

Outline of Deed of Settlement of a Mining Company (a).

PARTIES.

RECITALS.—Of purchase of contract.

Agreement to form a Company with a capital of £ , to be divided into shares of £50.

Parties of the part confirm the purchase contract, and authorize parties of the part to complete purchase.

That £ per share have been paid, and the sums so contributed with the £ , advanced by Messrs. formed a fund for completing the contract and carrying on the business of the Company.

That the stock in trade has been valued at £

That the valuation and purchase money have been paid to Messrs. and the property has been conveyed to trustees for the Company subject to Messrs. mortgage for £ and interest.

That the sum of £ , has been invested in the purchase of £ consols, as an indemnity to Messrs. against rent and covenants in leases and under leases.

Intention to apply for a charter of incorporation, or letters patent for limiting the liability of the shareholders.

Agreement by shareholders to observe the stipulations after-mentioned.

1. Partnership formed, and to be called the Company.
2. Capital to be £ , or so much as may be necessary for the Company's purposes and to be divided into shares.
3. Parties entitled to the shares opposite to their names in the first schedule.
4. Parties of the second part, confirm acts done in relation to the purchase, but so nevertheless, that their liability is not extended beyond 50*l.* per share.
5. Place of business, and objects of the Company.
6. Commencement of partnership.
7. Two or more persons not to hold shares jointly, except as trustees, and shares not to be divided into fractional parts.
8. Survivorship between shareholders, to be subject as after-mentioned. Shares to be personal estate. Shareholders' interest and liabilities to be in proportion to their shares.
9. Regulation as to payment of future calls.
10. In case of refusal to pay calls, shares to be forfeited to the Company, unless directors declare to the contrary, but without prejudice to directors' right to enforce calls. Forfeited shares to be sold and extinguished for the benefit of other shareholders.

But directors empowered to remit forfeitures on payment of calls and interest at 5*l.* per cent.

(a) See *post*, p. 307, for the form of certificate of shares in this Company. The above deed was framed with reference to the conditions and regulations indorsed on that certificate.

11. The Company's affairs to be managed by not more than ten directors. Their powers as to business, contracts, bills of exchange, &c.
12. Appointment of directors and a manager.
13. Days of meeting of the board.
14. Power to call extraordinary board.
15. Three directors to constitute a board.
16. Chairman to be appointed at the first board to be holden after Annual General Meeting every year. Mode of voting by directors.
17. Minutes of proceedings to be kept by secretary, and signed by chairman.
18. Directors to appoint banker, secretary, clerks, and servants, and manager of Company's works, and to delegate their authorities, to pay salaries, remove officers, and take security, if necessary.
19. Officers appointed, to sue and be sued, and mode of appointing new ones.
20. Directors to appoint trustees, in whom the property and securities of the Company may be vested.
21. Directors to have the exclusive conduct of actions and suits, and to indemnify public officers in certain cases.
22. Directors empowered to institute proceedings in the names of other parties, and to indemnify them against loss in certain cases.
23. Directors empowered to refer to arbitration, or compound debts, to take securities, or refrain from suing, and to authorize public officers to prove debts against bankrupts or insolvents, and to receive dividends and sign certificates,—officer's receipts to be discharges.
24. Power to invest surplus funds.
25. Directors to purchase, erect, or hire premises for the business of the Company, and such lands and mines as may be thought desirable for carrying on, or enlarging the business of the Company, and insure buildings and effects of the Company against fire.
26. Directors may renew leases, accept surrenders of, and grant underleases, and enter into all arrangements requisite thereon.
27. Securities or investments to be made in the names of trustees, but the monies to be under the control of the directors. Trustees to execute declarations of trust of securities or property of the company.
28. Power of leasing from year to year, or for terms of years, or lives, and to exchange or sell.
Trustees' concurrence only necessary for passing legal estate, the authority of the board of directors being sufficient for all purposes of sale.
29. Receipts of trustees, or directors constituting a board, sufficient discharges for payment of money.
30. Directors, in the event of death, &c., of trustees, to appoint new ones, and property thereupon to be vested in new trustees.
31. Assets of the Company to be liable to the performance of the purchase contract, and to the payment of rents, and performance of covenants in relation to the leaseholds, and the landlords' covenants in under-leases, and to the keeping up the indemnity fund.

Outline of
Deed of
Settlement.

- Directors empowered to apply assets in meeting other liabilities to which they may be personally responsible.
32. Proper books to be kept, and yearly accounts taken of the property, stock, and capital, and profits and loss of the Company.
 33. Annual General Meeting to be held on the last Friday in or such other day as the directors may appoint, and to be convened by advertisements.
 34. Balance sheets to be exhibited, and dividend declared at Annual General Meeting.
 35. Ten days' notice to be given of payment of dividends, and shareholders not having paid calls, not to be entitled to receive dividends, until arrears of calls paid with interest at £5 per cent.
 36. Vacancies in the direction previously to General Meeting in 184 to be filled up by directors, unless they shall see fit to reduce the number.
 37. Three directors to retire in 184 and annually afterwards. New directors to be appointed by shareholders at Annual General Meeting.
 38. Qualification of directors to be shares in their own right. Acts of directors to be valid, until disqualification notified to the board, unless directors declare otherwise.
 39. Directors may be removed for misconduct.
 40. Directors or officers may resign.
 41. Vacancies in direction previously to the period at which directors would retire, to be filled up by the board of directors, and new directors to retire at the time the directors in whose room they are appointed would have done.
 42. Directors to act in conformity to the rules established by an annual or extraordinary meeting of shareholders, and in case of there not being any rule, in the best manner for the welfare of the Company.
Directors empowered to make bye-laws in certain cases.
 43. Shareholders to fix remuneration to be paid to directors.
 44. Shareholders to be registered in book to be kept for the purpose, and shareholders changing names or places of abode, to notify same to board of directors.
 45. Notice to shareholders to be given by circular, or by advertisement in London Newspapers.
 46. At meeting of shareholders, chair to be filled by chairman of board of directors, or in his absence, by such member of the board as majority of shareholders may appoint, and minutes to be taken of proceedings.
 47. Questions to be decided by majority of votes, and scale of voting.
 48. Shareholders disqualified, not to vote or claim dividends until calls paid.
 49. Meetings may be adjourned.
 50. Books, &c., not to be inspected by shareholders, except before the 10th and after the 31st day after Annual General Meeting, and shareholders entitled to extracts or copies to be supplied by the secretary.
 51. No person to be considered a shareholder, unless he shall execute these presents, or a deed of covenant to be approved by the board.

- In case of refusal for three months after notice, shares to be forfeited, subject to discretionary powers of directors to remit same.
52. Shares not to be transferred until calls paid up, and regulations to be observed by shareholders wishing to part with shares.
 53. Regulations to be observed previously to the receipt of dividends on shares possessed by female, deceased, lunatic, bankrupt, or insolvent shareholders.
 54. Husbands of female proprietors, &c., may become shareholders with consent of directors, and in case of refusal by directors, shares may be purchased by directors.
 55. Form of transfer to be decided upon by directors.
 56. New proprietors to be registered, and to be subjected to the same liabilities and have the same privileges, as the persons by whom transfers are made.
 57. In case of shares vested in trust, receipts of trustees to be sufficient discharges.
 58. Shareholders at Annual, General, or Extraordinary Meetings, may increase the capital, add to or take away from number of directors, or make new rules for the management of the Company.
 59. Extraordinary Meetings may be convened on 14 days' notice being given.
 60. Shareholders possessing shares, may require directors to convene Extraordinary Meeting, and in case of refusal by directors, may convene meeting.
 61. Indemnity of trustees out of the Company's funds.
 62. Questions, or differences, relating to the Company, to be referred to arbitration.
 63. The present deed, and future ones to be enrolled.
 64. Partnership may be determined by a majority of shareholders at two meetings, to be called exclusively for that purpose.
 65. Directors may apply for a charter of incorporation, or letters patent.
 66. Covenants between shareholders to observe stipulations in respect of their shares.

Share Certificate in Mining Company, with special conditions and regulations indorsed.

————— COMPANY.

Share
Certificate.

Capital £ in shares of £50 each.
No. 6207 Certificate No. 6211.

This is to certify that the bearer hereof, is entitled to five shares in this Company (upon which a deposit of £ per share has been paid), subject to the conditions indorsed hereon.

London, Sept. 1836.

A. B. }
C. D. } Directors.
E. F. }

FIVE SHARES.

Registered,

W. M. Secretary.

£10 per share, second instalment, 15th Nov. 1836. W. M.
£10 per share, third instalment, 15th March, 1837. W. M.

Share
Certificate.

NOTICE.

The present directors are A. B., C. D., E. F., G. H., and H. I., and the proprietors of the property of [the mines or land bought] are the said H. I. and his partner S. M., and the contract for the purchase of the said property for the purposes of the Company, hath been entered into by the said A. B., C. D., E. F., with the said H. I., and S. M. The contract agreement is dated the day of 1836, and contains a full and particular description of the property, and various provisions relative to the time and mode of carrying into effect and completing the same by the said directors.

Copies of this agreement have been left and may be inspected at the office of the Company, No. *Winchester Street, London*, and also at the banking house of Messrs. at in the county of

CONDITIONS AND REGULATIONS.

1. The business of the Company shall be to carry on and enlarge the works, and such other business and works of a like nature as the directors shall think fit.
2. The first instalment of £ per share, to be paid to the bankers of the Company, whose receipts shall be exchanged, when the shares are allotted, for scrip shares (subject to these conditions and regulations) on application to the secretary. And further instalments, not exceeding £ per share at any one time, shall be paid by the shareholders, at such times as the directors shall appoint, thirty days previous notice of the time of payment on such call to be given in London daily newspapers.
3. In case of non-payment of any call, within days beyond the time appointed for such payment, the shares so in default shall be forfeited to the Company, and may be extinguished or sold, as the directors shall think fit. But the board of directors shall have power at their discretion to remit forfeitures, on payment of £5 per cent. interest on the preceding call from the day appointed for payment thereof.
4. The within-mentioned shares are issued subject in all respects to the said purchase, contract, and agreement of the day of , 1836, and the provisions of the same, and the acceptance of such shares is to be considered as an adoption and confirmation of the said purchase, contract and agreement, and the provisions of the same in all respects by the proprietor of such shares accordingly. And the said A. B., C. D., E. F., G. H., and H. I., and the survivors and survivor of them, are and is to have full power and authority to apply the money received and to be received in respect of shares in and for the purpose of carrying the said contract into effect, and completing the said purchase either in their or his own names or name, or in the names or name of any other persons or person, and otherwise in such manner as they or he shall think proper, and also full power and discretion to accept such titles to the said property, and enter into all such

- arrangements with respect to the said contract and the completing of the said purchase, or the rescinding of the same, as they or he shall find advisable or consider proper, and as in or by the said purchase, contract, or agreement more particularly mentioned or provided.
5. All the affairs of the company, except as aforesaid, shall be under the management of the directors, who shall remain in office until the day of , 184 , and have full power to transact all the business of the company, to appoint all officers (with such powers as they shall think fit to delegate) to hire and purchase and sell property of any description in their own names, or in the names of trustees, and to give receipts for all monies due to the company. Three directors to be a quorum for all purposes.
 6. The directors to fill up the vacancies in their body, or to add to their numbers, until the day of , 184 , after which the directors are to go out of office by rotation, but are to be eligible for re-election. And it shall be competent for any general meeting to remove any director or directors.
 7. The shares in the said company to be registered in the names of the bonâ fide proprietors thereof, and every transfer of shares to be also duly registered in the books of the company.
 8. A general meeting to be held on the day of , in every year, and such persons to be qualified to vote thereat as shall have been registered in the books of the company for three calendar months previously as shareholders, and to have one vote for every shares so registered. A chairman to be chosen by the meeting, who is to have the casting vote.
 9. The directors to call a general meeting at any time, on receiving a requisition from or more shareholders holding collectively shares, so registered in their names, for three calendar months previously.
 10. A deed of settlement to be prepared by counsel appointed by the directors, with such clauses as well in respect to other matters as to those mentioned in these presents, and with any variation as to the matters hereinbefore mentioned as such counsel shall think advisable, save and except as is otherwise provided for or agreed upon by the said purchase, contract, or agreement. Provision to be made in the deed that as between themselves the proprietors are not to be liable beyond the amount of their respective shares. The deed to be binding on the shareholders, and to be executed by the shareholders within thirty days after notice for that purpose shall have been given by the directors. The shares of such shareholders who shall not execute within that time shall be liable to forfeiture, and shall be extinguished or sold by the directors, but with the same power to a board of directors to remit forfeitures, as in the case of shares forfeited for non-payment of calls.

INSURANCE COMPANY.—DEEDS.

Provisional Agreement.

Deed of Covenant from the Proprietors of a Marine Assurance Company to the Directors of the said Company to execute a Deed of Settlement when prepared, and in the meantime to observe the Terms and Conditions of the Prospectus, and for payment of the premiums on the Assurances respectively effected by them.

To ALL to whom these presents shall come, the several persons whose names and seals are hereunto subscribed and affixed, send greeting. WHEREAS several merchants, shipowners, and other persons, have proposed to form and establish a Company with a capital of 5,000,000*l.* in shares of 100*l.* each for the insurance of ships and goods from loss and damage by sea and fire, such insurances to be confined to property of the said Company, and they have printed and published a prospectus or declaration of the intent of such Company, and of the terms and conditions thereof, in the words following, (that is to say), [*the prospectus is here inserted verbatim.*]

And whereas the said several persons, parties to these presents, have agreed to become proprietors of the said Company, and have accordingly respectively subscribed for and taken shares in the capital thereof, and have respectively advanced and paid an instalment of 5*l.* on each of the shares taken by them respectively; and the shares so taken are numbered in regular order, commencing with number one, and the number of shares taken by each of the said parties are written opposite to his name and seal subscribed and affixed by him and her respectively to these presents.

And whereas a deed for establishing the said Company, and for carrying into effect the intent and purpose of the several proprietors thereof, according to the terms and stipulations of the aforesaid prospectus is in preparation, and is intended to be executed by the said several proprietors, but is not yet completed, or ready for execution; and in the meantime the said proprietors have agreed to enter into and execute these presents for the purposes hereinafter expressed.

Now know ye, and these presents witness, that each of the said several persons, parties to these presents, doth hereby for himself, his heirs, executors, and administrators, and so far only as concerns his own acts, deeds, and payments, and not further or otherwise, covenant, promise, and agree with and to _____ of, &c., his executors and administrators, in manner following (viz.), That _____ of, &c., shall be the present Directors of the said Marine Assurance Company; and that any three of the said directors may form a board of directors for the transaction of the business of the Company, and for the purpose of procuring a proper deed of settlement to be prepared for the purpose of carrying into effect the terms and conditions of the said printed prospectus, containing such provisions as shall appear to the board to be necessary for that purpose, and as shall not be inconsistent with the principles upon which, according to the said prospectus the said Company is to be established, and that the said several persons, parties to these presents, will, when thereunto required by a board of directors, duly execute such deed of settlement as aforesaid; and that they the said several persons, parties to these presents respectively shall and will, from time to time and at all times

hereafter, until such deed of settlement shall have been duly executed by them respectively, well and truly abide by, observe, perform, fulfil, and keep all the terms, conditions, and stipulations expressed and contained in the aforesaid prospectus of the said company; and that such of them the said several persons parties to these presents shall and will pay the amount of his shares in the capital of the said company, by such instalments, in such manner and at such time or times as a board of directors shall call for or require; and that each of them the said several persons, parties to these presents shall and will, when and so often as he shall make an assurance with the said company, well and truly pay or cause to be paid to the directors of the said company for the time being, or some of them, for the use of the said company, the premium or consideration for the policy by which such assurance made by him with the said company shall be effected without any deduction whatsoever out of the same.

And lastly, that it shall be lawful for the said his executors or administrators, to enforce the due observance and performance of the covenants and agreements herein contained, and to reimburse himself and themselves out of the funds or property of the said company all costs, charges, and expenses which he or they may incur, sustain, or be put unto in enforcing the observance and performance of the said covenants and agreements, or in anywise relating thereto.

In witness, &c. (a)

Provisional
Agreement.

*Outline of Deed of Regulation for Life Assurance,
Reversionary Interest and Annuity Company.*

Deed of
Settlement.

PARTIES.

RECITALS.—Agreement to form the company, and to raise a capital of £

That the sum of £ has been paid on each share.

That an agreement for a lease of a house has been entered into.

That the several persons who as directors have managed the affairs of the company have entered into contracts to a large amount.

WITNESSETH.—That each proprietor covenants with the trustees, and the trustees covenant with the parties of the second part, that the parties to the deed and such other persons as may become proprietors shall constitute a company under the style of "The Life Assurance, Reversionary Interest and Annuity Company."

That the object of the company shall be to effect assurances upon lives, or otherwise to grant annuities and endowments, and to purchase reversions.

That the house and premises in street, shall be held in trust for the company.

That all contracts entered into by the directors previous to the execution of the deed shall be binding on all proprietors.

That all acts done by the directors before that time shall be confirmed.

(a) The above deed was settled by Mr. Shadwell, now the Vice Chancellor.

Outline of
Deed of
Settlement.

That the capital of the company shall consist of £ in shares
of £ each.

That £ per share only shall be paid unless in case of ex-
traordinary demand.

That the £ per share shall be payable by five instalments.

That the affairs of the company shall be conducted by
directors.

[Names of the directors.]

[Names of the trustees.]

RULES AND REGULATIONS OF THE COMPANY.

1. Proprietors to assemble once at least in every year.
2. Annual general meeting to be held in the month of
3. A special general meeting may be called at any time by board of directors.
4. Twenty proprietors holding twenty shares each may require board of directors to call a special general meeting.
5. Requisition to be left at the office of the company, and to express the object for which the meeting is required.
6. If the directors refuse, the requisitionists may call the meeting.
7. General meetings may adjourn.
8. No other business to be transacted at a special general meeting than that for which it shall have been called.
9. Questions to be decided by show of hands, unless ballot be demanded by five or more proprietors holding two hundred and fifty shares.
10. General meetings and ballots to be held and taken at the office of the company.
11. One director at least to attend at ballot.
12. Ballot glasses to be sealed.
13. Those proprietors only qualified to be present and to vote at any general meeting who shall be possessed of ten shares, and who (except the present proprietors and those who shall have become such by marriage, or as representatives of deceased proprietors,) shall have been proprietors for six months previously.
14. Ten shares to give one vote, thirty shares two votes, and fifty shares and upwards three votes.
15. Joint proprietors to vote by the person whose name stands first in the books of the company.
16. Proprietors may vote by proxy, such proxy being himself a proprietor qualified to vote.
17. Proprietors represented by proxy to be considered as personally present.
18. A majority of two-thirds necessary to decide questions relating to the reduction of the shares, and the issue of new shares, and the altering of the rules, and the dissolution of the company.
19. In all other cases a simple majority of votes sufficient.
20. At general meetings the chairman to preside.
21. Minutes of the proceedings at general meetings to be entered in a book and signed by the chairman.
22. The chairman to vote with the other proprietors, and also to have a casting vote.

23. A special general meeting, called for the purpose, may remove any officer of the company.

24. Two special general meetings may reduce the amount of each share in the capital of the company, and direct the issue of new shares to supply the deficiency.

25. Whenever any new shares are issued, the proprietors to be entitled to pre-emption.

26. Two special general meetings may amend the clauses of the deed, and make new rules and regulations. Provided such amended or new rules and regulations do not alter the principle confining the individual responsibility of each proprietor to the amount of his share.

27. Two special general meetings may dissolve the company.

28. General meetings to consist of not fewer than ten persons qualified to vote, and holding collectively one thousand shares.

29. General meetings to regulate the affairs of the company.

30. General meetings may call for and examine all deeds and other papers relating to the company.

31. Present directors to have power to fill up the existing vacancies in the direction.

32. Vacancies in direction, if not filled up previous to general meeting in _____, to be filled up by proprietors.

33. If vacancies in direction not filled up until _____, direction (though incomplete) to have full power to act.

34. The directors to meet once a week or oftener.

35. Every such meeting to be styled a board of directors.

36. Any one director may direct the secretary or chief clerk to convene a board.

37. No business to be transacted unless five directors are present.

38. All powers vested in the board of directors to be exercised by the members present, being at least five in number.

39. Board of directors to choose a chairman and deputy chairman.

40. Regulation as to chairman at meetings of directors.

41. Minutes of proceedings to be entered in a book, and signed by the person in the chair.

42. No member to have more than one vote, except the chairman.

43. Questions to be decided by a majority of votes.

44. No director to vote when personally interested in the question.

45. Business to be conducted conformably to previous regulations.

46. The board of directors to fix time for holding general meetings, and to call the same by a circular letter sent to each proprietor qualified to vote.

47. The board of directors to call a special general meeting for the election of auditors.

48. The board of directors may alter the time appointed for holding the annual general meetings.

49. The board of directors may call a special general meeting at any time by sending circular letters to the proprietors qualified to vote.

50. When requisition for a special general meeting has been made, the board of directors shall call the same within one month.

51. The board of directors to call adjourned meetings by sending a circular letter to each proprietor qualified to vote.

52. The board of directors to give notice of a ballot (where practicable) by sending a circular letter to each proprietor qualified to vote.

Outline of
Deed of
Settlement.

53. The board of directors to appoint three or more of their number to be a daily committee to attend to the ordinary business.

54. The decision of the daily committee on proposals for effecting insurances, to be final, but in other cases specified to be subject to revision by the board.

55. The daily committee to see that at the close of the day all monies received are paid into the bankers.

56. The daily committee to examine quarterly accounts, and to submit them to the board, and to assist the auditors in examining the annual statement of accounts.

57. The board of directors may appoint any three or more of their number to be a committee for any other particular purpose.

58. The board of directors may appoint out of the proprietors of the company any number of persons to be a local committee or board of management.

59. The board of directors may appoint the bankers.

60. Power to appoint medical officers.

61. Power to appoint standing counsel and solicitor.

62. Power to appoint actuary and secretary.

63. Power to separate offices of actuary and secretary.

64. Power to remove actuary and secretary.

65. Power to allow salary to actuary and secretary.

66. The secretary to attend all general meetings, and meetings of the directors.

67. The board of directors to appoint all the officers and servants of the company, and allow them such salaries and compensations as they shall think fit.

68. The board of directors may appoint and remove agents, and allow them such salaries and give them such powers as they shall think fit.

69. Salaries and wages to be paid out of the funds of the company, and never suffered to be in arrear.

70. The board of directors may give to the officers of the company such powers, and impose on them such duties, as they may think proper.

71. The board of directors may require all or any of the officers of the company to give security.

72. The board of directors to cause all policies to be signed by three of the directors.

73. The board of directors to cause it to be stated in every policy that the funds in the hands of the trustees shall alone be liable to make good any claim.

74. The board of directors to fix the rates and terms of all assurances and endowments, &c., granted by the company.

75. The board of directors to effect assurances, at the most moderate premiums, on the lives of healthy persons residing in and not going out of Europe.

76. Limit of sum to be assured.

77. And, also on the lives of persons going out of Europe, and of persons affected with slight chronic and other disorders, upon such terms as the board shall think fit.

78. No policy to be issued until the first premium is paid.

79. The board of directors, or their daily committee, may accept or refuse proposals of assurances.

80. If premiums not paid within thirty days after becoming due, the policy to be void.

81. The board of directors may revive policies.

82. The board of directors to cause all claims upon policies to be satisfied within three months after receipt of evidence of death of party assured.

83. The board of directors may redeem or repurchase any annuity granted by the company.

84. The board of directors may purchase policies granted by the company or lend money thereon.

85. The board of directors may purchase life and reversionary and other interests.

86. The board of directors to form two several funds to be called "The Proprietors' Fund," and "The Insurance Fund," and to keep distinct accounts of the said funds to be called "The Proprietors' Account," and "The Insurance Account."

87. The board of directors to calculate every five years the amount of profits accrued to the Insurance Fund, and to take therefrom so much of such profits as they shall think expedient, and to add the same to the Proprietors' Fund.

88. The board of directors to calculate every five years the amount of profits accrued to the Proprietors' Fund, and to divide such profits amongst the proprietors, and to carry the same to their accounts as payments on their shares.

89. Interest to be paid on the paid-up capital.

90. When the Proprietors' Fund amounts to £ , the board of directors to declare a dividend out of the profits thereof, which shall be payable to the proprietors, but no such dividend to reduce the Proprietors' Fund below £

91. The board of directors to give notice of dividend by sending a circular letter to each proprietor.

92. Dividends to be paid at the office of the company within one month after they are declared.

93. The board of directors to leave a balance in the hands of the bankers sufficient to answer current expenses.

94. Directors may borrow money instead of making calls; money not to exceed £

95. All payments to be made by the order of the board of directors.

96. Sums exceeding £ to be paid by cheques signed by three directors.

97. Money not wanted for immediate purposes to be invested.

98. The funds of the company to be invested in the names of the trustees, and all securities and ready money to be kept at the bankers.

99. As to the house of the company.

100. And the residence of any of the officers therein.

101. Directors may restore shares forfeited by not executing the deed of settlement.

102. The board of directors may, if they think fit, purchase shares from proprietors.

103. All shares so purchased to be transferred into the name of a secretary or chief clerk, or of such other persons as the directors may think fit.

Outline of
Deed of
Settlement.

104. The board of directors to sell all purchased shares for the benefit of the company.

105. The board of directors may make calls upon the proprietors to meet any extraordinary demand upon the company.

106. The directors, within five days after a call made, to send notice to each proprietor.

107. Upon the non-payment of any instalment at the day fixed, or any call for one calendar month, the directors may declare the shares of the defaulter forfeited.

108. The directors may enforce the payment of instalments, and also of calls, instead of declaring shares forfeited.

109. The directors to cause shares forfeited for non-payment of calls to be sold.

110. The proceeds of such sale, after deducting the expenses and the sum due to the company with interest thereon, to be paid to the defaulter.

111. No more shares to be sold than may be sufficient to pay the sum due and the expenses.

112. If proceeds of sale of forfeited shares not sufficient to pay the sum due to the company, the directors to sue for the deficiency.

113. The directors to certify in writing their approval or rejection of persons desirous to become proprietors.

114. The shares to be numbered.

115. Shares forfeited to the company to be still distinguished by their original number.

116. A certificate under the hands of three directors to be given to each proprietor.

117. The name and address of every proprietor to be entered in the book of the company, with the numbers of their respective shares.

118. The board of directors, on receiving notice of the marriage of any female proprietor, or of the death, bankruptcy, or insolvency of any proprietor, shall cause corresponding entries to be made in the books of the company.

119. And so, on receiving notice of the change of name or residence of any proprietors, to cause alteration of residence to be entered in share register.

120. The directors to cause minutes to be entered of the marriage of female proprietors, and of probates of wills, letters of administration, and assignments to assignees.

121. When any person ceases to be a proprietor, the directors to cause entries thereof to be made in the books of the company.

122. The directors may give to persons retiring from the company certificates that they are no longer proprietors.

123. The directors may appoint any proprietor to prove debts due to the company.

124. The directors to cause all proper books of account to be kept, and permit any proprietor, upon the requisition of ten proprietors holding two hundred shares, to inspect the same.

125. The books and accounts of the company to be produced at general meeting.

126. The directors to cause a report of the receipts and disbursements of the company, signed by the auditors, to be produced at every annual general meeting.

127. If an error to the amount of 50*l.*, be discovered, the same to be rectified without delay.

128. As to the enrolment of the deed of settlement.

129. The board of directors may apply for an act of Parliament, or a charter from the crown.

130. In case of a dissolution the funds and property to be divided amongst the proprietors.

131. Persons neglecting or refusing to perform covenants, to be prosecuted at the expense of the company. Board of directors may compromise actions or suits, and refer same to arbitration.

132. The board of directors, upon receiving notice of any demand being made against a proprietor, to take the same upon themselves.

133. Subject to the powers given to the general courts, the board of directors to have the entire control and management of the company.

134. Chairman and deputy chairman to be annually elected.

135. In case of death or resignation of chairman or deputy chairman, the vacancy to be supplied at a special board to be summoned for the purpose.

136. Chairman and deputy to be removed by the board of directors.

137. Board of directors to consist of fifteen members.

138. The future directors to be periodically elected by the proprietors.

139. Vacancies occurring in the present direction to be filled up by the next annual general meeting held after such vacancy shall happen.

140. In the year 1841 five directors, if there shall be so many, who have been elected to supply vacancies in the present direction, to go out of office, and thenceforward the same number, if there are so many, to go out of office every fifth year.

141. At the annual general meeting in the year 1841, and every succeeding fifth year, five directors, or so many as may have gone out of office at that meeting, to be elected.

142. A general meeting may reduce the number of directors, or abstain from filling up vacancies after present directors.

143. Remuneration to the directors.

144. Indemnity to directors signing policies.

145. Auditors to consist of three.

146. Auditors to examine the report made by the directors with the books and vouchers, and to sign the same if found correct. Auditors may make any observations they think fit on such report.

147. In the year 18 , and thenceforward, one auditor to go out of office.

148. In the year 18 , and thenceforward, one new auditor to be elected.

149. Vacancies amongst the auditors occurring before 18 , to be filled up by the directors.

150. Vacancies occurring after 18 , to be filled up by the proprietors.

151. Remuneration to auditors.

152. Persons appointed to fill up vacancies to continue in office no longer than the persons to whose places they succeed would have been entitled to continue.

153. If vacancy not filled up before annual day of election, the

**Outline of
Deed of
Settlement.**

director or auditor occasioning such vacancy to be considered as going out of office on that day.

154. No person to be eligible to be a director unless he should be in possession of fifty shares, and should have been a proprietor for six months previously.—If any director shall cease to hold fifty shares, his office to become vacant.

155. No person to be eligible to be an auditor unless he shall possess ten shares, and shall have been a proprietor for six months previously.

156. No person to be eligible to be a director or auditor who shall hold any office of trust or emolument, or who shall be concerned in any contract under the company. If any director or auditor shall after his election accept any such office or be concerned in any such contract, his office shall thereupon become vacant.

157. If any director shall absent himself for twelve consecutive months, or any director or auditor shall become insolvent, his office shall become vacant. If any auditor shall cease to hold ten shares, his office to become vacant.

158. Every person desirous of becoming a candidate for the office of director or auditor, to give ten days' notice.

159. Election of officers by show of hands, unless a ballot be demanded—each candidate to name a scrutineer.

160. Chairman, deputy-chairman, director and auditor going out of office, immediately re-eligible.

161. At general meetings, officers going out of office to be considered as in office until the meeting break up or adjourn, and until others elected in their places.

162. All acts done by the board of directors during a vacancy to be as valid as if the board were complete.

163. Trustees to consist of five.

164. Trustees to be appointed by the directors.

165. Trustees may be divided into classes.

166. Funds to be distributed amongst the classes.

167. Trustees may be removed by the directors.

168. Trustees not necessarily to vacate their office by ceasing to be directors.

169. Trustees, not directors, may attend all boards, but not to vote.

170. In all deeds and contracts entered into on behalf of the company, the names of the trustees to be used, and the signature by such trustees to be binding on all the proprietors.

171. As to execution of declaration of trust by trustees.

172. On removal, death, or resignation of any trustee, proper deeds to be executed.

173. Trustees to stand possessed of the estates and property of the company, to sell and dispose of the same as the directors shall appoint.

174. Trustees to sell at such prices and to such persons as directors shall direct.

175. All bonds and securities, and monies recovered thereon, to be held by the trustees in trust for the company.

176. Receipts of trustees, or any three of them, a sufficient discharge.

177. Any chairman, deputy-chairman, director, auditor, or trustee, may resign.

178. Directors, auditors, and trustees to attend all general meetings.

179. No person holding any situation in any life assurance company to be a director, auditor, or trustee.

180. Directors, trustees, and other officers of the company, to be indemnified out of the funds and property of the company from all liabilities.

181. Deposits of persons proposing to take shares, and not executing deed of settlement within two months, to be forfeited.

182. Proprietors to pay instalments on the day appointed.

183. No proprietor to pay a larger instalment than another proprietor, or more than £ per share, unless for discharging some debt.

184. If instalment not paid on the day appointed, interest to be paid for the same after the rate of 5*l.* per cent.

185. As between the proprietors and their real and personal representatives, shares to be considered as personal estate.

186. The share register book to be considered as containing a correct list of the proprietors.

187. Letters sent by the post to any proprietor, to the address as entered in the books of the company, to be considered to have reached such proprietor.

188. Letters sent by the post to the representatives of any proprietors, to the address as entered in the books, to be considered to have reached such person.

189. The receipt of the person in whose name shares stand, to be a sufficient discharge.

190. Legatees and next of kin of deceased proprietors not to be entitled to hold shares in those capacities—but the executors or administrators to be the only persons entitled to dispose of such shares.

191. Husbands of female proprietors, or the executors or administrators of deceased proprietors, not to be proprietors in respect of shares held in those capacities, but may dispose of the same.

192. Certificate of marriage, probate of will, or letters of administration, to be left at the office of the company before any husband, executor, or administrator can become a proprietor, or dispose of shares held by them in that capacity.

193. Assignees not to be proprietors, but may dispose of the shares acquired by them.

194. Before assignees can dispose of such shares the deed of assignment to them must be left at the office of the company.

195. Proprietors may dispose of their shares.

196. Husbands of female proprietors, and executors or administrators of deceased proprietors, desirous of becoming proprietors in respect of shares held by them in that capacity, and persons desirous of purchasing shares from the board of directors, must give notice of such desire to the directors.

197. Persons desirous of disposing of their shares must give notice of the intended sale to the board of directors.

198. If the board of directors certify their approval of such intended sale, the shares may be transferred,

199. All transfers of shares to be made at the office of the company, and in such form as the board shall prescribe.

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Deed of
Settlement.

200. All deeds of transfer to be prepared by the solicitor or secretary of the company.

201. All deeds of transfer, when executed, to be deposited with the company.

202. Every husband, executor, or administrator, desirous of becoming a proprietor, and who shall be approved of by the directors, to execute a deed of covenant to abide by the rules and regulations of the company.

203. Every person to whom a transfer of shares shall be made, shall in like manner execute a deed of covenant to abide by the rules and regulations of the company.

204. All such deeds of covenant to be prepared by the solicitor or secretary for the company.

205. Dividends declared in respect of shares held by females, deceased, bankrupt, or insolvent proprietors, in the interval between the marriage, death, bankruptcy, or insolvency of such proprietors and the same person becoming a proprietor thereof, shall be held in suspense until such person becoming a proprietor shall sign the deed of covenant.

206. Every husband, executor, and administrator, desirous of becoming a proprietor or proprietors, in respect of shares held by him in that capacity, and every person purchasing from the board of directors, shall, if already proprietors in respect of other shares, be considered as proprietor of such new shares from the time of their approval by the board of directors.

207. But otherwise only from the time of their executing a deed of covenant to abide by the rules and regulations of the company.

208. Every person to whom a transfer of shares shall be made, and who shall be already a proprietor of the company, shall be considered as a proprietor of such new shares from the time of the date of such deed of transfer.

209. But otherwise only from the time of his executing the deed of covenant.

210. When new proprietor admitted, former proprietor to be discharged from all further liability.

211. And to cease to have any further claim on the company, or on the proprietors thereof.

212. Persons entitled to receive certificates to give receipts for the same.

213. Receipt of any one joint-proprietor of shares sufficient.

214. Accounts exhibited by the directors, when approved by the proprietors, to be conclusive.

215. The proprietors employed in the service of the company to be just and faithful to the others, and render true accounts of all transactions to the board of directors.

216. Every proprietor to discharge his private debts and indemnify the company.

217. No proprietor to do any act whereby the funds or property of the company may be affected, or the company dissolved.

218. No proprietor, as between himself and the other proprietors, to be answerable beyond the amount of his share in the capital of the company.

219. If any proprietor be compelled to pay any debt of the company, the sum so paid and all costs incurred, shall be a debt due to him from the company.

220. Debt and costs to be paid to him by the directors or trustees, on demand.

221. If directors or trustees refuse to pay, debt and costs to be divided into parts, and each proprietor to pay his share.

222. If execution shall be issued against any proprietor, he may receive from each of the other proprietors a proportion of the costs thereby incurred.

223. If any proprietor refuse to pay his share of the debts and costs, the same to be recoverable by action at law.

224. Before any proprietor can proceed he must give notice to the directors.

225. No proprietor to be entitled to take advantage of this provision if he shall previously be in arrear to the company.

226. All disputes to be referred to arbitration.

COVENANTS.—By each proprietor to pay instalments when called for. Not to plead in bar or abatement. By each proprietor, in the event of any action being brought against any other proprietor to contribute rateably. By trustees to permit their names to be used; and to stand possessed of the effects of the company.



Deed of Covenant to abide by Company's regulations on Transfer of Shares.

This INDENTURE, made the day of in the year of our Lord, 18 , BETWEEN of the first part , of of the second part, and of , trustees of the Life Assurance Reversionary Interest and Annuity Company of the third part, WITNESSETH, that the directors of the said company having approved of the said as a fit and proper person to be admitted a member of the said company, the said , in consideration of the sum of £ , to be paid by the said purchaser, the receipt whereof is hereby acknowledged, doth by these presents, assign and transfer unto the said his executors, administrators, and assigns; all the share , numbered in the capital or joint stock of the said company, and all benefit, advantage, powers, and privileges attending the same, to hold the said share unto the said h executors, administrators, and assigns, for h own use and benefit, under and subject to the several covenants, provisoes, conditions, and restrictions, contained in a certain indenture, bearing date the day of 18 , and made between of the first part, of the second part, and the several other persons whose names are thereunto subscribed and seals affixed of the third part, purporting to be the deed of settlement of the Life Assurance Reversionary Interest and Annuity Company, and to the rules and regulations to be from time to time made by the directors for the time being of the said company, in pursuance of the powers by the said indenture vested in them for that purpose; and this indenture further witnesseth that the said for h self,

Transfer of
Shares.

Transfer of
Shares.

h heirs, executors, and administrators, doth hereby covenant with the said , and with each and every of them severally and respectively, and with their and every of their respective executors, administrators, and assigns, that h , the said shall and will well and truly perform, fulfil, observe, obey, and keep all and singular the covenants, provisoes, and agreements in the said deed of settlement contained, which respectively are or ought to be performed, fulfilled, observed, obeyed, and kept, by h , the said as a proprietor and member of the said company; and also all the rules and regulations for the time being of the said company, made and established in pursuance thereof, as fully and effectually and in the same or like manner to all intents and purposes as if the said had been a party to and had signed and sealed the said deed of settlement; and this indenture further witnesseth, that the said , for h self, h heirs, executors, and administrators, doth hereby further covenant with the said , and with each and every of them, severally and respectively, and with their and each, and every of their respective executors, administrators, and assigns, that h , the said , h executors and administrators shall and will as well in respect of the share hereby assigned as in respect of any share or shares which with the approbation of the directors of the said company the said may hereafter become the proprietor of, well and truly pay or cause to be paid all such instalments and sum and sums of money as shall or may be directed to be paid by the said deed of settlement, or shall or may from time to time or at any time hereafter be called for by the directors of the said company in pursuance of the powers vested in them by the said deed of settlement for that purpose, and also all such other sum and sums of money as shall or may in pursuance of the provisions contained in the said deed of settlement, be due or owing by the said and shall and will make all and every such payments at the time and place, and in the manner directed by or mentioned in the said deed, or specified in the letter by the said deed required to be sent to each proprietor, informing him or her thereof, and without any deduction or abatement whatsoever, and according to the true intent and meaning of the same deed.

In witness, &c.

Signed, sealed, and delivered by the above-named
in the presence of

(I. S.)

Signed, sealed, and delivered by the above-named
in the presence of

(I. S.)

Received the day and year first above written of the above-named
the sum of being the consideration money
above named to be paid by to me.
Witness.



Declaration in Action for Calls.

Declaration
in action for
calls.

IN THE QUEEN'S BENCH—

The day of in the year of our Lord
one thousand eight hundred and forty-four.

Middlesex, } The Railway Company, by A. B., their
to wit. } attorney, complain of C. D., who has been summoned
to answer the plaintiffs, by virtue of a writ issued on the day
of in the year of our Lord one thousand eight hundred and
forty-three, out of the Court of our Lady the Queen, before the
Queen herself, at Westminster, in an action of debt, wherein the
plaintiffs demand of the defendant the sum of three hundred and
fifty pounds, which he owes to and unjustly detains from them: for
that whereas the defendant heretofore, to wit, on the first day of
December, in the year of our Lord one thousand eight hundred and
forty-three, he then being proprietor of divers, to wit, one hundred
shares in the said Railway Company, was indebted to the
said plaintiffs in the sum of three hundred pounds for one call of the
sum of three pounds upon each of the said shares belonging to the
said defendant [and in the further sum of fifty pounds for interest
for the forbearance by the plaintiffs, at the defendant's request, of
monies due and owing from the defendant to the plaintiffs in respect
of the said shares] (a), whereby an action hath accrued to the said
plaintiffs by virtue of a certain act of Parliament, made and passed
in the year of the reign of our late Sovereign William the
Fourth, intituled, "An Act, &c.," to demand and have of and from
the defendant the said several monies respectively, amounting to the
sum of three hundred and fifty pounds above demanded; yet, the
defendant hath not paid the said sum above demanded, or any part
thereof, to the plaintiff's damage of fifty pounds, and therefore they
bring their suit, &c.

—◆—
Another Form of Declaration for Calls (b).

FIRST COUNT.

Formal commencement, and stating that the Company had been incorporated by an act 6 & 7 Wm. 4, c. 105.

Whereas, the defendant, before the several times of making the several calls in this count, and in the second count hereinafter mentioned, to wit, on, &c., subscribed for a large sum of money, to wit, 5000*l.* towards the undertaking mentioned in the said act, and in the act made in the first year of the reign of her present Majesty for

(a) The words within brackets are unnecessary. See the *Southampton Dock Company v. Richards, ante.*

(b) See the *Great North of England Railway Company v. Biddulph*, 7 M. & W. 243.

**Declaration
in action for
calls.**

enabling the said Company to extend the line of their railway, and to make two branches therefrom, and for other purposes relating thereto, and for divers, to wit, fifty shares of 100*l.* each in the said undertaking. And whereas the said Company, after the passing of the said first mentioned act, to wit, on, &c., and from thence continually until the commencement of this suit have been and still are making and constructing the railway and other works in the said acts mentioned, and otherwise carrying the said acts into execution. And whereas, also, after the passing of the said first mentioned act, and whilst the defendant was such subscriber as aforesaid and entitled to the said shares, to wit, on, &c., the directors, for the time being, of the said Company, then duly appointed pursuant to the said first mentioned act, made a certain call not exceeding 10*l.* a share, to wit, a call of 8*l.* a share from the several subscribers to and proprietors of the said undertaking, for the time being, upon and in respect of their respective shares therein, according to the said act, the same call being then found by the said directors to be necessary, and being then necessary for defraying the expenses of and carrying on the said undertaking, and the aggregate amount of the said call, and all other calls made or money paid for or in respect of the said shares, not exceeding 100*l.* on any share; which said call was then made payable by the said directors at a time before the commencement of this suit, and after an interval of three calendar months next after the day appointed for payment of any preceding call had elapsed, to wit, on, &c. And whereas, after the making of the said call, as in this count mentioned, and more than twenty-one days before the same was made payable as aforesaid, to wit, on, &c., notice of the said call and of the time at which the same was made payable as aforesaid, was duly given by advertisement then inserted in the several newspapers following, that is to say—two Durham newspapers respectively called, &c., [naming them], three Newcastle newspapers, respectively called, &c., &c., and three York newspapers, respectively called, &c. &c., according to the said first mentioned act, in and by which said notices a certain place in the said notice mentioned, was appointed and notified for the payment of the said call, at the said time at which the same was made payable as aforesaid, to the then treasurer of the said Company, to wit, &c., which period of twenty-one days next after the giving of the said notice elapsed before the commencement of this suit, whereby the defendant became liable to pay to the said Company a large sum of money, to wit, 400*l.*, being the amount of the said call upon and in respect of the said shares to which the defendant was so entitled as aforesaid; yet, the defendant hath not paid the said sum of 400*l.*, or any part thereof, or any interest thereon, whereby, and by virtue of the said first mentioned act, an action hath accrued to the said Company to demand and have of and from the defendant the sum of 400*l.*, and interest thereon, after the rate of 5*l.* for 100*l.* for a year, from the time the same became payable as aforesaid, amounting to a large sum, to wit, 100*l.*

SECOND COUNT.

Whereas also, afterwards, and whilst the defendant was such subscriber as aforesaid, and entitled to the said shares in the said undertaking, and after the passing of the said acts, and whilst the said Company were so making and constructing the said railway and

other works in the said acts mentioned, and otherwise carrying the said acts into execution as aforesaid, to wit, on the several days and times in this count in that behalf hereafter mentioned; the several calls in this count hereafter mentioned were respectively made by the directors, for the time being, of the said Company, according to the said acts, from the several subscribers to, and proprietors of the said undertaking, for the time being, upon and in respect of their respective shares in the said undertaking, the same calls being respectively, at the respective times of making the same, found necessary by the said directors, and being respectively then necessary for defraying the expenses of and carrying on the said undertaking, and no one of the said calls exceeding 10*l.* a share, &c., and the aggregate amount of the same calls, and all other calls and money paid for or in respect of the said shares, not exceeding 100*l.* on any share, which same calls respectively, at the respective times of making the same, respectively were, by the said directors, made payable before the commencement of this suit, on the respective days, in this count, in that behalf hereafter mentioned; that is to say, one call of 3*l.* a share, made on the 5th day of December, A.D., 1837, and payable on the 17th day of January, A.D., 1838. [Seven other calls were then specified in like manner.] The count then averred, that an interval of three calendar months at least had elapsed between the respective days of payment of the calls, and between the day of payment of the first of the same calls and the day of payment of any preceding call, and of the insertion in the newspapers of twenty-one days' notice in respect of each of the calls, specifying the days, times, and places of payment, and that the defendant became liable to pay the amount of 2250*l.* Breach:—non-payment of the calls, or any of them, or any part thereof, or any interest thereon, whereby, &c., [as in the first count.]

Declaration
in action for
calls.

THIRD COUNT.

Whereas also, the defendant, after the passing of the said first mentioned act, and before the commencement of this suit, to wit, on, &c., then, and at the time of making the call in this count hereafter mentioned, being a *proprietor* of divers, to wit, fifty shares in the undertaking in the said first mentioned act mentioned, was, and is indebted to the said Company in the sum of 400*l.* for a call, to wit, a call of 8*l.* a share upon his, the defendant's said shares in this count mentioned, before then, to wit, on, &c., made by the directors, for the time being, of the said company, pursuant to the said first mentioned act, and then made payable at a time before the commencement of this suit, to wit, on, &c., which said sum of 400*l.* is still due and unpaid, whereby, and by virtue of the first mentioned act, an action hath accrued to the said Company, &c.

Declaration
in action for
calls.

Another Form.

IN THE QUEEN'S BENCH.—

The day of in the year of our Lord,
one thousand eight hundred and forty-four.

Middlesex, } The Cheltenham and Great Western Union Railway
to wit. } Company, by their attorney, complain of
who has been summoned to answer the said Cheltenham and Great
Western Union Railway Company, by virtue of a writ issued on
the day of in the year of our Lord out of the Court
of our Lady the Queen, before the Queen herself at Westminster, in
an action of debt, wherein the plaintiffs demand of the defendant the
sum of 80*l.* which he owes to, and unjustly detains from them. For
that whereas the defendant, on the day of in the year of
our Lord and from thence hitherto being and now being the
proprietor of divers, to wit, ten shares in the undertaking mentioned
in and authorized by a certain act of Parliament made and passed
in the sixth year of the reign of his late Majesty, King William the
Fourth; for making a Railway from Cheltenham and from Gloucester
to join the Great Western Railway near Swindon, to be called "The
Cheltenham and Great Western Union Railway," with a branch to
Cirencester, (that is to say) a certain undertaking for making and
maintaining the railway and other works mentioned in the said act,
was and still is indebted to the plaintiffs in 50*l.*, for a call of the sum
of 5*l.* upon each and every of the said ten shares belonging to the de-
fendant in the said undertaking, whereby and by reason of the non-
payment thereof, a right of action has accrued to the plaintiffs, by
virtue of the said act of Parliament, to demand and have of and from
the defendant the said call of 5*l.* upon each of the said shares, [together
with interest upon the same after the rate of 5*l.* per cent. per annum
from the day appointed for the payment of the said call] (*a*), amount-
ing in the whole to the sum of 80*l.* above demanded. Yet the
defendant, although often requested so to do, has not as yet paid the
said sum above demanded or any part thereof, but he to do this hath
hitherto wholly refused, and still does refuse, to the damage of the
plaintiffs of £ and thereupon they bring suit, &c. (*b*).

Declaration in Action for not Accepting Railway Shares. (c)

Declaration
in action for
not accepting
shares.

Whereas on the 10th of August, 1840, the defendant bargained for
and agreed to buy of, and from the plaintiff, who, at the request of the
defendant, then agreed to sell to the defendant twenty half shares in
the Great Western Railway Company, at £52 per half share, to be

(*a*) See Note (*a*), *ante*, p. 323.

(*b*) See 9 C. & P. 55.

(*c*) *Stewart v. Cauty*, 2 Nich. Hare & Carrow, 616, 8 M. & W. 160.

transferred, delivered, and paid for within a reasonable time afterwards, and thereupon, to wit, on the day and year last aforesaid, in consideration of the premises, and that the plaintiff, at the request of the defendant, had then promised the defendant to deliver and transfer the said half shares within a reasonable time afterwards, the defendant promised the plaintiff to accept and receive such half shares and the transfer thereof within such reasonable time, and within a reasonable time afterwards, to pay him for such half shares at the rate aforesaid. And the plaintiff in fact says, that within a reasonable time after the making of the said mutual promises, to wit, on the day and year last aforesaid, he, the plaintiff, was then ready and willing, and then offered to deliver and transfer the said half shares to the defendant, and then requested the defendant to accept and receive the same and the transfer thereof. Yet the defendant then wholly refused to accept or receive the said half shares, or any of them, or any transfer thereof, or any of them, and then discharged the plaintiff from tendering to him the same half shares or any of them, or any transfer thereof, or of any of them, and although a reasonable time for accepting and receiving the said half shares, and the transfer thereof, and also a reasonable time afterwards for paying for the said half shares at the rate aforesaid, had elapsed long before the commencement of this suit, yet the defendant has hitherto wholly refused and neglected to accept or receive the said half shares, or any of them, or any transfer thereof, or of any of them, or to pay the plaintiff for the same half shares, or any of them, at the rate aforesaid, or otherwise howsoever. (a)

Declaration
in action for
not accepting
shares.

◆

Declaration in Action on the Case, against Secretary of a Company, for not Registering Plaintiff's name and not delivering to him a Certificate of Shares. (b)

That heretofore, to wit, on the 27th of December, 1838, the plaintiff became and was, and still is, entitled to divers, to wit, twenty shares in the undertaking mentioned in an act of Parliament, passed in the sixth year of the reign of his late Majesty king William the Fourth, intitled "An Act to enable I. H. K. to assign to a Company certain Letters Patent," that is to say, twenty shares in the capital or joint stock of the said Company: that the said company had provided certain books for entering therein the names and designations of the several persons or parties who had subscribed for any share or shares in the said undertaking, and of every person entitled to any share or shares therein, according to the provisions of the said act, of all which premises the said Company, heretofore, and before the commencement of this suit, and before the committing of the grievances herein-after mentioned, to wit, on the day and year aforesaid, had notice. And the plaintiff avers, that before and at the times of committing

Declaration in
action for not
registering
shareholder's
name, &c.

(a) See Forms of Pleas to this count, and of a special traverse in a replication, *post*, 335.

(b) See 10 M. & W. 309.

Declaration in action for not registering shareholder's name, &c.

the grievances hereinafter mentioned, being so as aforesaid entitled to the said shares in the said undertaking, he, the said plaintiff, was entitled, under and by virtue of the said act of Parliament, and according to the tenor and effect, true intent and meaning thereof, to have his name and designation, and each of the before-mentioned shares to which he was so entitled as aforesaid, entered by the said Company in the books of the said Company, and also to have made out by the said Company a certificate in respect of each of such shares, specifying therein the proper number of the said plaintiff as proprietor thereof, and to have such certificate delivered to him, the said plaintiff, on demand. That heretofore, and after he became entitled to the said shares as aforesaid, and before the commencement of this suit, to wit, on the 30th of May, 1839, he, the plaintiff, did request the said Company to cause to be entered in the said books of the said Company, the name and designation of the plaintiff as the person entitled to the said shares, making a separate entry of each of such shares, and that a certificate in respect of each of the said shares should be made out by the said Company, and did then demand of the said Company that such certificate should be delivered to the plaintiff as proprietor of the said shares, pursuant to the provisions of the said act of Parliament, and although a reasonable time for making such entry in the said books, and for making out and delivering such certificate, hath long since elapsed, yet the said Company, well knowing the premises, and contriving and intending to injure the plaintiff in this behalf, in utter disregard of the said act of Parliament, and of their duty in that behalf, have hitherto wholly neglected and refused, and still do neglect and refuse, to cause to be entered in any of the said books of the said Company, the name and designation of the said plaintiff as the person entitled to the said shares, or any or either of them, and although often requested so to do, have hitherto wholly neglected and refused, and still do neglect and refuse, to make out a certificate in respect of each of the said shares, or any or either of them, and to deliver the same to the plaintiff as proprietor thereof, whereby the plaintiff is deprived of the evidence of his title as proprietor of the said shares, and is prevented from receiving and enforcing payment of the interest and dividends for and in respect of the said shares, and thereby, and otherwise, the plaintiff is injured, &c. (a)

—♦—

Declaration against defendants as shareholders in the Anglo-American Gold Mining Association, to recover money paid under a special contract. (b)

Declaration against shareholders for money paid for Company.

[Formal commencement.] That before and at the time of the making the agreement and promise hereinafter mentioned, the defendants were partners and shareholders in a certain Company or Association, called the "Anglo-American Gold Mining Association."

(a) See the provisions of the act of Parliament on which this declaration was framed, 10 M. & W. 311.

(b) See Forms of some of the Pleas to this declaration, *post*, 331—333.

That heretofore, to wit, on the 24th day of December, A.D. 1835, by a certain agreement in writing then purporting to be made between the said H. B. [one of the defendants] and certain other persons, then being the agents of the said other defendants in that behalf, for and on behalf of themselves and of the said Company of the one part, and the said plaintiffs of the other part; after reciting that the members of the said Company or Association being desirous of obtaining the co-operation of the plaintiffs in carrying on the said concern, and having determined to increase the number of shares of the said Company, proposed to the plaintiffs to become shareholders and directors in the said Company, and that the plaintiffs having found, on investigating the concerns of the said Company, that questions and disputes had arisen and were pending between the said Company, and one I. P. its late superintendent or agent in North Carolina, who had drawn bills of exchange to a large amount on the said H. B., on account of the said Company, declined to become shareholders until they had an opportunity of ascertaining the state of the said Company, in reference to the questions and disputes so referred to, but that the directors and members of the said Association being desirous that the bills so drawn by the said I. P., on the said H. B., should not go back dishonoured, but should be taken up for the honor of the drawer, under the guarantee and indemnity of the said directors and of the said Company, the said plaintiffs consented and agreed to take up the said bills to an amount not exceeding 6000*l.*, upon the footing so proposed, and that the sum to be so advanced by them, together with such further sum, if any, as should be required to make up the said sum of 6000*l.*, should, in the event of their determining to join the said Company, at the period thereafter mentioned for that purpose, go in payment of shares to that amount, to be taken by them accordingly, and after reciting that a meeting of shareholders of the said Company, duly convened and held at the office of Messrs. _____, King's Arms Yard, Coleman Street, in the city of London, on the 17th day of the said month of December, it was resolved and determined that one hundred additional shares of 100*l.* each, should be created for the purposes, and be disposed of by the said directors for the benefit of the said Company, and that sixty of such shares had been set apart with a view to and in compliance with the proposal therein-before mentioned in that behalf: it was and is witnessed, and it was thereby mutually concluded and agreed as follows, that is to say, that bills not exceeding the amount of 6000*l.*, drawn by the said I. P. on the said H. B., on account of the said Company, should be taken up by the plaintiffs for the honor of the drawer, and that the plaintiffs should follow the instructions of the said Company, or of its agent or agents duly authorized for that purpose, whether as to proceeding against the said I. P. or against the property of the said Company, or otherwise, in respect of the said bills, and that in the event of the said bills, or any or either of them, not being paid, and of the plaintiffs not making their election to take the sixty shares so reserved and set apart for them, the defendants engaged and agreed for the payment of such bills or bill, with interest at 5*l.* per cent. on the amount advanced, and all costs and expenses attending such bills, at any time after the 1st day of October then next, on the said Company, and the directors of the said Company, having three calendar months' previous notice requiring the same, and in case the plaintiffs, or any or either of them,

Declaration
against share-
holders for
money paid for
Company.

**Declaration
against share-
holders for
money paid for
Company.**

should, within two months after receiving from the said directors of the said Company, a communication of the result of the questions or differences between the said Company and the said I. P., and of the state of the said Company's affairs (which communication the said directors were to make in as full and explicit a form, and at as early a period as should be in their power) or at any earlier period, determine to take the sixty shares so reserved and set apart as before mentioned, such shares to be taken at par as therein-before mentioned, they, or he, should be at liberty so to do, and that in case the money so advanced in taking up the bills as therein-before mentioned, with such further sum, if any, as should be necessary to make up the sum of 6000*l.*, should go in payment of such sixty shares, but the plaintiffs should, in that case, be entitled only to the costs and expenses attending the said bills, and not to any interest. And it was and is thereby further agreed, that in the event of the plaintiffs, or any, or either of them, taking the said sixty shares, they, or he, should, if they, or he, at the time of taking such shares, should declare such to be their, or his, wish, be elected directors or a director of the Company, jointly with the then directors, as by the said agreement fully and at large appears. And the said agreement, being so made, afterwards, to wit, on the said 2nd day of December, A.D. 1835, in consideration thereof, and that the plaintiffs, at the request of the defendants, had then promised the defendants to perform the said agreement in all things on their, the plaintiffs' part to be performed, they the defendants undertook and then promised the plaintiffs to perform the said agreement in all things on their the defendants' parts and behalves to be performed, and the plaintiffs, in fact, further say that, after the making of the said agreement, to wit, on the day and year last aforesaid, and on divers other days and times after that day, and more than three calendar months before the commencement of this suit, they, the plaintiffs, paid, laid out, and expended, divers large sums of money, not exceeding in the whole the said sum of 6000*l.* mentioned in the said agreement, to wit, the sum of 5800*l.* in and about the taking up and discharging for the honor of the drawer, divers of the said bills of exchange in writing before drawn by the said I. P. on the said H. B., for and on account of the said Company, for the payment respectively of divers large sums of money, amounting in the whole to a large sum, to wit, the sum of 5800*l.* at certain times, which respectively elapsed long before the commencement of this suit, pursuant to and upon the terms of the said agreement, the said bills being respectively bills which had been and were dishonoured and not paid, or taken up by any, or either of the parties thereto; and the plaintiffs, in fact, further say that they have been always ready to follow, and have followed the instructions of the said Company, and of their agents duly authorized for that purpose in respect of the said bills as aforesaid; and the plaintiffs further say, that afterwards, and more than three calendar months before the commencement of this suit, to wit, on the 22nd day of September, A.D. 1836, they, the plaintiffs, gave due notice, to wit, to the Company and to the said directors, that the plaintiffs declined to take the said sixty shares in, or to become members of the said Company, and the plaintiffs then elected not to take, and have not nor have any, nor hath any one of them, taken such shares, or any, or either of them, or become such shareholders, or shareholder; and they, the

plaintiffs, then gave the said Company, and the said directors, notice to pay, and required payment to them, the plaintiffs, according to the said agreement, at the expiration of three calendar months then following, of the said sum of 5800*l.*, so advanced by them, the plaintiffs, in taking up the said bills of exchange as aforesaid, with a certain sum, to wit, 500*l.*, being interest for the same, at the rate of 5*l.* per cent. per annum, then due and claimable thereon, and in respect thereof, and also a certain sum, to wit, 300*l.*, being the amount of the costs and expenses of the plaintiffs attending the taking up such bills, and in relation thereto, and by the plaintiffs then incurred in that behalf, according to the said agreement, and although the time for payment of the said several sums of 5800*l.*, 500*l.*, and 300*l.*, elapsed before the commencement of this suit, yet, the defendants, not regarding their said agreement, nor their said promises, have not paid, nor caused to be paid to the plaintiffs, or to any, or either of them, the said sums of 5800*l.*, 500*l.*, and 300*l.*, or any or either of them, or any part thereof, but have, and each of them have, therein failed and made default, and the said last mentioned three several sums of money still remain wholly due and unpaid, and unsatisfied, and in arrear, and unpaid to the plaintiffs, nor has any part thereof been paid to the plaintiffs by, or on behalf of either of the said parties to the said bills so taken up by the plaintiffs, or by or on behalf of the said Company, or otherwise satisfied.

Declaration
against share-
holders for
money paid for
Company.

◆

Plea that the Company is illegal and not chartered. (a)

And for a further plea to the 1st, 2nd, and 3rd counts of the said declaration, the said defendants Henry Heathorn and Abraham Hart, say, that the said Company or Association in the said 1st count mentioned, was and is an illegal Company, Association, or Partnership, consisting of divers persons shareholders therein, formed for the alleged purpose (1) of working gold mines in the United States of America, and reduction and sale of the said precious metal and all other valuable productions of the said mines, and presuming to act as if they were and are a corporate body, without any act of Parliament or charter from the Crown, or legal authority for so doing, and also presuming and pretending, without any act of Parliament, or charter from the Crown, or legal authority for so doing, to raise, and being constituted and formed with a view to raise, and with provisions for raising a transferable and assignable stock and capital to a large amount, to wit, 6000*l.* sterling, to be considered as divided into sixty shares of 100*l.* each, with power for the shareholders of the said Company, at a special meeting of shareholders to be called for that purpose, at any time, and from time to time, to increase the capital of the said Company to any amount that might be agreed upon, by creating an additional number of 100*l.* shares, and all which several shares, as well original as additional, were to be and are transferable and assign-

Plea, that the
Company is
illegal.

(a) See the 1st count of the declaration to which this was pleaded, ante, 328. The 2nd and 3rd counts were for money lent, and for money paid.

Plea, that the Company is illegal.

able from the holders thereof by deed, or will, or otherwise, to any other person or persons at the discretion of the holders thereof, to the common grievance, nuisance, prejudice, and inconvenience of the liege subjects of his late Majesty king William the Fourth, and our Lady the Queen, in their trade, commerce, property, and lawful affairs ; (2) and the said defendants further say, that before and at the time of the making of the said agreement and promise in the said 1st count mentioned, and before and at the times when the plaintiffs lent and paid the respective monies in the 2nd and 3rd counts mentioned, the said plaintiffs had notice of the several premises in this plea before mentioned ; and the said defendants further say, that the said loans and advances and payments in the 2nd and 3rd counts mentioned, were respectively made by the plaintiffs for the purpose of taking up and paying the said bills of exchange under the said agreement in the 1st count mentioned, and that the said agreement was made and entered into, and the same payments in the said 1st count mentioned, and the said loans, advances, and payments, in the 2nd and 3rd counts mentioned, were respectively made by the plaintiffs, and the said costs and expenses in the said first count mentioned, attending such bills, were incurred in order, and for the purpose, and with intent to support and continue the said Company, or Association, and for the furthering, countenancing, and proceeding in the said undertaking and attempt, to the common grievance and nuisance of his late Majesty and our Lady the Queen, whereby the said agreement was and is void in law, and the said promises and undertakings in the said 1st, 2nd, and 3rd counts mentioned, were and are null and void, and this the defendants are ready to verify, &c.

◆

Plea that the Company is Fraudulent.

Plea, that the Company is fraudulent.

And for a further plea to the 1st, 2nd, and 3rd counts, the defendants, Henry Heathorn and Abraham Hart, say, that the said Company or Association, or Partnership, consisting of divers persons, shareholders therein, presuming to act as if they were and are a body corporate, without any act of Parliament, or charter from the Crown, or legal authority for so doing, and also presuming and pretending without any act of Parliament, or charter from the Crown, or legal authority for so doing, to raise a large transferable and assignable stock in shares, transferable at the will of the holders thereof, *for the pretended object or purpose of Working Gold Mines, on an immense and extensive territory in parts beyond the seas, to wit, the United States of America*, and the reduction and sale of the said precious metals, and all other valuable products of the said mines ; whereas, in truth and in fact, at the time of the formation of the said Company or Association, and for a long time afterwards, no gold mine in the said United States had been or was discovered by the persons who projected, formed and constituted the said Company or association, or any or either of them, or by any person or persons on their behalf, or by the said Company, or by any person or persons on behalf of the said Company ; nor had any gold mine in the said United States been

purchased or hired by or on behalf of the persons who projected, formed, and constituted the said Company or Association, or by or on behalf of the said Company or Association, or by or on behalf of the said Company, nor were such persons, or the said Company, possessed of any such gold mine, nor in negotiation for the purchase or hire thereof,—and the locality or particular nature of the situation for commencing and carrying on the operations of the said Company remained to be discovered and selected, and the objects of the said Company were and are fanciful, visionary, and uncertain and delusive, fraudulent and deceptive, and the said Company or association was and is, by reason of the several premises, an undertaking, association, and attempt tending to the common nuisance, &c. [concluding as in the preceding plea.]

Plea, that the Company is fraudulent.

◆

Plea that the Contract sued upon is Illegal.

And for a further plea in this behalf as to the 4th count of the said declaration, the said defendants, Henry Heathorn and Abraham Hart, say, that the said money in the said 4th count mentioned, was paid and advanced by the plaintiffs to the defendants, and was received by the defendants, with the intent and for the purpose of furthering, countenancing, promoting, maintaining, supporting and continuing a certain unlawful Company or Association, consisting of the said defendants and other persons shareholders, formed for the alleged purpose [as in the plea first given from (1) to (2)]. (a) And the defendants, H. H. and A. H., further say, that before and at the time of making the said agreement and promise in the said 1st count mentioned, and before and at the times when the plaintiffs so advanced and paid, and the said defendants so received the said money in the said 4th count mentioned, the said plaintiffs had notice of the several premises in this plea before mentioned, and the said plaintiffs advanced and paid the same to the defendants, and voluntarily permitted and suffered the defendants to receive the same, in order and for the purpose, &c., [concluding as in the plea first given].

Plea, illegality of contract.

◆

In Action for Calls—Plea that the Defendant had transferred his Shares before the Call was payable (b).

Formal Commencement.

That true it is, heretofore, and before the commencement of this suit, to wit, on the 6th day of March, 1838, in the declaration mentioned, the defendant was the proprietor of the said shares in the undertaking in the said declaration mentioned; and that the call in

(a) See *ante*, 331, 332.

(b) The Aylesbury Railway Company v. Mount, 4 M. & Gr. 651.

**Plea—transfer
of shares be-
fore call made.**

the declaration mentioned was made under and pursuant to the provisions of the said act, for an instalment of 5*l.* per share, to be paid by the proprietors or owners of the capital of the Company, *on or before the 9th of April then next ensuing*; but that, afterwards, and before the commencement of this action, and before the said 9th of *April*, hereinbefore mentioned, when the said call was payable as aforesaid, to wit, *on the 7th of April, 1838*, he, the defendant, so being such proprietor as aforesaid, sold and disposed of all his said shares in the said undertaking (the said shares being the same shares in respect of which the plaintiff's claim to be paid the said call) to one C. T., and the said C. T. then took and accepted the same; and the defendant then, to wit, on the said 7th of April, 1838, after the said call was made, &c., and before the same was due and payable, by a deed under the seal of the defendant, and also under the seal of the said C. T. (and which deed then being in the possession of the plaintiffs, the defendant was unable to bring the same into Court there), in consideration of the sum of 5*l.* paid to the defendant by the said C. T. *did assign and transfer to the said C. T. the said shares in the declaration mentioned*, to hold to the said C. T., his executors, &c., *subject to the several conditions on which the defendant held the same immediately before the execution thereof*; and the said C. T. thereby then agreed to accept and take the said shares, subject to the conditions aforesaid, as by the said deed, &c.; that the said deed was duly stamped before the same was executed by either party, and was made and executed according to the provisions of the act; that the defendant and the said C. T., then duly delivered the said deed (the same then, and before the said call was payable, being first duly executed by both the defendant and the said C. T.) to the said Company, to be kept by the said Company, according to the provisions of the said act, and then requested the said Company to enter into the said Company's books kept for that purpose, a memorial of the said transfer and sale, and to indorse the entry of the memorial on the said deed;—*which memorial and indorsement the said Company then, and before the said call become due and payable, made*, according to the act; and, thereupon, and before the said call became due and payable, to wit, on the said 7th of April, the said Company duly received the said deed on behalf of the said Company, the plaintiffs in this action, and then duly entered the memorial in the said Company's book, and then duly indorsed the entry of the memorial of the said deed according to the said act, and then accepted and received the said transfer of the said shares of the defendant to the said C. T., whereby the defendant then, and before the commencement of this action, and before the said call had become due and payable, ceased to be the proprietor and owner of the said shares, and then ceased to be liable to the said call, under and by virtue of the provisions of the said act in the declaration mentioned. Verification.

Plea in an Action for not accepting Shares (a).

That within a reasonable time after the making of the said promises, and before the commencement of this suit, to wit, on the 30th August, 1840, he, the defendant was ready and willing to accept and receive, and pay for, and offered the plaintiff to accept and receive from him, and to pay him for, and requested the plaintiff to transfer and deliver to him, the defendant, the said half shares, of all which premises, &c. the plaintiff, to wit, then had notice. Yet the plaintiff did not, nor would, then, or at any time within a reasonable time in that behalf, deliver or transfer to him, the defendant, the said half shares, or any of them, but therein wholly failed and made default, whereupon the defendant did, to wit, then wholly rescind, cancel, repudiate, and put an end to the said contract, &c., whereof the plaintiff, to wit, then had notice, whereupon the defendant did afterwards refuse to accept or receive the said shares, &c., at the time therein in that behalf mentioned, as he well might for the cause aforesaid. Verification.

Plea—recission of contract: the plaintiff not having delivered shares in reasonable time.

Plea in Action for not accepting Shares, that the contract was rescinded.

That after the making of the promise, &c., and before any breach thereof by the defendant or the plaintiff, it was agreed by them that the said contract should be put an end to, and that they should be exonerated and discharged from the performance of their promises, &c.

Plea—recission of contract.

Plea in Action against a Shareholder or a Banking Company, that Public Officers, who had been appointed, ought to have been sued.

That the said causes of action accrued against a certain copartnership, called "the Southern District Banking Company," established under the 7 Geo. 4, c. 46, and not otherwise, of which said copartnership the defendants, at the time of the accruing of the causes of action, were members, that the said causes of action accrued against the defendants as such members, and not otherwise, that one S. B. and one W. D. had been duly appointed and registered pursuant to the said statute, as public officers of the said copartnership, to sue and be sued for and on behalf of the same, according to the statute, and the said persons so being, and being duly nominated and appointed and registered as such public officers at the time of the commencement of this suit, were living and resident in England, and within the jurisdiction of this Court at the commencement of this suit. Verification.

Plea—that public officers ought to have been sued.

(a) See the replication to this plea, *post*, 336.

Replication. *Replication to Plea, in Action for not accepting Shares, with special traverse of Defendant being ready and willing to deliver and transfer.*

That within a reasonable time after the making of the mutual promises, &c., to wit, on the 26th August, 1840, he, the plaintiff, was ready and willing, and then offered to deliver and transfer the said half shares to the defendant, and then requested the defendant to accept and receive the same and the transfer thereof, and that the defendant then refused to accept or receive the same, or any of them, or any transfer thereof, and then discharged the plaintiff, from tendering to him the said half shares, or any of them, or any transfer thereof, or of any of them, *without this*, that the defendant, at or after the time when (as in the said count in that behalf mentioned) the plaintiff was ready and willing, and offered to deliver the said half shares to the defendant, and then requested him to accept and receive the same and the transfer thereof, or at or after the time when (as in the said count in that behalf mentioned) the defendant discharged the plaintiff from tendering to him the same half shares, or any of them, or any transfer thereof, or of any of them, was ready or willing to accept, or receive, or pay for, or offered the plaintiff to accept or receive from him, or pay him for, or requested the plaintiff to transfer and deliver to him, the defendant, the same half shares, *modo et formâ* (a).[•]

(a) *Stewart v. Cauty*, 2 Nich. Hare & Carrow, 618; 8 M. & W. 160.

APPENDIX — STATUTES.

[The following Statutes have been passed since the preceding part of the Appendix was printed.]

8 VICT. CHAP. 16.

An Act for consolidating in One Act certain Provisions usually inserted in Acts with respect to the Constitution of Companies incorporated for carrying on Undertakings of a public Nature. [8th May, 1845.]

WHEREAS it is expedient to comprise in one general act sundry provisions relating to the constitution and management of joint stock companies, usually introduced into acts of Parliament authorizing the execution of undertakings of a public nature by such companies, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: may it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that this act shall apply to every joint stock company which shall by any act which shall hereafter be passed be incorporated for the purpose of carrying on any undertaking, and this act shall be incorporated with such act; and all the clauses and provisions of this act, save so far as they shall be expressly varied or excepted by any such act, shall apply to the company which shall be incorporated by such act, and to the undertaking for carrying on which such company shall be incorporated, so far as the same shall be applicable thereto respectively; and such clauses and provisions, as well as the clauses and provisions of every other act which shall be incorporated with such act, shall, save as aforesaid, form part of such act, and be construed together therewith as forming one act.

Companies clauses consolidation.

Act to apply to all companies incorporated by acts hereafter to be passed.

II. And with respect to the construction of this act, and of other acts to be incorporated therewith, be it enacted as follows:

The expression "the special act" used in this act shall be construed to mean any act which shall be hereafter passed incorporating a joint stock company for the purpose of carrying on any

Interpretation in this act: "the special act."

Companies
clauses con-
solidation.

“prescribed :”

“the under-
taking.”

Interpretations
in this and the
special act :

Number :

Gender :

“Lands :”

“Lease :”

“Month :”

“Superior
Courts :”

“Oath :”

“County :”

“Justice :”

“Two jus-
tices :”

“The com-
pany :”

“Directors :”

“Share-
holder :”

“Secretary.”

undertaking, and with which this act shall be so incorporated as aforesaid; and the word “prescribed” used in this act, in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special act; and the sentence in which such word shall occur shall be construed as if instead of the word “prescribed” the expression “prescribed for that purpose in the special act” had been used; and the expression “the undertaking” shall mean the undertaking of works, of whatever nature, which shall by the special act be authorized to be executed.

III. The following words and expressions both in this and the special act shall have the several meanings hereby assigned to them, unless there be something in the subject or the context repugnant to such construction; (that is to say,)

Words importing the singular number only shall include the plural number; and words importing the plural number only shall include the singular number :

Words importing the masculine gender only shall include females :

The word “lands” shall extend to messuages, lands, tenements, and hereditaments of any tenure :

The word “lease” shall include an agreement for a lease :

The word “month” shall mean calendar month :

The expression “superior Courts” shall mean her Majesty’s superior Courts of Record at Westminster or Dublin, as the case may require :

The word “oath” shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath :

The word “county” shall include any Riding or other like division of a county, and shall also include county of a city or county of a town :

The word “justice” shall mean justice of the peace acting for the county, city, borough, liberty, cinque port, or other place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter; and where any matter shall be authorized or required to be done by two justices the expression “two justices” shall be understood to mean two justices assembled and acting together in petty sessions :

The expression “the company” shall mean the company constituted by the special act :

The expression “the directors” shall mean the directors of the company, and shall include all persons having the direction of the undertaking, whether under the name of directors, managers, committee of management, or under any other name :

The word “shareholder” shall mean shareholder, proprietor, or member of the company; and in referring to any such shareholder, expressions properly applicable to a person shall be held to apply to a corporation : and

The expression “the secretary” shall mean the secretary of the company, and shall include the word “clerk.”

IV. And be it enacted, that in citing this act in other acts of Parliament and in legal instruments it shall be sufficient to use the expression "The Companies Clauses Consolidation Act, 1845."

Companies clauses consolidation.

V. And whereas it may be convenient in some cases to incorporate with acts of Parliament hereafter to be passed some portion only of the provisions of this act; be it therefore enacted, that for the purpose of making any such incorporation it shall be sufficient in any such act to enact that the clauses and provisions of this act, with respect to the matter so proposed to be incorporated (describing such matter as it is described in this act, in the words introductory to the enactment with respect to such matter), shall be incorporated with such act; and thereupon all the clauses and provisions of this act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such act, form part of such act, and such act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such act shall relate.

Short title of the act.
Form in which portions of this act may be incorporated with other acts.

And with respect to the distribution of the capital of the company into shares, be it enacted as follows:

Distribution of capital.

VI. The capital of the company shall be divided into shares of the prescribed number and amount; and such shares shall be numbered in arithmetical progression, beginning with number one; and every such share shall be distinguished by its appropriate number.

Capital to be divided into shares.

VII. All shares in the undertaking shall be personal estate, and transmissible as such, and shall not be of the nature of real estate.

Shares to be personal estate.

VIII. Every person who shall have subscribed the prescribed sum or upwards to the capital of the company, or shall otherwise have become entitled to a share in the company, and whose name shall have been entered on the register of shareholders hereinafter mentioned, shall be deemed a shareholder of the company.

Shareholders.

IX. The company shall keep a book, to be called the "Register of Shareholders;" and in such book shall be fairly and distinctly entered, from time to time, the names of the several corporations, and the names and additions of the several persons entitled to shares in the company, together with the number of shares to which such shareholders shall be respectively entitled, distinguishing each share by its number, and the amount of the subscriptions paid on such shares, and the surnames or corporate names of the said shareholders shall be placed in alphabetical order; and such book shall be authenticated by the common seal of the company being affixed thereto; and such authentication shall take place at the first ordinary meeting, or at the next subsequent meeting of the company, and so from time to time at each ordinary meeting of the company.

Registry of shareholders.

X. In addition to the said register of shareholders, the company shall provide a book, to be called the "Shareholders' Address Book," in which the secretary shall from time to time enter in alphabetical order the corporate names and places of business of the several shareholders of the company, being corporations, and the surnames of the several

Addresses of shareholders.

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other shareholders with their respective christian names, places of abode, and descriptions, so far as the same shall be known to the company; and every shareholder, or if such shareholder be a corporation the clerk or agent of such corporation, may at all convenient times peruse such book *gratis*, and may require a copy thereof or of any part thereof; and for every hundred words so required to be copied, the company may demand a sum not exceeding sixpence.

Certificates of
shares to be
issued to the
shareholders.

XI. On demand of the holder of any share the company shall cause a certificate of the proprietorship of such share to be delivered to such shareholder; and such certificate shall have the common seal of the company affixed thereto; and such certificate shall specify the share in the undertaking to which such shareholder is entitled; and the same may be according to the form in the schedule (A.) to this act annexed, or to the like effect; and for such certificate the company may demand any sum not exceeding the prescribed amount, or if no amount be prescribed, then a sum not exceeding two shillings and sixpence.

Certificate to
be evidence.

XII. The said certificate shall be admitted in all courts as *primâ facie* evidence of the title of such shareholder, his executors, administrators, successors, or assigns, to the share therein specified; nevertheless the want of such certificate shall not prevent the holder of any share from disposing thereof.

Certificate to
be renewed
when destroyed.

XIII. If any such certificate be worn out or damaged, then, upon the same being produced at some meeting of the directors, such directors may order the same to be cancelled, and thereupon another similar certificate shall be given to the party in whom the property of such certificate, and of the share therein mentioned, shall be at the time vested; or if such certificate be lost or destroyed, then, upon proof thereof to the satisfaction of the directors, a similar certificate shall be given to the party entitled to the certificate so lost or destroyed; and in either case a due entry of the substituted certificate shall be made by the secretary in the register of shareholders; and for every such certificate so given or exchanged the company may demand any sum not exceeding the prescribed amount, or if no amount be prescribed, then a sum not exceeding two shillings and sixpence.

Transfer of
shares.

And with respect to the transfer or transmission of shares, be it enacted as follows:

Transfer of
shares to be
by deed duly
stamped.

XIV. Subject to the regulations herein or in the special act contained, every shareholder may sell and transfer all or any of his shares in the undertaking, or all or any part of his interest in the capital stock of the company, in case such shares shall, under the provision hereinafter contained, be consolidated into capital stock; and every such transfer shall be by deed duly stamped, in which the consideration shall be truly stated; and such deed may be according to the form in the Schedule (B.) to this act annexed, or to the like effect.

Transfers of
shares to be
registered, &c.

XV. The said deed of transfer (when duly executed) shall be delivered to the secretary, and be kept by him; and the secretary shall enter a memorial thereof in a book to be called the "Register

of Transfers," and shall endorse such entry on the deed of transfer, and shall, on demand, deliver a new certificate to the purchaser; and for every such entry, together with such endorsement and certificate, the company may demand any sum not exceeding the prescribed amount, or if no amount be prescribed, then a sum not exceeding two shillings and sixpence; and on the request of the purchaser of any share an endorsement of such transfer shall be made on the certificate of such share, instead of a new certificate being granted; and such endorsement, being signed by the secretary, shall be considered in every respect the same as a new certificate; and until such transfer has been so delivered to the secretary as aforesaid the vendor of the share shall continue liable to the company for any calls that may be made upon such share, and the purchaser of the share shall not be entitled to receive any share of the profits of the undertaking, or to vote in respect of such share.

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solidation.

XVI. No shareholder shall be entitled to transfer any share, after any call shall have been made in respect thereof, until he shall have paid such call, nor until he shall have paid all calls for the time being due on every share held by him.

Transfer not to
be made until
calls paid.

XVII. It shall be lawful for the directors to close the register of transfers for the prescribed period, or if no period be prescribed, then for a period not exceeding fourteen days previous to each ordinary meeting, and they may fix a day for the closing of the same, of which seven days notice shall be given by advertisement in some newspaper as after mentioned; and any transfer made during the time when the transfer books are so closed shall, as between the company and the party claiming under the same, but not otherwise, be considered as made subsequently to such ordinary meeting.

Closing of
transfer books

XVIII. If the interest in any share have become transmitted in consequence of the death or bankruptcy or insolvency of any shareholder, or in consequence of the marriage of a female shareholder, or by any other lawful means than by a transfer according to the provisions of this or the special act, such transmission shall be authenticated by a declaration in writing as hereinafter mentioned, or in such other manner as the directors shall require; and every such declaration shall state the manner in which and the party to whom such share shall have been so transmitted, and shall be made and signed by some credible person before a justice, or before a master or master extraordinary of the high court of Chancery: and such declaration shall be left with the secretary, and thereupon he shall enter the name of the person entitled under such transmission in the register of shareholders; and for every such entry the company may demand any sum not exceeding the prescribed amount, and where no amount shall be prescribed, then not exceeding five shillings; and until such transmission has been so authenticated no person claiming by virtue of any such transmission shall be entitled to receive any share of the profits of the undertaking, nor to vote in respect of any such share as the holder thereof.

Transmission
of shares by
other means
than transfer
to be authenti-
cated by a
declaration.

XIX. If such transmission be by virtue of the marriage of a female shareholder, the said declaration shall contain a copy of the

Proof of trans-
mission by

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solidation.

marriage, will,
&c.

register of such marriage, or other particulars of the celebration thereof, and shall declare the identity of the wife with the holder of such share; and if such transmission have taken place by virtue of any testamentary instrument, or by intestacy, the probate of the will or the letters of administration, or an official extract therefrom, shall, together with such declaration, be produced to the secretary; and upon such production in either of the cases aforesaid the secretary shall make an entry of the declaration in the said register of transfers.

Company not
bound to
regard trusts.

XX. The company shall not be bound to see to the execution of any trust, whether express, implied, or constructive, to which any of the said shares may be subject; and the receipt of the party in whose name any such share shall stand in the books of the company, or if it stands in the names of more parties than one, the receipt of one of the parties named in the register of shareholders, shall from time to time be a sufficient discharge to the company for any dividend or other sum of money payable in respect of such share, notwithstanding any trusts to which such share may then be subject, and whether or not the company have had notice of such trusts; and the company shall not be bound to see to the application of the money paid upon such receipt.

Payment of
calls.

And with respect to the payment of subscriptions and the means of enforcing the payment of calls, be it enacted as follows:

Subscriptions
to be paid
when called
for.

XXI. The several persons who have subscribed any money towards the undertaking, or their legal representatives, respectively, shall pay the sums respectively so subscribed, or such portions thereof as shall from time to time be called for by the company, at such times and places as shall be appointed by the company; and with respect to the provisions herein or in the special act contained for enforcing the payment of calls, the word "shareholder" shall extend to and include the legal personal representatives of such shareholder.

Power to make
calls.

XXII. It shall be lawful for the company from time to time to make such calls of money upon the respective shareholders, in respect of the amount of capital respectively subscribed or owing by them, as they shall think fit, provided that twenty-one days' notice at the least be given of each call, and that no call exceed the prescribed amount, if any, and that successive calls be not made at less than the prescribed interval, if any, and that the aggregate amount of calls made in any one year do not exceed the prescribed amount if any; and every shareholder shall be liable to pay the amount of the calls so made, in respect of the shares held by him, to the persons and at the times and places from time to time appointed by the company.

Interest to be
paid on calls
unpaid.

XXIII. If, before or on the day appointed for payment, any shareholder do not pay the amount of any call to which he is liable, then such shareholder shall be liable to pay interest for the same at the rate allowed by law from the day appointed for the payment thereof to the time of the actual payment.

Power to allow
interest on

XXIV. It shall be lawful for the company, if they think fit, to receive from any of the shareholders willing to advance the same

all or any part of the monies due upon their respective shares beyond the sums actually called for ; and upon the principal monies so paid in advance, or so much thereof as from time to time shall exceed the amount of the calls then made upon the shares in respect of which such advance shall be made, the company may pay interest at such rate, not exceeding the legal rate of interest for the time being, as the shareholder paying such sum in advance and the company shall agree upon.

Companies clauses consolidation.

payment of subscriptions before call.

XXV. If at the time appointed by the company for the payment of any call any shareholder fail to pay the amount of such call, it shall be lawful for the company to sue such shareholder for the amount thereof, in any court of law or equity having competent jurisdiction, and to recover the same, with lawful interest, from the day on which such call was payable.

Enforcement of calls by action.

XXVI. In any action or suit to be brought by the company against any shareholder to recover any money due for any call it shall not be necessary to set forth the special matter, but it shall be sufficient for the company to declare that the defendant is the holder of one share or more in the company (stating the number of shares), and is indebted to the company in the sum of money to which the calls in arrear shall amount in respect of one call or more upon one share or more (stating the number and amount of each of such calls), whereby an action hath accrued to the company by virtue of this and the special act.

Declaration in action for calls.

XXVII. On the trial or hearing of such action or suit it shall be sufficient to prove that the defendant at the time of making such call was a holder of one share or more in the undertaking, and that such call was in fact made, and such notice thereof given as is directed by this or the special act; and it shall not be necessary to prove the appointment of the directors who made such call, nor any other matter whatsoever; and thereupon the company shall be entitled to recover what shall be due upon such call, with interest thereon, unless it shall appear either that any such call exceeds the prescribed amount, or that due notice of such call was not given, or that the prescribed interval between two successive calls had not elapsed, or that calls amounting to more than the sum prescribed for the total amount of calls in one year had been made within that period.

Matter to be proved in action for calls.

XXVIII. The production of the register of shareholders shall be *prima facie* evidence of such defendant being a shareholder, and of the number and amount of his shares.

Proof of proprietorship.

And with respect to the forfeiture of shares for nonpayment of calls, be it enacted as follows:

Nonpayment of calls.

XXIX. If any shareholder fail to pay any call payable by him, together with the interest, if any, that shall have accrued thereon, the directors, at any time after the expiration of two months from the day appointed for payment of such call, may declare the share in respect of which such call was payable forfeited, and that whether the company have sued for the amount of such call or not.

Forfeiture of shares for nonpayment of calls.

Companies clauses consolidation.

Notice of forfeiture to be given before declaration thereof.

XXX. Before declaring any share forfeited the directors shall cause notice of such intention to be left at or transmitted by the post to the usual or last place of abode of the person appearing by the register of shareholders to be the proprietor of such share; and if the holder of any such share be abroad, or if his usual or last place of abode be not known to the directors, by reason of its being imperfectly described in the shareholders' address book, or otherwise, or if the interest in any such share shall be known by the directors to have become transmitted otherwise than by transfer, as hereinbefore mentioned, but a declaration of such transmission shall not have been registered as aforesaid, and so the address of the parties to whom the same may have been transmitted, or may for the time being belong, shall not be known to the directors, the directors shall give public notice of such intention in the *London or Dublin Gazette*, according as the company's principal place of business shall be situate in England or Ireland, and also in some newspaper, as after mentioned; and the several notices aforesaid shall be given twenty-one days at least before the directors shall make such declaration of forfeiture.

Forfeiture to be confirmed by a general meeting.

XXXI. The said declaration of forfeiture shall not take effect so as to authorize the sale or other disposition of any share until such declaration have been confirmed at some general meeting of the company to be held after the expiration of two months at the least from the day on which such notice of intention to make such declaration of forfeiture shall have been given; and it shall be lawful for the company to confirm such forfeiture at any such meeting, and by an order at such meeting, or at any subsequent general meeting, to direct the share so forfeited to be sold or otherwise disposed of.

Sale of forfeited shares.

XXXII. After such confirmation as aforesaid it shall be lawful for the directors to sell the forfeited share, either by public auction or private contract, and if there be more than one such forfeited share, then either separately or together, as to them shall seem fit; and any shareholder may purchase any forfeited share so sold.

Evidence as to forfeiture of shares.

XXXIII. A declaration in writing, by some credible person not interested in the matter, made before any justice, or before any Master or Master extraordinary of the high Court of Chancery, that the call in respect of a share was made, and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was declared and confirmed in manner hereinbefore required, shall be sufficient evidence of the facts therein stated; and such declaration, and the receipt of the treasurer of the company for the price of such share, shall constitute a good title to such share; and a certificate of proprietorship shall be delivered to such purchaser, and thereupon he shall be deemed the holder of such share, discharged from all calls due prior to such purchase; and he shall not be bound to see to the application of the purchase-money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

No more shares to be sold than sufficient.

XXXIV. The company shall not sell or transfer more of the shares of any such defaulter than will be sufficient, as nearly as can

be ascertained at the time of such sale, to pay the arrears then due from such defaulter on account of any calls, together with interest, and the expenses attending such sale and declaration of forfeiture; and if the money produced by the sale of any such forfeited shares be more than sufficient to pay all arrears of calls and interest thereon due at the time of such sale, and the expenses attending the declaration of forfeiture and sale thereof, the surplus shall, on demand, be paid to the defaulter.

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sufficient for payment of calls.

XXXV. If payment of such arrears of calls and interest and expenses be made before any share so forfeited and vested in the company shall have been sold, such share shall revert to the party to whom the same belonged before such forfeiture, in such manner as if such calls had been duly paid.

On payment of calls before sale the forfeited shares to revert.

And with respect to the remedies of creditors of the company against the shareholders, be it enacted as follows:

Remedies against shareholders.

XXXVI. If any execution, either at law or in equity, shall have been issued against the property or effects of the company, and if there cannot be found sufficient whereon to levy such execution, then such execution may be issued against any of the shareholders to the extent of their shares respectively in the capital of the company not then paid up: provided always, that no such execution shall issue against any shareholder except upon an order of the court in which the action, suit, or other proceeding shall have been brought or instituted, made upon motion in open court after sufficient notice in writing to the persons sought to be charged; and upon such motion such court may order execution to issue accordingly; and for the purpose of ascertaining the names of the shareholders, and the amount of capital remaining to be paid upon their respective shares, it shall be lawful for any person entitled to any such execution, at all reasonable times, to inspect the register of shareholders without fee.

Execution against shareholders to the extent of their shares in capital not paid up.

XXXVII. If by means of any such execution any shareholder shall have paid any sum of money beyond the amount then due from him in respect of calls, he shall forthwith be reimbursed such additional sum by the directors out of the funds of the company.

Reimbursement of such shareholders.

And with respect to the borrowing of money by the Company on mortgage or bond, be it enacted as follows:

Power to borrow money.

XXXVIII. If the company be authorized by the special act to borrow money on mortgage or bond, it shall be lawful for them, subject to the restrictions contained in the special act, to borrow on mortgage or bond such sums of money as shall from time to time, by an order of a general meeting of the company, be authorized to be borrowed, not exceeding in the whole the sum prescribed by the special act, and for securing the repayment of the money so borrowed, with interest, to mortgage the undertaking, and the future calls on the shareholders, or to give bonds in manner hereinafter mentioned.

Power to borrow money.

XXXIX. If, after having borrowed any part of the money so authorized to be borrowed on mortgage or bond, the company pay off the same, it shall be lawful for them again to borrow the amount so paid off, and so from time to time: but such power of reborrowing

Power to reborrow.

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shall not be exercised without the authority of a general meeting of the company, unless the money be so reborrowed in order to pay off any existing mortgage or bond.

**Evidence of
authority for
borrowing.**

XL. Where by the special act the company shall be restricted from borrowing any money on mortgage or bond until a definite portion of their capital shall be subscribed or paid up, or where by this or the special act the authority of a general meeting is required for such borrowing, the certificate of a justice that such definite portion of the capital has been subscribed or paid up, and a copy of the order of a general meeting of the company authorizing the borrowing of any money, certified by one of the directors or by the secretary to be a true copy, shall be sufficient evidence of the fact of the capital required to be subscribed or paid up having been so subscribed or paid up, and of the order for borrowing money having been made; and upon production to any justice of the books of the company, and of such other evidence as he shall think sufficient, such justice shall grant the certificate aforesaid.

**Mortgages and
bonds to be
stamped.**

XLI. Every mortgage and bond for securing money borrowed by the company shall be by deed under the common seal of the company, duly stamped, and wherein the consideration shall be truly stated; and every such mortgage deed or bond may be according to the form in the Schedule (C.) or (D.) to this act annexed, or to the like effect.

**Rights of
mortgagees.**

XLII. The respective mortgagees shall be entitled one with another to their respective proportions of the tolls, sums, and premises comprised in such mortgages, and of the future calls payable by the shareholders, if comprised therein, according to the respective sums in such mortgages mentioned to be advanced by such mortgagees respectively, and to be repaid the sums so advanced, with interest, without any preference one above another by reason of priority of the date of any such mortgage, or of the meeting at which the same was authorized.

**Application of
calls, notwith-
standing mort-
gage.**

XLIII. No such mortgage (although it should comprise future calls on the shareholders) shall, unless expressly so provided, preclude the company from receiving and applying to the purposes of the company any calls to be made by the company.

**Rights of
obligees.**

XLIV. The respective obligees in such bonds shall, proportionally according to the amount of the monies secured thereby, be entitled to be paid, out of the tolls or other property or effects of the company, the respective sums in such bonds mentioned, and thereby intended to be secured, without any preference one above another by reason of priority of date of any such bond, or of the meeting at which the same was authorized, or otherwise howsoever.

**Register of
mortgages and
bonds.**

XLV. A register of mortgages and bonds shall be kept by the secretary, and within fourteen 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.

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shares con-
solidation.

XLVI. Any party entitled to any such mortgage or bond may from time to time transfer his right and interest therein to any other person; and every such transfer shall be by deed duly stamped, wherein the consideration shall be truly stated; and every such transfer may be according to the form in the Schedule (E.) to this act annexed, or to the like effect.

Transfers of
mortgages and
bonds to be
stamped.

XLVII. Within thirty days after the date of every such transfer, if executed within the United Kingdom, or otherwise within thirty days after the arrival thereof in the United Kingdom, it shall be produced to the secretary, and thereupon the secretary shall cause an entry or memorial thereof to be made in the same manner as in the case of the original mortgage; and after such entry every such transfer shall entitle the transferee to the full benefit of the original mortgage or bond in all respects; and no party, having made such transfer, shall have power to make void, release, or discharge the mortgage or bond so transferred, or any money thereby secured; and for such entry the company may demand a sum not exceeding the prescribed sum, or, where no sum shall be prescribed, the sum of two shillings and sixpence; and until such entry the company shall not be in any manner responsible to the transferee in respect of such mortgage.

Transfers of
mortgages and
bonds to be
registered.

XLVIII. The interest of the money borrowed upon any such mortgage or bond shall be paid at the periods appointed in such mortgage or bond, and if no period be appointed, half-yearly, to the several parties entitled thereto, and in preference to any dividends payable to the shareholders of the company.

Payment of
interest on
monies bor-
rowed.

XLIX. The interest on any such mortgage or bond shall not be transferrable, except by deed duly stamped.

Transfers of
interest to be
stamped.

L. The company may, if they think proper, fix a period for the repayment of the principal money so borrowed, with the interest thereof, and in such case the company shall cause such period to be inserted in the mortgage deed or bond; and upon the expiration of such period the principal sum, together with the arrears of interest thereon, shall, on demand, be paid to the party entitled to such mortgage or bond; and if no other place of payment be inserted in such mortgage deed or bond, such principal and interest shall be payable at the principal office or place of business of the company.

Repayment of
money bor-
rowed at a time
fixed.

LI. If no time be fixed in the mortgage deed or bond for the repayment of the money so borrowed, the party entitled to the mortgage or bond may, at the expiration or at any time after the expiration of twelve months from the date of such mortgage or bond, demand payment of the principal money thereby secured, with all arrears of interest, upon giving six months previous notice for that purpose; and in the like case the company may at any time pay off the money

Repayment of
money bor-
rowed where
no time fixed.

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borrowed, on giving the like notice; and every such notice shall be in writing or print, or both, and if given by a mortgagee or bond creditor shall be delivered to the secretary or left at the principal office of the company, and if given by the company shall be given either personally to such mortgagee or bond creditor or left at his residence, or if such mortgagee or bond creditor be unknown to the directors, or cannot be found after diligent inquiry, such notice shall be given by advertisement in the *London* or *Dublin Gazette*, according as the principal office of the company shall be in England or Ireland, and in some newspaper as after mentioned.

Interest to cease on expiration of notice to pay off mortgage or bond.

LII. If the company shall have given notice of their intention to pay off any such mortgage or bond at a time when the same may lawfully be paid off by them, then at the expiration of such notice all further interest shall cease to be payable on such mortgage or bond, unless, on demand of payment made pursuant to such notice, or at any time thereafter, the company shall fail to pay the principal and interest due at the expiration of such notice on such mortgage or bond.

Arrears of interest, when to be enforced by appointment of a receiver.

LIII. Where by the special act the mortgagees of the company shall be empowered to enforce the payment of the arrears of interest, or the arrears of principal and interest, due on such mortgages, by the appointment of a receiver, then, if within thirty days after the interest accruing upon any such mortgage has become payable, and, after demand thereof in writing, the same be not paid, the mortgagee may, without prejudice to his right to sue for the interest so in arrear in any of the superior courts of law or equity, require the appointment of a receiver, by an application to be made as hereinafter provided; and if within six months after the principal money owing upon any such mortgage has become payable, and after demand thereof in writing, the same be not paid, the mortgagee, without prejudice to his right to sue for such principal money, together with all arrears of interest, in any of the superior courts of law or equity, may, if his debt amount to the prescribed sum alone, or if his debt does not amount to the prescribed sum, he may, in conjunction with other mortgagees whose debts, being so in arrear, after demand as aforesaid, shall, together with his, amount to the prescribed sum, require the appointment of a receiver, by an application to be made as hereinafter provided.

Appointment of receiver.

LIV. Every application for a receiver in the cases aforesaid shall be made to two justices, and on any such application it shall be lawful for such justices, by order in writing, after hearing the parties, to appoint some person to receive the whole or a competent part of the tolls or sums liable to the payment of such interest, or such principal and interest, as the case may be, until such interest, or until such principal and interest, as the case may be, together with all costs, including the charges of receiving the tolls or sums aforesaid, be fully paid; and upon such appointment being made all such tolls and sums of money as aforesaid shall be paid to and received by the person so to be appointed; and the money so to be received shall be so much money received by or to the use of the party to whom such interest, or such principal and interest, as the case may be, shall be then due, and on whose behalf such receiver shall have been appointed; and after

such interest and costs, or such principal, interest, and costs, have been so received, the power of such receiver shall cease.

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solidation.

LIV. At all reasonable times the books of account of the company shall be open to the inspection of the respective mortgagees and bond creditors thereof, with liberty to take extracts therefrom, without fee or reward.

Access to ac-
count books by
mortgagees.

And with respect to the conversion of the borrowed money into capital, be it enacted as follows:—

Loans.

LVI. It shall be lawful for the company, if they think fit, unless it be otherwise provided by the special act, to raise the additional sum so authorized to be borrowed, or any part thereof, by creating new shares of the company, instead of borrowing the same, or, having borrowed the same, to continue at interest only a part of such additional sum, and to raise part thereof by creating new shares; but no such augmentation of capital as aforesaid shall take place without the previous authority of a general meeting of the company.

Power to con-
vert loan into
capital.

LVII. The capital so to be raised by the creation of new shares shall be considered as part of the general capital, and shall be subject to the same provisions in all respects, whether with reference to the payment of calls, or the forfeiture of shares on nonpayment of calls, or otherwise, as if it had been part of the original capital, except as to the times of making calls for such additional capital, and the amount of such calls, which respectively it shall be lawful for the company from time to time to fix as they shall think fit.

New shares to
be considered
same as origi-
nal shares.

LVIII. If at the time of any such augmentation of capital taking place by the creation of new shares the then existing shares be at a premium, or of greater actual value than the nominal value thereof, then, unless it be otherwise provided by the special act, the sum so to be raised shall be divided into shares of such amount as will conveniently allow the same to be apportioned among the then shareholders in proportion to the existing shares held by them respectively; and such new shares shall be offered to the then shareholders in the proportion aforesaid; and such offer shall be made by letter under the hand of the secretary given to or sent by post, addressed to each shareholder according to his address in the shareholders' address book, or left at his usual or last place of abode.

If old shares at
premium new
shares to be
offered to the
shareholders.

LIX. The said new shares shall vest in and belong to the shareholders who shall accept the same, and pay the value thereof to the company at the time and by the instalments which shall be fixed by the company; and if any shareholder fail for one month after such offer of new shares to accept the same, and pay the instalments called for in respect thereof, it shall be lawful for the company to dispose of such shares in such manner as they shall deem most for the advantage of the company.

Shares to vest
in the parties
accepting;
otherwise to be
disposed of by
the directors.

LX. If at the time of such augmentation of capital taking place the existing shares be not at a premium, then such new shares may be of such amount, and may be issued in such manner and on such terms, as the company shall think fit.

If not at a pre-
mium, to be
issued as Com-
pany think fit.

Companies clauses consolidation.

Consolidation of shares.

Power to consolidate shares into stock.

And with respect to the consolidation of the shares into stock, be it enacted as follows:—

LXI. It shall be lawful for the company from time to time, with the consent of three-fifths of the votes of the shareholders present in person or by proxy at any general meeting of the company, when due notice for that purpose shall have been given, to convert or consolidate all or any part of the shares then existing in the capital of the company, and in respect whereof the whole money subscribed shall have been paid up, into a general capital stock, to be divided amongst the shareholders according to their respective interests therein.

Proprietors of stock may transfer the same.

LXII. After such conversion or consolidation shall have taken place, all the provisions contained in this or the special act which require or imply that the capital of the company shall be divided into shares of any fixed amount, and distinguished by numbers, shall, as to so much of the capital as shall have been so converted or consolidated into stock, cease and be of no effect, and the several holders of such stock may thenceforth transfer their respective interests therein, or any parts of such interests, in the same manner and subject to the same regulations and provisions as or according to which any shares in the capital of the company might be transferred under the provisions of this or the special act; and the company shall cause an entry to be made in some book, to be kept for that purpose, of every such transfer; and for every such entry they may demand any sum not exceeding the prescribed amount, or if no amount be prescribed a sum not exceeding two shillings and sixpence.

Register of stock.

LXIII. The company shall from time to time cause the names of the several parties who may be interested in any such stock as aforesaid, with the amount of the interest therein possessed by them respectively, to be entered in a book to be kept for the purpose, and to be called "The Register of Holders of Consolidated Stock;" and such book shall be accessible at all reasonable times to the several holders of shares or stock in the undertaking.

Proprietors of stock entitled to dividends.

LXIV. The several holders of such stock shall be entitled to participate in the dividends and profits of the company, according to the amount of their respective interests in such stock, and such interests shall, in proportion to the amount thereof, confer on the holders thereof respectively the same privileges and advantages, for the purpose of voting at meetings of the company, qualification for the office of directors, and for other purposes, as would have been conferred by shares of equal amount in the capital of the company, but so that none of such privileges or advantages, except the participation in the dividends and profits of the company, shall be conferred by any aliquot part of such amount of consolidated stock as would not, if existing in shares, have conferred such privileges or advantages respectively.

Application of capital.

LXV. And be it enacted, That all the money raised by the company, whether by subscriptions of the shareholders, or by loan or otherwise, shall be applied, firstly, in paying the costs and expenses incurred in obtaining the special act, and all expenses incident thereto, and, secondly, in carrying the purposes of the company into execution.

And with respect to the general meetings of the company, and the exercise of the right of voting by the shareholders, be it enacted as follows:

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solidation.

LXVI. The first general meeting of the shareholders of the company shall be held within the prescribed time, or if no time be prescribed, within one month after the passing of the special act, and the future general meetings shall be held at the prescribed periods, and if no periods be prescribed, in the months of February and August in each year, or at such other stated periods as shall be appointed for that purpose by an order of a general meeting; and the meetings so appointed to be held as aforesaid shall be called "ordinary meetings;" and all meetings, whether ordinary or extraordinary, shall be held in the prescribed place, if any, and if no place be prescribed, then at some place to be appointed by the directors.

General meet-
ings.

Ordinary
meetings to be
held half-
yearly.

LXVII. No matters, except such as are appointed by this or the special act to be done at an ordinary meeting, shall be transacted at any such meeting, unless special notice of such matters have been given in the advertisement convening such meeting.

Business at
ordinary
meetings.

LXVIII. Every general meeting of the shareholders, other than an ordinary meeting, shall be called an "extraordinary meeting;" and such meetings may be convened by the directors at such times as they think fit.

Extraordinary
meetings.

LXIX. No extraordinary meeting shall enter upon any business not set forth in the notice upon which it shall have been convened.

Business at
extraordinary
meetings.

LXX. It shall be lawful for the prescribed number of shareholders, holding in the aggregate shares to the prescribed amount, or, where the number of shareholders or amount of shares shall not be prescribed, it shall be lawful for twenty or more shareholders holding in the aggregate not less than one-tenth of the capital of the company, by writing under their hands, at any time to require the directors to call an extraordinary meeting of the company; and such requisition shall fully express the object of the meeting required to be called, and shall be left at the office of the company, or given to at least three directors, or left at their last or usual places of abode; and forthwith upon the receipt of such requisition the directors shall convene a meeting of the shareholders; and if for twenty-one days after such notice the directors fail to call such meeting, the prescribed number, or such other number as aforesaid, of shareholders, qualified as aforesaid, may call such meeting, by giving fourteen days public notice thereof.

Extraordinary
meetings may
be required by
shareholders.

LXXI. Fourteen days public notice at the least of all meetings, whether ordinary or extraordinary, shall be given by advertisement, which shall specify the place, the day, and the hour of meeting; and every notice of an extraordinary meeting, or of an ordinary meeting if any other business than the business hereby or by the special act appointed for ordinary meetings is to be done thereat, shall specify the purpose for which the meeting is called.

Notice of
meetings.

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clauses con-
solidation.

Quorum for a
general meet-
ing.

LXXII. In order to constitute a meeting (whether ordinary or extraordinary) there shall be present, either personally or by proxy, the prescribed quorum, and if no quorum be prescribed then shareholders holding in the aggregate not less than one-twentieth of the capital of the company, and being in number not less than one for every five hundred pounds of such required proportion of capital, unless such number would be more than twenty, in which case twenty shareholders holding not less than one-twentieth of the capital of the company, shall be the quorum; and if within one hour from the time appointed for such meeting the said quorum be not present no business shall be transacted at the meeting, other than the declaring of a dividend, in case that shall be one of the objects of the meeting, but such meeting shall, except in the case of a meeting for the election of directors, hereinafter mentioned, be held to be adjourned *sine die*.

Chairman at
general meet-
ings.

LXXIII. At every meeting of the company one or other of the following persons shall preside as chairman; that is to say, the chairman of the directors, or in his absence the deputy chairman (if any), or in the absence of the chairman and deputy chairman some one of the directors of the company to be chosen for that purpose by the meeting, or in the absence of the chairman and deputy chairman and of all the directors, any shareholder to be chosen for that purpose by a majority of the shareholders present at such meeting.

Business at
meetings and
adjournments.

LXXIV. The shareholders present at any such meeting shall proceed in the execution of the powers of the company with respect to the matters for which such meeting shall have been convened, and those only; and every such meeting may be adjourned from time to time, and from place to place; and no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which such adjournment took place.

Votes of share-
holders.

LXXV. At all general meetings of the company every shareholder shall be entitled to vote according to the prescribed scale of voting, and where no scale shall be prescribed every shareholder shall have one vote for every share up to ten, and he shall have an additional vote for every five shares beyond the first ten shares held by him up to one hundred, and an additional vote for every ten shares held by him beyond the first hundred shares; provided always, that no shareholder shall be entitled to vote at any meeting unless he shall have paid all the calls then due upon the shares held by him.

Manner of
voting.

LXXVI. The votes may be given either personally or by proxies, being shareholders, authorized by writing according to the form in the schedule (F.) to this act annexed, or in a form to the like effect, under the hand of the shareholder nominating such proxy, or if such shareholder be a corporation, then under their common seal; and every proposition at any such meeting shall be determined by the majority of votes of the parties present, including proxies, the chairman of the meeting being entitled to vote, not only as a principal and proxy, but to have a casting vote if there be an equality of votes.

Regulations as
to proxies.

LXXVII. No person shall be entitled to vote as a proxy unless the instrument appointing such proxy have been transmitted to the secre-

tary of the company the prescribed period, or, if no period be prescribed, not less than forty-eight hours before the time appointed for holding the meeting at which such proxy is to be used.

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solidation.

LXXVIII. If several persons be jointly entitled to a share, the person whose name stands first in the register of shareholders as one of the holders of such share shall, for the purpose of voting at any meeting, be deemed the sole proprietor thereof; and on all occasions the vote of such first named shareholder, either in person or by proxy, shall be allowed as the vote in respect of such share, without proof of the concurrence of the other holders thereof.

Votes of joint
shareholders.

LXXIX. If any shareholder be a lunatic or idiot, such lunatic or idiot may vote by his committee; and if any shareholder be a minor he may vote by his guardian or any one of his guardians; and every such vote may be given either in person or by proxy.

Votes of lunatics and
minors, &c.

LXXX. Whenever in this or the special act the consent of any particular majority of votes at any meeting of the company is required in order to authorize any proceeding of the company, such particular majority shall only be required to be proved in the event of a poll being demanded at such meeting; and if such poll be not demanded, then a declaration by the chairman that the resolution authorizing such proceeding has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient authority for such proceeding, without proof of the number or proportion of votes recorded in favour of or against the same.

Proof of a particular
majority of votes
only required
in the event of
a poll being
demanded.

And with respect to the appointment and rotation of directors, be it enacted as follows:

*Appointment
and rotation of
directors.*

LXXXI. The number of directors shall be the prescribed number.

Number of
directors.

LXXXII. Where the company shall be authorized by the special act to increase or to reduce the number of the directors it shall be lawful for the company, from time to time, in general meeting, after due notice for that purpose, to increase or reduce the number of the directors within the prescribed limits, if any, and to determine the order of rotation in which such reduced or increased number shall go out of office, and what number shall be a quorum at their meetings.

Power to vary
the number of
directors.

LXXXIII. The directors appointed by the special act shall, unless thereby otherwise provided, continue in office until the first ordinary meeting to be held in the year next after that in which the special act shall have passed; and at such meeting the shareholders present, personally or by proxy, may either continue in office the directors appointed by the special act, or any number of them, or may elect a new body of directors, or directors to supply the places of those not continued in office, the directors appointed by the special act being eligible as members of such new body; and at the first ordinary meeting to be held every year thereafter the shareholders present, personally or by proxy, shall elect persons to supply the places of the directors then retiring from office, agreeably to the provisions hereinafter contained; and the several persons elected at any such meeting being neither removed nor disqualified, nor having re-

Election of
directors.

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signed, shall continue to be directors until others are elected in their stead, as hereinafter mentioned.

Existing directors continued on failure of meeting for election of directors.

LXXXIV. If at any meeting at which an election of directors ought to take place the prescribed quorum shall not be present within one hour from the time appointed for the meeting no election of directors shall be made, but such meeting shall stand adjourned to the following day at the same time and place; and if at the meeting so adjourned the prescribed quorum be not present within one hour from the time appointed for the meeting the existing directors shall continue to act and retain their powers until new directors be appointed at the first ordinary meeting of the following year.

Qualification of directors.

LXXXV. No person shall be capable of being a director unless he be a shareholder, nor unless he be possessed of the prescribed number, if any, of shares; and no person holding an office or place of trust or profit under the company, or interested in any contract with the company, shall be capable of being a director; and no director shall be capable of accepting any other office or place of trust or profit under the company, or of being interested in any contract with the company, during the time he shall be a director.

Cases in which office of director shall become vacant.

LXXXVI. If any of the directors at any time subsequently to his election accept or continue to hold any other office or place of trust or profit under the company, or be either directly or indirectly concerned in any contract with the company, or participate in any manner in the profits of any work to be done for the company, or if such director at any time cease to be a holder of the prescribed number of shares in the company, then in any of the cases aforesaid the office of such director shall become vacant, and thenceforth he shall cease from voting or acting as a director.

Shareholder of an incorporated joint stock company not disqualified by reason of contracts.

LXXXVII. Provided always, that no person, being a shareholder or member of any incorporated joint stock company, shall be disqualified or prevented from acting as a director by reason of any contract entered into between such joint stock company and the company incorporated by the special act; but no such director, being a shareholder or member of such joint stock company, shall vote on any question as to any contract with such joint stock company.

Rotation of directors.

LXXXVIII. The directors appointed by the special act, and continued in office as aforesaid, or the directors elected to supply the places of those retiring as aforesaid, shall, subject to the provision herein-before contained for increasing or reducing the number of directors, retire from office at the times and in the proportions following, the individuals to retire being in each instance determined by ballot among the directors, unless they shall otherwise agree; (that is to say,)

At the end of the first year after the first election of directors the prescribed number, and if no number be prescribed one-third of such directors, to be determined by ballot among themselves, unless they shall otherwise agree, shall go out of office:

At the end of the second year the prescribed number, and if no number be prescribed one-half of the remaining number of such directors, to be determined in like manner, shall go out of office:

At the end of the third year the prescribed number, and if no number be prescribed the remainder of such directors, shall go out of office :

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And in each instance the places of the retiring directors shall be supplied by an equal number of qualified shareholders; and at the first ordinary meeting in every subsequent year the prescribed number, and if no number be prescribed one-third of the directors, being those who have been longest in office, shall go out of office, and their places shall be supplied in like manner; nevertheless every director so retiring from office may be re-elected immediately or at any future time, and after such re-election shall, with reference to the going out by rotation, be considered as a new director: provided always, that if the prescribed number of directors be some number not divisible by three, and the number of directors to retire be not prescribed, the directors shall in each case determine what number of directors, as nearly one-third as may be, shall go out of office, so that the whole number shall go out of office in three years.

LXXXIX. If any director die, or resign, or become disqualified or incompetent to act as a director, or cease to be a director by any other cause than that of going out of office by rotation as aforesaid, the remaining directors, if they think proper so to do, may elect in his place some other shareholder, duly qualified, to be a director; and the shareholder so elected to fill up any such vacancy shall continue in office as a director so long only as the person in whose place he shall have been elected would have been entitled to continue if he had remained in office.

Supply of occasional vacancies in office of directors.

And with respect to the powers of the directors, and the powers of the company to be exercised only in general meeting, be it enacted as follows :

Powers of directors.

XC. The directors shall have the management and superintendence of the affairs of the company, and they may lawfully exercise all the powers of the company, except as to such matters as are directed by this or the special act to be transacted by a general meeting of the company, but all the powers so to be exercised shall be exercised in accordance with and subject to the provisions of this and the special act: and the exercise of all such powers shall be subject also to the control and regulation of any general meeting specially convened for the purpose, but not so as to render invalid any act done by the directors prior to any resolution passed by such general meeting.

Powers of the company to be exercised by the directors.

XCI. Except as otherwise provided by the special act, the following powers of the company, (that is to say,) the choice and removal of the directors except as hereinbefore mentioned, and the increasing or reducing of their number where authorized by the special act, the choice of auditors, the determination as to the remuneration of the directors, auditors, treasurer, and secretary, the determination as to the amount of money to be borrowed on mortgage, the determination as to the augmentation of capital, and the declaration of dividends, shall be exercised only at a general meeting of the company.

Powers of the company not to be exercised by the directors.

And with respect to the proceedings and liabilities of the directors, be it enacted as follows :

Proceedings of Directors.

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clauses con-
solidation.

Meetings of
Directors.

XCII. The directors shall hold meetings at such times as they shall appoint for the purpose, and they may meet and adjourn as they think proper, from time to time, and from place to place; and at any time any two of the directors may require the secretary to call a meeting of the directors, and in order to constitute a meeting of directors there shall be present at the least the prescribed quorum, and when no quorum shall be prescribed there shall be present at least one-third of the directors; and all questions at any such meeting shall be determined by the majority of votes of the directors present, and in case of an equal division of votes the chairman shall have a casting vote in addition to his vote as one of the directors.

Permanent
chairman of
directors.

XCIII. At the first meeting of directors held after the passing of the special act, and at the first meeting of the directors held after each annual appointment of directors, the directors present at such meeting shall choose one of the directors to act as chairman of the directors for the year following such choice, and shall also, if they think fit, choose another director to act as deputy chairman for the same period; and if the chairman or deputy chairman die or resign, or cease to be a director, or otherwise become disqualified to act, the directors present at the meeting next after the occurrence of such vacancy shall choose some other of the directors to fill such vacancy; and every such chairman or deputy chairman so elected as last aforesaid shall continue in office so long only as the person in whose place he may be so elected would have been entitled to continue if such death, resignation, removal, or disqualification had not happened.

Occasional
chairman of
directors.

XCIV. If at any meeting of the directors neither the chairman nor deputy chairman be present the directors present shall choose some one of their number to be chairman of such meeting.

Committees of
directors.

Powers of
committees.

XCv. It shall be lawful for the directors to appoint one or more committees, consisting of such number of directors as they think fit, within the prescribed limits, if any, and they may grant to such committees respectively power on behalf of the company to do any acts relating to the affairs of the company which the directors could lawfully do, and which they shall from time to time think proper to intrust to them.

Meetings of
committees.

XCvi. The said committees may meet from time to time, and may adjourn from place to place, as they think proper, for carrying into effect the purposes of their appointment; and no such committee shall exercise the powers intrusted to them except at a meeting at which there shall be present the prescribed quorum, or if no quorum be prescribed then a quorum to be fixed for that purpose by the general body of directors; and at all meetings of the committees one of the members present shall be appointed chairman; and all questions at any meeting of the committee shall be determined by a majority of votes of the members present, and in case of an equal division of votes the chairman shall have a casting vote in addition to his vote as a member of the committee.

Contracts by

XCvii. The power which may be granted to any such committee

to make contracts, as well as the power of the directors to make contracts, on behalf of the company, may lawfully be exercised as follows; (that is to say.)

Companies clauses consolidation.

With respect to any contract which, if made between private persons, would be by law required to be in writing, and under seal, such committee or the directors may make such contract on behalf of the company in writing, and under the common seal of the company, and in the same manner may vary or discharge the same:

committee or directors, how to be entered into.

With respect to any contract which, if made between private persons, would be by law required to be in writing, and signed by the parties to be charged therewith, then such committee or the directors may make such contract on behalf of the company in writing, signed by such committee or any two of them, or any two of the directors, and in the same manner may vary or discharge the same:

With respect to any contract which, if made between private persons, would by law be valid although made by parol only, and not reduced into writing, such committee or the directors may make such contract on behalf of the company by parol only, without writing, and in the same manner may vary or discharge the same:

And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the company and their successors, and all other parties thereto, their heirs, executors, or administrators, as the case may be; and on any default in the execution of any such contract, either by the company or any other party thereto, such actions or suits may be brought, either by or against the company, as might be brought had the same contracts been made between private persons only.

XCVIII. The directors shall cause notes, minutes, or copies, as the case may require, of all appointments made or contracts entered into by the directors, and of the orders and proceedings of all meetings of the company, and of the directors and committees of directors, to be duly entered in books, to be from time to time provided for the purpose, which shall be kept under the superintendence of the directors; and every such entry shall be signed by the chairman of such meeting; and such entry, so signed, shall be received as evidence in all courts, and before all judges, justices, and others, without proof of such respective meetings having been duly convened or held, or of the persons making or entering such orders or proceedings being shareholders or directors or members of committee respectively, or of the signature of the chairman, or of the fact of his having been chairman, all of which last-mentioned matters shall be presumed, until the contrary be proved.

Proceedings to be entered in a book, and to be evidence.

XCIX. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding it may be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were or was disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Informalities in appointment of directors not to invalidate proceedings.

Companies
clauses con-
solidation.

Directors not
to be person-
ally liable.

Indemnity of
directors.

Auditors.

Election of
auditors.

Qualification
of auditors.

Rotation of
auditors.

Vacancies in
office of
auditor.

Failure of
meeting to
elect auditor.

C. No director, by being party to or executing in his capacity of director any contract or other instrument on behalf of the company, or otherwise lawfully executing any of the powers given to the directors, shall be subject to be sued or prosecuted, either individually or collectively, by any person whomsoever; and the bodies or goods or lands of the directors shall not be liable to execution of any legal process by reason of any contract or other instrument so entered into, signed, or executed by them, or by reason of any other lawful act done by them in the execution of any of their powers as directors; and the directors, their heirs, executors, and administrators, shall be indemnified out of the capital of the company for all payments made or liability incurred in respect of any acts done by them, and for all losses, costs, and damages which they may incur in the execution of the powers granted to them; and the directors for the time being of the company may apply the existing funds and capital of the company for the purposes of such indemnity, and may, if necessary for that purpose, make calls of the capital remaining unpaid, if any.

And with respect to the appointment and duties of auditors, be it enacted as follows:

CI. Except where by the special act auditors shall be directed to be appointed otherwise than by the company, the company shall, at the first ordinary meeting after the passing of the special act, elect the prescribed number of auditors, and if no number is prescribed two auditors, in like manner as is provided for the election of directors; and at the first ordinary meeting of the company in each year thereafter the company shall in like manner elect an auditor to supply the place of the auditor then retiring from office, according to the provision hereinafter contained; and every auditor elected as hereinbefore provided, being neither removed nor disqualified, nor having resigned, shall continue to be an auditor until another be elected in his stead.

CII. Where no other qualification shall be prescribed by the special act, every auditor shall have at least one share in the undertaking; and he shall not hold any office in the company, nor be in any other manner interested in its concerns, except as a shareholder.

CIII. One of such auditors (to be determined in the first instance by ballot between themselves, unless they shall otherwise agree, and afterwards by seniority,) shall go out of office at the first ordinary meeting in each year; but the auditor so going out shall be immediately re-eligible, and after any such re-election shall, with respect to the going out of office by rotation, be deemed a new auditor.

CIV. If any vacancy take place among the auditors in the course of the current year, then at any general meeting of the company the vacancy may, if the company think fit, be supplied by election of the shareholders.

CV. The provision of this act respecting the failure of an ordinary meeting at which directors ought to be chosen shall apply, *mutatis*

mutandis, to any ordinary meeting at which an auditor ought to be appointed.

CVI. The directors shall deliver to such auditors the half-yearly or other periodical accounts and balance sheet, fourteen days at the least before the ensuing ordinary meeting at which the same are required to be produced to the shareholders as hereinafter provided.

CVII. It shall be the duty of such auditors to receive from the directors the half-yearly or other periodical accounts and balance sheet required to be presented to the shareholders, and to examine the same.

CVIII. It shall be lawful for the auditors to employ such accountants and other persons as they may think proper, at the expense of the company, and they shall either make a special report on the said accounts, or simply confirm the same; and such report or confirmation shall be read, together with the report of the directors, at the ordinary meeting.

And with respect to the accountability of the officers of the company, be it enacted as follows:

CIX. Before any person intrusted with the custody or control of monies, whether treasurer, collector, or other officer of the company, shall enter upon his office, the directors shall take sufficient security from him for the faithful execution of his office.

CX. Every officer employed by the company shall from time to time, when required by the directors, make out and deliver to them, or to any person appointed by them for that purpose, a true and perfect account in writing under his hand of all monies received by him on behalf of the company; and such account shall state how, and to whom, and for what purpose such monies shall have been disposed of; and, together with such account, such officer shall deliver the vouchers and receipts for such payments; and every such officer shall pay to the directors, or to any person appointed by them to receive the same, all monies which shall appear to be owing from him upon the balance of such accounts.

CXI. If any such officer fail to render such account, or to produce and deliver up all the vouchers and receipts relating to the same in his possession or power, or to pay the balance thereof when thereunto required, or if for three days after being thereunto required he fail to deliver up to the directors, or to any person appointed by them to receive the same, all papers and writings, property, effects, matters, and things, in his possession or power, relating to the execution of this or the special act, or any act incorporated therewith, or belonging to the company, then, on complaint thereof being made to a justice, such justice shall summon such officer to appear before two or more justices at a time and place to be set forth in such summons, to answer such charge; and upon the appearance of such officer, or in his absence upon proof that such summons was personally served upon him, or left at his last known place of abode, such justices may hear and determine the matter in a summary way, and may adjust and

Companies
clauses con-
solidation.

Delivery of
balance sheet,
&c. by direc-
tors to auditors.

Duty of
auditors.

Powers of
auditors.

*Accountability
of officers.*

Security to be
taken from
officers in-
trusted with
money.

Officers to
account, on
demand.

Summary
remedy against
parties failing
to account.

Companies clauses consolidation.

declare the balance owing by such officer; and if it appear, either upon confession of such officer or upon evidence, or upon inspection of the account, that any monies of the company are in the hands of such officer, or owing by him to the company, such justices may order such officer to pay the same; and if he fail to pay the amount it shall be lawful for such justices to grant a warrant to levy the same by distress, or, in default thereof, to commit the offender to gaol, there to remain without bail for a period not exceeding three months, unless the same be sooner paid.

Officers refusing to deliver up documents, &c. to be imprisoned.

CXII. If any such officer refuse to make out such account in writing, or to produce and deliver to the justices the several vouchers and receipts relating thereto, or to deliver up any books, papers, or writings, property, effects, matters, or things, in his possession or power, belonging to the company, such justices may lawfully commit such offender to gaol, there to remain until he shall have delivered up all the vouchers and receipts, if any, in his possession or power, relating to such accounts, and have delivered up all books, papers, writings, property, effects, matters, and things, if any, in his possession or power, belonging to the company.

Where officer abscond a warrant may be issued in the first instance.

CXIII. Provided always, that if any director or other person acting on behalf of the company shall make oath that he has good reason to believe, upon grounds to be stated in his deposition, and does believe, that it is the intention of any such officer as aforesaid to abscond, it shall be lawful for the justice before whom the complaint is made, instead of issuing his summons, to issue his warrant for the bringing such officer before such two justices as aforesaid; but no person executing such warrant shall keep such officer in custody longer than twenty-four hours, without bringing him before some justice; and it shall be lawful for the justice before whom such officer may be brought either to discharge such officer, if he think there is no sufficient ground for his detention, or to order such officer to be detained in custody, so as to be brought before two justices, at a time and place to be named in such order, unless such officer give bail to the satisfaction of such justice for his appearance before such justices to answer the complaint of the company.

Sureties not to be discharged.

CXIV. No such proceeding against or dealing with any such officer as aforesaid shall deprive the company of any remedy which they might otherwise have against such officer, or any surety of such officer.

Accounts.

Accounts to be kept.

And with respect to the keeping of accounts, and the right of inspection thereof by the shareholders, be it enacted as follows:

CXV. The directors shall cause full and true accounts to be kept of all sums of money received or expended on account of the company by the directors and all persons employed by or under them, and of the matters and things for which such sums of money shall have been received or disbursed and paid.

Books to be balanced.

CXVI. The books of the company shall be balanced at the prescribed periods, and, if no periods be prescribed, fourteen days at least before each ordinary meeting; and forthwith on the books being

so balanced an exact balance sheet shall be made up, which shall exhibit a true statement of the capital stock, credits, and property of every description belonging to the company, and the debts due by the company at the date of making such balance sheet, and a distinct view of the profit or loss which shall have arisen on the transactions of the company in the course of the preceding half year; and previously to each ordinary meeting such balance sheet shall be examined by the directors, or any three of their number, and shall be signed by the chairman or deputy chairman of the directors.

Companies clauses consolidation.

CXVII. The books so balanced, together with such balance sheet as aforesaid, shall for the prescribed periods, and if no periods be prescribed for fourteen days previous to each ordinary meeting, and for one month thereafter, be open for the inspection of the shareholders at the principal office or place of business of the company; but the shareholders shall not be entitled at any time, except during the periods aforesaid, to demand the inspection of such books, unless in virtue of a written order signed by three of the directors.

Inspection of accounts by shareholders at stated times.

CXVIII. The directors shall produce to the shareholders assembled at such ordinary meeting the said balance sheet, applicable to the period immediately preceding such meeting, together with the report of the auditors thereon, as hereinbefore provided.

Balance sheet to be produced at the meeting.

CXIX. The directors shall appoint a book-keeper to enter the accounts aforesaid in books to be provided for the purpose; and every such book-keeper shall permit any shareholder to inspect such books, and to take copies or extracts therefrom, at any reasonable time during the prescribed periods, and if no periods be prescribed during one fortnight before and one month after every ordinary meeting; and if he fail to permit any such shareholder to inspect such books, or take copies or extracts therefrom, during the periods aforesaid, he shall forfeit to such shareholder for every such offence a sum not exceeding five pounds.

Book keeper to allow inspection of the accounts at the appointed times.

And with respect to the making of dividends, be it enacted as follows:

Dividends.

CXX. Previously to every ordinary meeting at which a dividend is intended to be declared the directors shall cause a scheme to be prepared, showing the profits, if any, of the company for the period current since the preceding ordinary meeting at which a dividend was declared, and apportioning the same, or so much thereof as they may consider applicable to the purposes of dividend, among the shareholders, according to the shares held by them respectively, the amount paid thereon, and the periods during which the same may have been paid, and shall exhibit such scheme at such ordinary meeting, and at such meeting a dividend may be declared according to such scheme.

Previously to declaration of dividends a scheme to be prepared.

CXXI. The company shall not make any dividend whereby their capital stock will be in any degree reduced: provided always, that the word "dividend" shall not be construed to apply to a return of any portion of the capital stock, with the consent of all the mortgagees and bond creditors of the company, due notice being given

Dividend not to be made so as to reduce capital.

Companies clauses consolidation.

for that purpose at an extraordinary meeting to be convened for that object.

Power to directors to set apart a fund for contingencies.

CXXII. Before apportioning the profits to be divided among the shareholders the directors may, if they think fit, set aside thereout such sum as they may think proper to meet contingencies, or for enlarging, repairing, or improving the works connected with the undertaking, or any part thereof, and may divide the balance only among the shareholders.

Dividend not to be paid unless all calls paid.

CXXIII. No dividend shall be paid in respect of any share until all calls then due in respect of that and every other share held by the person to whom such dividend may be payable shall have been paid.

Bye laws.

And with respect to the making of bye laws, be it enacted as follows:

Power to make bye laws for the officers of the company.

CXXIV. It shall be lawful for the company from time to time to make such bye laws as they think fit, for the purpose of regulating the conduct of the officers and servants of the company, and for providing for the due management of the affairs of the company in all respects whatsoever, and from time to time to alter or repeal any such bye laws, and make others, provided such bye laws be not repugnant to the laws of that part of the united kingdom where the same are to have effect, or to the provisions of this or the special act; and such bye laws shall be reduced into writing, and shall have affixed thereto the common seal of the company; and a copy of such bye laws shall be given to every officer and servant of the company affected thereby.

Fines for breach of such bye laws.

CXXV. It shall be lawful for the company, by such bye laws, to impose such reasonable penalties upon all persons, being officers or servants of the company, offending against such bye laws, as the company think fit, not exceeding five pounds for any one offence.

Bye laws to be so framed as that penalties may be mitigated.

CXXVI. All the bye laws to be made by the company shall be so framed as to allow the justice before whom any penalty imposed thereby may be sought to be recovered to order a part only of such penalty to be paid, if such justice shall think fit.

Evidence of bye laws.

CXXVII. The production of a written or printed copy of the bye laws of the company, having the common seal of the company affixed thereto, shall be sufficient evidence of such bye laws in all cases of prosecution under the same.

Arbitration.

And with respect to the settlement of disputes by arbitration, be it enacted as follows:

Appointment of arbitrator when questions are to be determined by arbitration.

CXXVIII. When any dispute authorized or directed by this or the special act, or any act incorporated therewith, to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall by writing under his hand nominate and appoint an arbitrator, to whom such dispute shall be referred; and after any such appointment shall have been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as such revocation; and if for the

space of fourteen days after any such dispute shall have arisen, and after a request in writing shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute; and in such case the award or determination of such single arbitrator shall be final.

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clauses con-
solidation.

CXXXIX. If before the matters so referred shall be determined any arbitrator appointed by either party die, or become incapable or refuse or for seven days neglect to act as arbitrator, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place; and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so, the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so to be substituted as aforesaid, shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death, refusal, or disability as aforesaid.

Vacancy of
arbitrator to be
supplied.

CXXX. Where more than one arbitrator shall have been appointed such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ; and if such umpire shall die, or refuse or for seven days neglect to act, they shall forthwith after such death, refusal, or neglect appoint another umpire in his place; and the decision of every such umpire on the matters so referred to him shall be final.

Appointment
of umpire.

CXXXI. If in either of the cases aforesaid the said arbitrators shall refuse, or shall, for seven days after request of either party to such arbitration, neglect to appoint an umpire, it shall be lawful for the Board of Trade, if they think fit, in any case in which a Railway Company shall be one party to the arbitration, on the application of either party to such arbitration, to appoint an umpire; and the decision of such umpire on the matters on which the arbitrators shall differ shall be final.

Board of Trade
empowered to
appoint an um-
pire, on neglect
of the arbitra-
tors, in case of
railway com-
panies.

CXXXII. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

Power of arbi-
trators to call
for books, &c.

CXXXIII. Except where by this or the special act, or any act incorporated therewith, it shall be otherwise provided, the costs of and attending every such arbitration to be determined by the arbitrators shall be in the discretion of the arbitrators or their umpires, as the case may be.

Costs to be in
the discretion
of the arbitra-
tors.

CXXXIV. The submission to any such arbitration may be made a rule of any of the superior courts, on the application of either of the parties.

Submission to
arbitration to
be made rule of
court.

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clauses con-
solidation.

Notices.

Service of
notices upon
company.

And with respect to the giving of notice, be it enacted as follows :
CXXXV. Any summons or notice, or any writ, or other proceeding, at law or in equity, requiring to be served upon the company, may be served by the same being left at, or transmitted through the post directed to the principal office of the company, or one of their principal offices where there shall be more than one, or being given personally to the secretary, or in case there be no secretary then by being given to any one director of the company.

Service by
company on
shareholders.

CXXXVI. Notices requiring to be served by the company upon the shareholders may, unless expressly required to be served personally, be served by the same being transmitted through the post directed according to the registered address or other known address of the shareholder, within such period as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the giving of such notice ; and in proving such service it shall be sufficient to prove that such notice was properly directed, and that it was so put into the Post Office.

Notices to
joint proprie-
tors of shares.

CXXXVII. All notices directed to be given to the shareholders shall, with respect to any share to which persons are jointly entitled, be given to whichever of the said persons shall be named first in the register of shareholders ; and notice so given shall be sufficient notice to all the proprietors of such share.

Notices by
advertisement.

CXXXVIII. All notices required by this or the special act, or any act incorporated therewith, to be given by advertisement, shall be advertised in the prescribed newspaper, or if no newspaper be prescribed, or if the prescribed newspaper cease to be published, in a newspaper circulating in the district within which the company's principal place of business shall be situated.

Authentication
of notices.

CXXXIX. Every summons, notice, or other such document requiring authentication by the company, may be signed by two directors, or by the treasurer or the secretary of the company, and need not be under the common seal of the company, and the same may be in writing or in print, or partly in writing and partly in print.

Proof of debts
in bankruptcy.

CXL. And be it enacted, that if any person against whom the company shall have any claim or demand become bankrupt, or take the benefit of any act for the relief of insolvent debtors, it shall be lawful for the secretary or treasurer of the company, in all proceedings against the estate of such bankrupt or insolvent, or under any fiat, sequestration, or act of insolvency against such bankrupt or insolvent, to represent the company, and act in their behalf, in all respects as if such claim or demand had been the claim or demand of such secretary or treasurer, and not of the company.

Tender of
amends.

CXLI. And be it enacted, that if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special act, or by virtue of any power or authority thereby given, and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such

last-mentioned party shall not recover in any such action; and if no such tender shall have been made it shall be lawful for the defendant, by leave of the court where such action shall be pending, at any time before issue joined, to pay into court such sum of money as he shall think fit; and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court.

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clauses con-
solidation.

And with respect to the recovery of damages not specially provided for, and penalties, be it enacted as follows :

*Recovery of
Damages and
Penalties.*

CXLII. In all cases where any damages, costs, or expenses are by this or the special act, or any act incorporated therewith, directed to be paid, and the method of ascertaining the amount or enforcing the payment thereof is not provided for, such amount, in case of dispute, shall be ascertained and determined by two justices; and if the amount so ascertained be not paid by the company or other party liable to pay the same within seven days after demand, the amount may be recovered by distress of the goods of the company or other party liable as aforesaid; and the justices by whom the same shall have been ordered to be paid, or either of them, on application, shall issue their or his warrant accordingly.

Provisions for
damages not
otherwise
provided for.

CXLIII. If sufficient goods of the company cannot be found whereon to levy any such damages, costs, or expenses, payable by the company, the same may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the company; and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence; and if such treasurer pay any money under such distress as aforesaid, he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the company coming into his custody or control, or he may sue the company for the same.

Distress
against the
treasurer.

CXLIV. Where in this or the special act, or any act incorporated therewith, any question of compensation, expenses, charges or damages is referred to the determination of any one justice, or more, it shall be lawful for any justice, upon the application of either party, to summon the other party to appear before one justice, or before two justices, as the case may require, at a time and place to be named in such summons; and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such one justice, or such two justices, as the case may be, to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, on oath; and the costs of every such inquiry shall be in the discretion of such justices, and they shall determine the amount thereof.

Method of
proceeding
before justices
in questions of
damages, &c.

CXLV. The company shall publish the short particulars of the several offences for which any penalty is imposed by this or the special act, or any act incorporated therewith, or by any bye law of the company affecting other persons than the shareholders, officers, or

Publication of
penalties.

Companies clauses consolidation.

servants of the company, and of the amount of every such penalty, and shall cause such particulars to be painted on a board, or printed upon paper and pasted thereon, and shall cause such board to be hung up or affixed on some conspicuous part of the principal place of business of the company, and where any such penalties are of local application shall cause such boards to be affixed in some conspicuous place in the immediate neighbourhood to which such penalties are applicable or have reference; and such particulars shall be renewed as often as the same or any part thereof is obliterated or destroyed; and no such penalty shall be recoverable unless it shall have been published and kept published in the manner herein-before required.

Penalty for defacing boards used for such publication.

CXLVI. If any person pull down or injure any board put up or affixed as required by this or the special act, or any act incorporated therewith, for the purpose of publishing any bye law or penalty, or shall obliterate any of the letters or figures thereon, he shall forfeit for every such offence a sum not exceeding five pounds, and shall defray the expenses attending the restoration of such board.

Penalties to be summarily recovered before two justices.

CXLVII. Every penalty or forfeiture imposed by this or the special act, or any act incorporated therewith, or by any bye law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices; and on complaint being made to any justice he shall issue a summons, requiring the party complained against to appear before two justices at a time and place to be named in such summons; and every such summons shall be served on the party offending, either in person or by leaving the same with some inmate at his usual place of abode; and upon the appearance of the party complained against, or in his absence, after proof of the due service of such summons, it shall be lawful for two justices to proceed to the hearing of the complaint, and that although no information in writing or in print shall have been exhibited before them, and upon proof of the offence, either by the confession of the party complained against, or upon the oath of one credible witness or more, it shall be lawful for such justices to convict the offender, and upon such conviction to adjudge the offender to pay the penalty or forfeiture incurred, as well as such costs attending the conviction as such justices shall think fit.

Penalties may be levied by distress.

CXLVIII. If forthwith upon any such adjudication as aforesaid, the amount of the penalty or forfeiture, and of such costs as aforesaid, be not paid, the amount of such penalty and costs shall be levied by distress; and such justices, or either of them, shall issue their or his warrant of distress accordingly.

Imprisonment in default of distress.

CXLIX. It shall be lawful for any such justice to order any offender so convicted as aforesaid to be detained and kept in safe custody until return can be conveniently made to the warrant of distress to be issued for levying such penalty or forfeiture, and costs, unless the offender give sufficient security, by way of recognizance or otherwise, to the satisfaction of the justice, for his appearance before him on the day appointed for such return, such day not being more than eight days from the time of taking such security; but if before issuing such warrant of distress it shall appear to the justice, by the

admission of the offender or otherwise, that no sufficient distress can be had within the jurisdiction of such justice whereon to levy such penalty or forfeiture, and costs, he may, if he thinks fit, refrain from issuing such warrant of distress; and in such case, or if such warrant shall have been issued, and upon the return thereof such insufficiency as aforesaid shall be made to appear to the justice, then such justice shall, by warrant, cause such offender to be committed to gaol, there to remain without bail for any term not exceeding three months, unless such penalty or forfeiture, and costs, be sooner paid and satisfied.

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CL. Where in this or the special act, or any act incorporated therewith, any sum of money, whether in the nature of penalty or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money, and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

Distress how to
to be levied.

CLI. No distress levied by virtue of this or the special act, or any act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

Distress not
unlawful for
want of form.

CLII. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one-half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, for the benefit of the poor of such parish; or if the place wherein the offence shall have been committed shall be extra-parochial, then such justices shall direct such remainder to be applied for the benefit of the poor of such extra-parochial place, or of any adjoining parish or district, and shall order the same to be paid over to the proper officer for that purpose.

Application of
penalties.

CLIII. No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this or the special act, or any act incorporated therewith, for any offence made cognizable before a justice, unless the complaint respecting such offence shall have been made before such justice within six months next after the commission of such offence.

Penalties to be
sued for within
six months.

CLIV. If, through any act, neglect, or default on account whereof any person shall have incurred any penalty imposed by this or the special act, or any act incorporated therewith, any damage to the property of the company shall have been committed by such person he shall be liable to make good such damage, as well as to pay such

Damage to be
made good in
addition to
penalty.

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penalty; and the amount of such damages shall, in case of dispute, be determined by the justices by whom the party incurring such penalty shall have been convicted; and on nonpayment of such damages, on demand, the same shall be levied by distress, and such justices, or one of them, shall issue their or his warrant accordingly.

Penalty on witnesses making default.

CLV. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction, under the provisions of this or the special act, or any act incorporated therewith, at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence.

Transient offenders.

CLVI. It shall be lawful for any officer or agent of the company, and all persons called by him to his assistance, to seize and detain any person who shall have committed any offence against the provisions of this or the special act, or any act incorporated therewith, and whose name and residence shall be unknown to such officer or agent, and convey him, with all convenient despatch, before some justice, without any warrant or other authority than this or the special act; and such justice shall proceed with all convenient despatch to the hearing and determining of the complaint against such offender.

Form of conviction.

CLVII. The justices before whom any person shall be convicted of any offence against this or the special act, or any act incorporated therewith, may cause the conviction to be drawn up according to the form in the schedule (G.) to this act annexed.

Proceedings not to be quashed for want of form.

CLVIII. No proceeding in pursuance of this or the special act, or any act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by certiorari or otherwise into any of the superior courts.

Appeal.

Parties allowed to appeal to quarter sessions on giving security.

CLIX. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special act, or any act incorporated therewith, such party may appeal to the general quarter sessions for the county or place in which the cause of appeal shall have arisen; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days' notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such notice enter into recognizances, with two sufficient sureties, before a justice, conditioned duly to prosecute such appeal, and to abide the order of the court thereon.

CLX. At the quarter sessions for which such notice shall be given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

And with respect to the provision to be made for affording access to the special act by all parties interested, be it enacted as follows:

CLXI. The company shall, at all times after the expiration of six months after the passing of the special act, keep in their principal office of business a copy of the special act, printed by the printers to her Majesty, or some of them; and where the undertaking shall be a railway, canal, or other like undertaking, the works of which shall not be confined to one town or place, shall also, within the space of such six months, deposit in the office of each of the clerks of the peace of the several counties into which the works shall extend, and in the office of the town clerk of every burgh or city into which or within one mile of which the works shall extend, a copy of such special act so printed as aforesaid; and the said clerks of the peace and town clerks shall receive, and they and the company respectively shall retain, the said copies of the special act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner and upon the like terms and under the like penalty for default as is provided in the case of certain plans and sections, by an act passed in the first year of the reign of her present Majesty, intitled *An Act to compel clerks of the peace for counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either House of Parliament.* (a)

CLXII. If the company shall fail to keep or deposit as hereinbefore mentioned any of the said copies of the special act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

CLXIII. And be it enacted, That this act shall not extend to Scotland.

CLXIV. Provided always, and be it enacted, That if any shareholder residing in Scotland shall fail to pay the amount of any call made upon him by the company in respect of any share held by him, it shall be lawful for the company to proceed against him in Scotland, and to sue for and recover the amount of such call, or to declare such share forfeited, in such manner as is by "The Companies Clauses Consolidation (Scotland) Act, 1845," in case the same shall pass into a law, provided in regard to shareholders of any company in Scotland.

CLXV. And be it enacted, That this act may be amended or repealed by any act to be passed in this session of Parliament.

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Court to make such order as they think reasonable.

Access to special act.

Copies of special act to be kept and deposited, and allowed to be inspected.

7 W. 4, & 1 Vict. c. 83.

Penalty on company failing to keep or deposit such copies.

Act not to extend to Scotland.

For recovering calls against shareholders residing in Scotland.

Act may be amended, &c.

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SCHEDULES referred to by the foregoing Act.

SCHEDULE (A.)

Form of Certificate of Share.

“The
Number
Company.”
This is to certify, that *A. B.* of is the proprietor of the
share number of “The Company,” subject to the
regulations of the said company. Given under the common seal of
the said company, the day of in the year of our
Lord

SCHEDULE (B.)

Form of Transfer of Shares or Stock.

I of in consideration of the sum of paid to
me by of do hereby transfer to the said
share [or shares], numbered in the undertaking called “The
Company” [or pounds consolidated stock in the
undertaking called “The Company,” standing (or part of the
stock standing) in my name in the books of the company], to hold
unto the said his executors, administrators, and assigns [or
successors and assigns], subject to the several conditions on which I
held the same at the time of the execution hereof; and I the said
do hereby agree to take the said share [or shares] [or stock],
subject to the same conditions. As witness our hands and seals the
day of

SCHEDULE (C.)

Form of Mortgage Deed.

“The
Mortgage, Number
Company.”
By virtue of [*here name the special Act*], we, £ “The Com-
pany,” in consideration of the sum of pounds paid to us by
A. B. of do assign unto the said *A. B.*, his executors, admin-
istrators, and assigns, the said undertaking, [and (*in case such loan
shall be in anticipation of the capital authorized to be raised*) all future
calls on shareholders], and all the tolls and sums of money arising by
virtue of the said act, and all the estate, right, title, and interest of
the company in the same; to hold unto the said *A. B.*, his executors,
administrators, and assigns, until the said sum of pounds,
together with interest for the same at the rate of for every
one hundred pounds by the year, be satisfied [the principal sum to be
repaid at the end of years from the date hereof (*in case any
period be agreed upon for that purpose*)], [at or any place of
payment other than the principal office of the company.] Given under
our common seal, this day of in the year of our Lord,

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solidation.

SCHEDULE (D.)
Form of Bond.

“The _____ Company,”
Bond, Number _____ £
By virtue of [*here name the special Act*], we, “The _____ Com-
pany,” in consideration of the sum of _____ pounds to us in hand
paid by A. B. of _____ do bind ourselves and our successors unto
the said A. B., his executors, administrators, and assigns, in the penal
sum of _____ pounds.
The condition of the above obligation is such, that if the said
company shall pay to the said A. B., his executors, administrators, or
assigns, [at _____ (*in case any other place of payment than the*
principal office of the company be intended),] on the _____ day of
_____ which will be in the year one thousand eight hundred and
_____, the principal sum of _____ pounds, together with interest
for the same at the rate of _____ pounds per centum per annum,
payable half-yearly on the _____ day of _____ and _____ day of _____
then the above-written obligation is to become void, other-
wise to remain in full force. Given under our common seal, this
_____ day of _____ one thousand eight hundred and _____

SCHEDULE (E.)

Form of Transfer of Mortgage or Bond.

I A. B. of _____ in consideration of the sum of _____ paid to
me by G. H. of _____ do hereby transfer to the said G. H., his
executors, administrators, and assigns, a certain bond [*or mortgage*]
number _____ made by “The _____ Company” to
bearing date the _____ day of _____ for securing the sum of
_____ and _____ interest [*or, if such transfer be by indorsement,*
the within security], and all my right, estate, and interest in and to
the money thereby secured [*and if the transfer be of a mortgage,* and
in and to the tolls, money, and property thereby assigned]. In witness
whereof I have hereunto set my hand and seal, this _____ day of _____
one thousand eight hundred and _____

SCHEDULE (F.)

Form of Proxy.

A. B. one of the proprietors of “The _____ Company,”
doth hereby appoint C. D. of _____ to be the proxy of the said A.
B., in his absence to vote in his name upon any matter relating to the
undertaking proposed at the meeting of the proprietors of the said
company to be held on the _____ day of _____ next, in such
manner as he the said C. D. doth think proper. In witness whereof
the said A. B. hath hereunto set his hand [*or, if a corporation, say the*
common seal of the corporation], the _____ day of _____ one
thousand eight hundred and _____

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SCHEDULE (G.)
Form of Conviction.

to wit.

Be it remembered, that on the _____ day of _____ in the year of our Lord _____ A. B. is convicted before us C., D., two of her majesty's justices of the peace for the county of [here describe the offence generally, and the time and place when and where committed], contrary to the [here name the special act]. Given under our hands and seals, the day and year first above written.

C.
D.

8 VICT. CHAP. 17.

An Act for consolidating in one Act certain provisions usually inserted in Acts with respect to the constitution of companies incorporated for carrying on undertakings of a public nature in Scotland.

[8th May, 1845.]

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Whereas it is expedient to comprise in one general act sundry provisions relating to the constitution and management of Joint Stock Companies, usually introduced into acts of Parliament authorizing the execution of undertakings of a public nature by such companies in Scotland, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That this act shall apply to every Joint Stock Company in Scotland which shall by any act of Parliament which shall hereafter be passed be incorporated for the purpose of carrying on any undertaking; and this act shall be incorporated with such act, and all the clauses and provisions of this act, save so far as they shall be varied or excepted by any such act, shall apply to the company which shall be incorporated by any act, and to the undertaking for carrying on which such company shall be incorporated, so far as the same shall be applicable thereto respectively; and such enactments and provisions, as well as the enactments and provisions of every other act which shall be incorporated with such act, shall, save as aforesaid, form part of such act, and be construed together therewith as forming one act.

Act to apply to
all companies
incorporated
by acts here-
after to be
passed.

Interpretations
in this act :
"The special
act :"

prescribed :"

II. And with respect to the construction of this act, and of other acts to be incorporated therewith, be it enacted as follows :

The expression "the special act" used in this act shall be construed to mean any act which shall be hereafter passed incorporating or constituting a Joint Stock Company for the purpose of carrying on any undertaking, and with which this act shall be so incorporated as aforesaid; and the word "prescribed" used in this act, in reference to any matter herein stated, shall be construed to refer to such

matter as shall be prescribed or provided for in the special act; and the sentence in which such word shall occur shall be construed as if instead of the word "prescribed" the expression "prescribed for that purpose in the special act" had been used; and the expression "the undertaking" shall mean the undertaking or works, of whatever nature, which shall by the special act be authorized to be executed.

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"the under-
taking."

III. The following words and expressions both in this and the special act shall have the several meanings hereby assigned to them, unless there be something in the subject or the context repugnant to such construction; (that is to say,)

Interpretation
in this and th
special act:

Words importing the singular number only shall include the plural number; and words importing the plural number only shall include the singular number:

Number:

Words importing the masculine gender only shall include females: The word "lands" shall extend to houses, lands, tenements, and heritages of any description or tenure:

Gender:
"Lands:"

The word "lease" shall include a missive or an agreement for a lease:

"Lease:"

The word "month" shall mean calendar month:

"Month:"

The "Lord Ordinary" shall mean the Lord Ordinary of the Court of Session in Scotland officiating on the bills in time of vacation, or the junior Lord Ordinary, if in time of session, as the case may be:

"Lord Ordina-
ry:"

The word "sheriff" shall include the Sheriff Substitute:

"Sheriff:"

The word "oath" shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath:

"Oath:"

The word "county" shall include any ward or other like division of a county.

"County:"

The word "justice" shall mean Justice of the Peace acting for the county, city, or place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter; and where any matter shall be authorized or required to be done by two justices, the expression "two justices" shall be understood to mean two or more justices assembled and acting together:

"Justice:"

"Two
justices:"

The expression "the company" shall mean the company constituted by the special Act:

"the com-
pany:"

The expression "the directors" shall mean the directors of the company, and shall include all persons having the direction of the undertaking, whether under the name of directors, managers, committee of management, or under any other name:

"Directors:"

The word "shareholder" shall mean shareholder, proprietor, or member of the company; and in referring to any such shareholder, expressions properly applicable to a person shall be held to apply to a corporation: and

"Share-
holder:"

The expression "the secretary" shall mean the secretary of the company, and shall include the word "clerk."

"Secretary."

IV. And be it enacted, that in citing this act in other acts of Parliament and in legal instruments it shall be sufficient to use the expression "The Companies Clauses Consolidation (Scotland) Act, 1845."

Short title of
the act.

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V. And whereas it may be convenient in some cases to incorporate with acts hereafter to be passed some portion only of the provisions of this act; be it therefore enacted, that for the purpose of making any such incorporation it shall be sufficient in any such act to enact that the clauses and provisions of this act, with respect to the matter so proposed to be incorporated (describing such matter as it is described in this act in the words introductory to the enactment with respect to such matter), shall be incorporated with such act; and thereupon all the clauses and provisions of this act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such act, form part of such act, and such act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such act shall relate.

Form in which
provisions of this
act may be in-
corporated
with other
acts.

Distribution of
Capital.

And with respect to the distribution of the capital of the company into shares, be it enacted as follows :

Capital to be
divided into
shares.

VI. The capital of the company shall be divided into shares of the prescribed number and amount; and such shares shall be numbered in arithmetical progression, beginning with number one; and every such share shall be distinguished by its appropriate number.

Shares to be
personal estate.

VII. All shares in the undertaking shall be personal estate, and transmissible as such, and shall not be of the nature of real estate.

Shareholders.

VIII. Every person who shall have subscribed the prescribed sum or upwards to the capital of the company, or shall otherwise have become entitled to a share in the company, and whose name shall have been entered on the register of shareholders herein-after mentioned, shall be deemed a shareholder of the company, and shall be entitled to have one share therein allotted to him in respect of every sum of the prescribed amount so subscribed by him.

Registry of
shareholders.

IX. The company shall keep a book, to be called the "Register of Shareholders;" and in such book shall be fairly and distinctly entered, from time to time, the names of the several corporations, and the names and additions of the several persons entitled to shares in the company, together with the number of shares to which such shareholders shall be respectively entitled, distinguishing each share by its number, and the amount of the subscriptions paid on such shares; and the surnames or corporate names of the said shareholders shall be placed in alphabetical order; and such books shall be authenticated by the common seal of the company being affixed thereto; and such authentication shall take place at the first ordinary meeting, or at the next subsequent meeting of the company, and so from time to time at each ordinary meeting of the company.

Addresses of
shareholders.

X. In addition to the said register of shareholders, the company shall provide a book, to be called the "Shareholders' Address Book," in which the secretary shall from time to time enter in alphabetical order the corporate names and places of business of the several shareholders of the company, being corporations, and the surnames of the several other shareholders, with their respective Christian names, places of abode, and descriptions, so far as the same shall be known to the company; and every shareholder, or if such shareholder be a

corporation the clerk or agent of such corporation, may at all convenient times peruse such book gratis, and may require a copy thereof, or of any part thereof; and for every hundred words so required to be copied the company may demand a sum not exceeding sixpence.

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XI. On demand of the holder of any share the company shall cause a certificate of the proprietorship of such share to be delivered to such shareholder; and such certificate shall have the common seal of the company affixed thereto; and such certificate shall specify the share in the undertaking to which such shareholder is entitled; and the same may be according to the form in the schedule (A.) to this act annexed, or to the like effect; and for such certificate the company may demand any sum not exceeding the prescribed amount, or if no amount be prescribed then a sum not exceeding two shillings and sixpence.

Certificates of
shares to be
issued to the
shareholders.

XII. The said certificate shall be admitted in all courts as *prima facie* evidence of the title of such shareholder, his executors, administrators, successors, or assigns, to the share therein specified; nevertheless the want of such certificate shall not prevent the holder of any share from disposing thereof.

Certificate to
be evidence.

XIII. If any such certificate be worn out or damaged, then, upon the same being produced at some meeting of the directors, such directors may order the same to be cancelled, and thereupon another similar certificate shall be given to the party in whom the property of such certificate, and of the share therein mentioned, shall be at the time vested; or if such certificate be lost or destroyed, then, upon proof thereof to the satisfaction of the directors, a similar certificate shall be given to the party entitled to the certificate so lost or destroyed; and in either case a due entry of the substituted certificate shall be made by the secretary in the register of shareholders; and for every such certificate so given or exchanged the company may demand any sum not exceeding the prescribed amount, or if no amount be prescribed, then a sum not exceeding two shillings and sixpence.

Certificate to
be renewed
when de-
stroyed.

And with respect to the transfer or transmission of shares, be it enacted as follows:

Transfer of
shares.

XIV. Subject to the regulations herein or in the special act contained, every shareholder may sell and transfer all or any of his shares in the undertaking, or all or any part of his interest in the capital stock of the company, in case such shares shall, under the provisions hereinafter contained, be consolidated into capital stock; and every such transfer shall be by deed duly stamped, in which the consideration shall be truly stated; and such deed may be according to the form in the Schedule (B.) to this act annexed, or to the like effect.

Transfer of
shares to be
by deed duly
stamped.

XV. Whereas there may be hereafter many shareholders of the company who reside in England, and sales of shares are frequently made by persons in England to persons in Scotland, and *vice versa*, and it would be attended with inconvenience if all transfers of shares were required to be executed according to the forms of the law of Scotland; all transfers of shares of the said company shall be valid

Regulating the
form of trans-
fers of shares.

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and effectual if executed according to the usual mode of executing such instruments either in England or Scotland, or partly according to the one and partly according to the other.

Transfers of
shares to be
registered, &c.

XVI. The said deed of transfer (when duly executed) shall be delivered to the secretary, and be kept by him; and the secretary shall enter a memorial thereof in a book, to be called the "Register of Transfers," and shall indorse such entry on the deed of transfer, and shall, on demand, deliver a new certificate to the purchaser; and for every such entry and endorsement and certificate the company may demand any sum not exceeding the prescribed amount, or if no amount be prescribed then a sum not exceeding two shillings and sixpence; and on the request of the purchaser of any share an endorsement of such transfer shall be made on the certificate of such share, instead of a new certificate being granted; and such endorsement, being signed by the secretary, shall be considered in every respect the same as a new certificate; and until such transfer has been so delivered to the secretary as aforesaid the vendor of the share shall continue liable to the company for any calls that may be made upon such share, and the purchaser of the share shall not be entitled to receive any share of the profits of the undertaking, or to vote in respect of such share.

Transfers not
to be made
until all calls
paid.

XVII. No shareholder shall be entitled to transfer any share, after any call shall have been made in respect thereof, until he shall have paid such call, nor until he shall have paid all calls for the time being due on every share held by him.

Closing of
transfer books.

XVIII. It shall be lawful for the directors to close the register of transfers for the prescribed period, or if no period be prescribed then for a period not exceeding fourteen days previous to each ordinary meeting, and they may fix a day for the closing of the same, of which seven days' notice shall be given by advertisement in some newspaper as after mentioned; and any transfer made during the time when the transfer books are so closed shall, as between the company and the party claiming under the same, but not otherwise, be considered as made subsequently to such ordinary meeting.

Transmission
of shares by
other means
than transfer
to be authen-
ticated by a
declaration.

XIX. If the interest in any share have become transmitted in consequence of the death or bankruptcy or insolvency of any shareholder, or in consequence of the marriage of a female shareholder, or by any other lawful means than by a transfer according to the provisions of this or the special act, such transmission shall be authenticated by a declaration in writing as hereinafter mentioned, or in such other manner as the directors shall require; and every such declaration shall state the manner in which and the party to whom such share shall have been so transmitted, and shall be made and signed by some credible person before a sheriff or justice; and such declaration shall be left with the secretary, and thereupon he shall enter the name of the person entitled under such transmission in the register of shareholders; and for every such entry the company may demand any sum not exceeding the prescribed amount, and where no amount shall be prescribed then not exceeding five shillings; and until such transmission has been so authenticated no person claiming

by virtue of any such transmission shall be entitled to receive any share of the profits of the undertaking, nor to vote in respect of any such share as the holder thereof.

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XX. If such transmission be by virtue of the marriage of a female shareholder, the said declaration shall contain a copy of the register of such marriage, or other particulars of the celebration or effecting thereof, and shall declare the identity of the wife with the holder of such share; and if such transmission have taken place by virtue of any testamentary instrument, or by intestacy, the probate of the will or the letters of administration, or an official extract therefrom, obtained from any prerogative court if granted in England, or a testamentary or testament dative if expedite in Scotland, or an official extract thereof, shall, together with such declaration, be produced to the secretary; and upon such production in either of the cases aforesaid the secretary shall make an entry of the declaration in the said register of transfers.

Proof of
transmission
by marriage,
will, &c.

XXI. The company shall not be bound to see to the execution of any trust, whether express, implied, or constructive, to which any of the said shares may be subject; and the receipt of the party in whose name any such share shall stand in the books of the company, or if it stands in the names of more parties than one the receipt of the party first named in the register of shareholders and then surviving, shall from time to time be a sufficient discharge to the company for any dividend or other sum of money payable in respect of such share, notwithstanding any trust to which such share may then be subject, and whether or not the company have had notice of such trusts; and the company shall not be bound to see to the application of the money paid upon such receipt.

Company not
bound to re-
gard trusts.

And with respect to the payment of subscriptions and the means of enforcing the payment of calls, be it enacted as follows:

Payment of
calls.

XXII. The several persons who have subscribed any money towards the undertaking, or their legal representatives respectively, shall pay the sums respectively so subscribed, or such portions thereof as shall from time to time be called for by the company, at such times and places as shall be appointed by the company; and with respect to the provisions herein or in the special act contained for enforcing the payment of calls, the word "shareholder" shall extend to and include the legal personal representatives of such shareholder.

Subscriptions
to be paid when
called for.

XXIII. It shall be lawful for the company from time to time to make such calls of money upon the respective shareholders, in respect of the amount of capital respectively subscribed or owing by them, as they shall think fit, provided that twenty-one days' notice at the least be given of each call, and that no call exceed the prescribed amount, if any, and that successive calls be not made at less than the prescribed interval, if any, and that the aggregate amount of calls made in any one year do not exceed the prescribed amount, if any; and every shareholder shall be liable to pay the amount of the calls so made, in respect of the shares held by him, to the persons and at the times and places from time to time appointed by the company.

Power to make
calls.

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Interest to be
paid on calls
unpaid.

Power to allow
interest on
payment of
subscriptions
before call.

Enforcement
of calls by
action.

Averment in
action for calls.

Matter to be
proved in
action for calls.

Proof of pro-
prietorship.

Nonpayment
of calls.

XXIV. If, before or on the day appointed for payment, any shareholder do not pay the amount of any call to which he is liable, then such shareholder shall be liable to pay interest for the same at the rate allowed by law from the day appointed for the payment thereof to the time of the actual payment.

XXV. It shall be lawful for the company, if they think fit, to receive from any of the shareholders willing to advance the same all or any part of the monies due upon their respective shares beyond the sums actually called for; and upon the principal monies so paid in advance, or so much thereof as from time to time shall exceed the amount of the calls then made upon the shares in respect of which such advance shall be made, the company may pay interest at such rate, not exceeding the legal rate of interest for the time being, as the shareholder paying such sum in advance and the company shall agree upon.

XXVI. If at the time appointed by the company for the payment of any call any shareholder fail to pay the amount of such call, it shall be lawful for the company to sue such shareholder for the amount thereof in any court of law or equity having competent jurisdiction, and to recover the same, with lawful interest from the day on which such call was payable.

XXVII. In any action or suit to be brought by the company against any shareholder to recover any money due for any call it shall not be necessary to set forth the special matter, but it shall be sufficient for the company to aver that the defender is the holder of one share or more in the company (stating the number of shares), and is indebted to the company in the sum of money to which the calls in arrear shall amount in respect of one call or more upon one share or more (stating the number and amount of each of such calls), whereby an action hath accrued to the company by virtue of this and the special act.

XXVIII. On the trial or hearing of such action or suit it shall be sufficient to prove that the defender at the time of making such call was a holder of one share or more in the undertaking, and that such call was in fact made, and such notice thereof given as is directed by this or the special act; and it shall not be necessary to prove the appointment of the directors who made such call, nor any other matter whatsoever; and thereupon the company shall be entitled to recover what shall be due upon such call, with interest thereon, unless it shall appear either that any such call exceeds the prescribed amount, or that due notice of such call was not given, or that the prescribed interval between two successive calls had not elapsed, or that calls amounting to more than the sum prescribed for the total amount of calls in one year had been made within that period.

XXIX. The production of the register of shareholders shall be *prima facie* evidence of such defender being a shareholder, and of the number and amount of his shares.

And with respect to the forfeiture of shares for nonpayment of calls, be it enacted as follows :

XXX. If any shareholder fail to pay any call payable by him, together with the interest, if any, that shall have accrued thereon, the directors, at any time after the expiration of two months from the day appointed for payment of such call, may declare the share in respect of which such call was payable forfeited, and that whether the company have sued for the amount of such call or not.

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Forfeiture of
shares for non-
payment of
calls.

Notice of
forfeiture to be
given before
declaration
thereof.

XXXI. Before declaring any share forfeited the directors shall cause notice of such intention to be left at or transmitted by the post to the usual or last place of abode of the person appearing by the register of shareholders to be the proprietor of such share; and if the holder of any such share be abroad, or if his usual or last place of abode be not known to the directors, by reason of its being imperfectly described in the shareholders' address book, or otherwise, or if the interest in any such share shall be known by the directors to have become transmitted otherwise than by transfer, as hereinbefore mentioned, but a declaration of such transmission shall not have been registered as aforesaid, and so the address of the parties to whom the same may have been transmitted, or may for the time being belong, shall not be known to the directors, the directors shall give public notice of such intention in the *Edinburgh Gazette*, and also in some newspaper as after mentioned; and the several notices aforesaid shall be given twenty-one days at least before the directors shall make such declaration of forfeiture.

XXXII. The said declaration of forfeiture shall not take effect so as to authorize the sale or other disposition of any share until such declaration have been confirmed at some general meeting of the company to be held after the expiration of two months at the least from the day on which such notice of intention to make such declaration of forfeiture shall have been given; and it shall be lawful for the company to confirm such forfeiture at any such meeting, and by an order at such meeting, or at any subsequent general meeting, to direct the share so forfeited to be sold or otherwise disposed of.

Forfeiture to
be confirmed
by a general
meeting.

XXXIII. After such confirmation as aforesaid it shall be lawful for the directors to sell the forfeited share, either by public auction or private contract, and if there be more than one such forfeited share, then either separately or together, as to them shall seem fit; and any shareholder may purchase any forfeited share so sold.

Sale of for-
feited shares.

XXXIV. A declaration in writing, by some credible person not interested in the matter, made before any sheriff or justice, that the call in respect of a share was made, and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was declared and confirmed in manner hereinbefore required, shall be sufficient evidence of the facts therein stated; and such declaration, and the receipt of the treasurer of the company for the price of such share, shall constitute a good title to such share; and a certificate of proprietorship shall be delivered to such purchaser, and thereupon he shall be deemed the holder of such share, discharged from all calls due prior to such purchase; and he shall not be bound to see to the application of the purchase money, nor shall his title to

Evidence as
to forfeiture of
shares.

Companies clauses consolidation.

(*Scotland.*)

No more shares to be sold than sufficient for payment of calls.

such share be affected by any irregularity in the proceedings in reference to such sale.

XXXV. The company shall not sell or transfer more of the shares of any such defaulter than will be sufficient, as nearly as can be ascertained at the time of such sale, to pay the arrears then due from such defaulter on account of any calls, together with interest, and the expenses attending such sale and declaration of forfeiture, and if the money produced by the sale of any such forfeited shares be more than sufficient to pay all arrears of calls and interest thereon due at the time of such sale, and the expenses attending the declaration of forfeiture and sale thereof, the surplus shall, on demand, be paid to the defaulter.

On payment of calls before sale the forfeited shares to revert.

XXXVI. If payment of such arrears of calls and interest and expenses be made before any share so forfeited and vested in the company shall have been sold, such share shall revert to the party to whom the same belonged before such forfeiture in such manner as if such calls had been duly paid.

Limiting responsibility of shareholders.

XXXVII. If the said company shall be incorporated, no person or corporation, nor the estate, real or personal, of any such person or corporation, who is or shall be a proprietor of the said incorporated company, shall be liable for or charged with the payment of any debt or demand whatsoever due or to become due by or from the said company beyond the extent of his or their share in the capital of the said company.

Execution against Shareholders.

Execution against shareholders to the extent of their shares in capital not paid up.

And with respect to the remedies of creditors of the company against the shareholders, be it enacted as follows :

XXXVIII. If any legal diligence or execution shall have been issued against the property or effects of the company, and if there cannot be found sufficient whereon to levy under such diligence or execution, then such diligence or execution may be used against any of the shareholders to the extent of their shares respectively in the capital of the company not then paid up; and for the purpose of ascertaining the names of the shareholders, and the amount of capital remaining to be paid upon their respective shares, it shall be lawful for any person entitled to any such execution, at all reasonable times, to inspect the register of shareholders without fee.

Reimbursement of such shareholders.

XXXIX. If by means of any such diligence or execution any shareholder shall have paid any sum of money beyond the amount then due from him in respect of calls, he shall forthwith be reimbursed such additional sum by the directors out of the funds of the company.

Power to borrow money.

Company may borrow on mortgage or bond.

And with respect to the borrowing of money by the company on mortgage or bond, be it enacted as follows :

XL. If the company be authorized by the special act to borrow money on mortgage or bond, it shall be lawful for them, subject to the restrictions contained in the special act, to borrow on mortgage or bond such sums of money as shall from time to time, by an order of a general meeting of the company, be authorized to be borrowed,

not exceeding in the whole the sum prescribed by the special act, and for securing the repayment of the money so borrowed, with interest, to mortgage the undertaking, and the future calls on the shareholders, or to give bonds in manner hereinafter mentioned.

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clauses con-
solidation.
(Scotland.)

XLII. If, after having borrowed any part of the money so authorized to be borrowed on mortgage or bond, the company pay off the same, it shall be lawful for them again to borrow the amount so paid off, and so from time to time; but such power of reborrowing shall not be exercised without the authority of a general meeting of the company, unless the money be so reborrowed in order to pay off any existing bond or security.

Power to
reborrow.

XLIII. Where by the special act, the company shall be restricted from borrowing any money on mortgage or bond until a definite portion of their capital shall be subscribed or paid up, or where by this or the special act the authority of a general meeting is required for such borrowing, the certificate of a sheriff that such definite portion of the capital has been subscribed or paid up, and a copy of the order of a general meeting of the company authorizing the borrowing of any money, certified by one of the directors or by the secretary to be a true copy, shall be sufficient evidence of the fact of the capital required to be subscribed or paid up having been so subscribed or paid up, and of the order for borrowing money having been made; and upon production to any sheriff of the books of the company, and of such other evidence as he shall think sufficient, such sheriff shall grant the certificate, as aforesaid.

Evidence of
authority for
borrowing.

XLIV. Every mortgage and bond for securing money borrowed by the company shall be by deed under the common seal of the company, duly stamped, and wherein the consideration shall be truly stated; and every such mortgage deed or bond may be according to the form in the schedule (C.) or (D.) to this act annexed, or to the like effect; and every such mortgage deed shall have the full effect of an assignation in security duly completed.

Mortgages and
bonds to be by
deed duly
stamped.

XLV. The respective mortgagees shall be entitled one with another to their respective proportions of the tolls, sums, and premises comprised in such mortgages, and of the future calls payable by the shareholders, if comprised therein, according to the respective sums in such mortgages mentioned to be advanced by such mortgagees respectively, and to be repaid the sums so advanced, with interest, without any preference one above another by reason of priority of the date of any such mortgage, or of the meeting at which the same was authorized.

Rights of
mortgagees.

XLVI. No such mortgage (although it should comprise future calls on the shareholders) shall, unless expressly so provided, preclude the company from receiving and applying to the purposes of the company any calls to be made by the company.

Application
of calls, not-
withstanding
mortgage.

XLVII. All mortgages and money lent on mortgage to the company shall be personal estate, and transmissible as such, and shall not be of the nature of real estate.

Mortgages to
be personal
estate.

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clauses con-
solidation.
(Scotland.)

Rights of
obligees.

XLVII. The respective obligees in such bonds shall, proportionally according to the amount of the monies secured thereby, be entitled to be paid, out of the tolls or other property or effects of the company, the respective sums in such bonds mentioned and thereby intended to be secured, without any preference one above another by reason of priority of date of any such bond, or of the meeting at which the same was authorized, or otherwise howsoever.

Register of
mortgages
and bonds.

XLVIII. A register of mortgages and bonds shall be kept by the secretary, and within fourteen 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.

Transfers of
mortgages and
bonds to be
stamped.

XLIX. Any party entitled to any such mortgage or bond may from time to time transfer his right and interest therein to any other person; and every such transfer shall be by deed duly stamped, wherein the consideration shall be truly stated; and every such transfer may be according to the form in the schedule (E.) to this act annexed, or to the like effect.

Transfers of
mortgages and
bonds to be
registered.

L. Within thirty days after the date of every such transfer, if executed within the united kingdom, or otherwise within thirty days after the arrival thereof in the united kingdom, it shall be produced to the secretary, and thereupon the secretary shall cause an entry or memorial thereof to be made in the same manner as in the case of the original mortgage; and after such entry every such transfer shall entitle the transferee to the full benefit of the original mortgage or bond in all respects; and no party, having made such transfer, shall have power to make void, release, or discharge the mortgage or bond so transferred, or any money thereby secured; and for such entry the company may demand a sum not exceeding the prescribed sum, or, where no sum shall be prescribed, the sum of two shillings and sixpence; and until such entry the company shall not be in any manner responsible to the transferee in respect of such mortgage.

Payment of
interest on
monies
borrowed.

LI. The interest of the money borrowed upon any such mortgage or bond shall be paid at the periods appointed in such mortgage or bond, and if no period be appointed, half-yearly, to the several parties entitled thereto, and in preference to any dividends payable to the shareholders of the company.

Transfers of
interest to be
stamped.

LII. The interest on any such mortgage or bond shall not be transferrable, except by deed duly stamped.

Repayment
of money
borrowed at
a time fixed.

LIII. The company may, if they think proper, fix a period for the repayment of the principal money so borrowed, with the interest thereof, and in such case the company shall cause such period to be inserted in the mortgage deed or bond; and upon the expiration of

such period the principal sum, together with the arrears of interest thereon, shall, on demand, be paid to the party entitled to such mortgage or bond; and if no other place of payment be inserted in such mortgage deed or bond, such principal and interest shall be payable at the principal office or place of business of the company.

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LIV. If no time be fixed in the mortgage deed or bond for the repayment of the money so borrowed, the party entitled to the mortgage or bond may, at the expiration or at any time after the expiration of twelve months from the date of such mortgage or bond, demand payment of the principal money thereby secured, with all arrears of interest, upon giving six months' previous notice for that purpose; and in the like case the company may at any time pay off the money borrowed, on giving the like notice; and every such notice shall be in writing or print, or both, and if given by a mortgagee or bond creditor shall be delivered to the secretary, or left at the principal office of the company, and if given by the company shall be given either personally to such mortgagee or bond creditor or left at his residence, or if such mortgagee or bond creditor be unknown to the directors, or cannot be found after diligent inquiry, such notice shall be given by advertisement in the *Edinburgh Gazette*, and in some newspaper as after mentioned.

Repayment
of money
borrowed
where no time
fixed.

LV. If the company shall have given notice of their intention to pay off any such mortgage or bond at a time when the same may lawfully be paid off by them, then at the expiration of such notice all further interest shall cease to be payable on such mortgage or bond, unless on demand of payment made pursuant to such notice, or at any time thereafter, the company shall fail to pay the principal and interest due at the expiration of such notice on such mortgage or bond.

Interest to
cease on ex-
piration of
notice to pay
off mortgage
or bond.

LVI. Where by the special act the mortgagees of the company shall be empowered to enforce the payment of the arrear of interest or the arrears of principal and interest, due on such mortgages, by the appointment of a judicial factor, then, if within thirty days after the interest accruing upon any such mortgage or bond has become payable, and after demand thereof in writing, the same be not paid, the mortgagee may, without prejudice to his right to sue for the interest so in arrear in any competent court, require the appointment of a judicial factor, by an application to be made as hereinafter provided; and if within six months after the principal money owing upon any such mortgage or bond has become payable, and after demand thereof in writing, the same be not paid, the mortgagee, without prejudice to his right to sue for such principal money, together with all arrears of interest, in any competent court, may, if his debt amount to the prescribed sum alone, or if his debt does not amount to the prescribed sum, he may, in conjunction with other mortgagees, whose debts, being so in arrear, after demand as aforesaid, shall, together with his, amount to the prescribed sum, require the appointment of a judicial factor, by an application to be made as hereinafter provided.

Arrears of
interest, when
to be enforced
by appointment
of a judicial
factor.

Arrears of
principal and
interest.

LVII. Every application for a judicial factor in the cases aforesaid Appointment

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**of judicial
factor.**

shall be made to the court of session, and on any such application so made, and after hearing the parties, it shall be lawful for the said court, by order in writing, to appoint some person to receive the whole or a competent part of the tolls or sums liable to the payment of such interest, or such principal and interest, as the case may be, until such interest, or until such principal and interest, as the case may be, together with all costs, including the charges of receiving the tolls or sums aforesaid, be fully paid; and upon such appointment being made all such tolls and sums of money as aforesaid shall be paid to and received by the person so to be appointed; and the money so to be received shall be so much money received by or to the use of the party to whom such interest, or such principal and interest, as the case may be, shall be then due, and on whose behalf such judicial factor shall have been appointed; and after such interest and costs, or such principal, interest, and costs, have been so received, the power of such judicial factor shall cease, and he shall be bound to account to the company for his intrusions, or the sums received by him, and to pay over to their treasurer any balance that may be in his hands.

**Access to
account books
and by mortgagees.**

LVIII. At all reasonable times the books of account of the company shall be open to the inspection of the respective mortgagees and bond creditors thereof, with liberty to take extracts therefrom, without fee or reward.

Loans.

**Power to
convert loan
into capital.**

And with respect to the conversion of the borrowed money into capital, be it enacted as follows:

LIX. It shall be lawful for the company, if they think fit, unless it be otherwise provided by the special act, to raise the additional sum so authorized to be borrowed, or any part thereof, by creating new shares of the company, instead of borrowing the same, or having borrowed the same, to continue at interest only a part of such additional sum, and to raise part thereof by creating new shares; but no such augmentation of capital as aforesaid shall take place without the previous authority of a general meeting of the company.

**New shares
to be con-
sidered same
as original
shares.**

LX. The capital so to be raised by the creation of new shares shall be considered as part of the general capital, and shall be subject to the same provisions in all respects, whether with reference to the payment of calls, or the forfeiture of shares on nonpayment of calls, or otherwise, as if it had been part of the original capital, except as to the times of making calls for such additional capital, and the amount of such calls, which respectively it shall be lawful for the company from time to time to fix as they shall think fit.

**If old shares
at premium,
new shares to
be offered to
original
shareholders.**

LXI. If at the time of any such augmentation of capital taking place by the creation of new shares the then existing shares be at a premium, or of greater actual value than the nominal value thereof, then, unless it be otherwise provided by the special act, the sum so to be raised shall be divided into shares of such amount as will conveniently allow the same to be apportioned among the then shareholders in proportion to the existing shares held by them respectively; and such new shares shall be offered to the then shareholders in the proportion aforesaid; and such offer shall be made by letter under the hand of the secretary given to or sent by post, addressed

to each shareholder according to his address in the shareholders address book, or left at his usual or last place of abode.

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LXII. The said new shares shall vest in and belong to the shareholders who shall accept the same, and pay the value thereof to the company at the time and by the instalments which shall be fixed by the company; and if any shareholder fail for one month after such offer of new shares to accept the same, and pay the instalments called for in respect thereof, it shall be lawful for the company to dispose of such shares in such manner as they shall deem most for the advantage of the company.

Shares to vest
in the parties
accepting;
otherwise to
be disposed of
by the direc-
tors.

LXIII. If at the time of such augmentation of capital taking place the existing shares be not at a premium, then such new shares may be of such amount, and may be issued in such manner and on such terms, as the company shall think fit.

If not at a pre-
mium to be
issued as com-
pany think fit.

And with respect to the consolidation of the shares into stock, be it enacted as follows:

Consolidation
of Shares.

LXIV. It shall be lawful for the company from time to time, with the consent of three-fifths of the votes of the shareholders present in person or by proxy at any general meeting of the company, when due notice for that purpose shall have been given, to convert or consolidate all or any part of the shares then existing in the capital of the company, and in respect whereof the whole money subscribed shall have been paid up, into a general capital stock, to be divided amongst the shareholders according to their respective interests therein.

Power to con-
solidate shares
into stock.

LXV. After such conversion or consolidation shall have taken place all the provisions contained in this or the special act which require or imply that the capital of the company shall be divided into shares of any fixed amount, and distinguished by numbers, shall, as to so much of the capital as shall have been so converted or consolidated into stock, cease and be of no effect, and the several holders of such stock may thenceforth transfer their respective interests therein, or any parts of such interests, in the same manner and subject to the same regulations and provisions as or according to which any shares in the capital of the company might be transferred under the provisions of this or the special act; and the company shall cause an entry to be made in some book to be kept for that purpose of every such transfer; and for every such entry they may demand any sum not exceeding the prescribed amount, or if no amount be prescribed a sum not exceeding two shillings and sixpence.

Proprietors of
stock may
transfer the
same.

LXVI. The company shall from time to time cause the names of the several parties who may be interested in any such stock as aforesaid, with the amount of the interest therein possessed by them respectively, to be entered in a book to be kept for the purpose, and to be called "The Register of Holders of Consolidated Stock," and such book shall be accessible at all reasonable times to the several holders of shares of stock in the undertaking.

Register of
stock.

LXVII. The several holders of such stock shall be entitled to participate in the dividends and profits of the company according to

Proprietors of
stock entitled
to dividends.

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clauses con-
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the amount of their respective interests in such stock; and such interests shall, in proportion to the amount thereof, confer on the holders thereof respectively the same privileges and advantages, for the purpose of voting at meetings of the company, qualification for the office of directors, and for other purposes, as would have been conferred by shares of equal amount in the capital of the company, but so that none of such privileges or advantages, except the participation in the dividends and profits of the company, shall be conferred by any aliquot part of such amount of consolidated stock as would not, if existing in shares, have conferred such privileges or advantages respectively.

Application of
capital.

LXVIII. And be it enacted, that all the money raised by the company, whether by subscriptions of the shareholders, or by loan or otherwise, shall be applied, firstly, in paying the costs and expenses incurred in obtaining the special act, and all expenses incident thereto, and, secondly, in carrying the purposes of the company into execution.

*General
Meetings.*

And with respect to the general meetings of the company, and the exercise of the right of voting by the shareholders, be it enacted as follows:

Ordinary
meetings to
be held half-
yearly.

LXIX. The first general meeting the shareholders of the company shall be held within the prescribed time, or if no time be prescribed within one month after the passing of the special act, and the future general meetings shall be held at the prescribed periods, and if no periods be prescribed in the months of February and August in each year, or at such other stated periods as shall be appointed for that purpose by an order of a general meeting; and the meetings so appointed to be held as aforesaid shall be called "ordinary meetings;" and all meetings, whether ordinary or extraordinary, shall be held in the prescribed place, if any, and if no place be prescribed then at some place to be appointed by the directors.

Business at
ordinary meet-
ings.

LXX. No matters, except such as are appointed by this or the special act to be done at an ordinary meeting, shall be transacted at any such meeting, unless special notice of such matters have been given in the advertisement convening such meeting.

Extraordinary
meetings.

LXXI. Every general meeting of the shareholders, other than an ordinary meeting, shall be called an "extraordinary meeting;" and such meetings may be convened by the directors at such times as they think fit.

Business at
extraordinary
meetings.

LXXII. No extraordinary meeting shall enter upon any business not set forth in the notice upon which it shall have been convened.

Extraordinary
meetings may
be required by
shareholders to
be convened.

LXXIII. It shall be lawful for the prescribed number of shareholders, holding in the aggregate shares to the prescribed amount, or, where the number of shareholders or amount of shares shall not be prescribed, it shall be lawful for twenty or more shareholders, holding in the aggregate not less than one-tenth of the capital of the company, by writing under their hands, at any time to require the directors to call an extraordinary meeting of the company; and such

requisition shall fully express the object of the meeting required to be called, and shall be left at the office of the company, or given to at least three directors, or left at their last or usual places of abode; and forthwith upon the receipt of such requisition the directors shall convene a meeting of the shareholders; and if for twenty-one days after such notice the directors fail to call such meeting, the prescribed number of shareholders, or such other number as aforesaid, qualified as aforesaid, may call such meeting by giving fourteen days public notice thereof.

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LXXIV. Ten days public notice at the least of all meetings, whether ordinary or extraordinary, shall be given by advertisement, which shall specify the place, the day, and the hour of meeting; and every notice of an extraordinary meeting, or of an ordinary meeting if any other business than the business hereby or by the special act appointed for ordinary meetings is to be done thereat, shall specify the purpose for which the meeting is called.

Notice of
meetings.

LXXV. In order to constitute a meeting (whether ordinary or extraordinary) there shall be present, either personally or by proxy, the prescribed quorum, and if no quorum be prescribed then shareholders holding in the aggregate not less than one twentieth of the capital of the company, and being in number not less than one for every five hundred pounds of such required proportion of capital, unless such number would be more than twenty, in which case twenty shareholders holding not less than one twentieth of the capital of the company shall be the quorum; and if within one hour from the time appointed for such meeting the said quorum be not present no business shall be transacted at the meeting other than the declaring of a dividend, in case that shall be one of the objects of the meeting, but such meeting, shall, except in the case of a meeting for the election of directors hereinafter mentioned, be held to be adjourned sine die.

Quorum for
a general
meeting.

LXXVI. At every meeting of the company one or other of the following persons shall preside as chairman; that is to say, the chairman of the directors, or in his absence the deputy chairman (if any), or in the absence of the chairman and deputy chairman some one of the directors of the company to be chosen for that purpose by the meeting, or in the absence of the chairman and deputy chairman and of all the directors any shareholder to be chosen for that purpose by a majority of the shareholders present at such meeting.

Chairman at
general
meetings.

LXXVII. The shareholders present at any such meeting shall proceed in the execution of the powers of the company with respect to the matters for which such meeting shall have been convened, and those only; and every such meeting may be adjourned from time to time, and from place to place; and no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which such adjournment took place.

Business at
meetings and
adjournments.

LXXVIII. At all general meetings of the company every shareholder shall be entitled to vote according to the prescribed scale of

Vote of
shareholders.

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classes con-
solidation.
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voting, and where no scale shall be prescribed every shareholder shall have one vote for every share up to ten, and he shall have an additional vote for every five shares beyond the first ten shares held by him up to one hundred, and an additional vote for every ten shares held by him beyond the first hundred shares; provided always, that no shareholder shall be entitled to vote at any meeting unless he shall have paid all the calls then due upon the shares held by him.

Manner of
voting.

LXXIX. The votes may be given either personally or by proxies, being shareholders, authorized by writing according to the form in the schedule (F.) to this act annexed, or in a form to the like effect, under the hand of the shareholder nominating such proxy, or if such shareholder be a corporation then under their common seal; and every proposition at any such meeting shall be determined by the majority of votes of the parties present including proxies, the chairman of the meeting being entitled to vote, not only as a principal and proxy, but to have a casting vote if there be an equality of votes.

Regulations as
to proxies.

LXXX. No person shall be entitled to vote as a proxy unless the instrument appointing such proxy have been transmitted to the secretary of the company within the prescribed period, or, if no period be prescribed, not less than forty-eight hours before the time appointed for holding the meeting at which such proxy is to be used.

Votes of joint
shareholders.

LXXXI. If several persons be jointly entitled to a share, the person whose name stands first in the register of shareholders as one of the holders of such share shall, for the purpose of voting at any meeting, be deemed the sole proprietor thereof: and on all occasions the vote of such first-named shareholder, either in person or by proxy, shall be allowed as the vote in respect of such share, without proof of the concurrence of the other holders thereof.

Votes of luna-
tics and
minors, &c.

LXXXII. If any shareholder be a lunatic or idiot, fatuous or furious person, such lunatic or idiot, fatuous or furious person, may vote by his tutor, curator, or other person appointed to manage his estate; and if any shareholder be a minor he may vote by his tutors or curators or any one of them; and every such vote may be given either in person or by proxy.

Proof of a
particular
majority of
votes only
required in
the event of a
poll being
demanded.

LXXXIII. Whenever in this or the special act the consent of any particular majority of votes at any meeting of the company is required in order to authorize any proceeding of the company, such particular majority shall only be required to be proved in the event of a poll being demanded at such meeting; and if such poll be not demanded then a declaration by the chairman that the resolution authorizing such proceeding has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient authority for such proceeding, without proof of the number or proportion of votes recorded in favour of or against the same.

Appointment
and rotation of
directors.

And with respect to the appointment and rotation of directors, be it enacted as follows:

LXXXIV. The number of directors shall be the prescribed number.

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LXXXV. Where the company shall be authorized by the special act to increase or to reduce the number of the directors it shall be lawful for the company, from time to time in general meeting, after due notice for that purpose, to increase or reduce the number of the directors within the prescribed limits, if any, and to determine the order of rotation in which such reduced or increased number shall go out of office, and what number shall be a quorum of their meetings.

Power to
vary the
number of
directors.

LXXXVI. The directors appointed by the special act shall, unless thereby otherwise provided, continue in office until the first ordinary meeting to be held in the year next after that in which the special act shall have passed; and at such meeting the shareholders present, personally or by proxy, may either continue in office the directors appointed by the special act, or any number of them, or may elect a new body of directors, or directors to supply the places of those not continued in office, the directors appointed by the special act being eligible as members of such new body; and at the first ordinary meeting to be held every year thereafter the shareholders present, personally or by proxy, shall elect persons to supply the places of the directors then retiring from office, agreeably to the provisions herein-after contained; and the several persons elected at any such meeting, being neither removed nor disqualified, nor having resigned, shall continue to be directors until others are elected in their stead, as hereinafter mentioned.

Election of
directors.

LXXXVII. If at any meeting at which an election of directors ought to take place the prescribed quorum shall not be present within one hour from the time appointed for the meeting no election of directors shall be made, but such meeting shall stand adjourned to the following day, at the same time and place; and if at the meeting so adjourned the prescribed quorum be not present within one hour from the time appointed for the meeting, the existing directors shall continue to act and retain their powers until new directors be appointed at the first ordinary meeting of the following year.

Existing direc-
tors continued,
on failure of
meeting for
election of
directors.

LXXXVIII. No person shall be capable of being a director unless he be a shareholder, nor unless he be possessed of the prescribed number, if any, of shares; and no person holding an office or place of trust or profit under the company, or interest in any contract with the company, shall be capable of being a director; and no director shall be capable of accepting any other office or place of trust or profit under the company, or of being interested in any contract with the company, during the time he shall be a director.

Qualification
of directors.

LXXXIX. If any of the directors at any time subsequently to his election accept or continue to hold any other office or place of trust or profit under the company, or be either directly or indirectly concerned in any contract with the company, or participate in any manner in the profits of any work to be done for the company, or if

Cases in which
office of direc-
tor shall
become vacant.

Companies
 clauses con-
 solidation.
 (Scotland.)

such director at any time cease to be a holder of the prescribed number of shares in the company, then in any of the cases aforesaid the office of such director shall become vacant, and thenceforth he shall cease from voting or acting as a director.

Shareholder of
 an incorporated
 joint stock
 company not
 disqualified by
 reason of
 contracts.

XC. Provided always, that no person, being a shareholder or member of any incorporated joint stock company, shall be disqualified or prevented from acting as a director by reason of any contract entered into between such joint stock company and the company incorporated by the special act; but no such director, being a shareholder or member of such joint stock company, shall vote on any question as to any contract with such joint stock company.

Rotation of
 directors.

XCI. The directors appointed by the special act, and continued in office as aforesaid, or the directors elected to supply the places of those retiring as aforesaid, shall, subject to the provision hereinbefore contained for increasing or reducing the number of directors, retire from office at the times and in the proportions following; the individuals to retire being in each instance determined by ballot among the directors, unless they shall otherwise agree; (that is to say,)

At the end of the first year after the first election of directors the prescribed number, and if no number be prescribed one third of such directors, to be determined by ballot among themselves, unless they shall otherwise agree, shall go out of office:

At the end of the second year the prescribed number, and if no number be prescribed one half of the remaining number of such directors, to be determined in like manner, shall go out of office:

At the end of the third year the prescribed number, and if no number be prescribed the remainder of such directors shall go out of office:

And in each instance the places of the retiring directors shall be supplied by an equal number of qualified shareholders; and at the first ordinary meeting in every subsequent year the prescribed number, and if no number be prescribed one third of the directors, being those who have been longest in office, shall go out of office, and their places shall be supplied in like manner: nevertheless, every director so retiring from office may be re-elected immediately or at any future time, and after such re-election shall, with reference to the going out by rotation, be considered as a new director: provided always, that if the prescribed number of directors be some number not divisible by three, and the number of directors to retire be not prescribed, the directors shall in each case determine what number of directors, as nearly one third as may be, shall go out of office, so that the whole number shall go out of office in three years.

Supply of
 occasional
 vacancies in
 office of di-
 rectors.

XCII. If any director die or resign, or become disqualified or incompetent to act as a director, or cease to be a director by any other cause than that of going out of office by rotation as aforesaid, the remaining directors, if they think proper so to do, may elect in his place some other shareholder, duly qualified, to be a director; and the shareholder so elected to fill up any such vacancy shall continue in office as a director so long only as the person in whose place he

shall have been elected would have been entitled to continue if he had remained in office.

And with respect to the powers of the directors and the powers of the company to be exercised only in general meetings, be it enacted as follows :

XCIII. The directors shall have the management and superintendence of the affairs of the company, and they may lawfully exercise all the powers of the company, except as to such matters as are directed by this or the special act to be transacted by a general meeting of the company; but all the powers so to be exercised shall be exercised in accordance with and subject to the provisions of this and the special act; and the exercise of all such powers shall be subject also to the control and regulation of any general meeting specially convened for the purpose, but not so as to render invalid any act done by the directors prior to any resolution passed by such general meeting.

XCIV. Except as otherwise provided by the special act, the following powers of the company, (that is to say,) the choice and removal of the directors, except as hereinbefore mentioned, and the increasing or reducing of their number where authorized by the special act, the choice of auditors, the determination as to the remuneration of the directors, auditors, treasurer, and secretary, the determination as to the amount of money to be borrowed on mortgage, the determination as to the augmentation of capital, and the declaration of dividends, shall be exercised only at a general meeting of the company.

And with respect to the proceedings and liabilities of the directors, be it enacted as follows :

XCv. The directors shall hold meetings at such times as they shall appoint for the purpose, and they may meet and adjourn as they think proper from time to time, and from place to place; and at any time any two of the directors may require the secretary to call a meeting of the directors; and in order to constitute a meeting of directors, there shall be present at the least the prescribed quorum, and when no quorum shall be prescribed there shall be present at least one third of the directors; and all questions at any such meeting shall be determined by the majority of votes of the directors present, and in case of an equal division of votes the chairman shall have a casting vote, in addition to his vote as one of the directors.

XCVI. At the first meeting of directors held after the passing of the special act, and at the first meeting of the directors held after each annual appointment of directors, the directors present at such meeting shall choose one of the directors to act as chairman of the directors for the year following such choice, and shall also, if they think fit, choose another director to act as deputy chairman for the same period; and if the chairman or deputy chairman die or resign, or cease to be a director, or otherwise become disqualified to act, the directors present at the meeting next after the occurrence of such vacancy shall choose some other of the directors to fill such vacancy;

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clauses con-
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(Scotland.)

Powers of
directors.

Powers of the
company to be
exercised by
the directors.

Powers of the
company not
to be exercised
by the di-
rectors.

Proceedings of
directors.

Meetings of
directors.

Permanent
chairman of
directors.

Companies
 clauses con-
 solidation.
 (Scotland.)

and every such chairman or deputy chairman so elected as last aforesaid shall continue in office so long only as the person in whose place he may be so elected would have been entitled to continue if such death, resignation, removal, or disqualification had not happened.

Occasional
 chairman of
 directors.

XCVII. If at any meeting of the directors neither the chairman nor deputy chairman be present the directors present shall choose some one of their number to be chairman of such meeting.

Committees
 of directors.
 Powers of
 committees.

XCVIII. It shall be lawful for the directors to appoint one or more committees consisting of such number of directors as they think fit, within the prescribed limits, if any, and they may grant to such committees respectively power on behalf of the company to do any acts relating to the affairs of the company which the directors could lawfully do, and which they shall from time to time think proper to intrust to them.

Meetings of
 committees.

XCIX. The said committees may meet from time to time, and may adjourn from place to place, as they think proper, for carrying into effect the purposes of their appointment; and no such committee shall exercise the powers intrusted to them, except at a meeting at which there shall be present the prescribed quorum, or if no quorum be prescribed then a quorum to be fixed for that purpose by the general body of directors; and at all meetings of the committees one of the members present shall be appointed chairman; and all questions at any meeting of the committee shall be determined by a majority of votes of the members present, and in case of an equal division of votes the chairman shall have a casting vote, in addition to his vote as a member of the committee.

Contracts by
 committee or
 directors, how
 to be entered
 into.

C. The power which may be granted to any such committee to make contracts, as well as the power of the directors to make contracts, on behalf of the company, may lawfully be exercised as follows; (that is to say,)

With respect to any contract which, if made between private persons, would be by law required to be by deed or by agreement, in writing, and signed by the parties to be charged therewith, then such committee or the directors may make such contract on behalf of the company, in writing, either under the common seal of the company, or signed by such committee, or any two of them, or any two of the directors, and in the same manner may vary or discharge the same:

With respect to any contract which, if made between private persons, would by law be valid, although made by parol only, and not reduced into writing, such committee, or the directors, may make such contract on behalf of the company, by parol only, without writing, and in the same manner may vary or discharge the same:

And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the company and their successors, and all other parties thereto, their heirs, executors, or administrators, as the case may be; and on any default in the execution of any such contract, either by the company, or any other party thereto, such actions or suits may be brought, either by or

against the company, as might be brought had the same contracts been made between private persons only.

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clauses con-
solidation.

(Scotland.)

CII. The directors shall cause notes, minutes, or copies, as the case may require, of all appointments made or contracts entered into by the directors, and of the orders and proceedings of all meetings of the company, and of the directors and committees of directors, to be duly entered in books to be from time to time provided for the purpose, which shall be kept under the superintendence of the directors; and every such entry shall be signed by the chairman of such meeting; and such entry, so signed, shall be received as evidence in all courts, and before all judges, justices, and others, without proof of such respective meetings having been duly convened or held, or of the persons making or entering such orders or proceedings being shareholders or directors or members of committee respectively, or of the signature of the chairman, or of the fact of his having been chairman, all of which last-mentioned matters shall be presumed, until the contrary be proved.

Proceedings
to be entered
in a book, and
to be evidence.

CIII. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding it may be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were or was disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Informalities
in appointment
of directors not
to invalidate
proceedings.

CIV. No director, by being party to or executing in his capacity of director any contract or other instrument on behalf of the company, or otherwise lawfully executing any of the powers given to the directors, shall be subject to be sued or prosecuted, either individually or collectively, by any person whomsoever; and the bodies or goods or lands of the directors shall not be liable to execution of any legal process by reason of any contract or other instrument so entered into, signed, or executed by them, or by reason of any other lawful act done by them in the execution of any of their powers as directors; and the directors, their heirs, executors, and administrators, shall be indemnified out of the capital of the company for all payments made or liability incurred in respect of any acts done by them, and for all losses, costs, and damages which they may incur in the execution of the powers granted to them; and the directors for the time being of the company may apply the existing funds and capital of the company for the purposes of such indemnity, and may, if necessary for that purpose, make calls of the capital remaining unpaid, if any.

Directors not
to be personally
liable.

Indemnity of
directors.

And with respect to the appointment and duties of auditors, be it enacted as follows:

Auditors.

CIV. Except where by the special act auditors shall be directed to be appointed otherwise than by the company, the company shall at the first ordinary meeting after the passing of the special act elect the prescribed number of auditors, and if no number is prescribed two auditors, in like manner as is provided for the election of directors; and at the first ordinary meeting of the company in each year thereafter the company shall in like manner elect an auditor to

Election of
auditors.

Companies
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solidation.
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supply the place of the auditor then retiring from office, according to the provision hereinafter contained; and every auditor elected as hereinbefore provided, being neither removed nor disqualified, nor having resigned, shall continue to be an auditor until another be elected in his stead.

Qualification
of auditors.

CV. Where no other qualification shall be prescribed by the special act, every auditor shall have at least one share in the undertaking, and he shall not hold any office in the company, nor be in any other manner interested in its concerns, except as a shareholder.

Rotation of
auditors.

CVI. One of such auditors (to be determined in the first instance by ballot between themselves, unless they shall otherwise agree, and afterwards by seniority,) shall go out of office at the first ordinary meeting in each year; but the auditor so going out shall be immediately re-eligible, and after any such re-election shall, with respect to the going out of office by rotation, be deemed a new auditor.

Vacancies in
office of
auditor.

CVII. If any vacancy take place among the auditors in the course of the current year, then at any general meeting of the company the vacancy may, if the company think fit, be supplied by election of the shareholders.

Failure of
meeting to
elect auditors.

CVIII. The provision of this act respecting the failure of an ordinary meeting at which directors ought to be chosen shall apply, *mutatis mutandis*, to any ordinary meeting at which an auditor ought to be appointed.

Delivery of
balance sheet,
&c., by direc-
tors to
auditors.

CIX. The directors shall deliver to such auditors the half-yearly or other periodical accounts and balance sheet fourteen days at the least before the ensuing ordinary meeting at which the same are required to be produced to the shareholders, as hereinafter provided.

Duty of
auditors.

CX. It shall be the duty of such auditors to receive from the directors the half-yearly or other periodical accounts and balance sheet required to be presented to the shareholders, and to examine the same.

Powers of
auditors.

CXI. It shall be lawful for the auditors to employ such accountants and other persons as they may think proper, at the expense of the company, and they shall either make a special report on the said accounts, or simply confirm the same; and such report or confirmation shall be read, together with the report of the directors, at the ordinary meeting.

Accountability
of officers.

And with respect to the accountability of the officers of the company, be it enacted as follows:

Security to be
taken from
officers in-
trusted with
money.
Officers to

CXII. Before any person intrusted with the custody or control of monies, whether treasurer, collector, or other officer of the company, shall enter upon his office, the directors shall take sufficient security from him for the faithful execution of his office.

CXIII. Every officer employed by the company shall from time

to time, when required by the directors, make out and deliver to them, or to any person appointed by them for that purpose, a true and perfect account, in writing under his hand, of all monies received by him on behalf of the company; and such account shall state how, and to whom, and for what purpose, such monies shall have been disposed of; and, together with such account, such officer shall deliver the vouchers and receipts for such payments; and every such officer shall pay to the directors, or to any person appointed by them to receive the same, all monies which shall appear to be owing by him upon the balance of such accounts.

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account on
demand.

CXIV. If any such officer fail to render such account, or to produce and deliver up all the vouchers and receipts relating to the same in his possession or power, or to pay the balance thereof when thereunto required, or if, for three days after being thereunto required, he fail to deliver up to the directors, or to any person appointed by them to receive the same, all papers and writings, property, effects, matters, and things, in his possession or power, relating to the execution of this or the special act, or any act incorporated therewith, or belonging to the company, then, on complaint thereof being made to the sheriff or a justice, such sheriff or justice shall summon or order such officer to appear before such sheriff, if the summons or order be issued by a sheriff, or before two or more justices, if the summons or order be issued by a justice, at a time and place to be set forth in such summons or order, to answer such charge; and upon the appearance of such officer, or, in his absence, upon proof that such summons or order was personally served upon him, or left at his last known place of abode, such sheriff or justices may hear and determine the matter in a summary way, and may adjust and declare the balance owing by such officer; and if it appear, either upon confession of such officer or upon evidence, or upon inspection of the account, that any monies of the company are in the hands of such officer, or owing by him to the company, such sheriff or justices may order such officer to pay the same; and if he fail to pay the amount it shall be lawful for such sheriff or justices to grant a warrant to levy the same by pointing and sale, or in default thereof to commit the offender to gaol, there to remain without bail for a period not exceeding three months.

Summary
remedy against
parties failing
to account.

CXV. If any such officer refuse to produce and deliver to the said sheriff or justices the several vouchers and receipts relating to his accounts, or to deliver up any books, papers, or writings, property, effects, matters, or things, in his possession or power, belonging to the company, such sheriff or justices may lawfully commit such offender to gaol, there to remain until he shall have delivered up all the vouchers and receipts, if any, in his possession or power, relating to such accounts, and have delivered up all books, papers, writings, property, effects, matters, and things, if any, in his possession or power, belonging to the company.

Officers
refusing to
deliver up
documents, &c.
to be imprison-
ed.

CXVI. Provided always, that if any director or other person acting on behalf of the company shall make oath that he has good reason to believe, upon grounds to be stated in his deposition, and does believe, that it is the intention of any such officer as aforesaid

Where officer
about to
abscond, a
warrant may
be issued in

Companies
clauses con-
solidation.
(Scotland.)

the first
instance.

to abscond, it shall be lawful for the sheriff or justice before whom the complaint is made, instead of issuing his summons or order, to issue his warrant for the bringing such officer before the sheriff, to answer to the charge, as hereinbefore directed, if the warrant has been issued by the sheriff, or before any justice if the warrant shall have been issued by a justice; and it shall be lawful for the justice before whom such officer may be brought either to discharge such officer, if he thinks there is no sufficient ground for his detention, or to order such officer to be detained in custody, so as to be brought before two justices at a time, and place to be named in such order, unless such officer give surety, to the satisfaction of such justice, for his appearance before such justices, to answer the complaint of the company.

Sureties not to
be discharged.

CXVII. No such proceeding against or dealing with any such officer as aforesaid shall deprive the company of any remedy which they might otherwise have against such officer, or any surety of such officer.

Accounts.

Accounts to
be kept.

And with respect to the keeping of accounts, and the right of inspection thereof by the shareholders, be it enacted as follows:

CXVIII. The directors shall cause full and true accounts to be kept of all sums of money received or expended on account of the company by the directors, and all persons employed by or under them, and of the matters and things for which such sums of money shall have been received, or disbursed and paid.

Books to be
balanced.

CXIX. The books of the company shall be balanced at the prescribed periods, and if no periods be prescribed, fourteen days at least before each ordinary meeting; and forthwith on the books being so balanced an exact balance sheet shall be made up, which shall exhibit a true statement of the capital stock, credits, and property of every description belonging to the company, and the debts due by the company at the date of making such balance sheet, and a distinct view of the profit or loss which shall have arisen on the transactions of the company in the course of the preceding half-year; and previously to each ordinary meeting such balance sheet shall be examined by the directors or any three of their number, and shall be signed by the chairman or deputy chairman of the directors.

Inspection of
accounts by
shareholders at
stated times.

CXX. The books so balanced, together with such balance sheet as aforesaid, shall for the prescribed periods, and if no periods be prescribed, for fourteen days previous to each ordinary meeting, and for one month thereafter, be open for the inspection of the shareholders at the principal office or place of business of the Company; but the shareholders shall not be entitled at any time, except during the periods aforesaid, to demand the inspection of such books, unless in virtue of a written order signed by three of the directors.

Balance sheet
to be produced
at the meeting.

CXXI. And be it enacted, That the directors shall produce to the shareholders assembled at such ordinary meeting the said balance sheet as aforesaid, applicable to the period immediately preceding such meeting, together with the report of the auditors thereon, as herein-before provided.

CXXII. The directors shall appoint a book-keeper to enter the accounts aforesaid in books to be provided for the purpose; and every such book-keeper shall permit any shareholder to inspect such books, and to take copies or entries therefrom, at any reasonable time during the prescribed periods, and if no periods be prescribed during one fortnight before and one month after every ordinary meeting; and if he fail to permit any such shareholder to inspect such books, or take copies or extracts therefrom, during the periods aforesaid, he shall forfeit to such shareholder for every such offence a sum not exceeding five pounds.

Companies clauses consolidation.
(Scotland.)

Book-keeper to allow inspection of the accounts.

And with respect to the making of dividends, be it enacted as follows:

Dividends.

CXXIII. Previously to every ordinary meeting at which a dividend is intended to be declared, the directors shall cause a scheme to be prepared, showing the profits, if any, of the company for the period current since the preceding ordinary meeting at which a dividend was declared, and apportioning the same, or so much thereof as they may consider applicable to the purposes of dividend among the shareholders, according to the shares held by them respectively, the amount paid thereon, and the periods during which the same may have been paid, and shall exhibit such scheme at such ordinary meeting, and at such meeting a dividend may be declared according to such scheme.

Previously to declaration of dividends a scheme to be prepared.

CXXIV. The company shall not make any dividend whereby their capital stock will be in any degree reduced: Provided always, that the word "dividend" shall not be construed to apply to a return of any portion of the capital stock, with the consent of all the mortgagees and bond creditors of the company, due notice being given for that purpose at an extraordinary meeting to be convened for that object.

Dividend not to be made so as to reduce capital.

CXXV. Before apportioning the profits to be divided among the shareholders the directors may, if they think fit, set aside thereout such sum as they may think proper to meet contingencies, or for enlarging, repairing, or improving the works connected with the undertaking, or any part thereof, and may divide the balance only among the shareholders.

Power to directors to set apart a fund for contingencies.

CXXVI. No dividend shall be paid in respect of any share until all calls then due in respect of that and every other share held by the person to whom such dividend may be payable shall have been paid.

Dividend not to be paid unless all calls paid.

And with respect to the making of bye laws, be it enacted as follows:

Bye laws.

CXXVII. It shall be lawful for the company from time to time to make such bye laws as they think fit, for the purpose of regulating the conduct of the officers and servants of the company, and for providing for the due management of the affairs of the company in all respects whatsoever, and from time to time to alter or repeal any such bye laws, and make others, provided such bye laws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect, or to the provisions of this or the special act; and such bye laws shall be reduced into writing, and shall have affixed thereto

Power to make bye-laws for the officers of the company.

Companies clauses consolidation.

(Scotland.)

Fines for breach of such bye laws.

Bye laws to be so framed as that penalties may be mitigated.

Evidence of bye laws.

Arbitration.

Appointment of arbitrators when questions are to be determined by arbitration.

Vacancy of arbitrator to be supplied.

Appointment of umpire.

the common seal of the company, and a copy of such bye laws shall be given to every officer and servant of the company affected thereby.

CXXVIII. It shall be lawful for the company by such bye laws to impose such reasonable penalties upon all persons, being officers or servants of the company, offending against such bye laws, as the company think fit, not exceeding five pounds for any one offence.

CXXIX. All the bye laws to be made by the company shall be so framed as to allow the sheriff or justices before whom any penalty imposed thereby may be sought to be recovered to order a part only of such penalty to be paid, if such sheriff shall think fit.

CXXX. The production of a written or printed copy of the bye laws of the company, having the common seal of the company affixed thereto, shall be sufficient evidence of such bye laws in all cases of prosecution under the same.

And with respect to the settlement of disputes by arbitration, be it enacted as follows :

CXXXI. When any dispute directed by this or the special act, or any act incorporated therewith, to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall by writing under his hand nominate and appoint an arbitrator to whom such dispute shall be referred; and after any such appointment shall have been made neither party shall have power to revoke the same, without the consent of the other, nor shall the death of either party operate as such revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties; and such arbitrator may proceed to hear and determine the matters which shall be in dispute, and in such case the award or determination of such single arbitrator shall be final.

CXXXII. If, before the matters so referred shall be determined, any arbitrator appointed by either party die, or become incapable or refuse or for seven days neglect to act as arbitrator, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place; and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death, refusal, or disability as aforesaid.

CXXXIII. Where more than one arbitrator shall have been appointed, such arbitrators shall, before they enter upon the matters so referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ;

and if such umpire shall die, or refuse, or for seven days neglect to act, they shall forthwith after such death, refusal, or neglect, appoint another umpire in his place; and the decision of every such umpire on the matters so referred to him shall be final.

Companies
clauses con-
solidation.
(Scotland.)

CXXXIV. If, in either of the cases aforesaid, the said arbitrators shall refuse, or shall for seven days after request of either party to such arbitration neglect to appoint an umpire, it shall be lawful for the Lord Ordinary, on the application of either party to such arbitration, to appoint an umpire, and the decision of such umpire on the matters on which the arbitrators shall differ shall be final.

The Lord
Ordinary em-
powered to
appoint an um-
pire, on neglect
of the arbitra-
tors.

CXXXV. The said arbitrators, or their umpire, may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose, and may also grant diligence for the recovery of such documents as either party may require, or for citing witnesses; and, on application to the Lord Ordinary, letters of supplement, or such other writ as may be necessary, shall be issued by the Lord Ordinary, in support of such diligence.

Power of arbi-
trator to call
for books, &c.

CXXXVI. Except where by this or the special act, or any act incorporated therewith, it shall be otherwise provided, the costs of and attending every such arbitration to be determined by the arbitrators shall be in the discretion of the arbitrators or the umpire, as the case may be.

Costs to be in
the discretion
of the arbitra-
tors.

And with respect to the giving of notices, be it enacted as follows:

CXXXVII. Any summons or notice, or any writ, or other proceeding, at law or in equity, requiring to be served upon the company, may be served by the same being left at or transmitted through the post, directed to the principal office of the company, or one of their principal offices, where there shall be more than one, or being given personally to the secretary, or in case there be no secretary then by being given to any one director of the company.

Notices.

Service of
notices upon
company.

CXXXVIII. Notices requiring to be served by the company upon the shareholders may, unless expressly required to be served personally, be served by the same being transmitted through the post directed according to the registered address or other known address of the shareholder, within such period as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the giving of such notice; and in proving such service it shall be sufficient to prove that such notice was properly directed, and that it was so put into the post office.

Service by
company on
shareholders.

CXXXIX. All notices directed to be given to the shareholders shall, with respect to any share to which persons are jointly entitled, be given to whichever of the said persons shall be named first in the register of shareholders: and notice so given shall be sufficient notice to all the proprietors of such share.

Notices to
joint pro-
prieters of
shares.

CXL. All notices required by this or the special act, or any act

Notice by
advertisement

Companies
classes con-
solidation.

(Scotland.)

incorporated therewith, to be given by advertisement, shall be advertised in the prescribed newspaper, or if no newspaper be prescribed, or if the prescribed newspaper cease to be published, in a newspaper circulating in the district within which the company's principal place of business shall be situated.

Authentication
of notices.

CXLI. Every summons, demand, or notice, or other such document requiring authentication by the company, may be signed by two directors, or by the treasurer or the secretary, of the company, and need not be under the common seal of the company, and the same may be in writing or in print, or partly in writing and partly in print.

Proof of debts
in bankruptcy.

CXLII. And be it enacted, that if any person against whom the company shall have any claim or demand become bankrupt, or take the benefit of any act for the relief of insolvent debtors, it shall be lawful for the secretary or treasurer of the company, in all proceedings against the estate of such bankrupt or insolvent, or under any fiat, sequestration, or act of insolvency against such bankrupt or insolvent, to represent the company, and act in their behalf, in all respects as if such claim or demand had been the claim or demand of such secretary or treasurer, and not of the company.

Tender of
amends.

CXLIII. And be it enacted, that if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special act, or by virtue of any power or authority thereby given, and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender shall have been made it shall be lawful for the defender, by leave of the court where such action shall be pending, at any time before the record is closed, to pay into court such sum of money as he shall think fit; and thereupon such proceedings shall be had as in other cases where defenders are allowed to pay money into court.

Recovery of
damages and
penalties

Provision for
damages not
otherwise pro-
vided for.

And with respect to the recovery of damages not specially provided for, be it enacted as follows:

CXLIV. In all cases where any damages, costs, or expenses are by this or the special act, or any act incorporated therewith, directed to be paid, and the method of ascertaining the amount or enforcing the payment thereof is not provided for, such amount, in case of dispute, shall be ascertained and determined by the sheriff; and if the amount so ascertained be not paid by the company or other party liable to pay the same within seven days after demand, the amount may be recovered by pointing and sale of the goods of the company or other party liable as aforesaid; and the sheriff shall, on application issue his warrant accordingly.

Distress, &c.
against the
treasurer.

CXLV. If sufficient goods of the company cannot be found whereon to levy any such damages, costs, or expenses, payable by the company, the same may, if the amount thereof do not exceed twenty pounds, be recovered by pointing and sale of the goods of the treasurer of the company; and the sheriff, on application, shall issue

his warrant accordingly; but no such pointing and sale shall be executed against the goods of such treasurer unless seven days previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence; and if such treasurer pay any money under such distress or pointing and sale as aforesaid, he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the company coming into his custody or control, or he may sue the company for the same.

Companies clauses consolidation.
(Scotland.)

CXLVI. Where, in this or the special act, or any act incorporated therewith, any question of expenses, charges, or damages is referred to the determination of any sheriff or justices, it shall be lawful for the sheriff or any justice, upon the application of either party, to summon the other party to appear before such sheriff, or before two justices, as the case may require, at a time and place to be named in such summons; and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such sheriff, or such two justices, as the case may be, to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, on oath; and the costs of every such inquiry shall be in the discretion of such sheriff or justices, and he or they shall determine the amount thereof.

Method of proceeding before the sheriff or justices in questions of damages, &c.

CXLVII. The company shall publish the short particulars of the several offences for which any penalty is imposed by this or the special act, or any act incorporated therewith, or by any bye law of the company affecting other persons than the shareholders, officers, or servants of the company, and of the amount of every such penalty, and shall cause such particulars to be painted on a board, or printed upon paper and pasted thereon, and shall cause such board to be hung up or affixed on some conspicuous part of the principal place of business of the company, and where any such penalties are of local application shall cause such boards to be affixed in some conspicuous place in the immediate neighbourhood to which such penalties are applicable or have reference; and such particulars shall be renewed as often as the same or any part thereof is obliterated or destroyed; and no such penalty shall be recoverable unless it shall have been published and kept published in the manner hereinbefore required.

Publication of penalties.

CXLVIII. If any person pull down or injure any board put up or affixed as required by this or the special act, or any act incorporated therewith, for the purpose of publishing any bye law or penalty, or shall obliterate any of the letters or figures thereon, he shall forfeit for every such offence a sum not exceeding five pounds, and shall defray the expenses attending the restoration of such board.

Penalty for defacing boards used for such publication.

CXLIX. Every penalty or forfeiture imposed by this or the special act, or by any bye law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before the sheriff or two justices; and on complaint being made to any sheriff or justice he shall issue an order requiring the party complained against to appear before himself, if the order be issued by a sheriff, or before two or more justices, if the order be

Penalties to be summarily recovered before the sheriff or two justices.

Companies
clauses con-
solidation.

(Scotland.)

issued by a justice, at a time and place to be named in such order; and every such order shall be served on the party offending, either in person or by leaving the same with some inmate at his usual place of abode; and upon the appearance of the party complained against, or in his absence, after proof of the due service of such order, it shall be lawful for any sheriff or two justices to proceed to the hearing of the complaint; and upon proof of the offence, either by the confession of the party complained against, or upon the oath of one credible witness or more, it shall be lawful for such sheriff or justices to convict the offender, and upon such conviction to adjudge the offender to pay the penalty or forfeiture incurred, as well as such costs attending the conviction, as such sheriff or justices shall think fit.

Penalties to be
levied by dis-
tress.

CL. If forthwith upon any such adjudication as aforesaid the amount of the penalty or forfeiture, and of such costs as aforesaid, be not paid, the amount of such penalty and costs shall be levied by pouncing and sale; and such sheriff or justices, or either of them, shall issue his or their warrant of pouncing and sale accordingly.

Imprisonment
in default of
distress.

CLL. It shall be lawful for any such sheriff or justices to order any offender so convicted as aforesaid to be detained and kept in safe custody until return can be conveniently made to the warrant of pouncing and sale to be issued for levying such penalty or forfeiture, and costs, unless the offender give sufficient security, by way of recognizance or otherwise, to the satisfaction of the sheriff or justices, for his appearance before him on the day appointed for such return, such day not being more than eight days from the time of taking such security; but if before issuing such warrant of pouncing and sale it shall appear to the sheriff or justices, by the admission of the offender or otherwise, that no sufficient pouncing and sale can be had within the jurisdiction of such sheriff or justices whereon to levy such penalty or forfeiture, and costs, he or they may, if he or they think fit, refrain from issuing such warrant; and in such case, or if such warrant shall have been issued, and upon the return thereof such insufficiency as aforesaid shall be made to appear to the sheriff or justices, then such sheriff or justices shall, by warrant, cause such offender to be committed to gaol, there to remain without bail for any term not exceeding three months, unless such penalty or forfeiture, and costs, be sooner paid and satisfied.

Distress, &c.
how to be
levied.

CLLII. Where in this or the special act, or any act incorporated therewith, any sum of money, whether in the nature of penalty or otherwise, is directed to be levied by pouncing and sale, such sum of money shall be levied by pouncing and sale of the goods and effects of the party liable to pay the same, and the overplus arising from the sale of such goods and effects, after satisfying such sum of money and the expenses of the pouncing and sale, shall be returned, on demand, to the party whose goods shall have been seized.

Distress, &c.
not unlawful
for want of
form.

CLLIII. No pouncing and sale made by virtue of this or the special act, or any act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser or wrongdoer, on account of any defect or want of form in the summons,

conviction, warrant, or other proceeding relating thereto; but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action before the sheriff court.

Companies
clauses con-
solidation.
(Scotland.)

CLIV. The sheriff or justices by whom any such penalty or forfeiture shall be imposed, where the application thereof is not otherwise provided for, may award not more than one half thereof to the informer, and shall award the remainder to the kirk session of the parish in which the offence shall have been committed, for the benefit of the poor of such parish.

Application of
penalties.

CLV. No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this or the special act, or any act incorporated therewith, for any offence made cognizable before the sheriff or justices, unless the complaint respecting such offence shall have been made before such sheriff or some justice within six months next after the commission of such offence.

Penalties to
be sued for
within six
months.

CLVI. If, through any act, neglect, or default on account whereof any person shall have incurred any penalty imposed by this or the special act, or any act incorporated therewith, any damage to the property of the company shall have been committed by such person, he shall be liable to make good such damage, as well as to pay such penalty; and the amount of such damages shall, in case of dispute, be determined by the sheriff or justices by whom the party incurring such penalty shall have been convicted; and on nonpayment of such damages, on demand, the same shall be levied by pouding and sale, and such sheriff or justices shall issue his or their warrant accordingly.

Damage to be
made good in
addition to
penalty.

CLVII. It shall be lawful for any sheriff or justice to summon any person to appear before him as a witness in any matter in which such sheriff or justice, or two or more justices, shall have jurisdiction, under the provisions of this or the special act, or any act incorporated therewith, at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such sheriff or justice or justices, every such person shall forfeit a sum not exceeding five pounds for every such offence.

Penalty on
witnesses
making de-
fault.

CLVIII. It shall be lawful for any officer or agent of the company, and all persons called by him to his assistance, to seize and detain any person who shall be found committing any offence against the provisions of this or the special act, or any act incorporated therewith, and whose name and residence shall be unknown to such officer or agent, and convey him, with all convenient despatch, before the sheriff or a justice, without any warrant or other authority than this or the special act; and such sheriff or justice shall proceed with all convenient despatch in the matter of the complaint against such offender.

Transient
offenders.

Companies
 clauses con-
 solidation.

(Scotland.)

Proceedings by
 sheriff need
 not be in
 writing.

CLIX. Any sheriff to whom any application is authorized to be made, and before whom any judicial proceeding shall in consequence take place or become necessary, under or by virtue of this or the special act, or any act incorporated therewith, shall and he is hereby authorized and required summarily to call before him all parties who appear to him to be interested therein, and to proceed forthwith to hear *vivâ voce*, and pronounce judgment regarding the matters mentioned in such application or proceeding, or to do the several matters and things required by this act to be done by him, without waiting the ordinary course of the roll of causes before him, and without written pleadings, or a written record, or reducing any evidence which may be led by either of the parties to writing, unless and except where the said sheriff shall consider that the matters mentioned in such application or proceedings can with more advantage be decided with written pleadings and with a written record, in which case he shall proceed to make up a record, and bring the said matters to a conclusion with all convenient despatch; and the orders and judgments of the said sheriff, when pronounced without a record, shall be final and conclusive, and not subject to review by suspension or advocation, or to reduction, on any ground whatever.

Form of con-
 viction.

CLX. The sheriff or justice, or justices, before whom any person shall be convicted of any offence against this or the special act, or any act incorporated therewith, may cause the conviction to be drawn up according to the form in the Schedule (G.) to this act annexed.

Proceedings
 not to be
 quashed for
 want of form,
 nor removed.

CLXI. No proceeding in pursuance of this or the special act, or any act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by suspension or otherwise into any superior Court.

Power of ap-
 peal to sheriff.

CLXII. In all cases which may come before any sheriff substitute under this or the special act, or any act incorporated therewith, in which written pleadings shall have been allowed, and a written record shall have been made up, and where the evidence which has been led by the parties shall have been reduced to writing, but in no other case whatever, it shall be competent for any of the parties thereto, within seven days after a final judgment shall have been pronounced by such sheriff substitute, to appeal against the same to the sheriff of the county, by lodging a minute of appeal with the sheriff clerk of such county, or his depute; and the said sheriff shall thereupon review the proceedings of the said sheriff substitute, and while process, and, if he think proper, hear the parties *vivâ voce* thereon, and pronounce judgment; and such judgment shall in no case be subject to review by suspension or advocation, or to reduction, on any ground whatever.

Parties allowed
 to appeal from
 justices to
 quarter ses-
 sions, on giving
 security.

CLXIII. If any party shall feel aggrieved by any determination or adjudication of any justice, or two or more justices, with respect to any penalty or forfeiture under the provisions of this or the special act, or any act incorporated therewith, such party may appeal to the general quarter sessions for the county or place in which the cause of

appeal shall have arisen; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days' notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such notice enter into recognizances, with two sufficient sureties, before a justice, conditioned duly to prosecute such appeal, and to abide the order of the Court thereon.

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 clauses con-
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 (Scotland.)

CLXIV. At the quarter sessions for which such notice shall be given the Court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the Court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

Court to mak
 such order as
 they think rea-
 sonable.

And with respect to the provision to be made for affording access to the special act by all parties interested, be it enacted as follows:

CLXV. The company shall, at all times after the expiration of six months after the passing of the special act, keep in their principal office of business a copy of the special act, printed by the printers to her Majesty, or some of them; and where the undertaking shall be a railway, canal, or other like undertaking, the works of which shall not be confined to one town or place, shall also, within the space of such six months, deposit in the office of each of the clerks of the peace of the several counties into which the works shall extend, and in the office of the town clerk of every burgh or city into which or within one mile of which the works shall extend, a copy of such special act so printed as aforesaid; and the said clerks of the peace and town clerks shall receive, and they and the company respectively shall retain, the said copies of the special act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner and upon the like terms and under the like penalty for default as is provided in the case of certain plans and sections, by an act passed in the first year of the reign of her present Majesty, intitled "An Act to compel Clerks of the Peace for Counties, and other Persons, to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament." (a)

Access to spe-
 cial act.

Copies of spe-
 cial act to be
 kept and de-
 posited, and
 allowed to be
 inspected.

7 W. 4 &
 1 Vict. c. 83.

CLXVI. If the company shall fail to keep or deposit as hereinbefore mentioned any of the said copies of the special act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

Penalty on
 company fail-
 ing to keep or
 deposit such
 copies.

Companies
 clauses con-
 solidation.
 (Scotland.)

SCHEDULES referred to by the foregoing act.

SCHEDULE (A.)

Form of Certificate of Share.

“The Company.”

Number
 This is to certify, that *A. B.* of _____ is the proprietor of the
 share, number _____ of “The Company,” subject to the
 regulations of the said company. Given under the common seal of
 the said company, the _____ day of _____ in the year of our
 Lord _____

SCHEDULE (B.)

Form of Transfer of Shares or Stock.

I _____ of _____ in consideration of the sum of _____ paid to
 me by _____ of _____ do hereby transfer to the said
 share [*or shares*] numbered _____ in the undertaking called “The
 Company” [*or* _____ pounds consolidated stock in the
 undertaking called “The Company,” standing (*or part of the*
 stock standing) in my name in the books of the company], to hold
 unto the said _____ his executors, administrators, and assigns [*or*
 successors and assigns], subject to the several conditions on which I
 held the same at the time of the execution hereof; and I the said
 do hereby agree to take the said share [*or shares*] [*or stock*],
 subject to the same conditions. [*Here insert testing clause according to
 the form of the law of Scotland, if executed in Scotland, and if executed
 in England, the form of attestation usual in England.*]

SCHEDULE (C.)

Form of Mortgage Deed.

“The Company.”

Mortgage, Number _____ £ _____
 By virtue [*here name the special act*], we, “The Company,” in consideration of the sum of _____ pounds paid to us by
A. B. of _____ do assign unto the said *A. B.* his executors, admin-
 istrators, and assignees, the said undertaking [*and (in case such loan
 shall be in anticipation of the capital authorised to be raised)* all future
 calls on shareholders], and all the tolls and sums of money arising by
 virtue of the said act, and all the estate, right, title, and interest of the
 company in the same, to hold unto the said *A. B.*, his executors, ad-
 ministrators, and assigns, until the said sum of _____ pounds, toge-
 ther with interest for the same at the rate of _____ for every one
 hundred pounds by the year, be satisfied [*the principal sum to be*
 repaid at the end of _____ years from the date hereof (*in case any
 period be agreed upon for that purpose*), at _____ or any place of
 payment other than the principal office of the company]. In witness
 whereof, &c. [*Here insert the testing clause of deeds executed in
 Scotland.*]

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(Scotland.)

SCHEDULE (D.)
Form of Bond.

"The Bond, Number _____ Company,"
£ _____
By virtue of [*here name the special Act*], we, "The _____ "Com-
pany," in consideration of the sum of _____ pounds to us in hand
paid by A. B. of _____ do bind ourselves and our successors into
the said A. B. his executors, administrators, and assigns in the sum of
_____ pounds to be repaid to the said A. B., his executors, adminis-
trators, or assigns, at _____ (*in case any other place of payment than*
the principal office of the company be intended) on the _____ day of
_____ which will be in the year one thousand eight hundred and
_____, with a fifth part more of liquidated penalty in case of
failure, together with interest for the same at the rate of
_____ pounds per centum per annum, payable half-yearly on the
day of _____ and _____ day of _____ In witness whereof, &c.
[*Here insert the testing clause of deeds executed in Scotland.*]

SCHEDULE (E.)

Form of Transfer of Mortgage or Bond.

I A. B. of _____ in consideration of the sum of _____ paid to
me by G. H. of _____ do hereby transfer to the said G. H., his ex-
ecutors, administrators, and assigns, a certain bond [*or mortgage*]
number _____ made by "The _____ Company," to
bearing date the _____ day of _____ for securing the sum of
_____ and _____ interest [*or if such transfer be by endorse-*
ment, the within security,] and all my right, estate, and interest in
and to the money thereby secured [*and if the transfer be of a mortgage*
and in and to the tolls, money, and property thereby assigned.]
[*Here insert Scotch testing clause, if executed in Scotland, and if executed*
in England, the form of attestation usual in England.]

SCHEDULE (F.)

Form of Proxy.

A. B. one of the proprietors of "The _____ Company,"
doth hereby appoint C. D. of _____ to be the proxy of the said A. B.
in his absence to vote in his name upon any matter relating to the un-
dertaking proposed at the meeting of the proprietors of the said com-
pany to be held on the _____ day of _____ next, in such manner
as he the said C. D. doth think proper. In witness whereof the said
A. B. hath hereunto set his hand [*or, if a Corporation, say the com-*
mon seal of the corporation], the _____ day of _____ one thousand
eight hundred and _____

SCHEDULE (G.)

*Form of Conviction before
to wit.*

Be it remembered, That on the _____ day of _____ in the
year of our Lord _____ A. B. is convicted before me C., the she-
riff or before us D. E. two of her Majesty's justices of the peace for the

Companies
 clauses con-
 solidation.
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county of [here describe the offence generally, and the time and place when and where committed] contrary to the [here name the special Act]. Given under my hand [or under our hands], the day and year first above written.

C.
 D.
 E.

8 VICT. CHAP. 18.

An Act for consolidating in one Act certain Provisions usually inserted in Acts authorising the taking of Lands for Undertakings of a public Nature.
 [8th May, 1845.]

Lands clauses
 consolidation.

Whereas it is expedient to comprise in one general act sundry provisions usually introduced into acts of Parliament relative to the acquisition of lands required for undertakings or works of a public nature, and to the compensation to be made for the same, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: May it therefore please your Majesty that it may enacted; and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, That this act shall apply to every undertaking authorized by any act which shall hereafter be passed, and which shall authorize the purchase or taking of lands for such undertaking, and this act shall be incorporated with such act; and all the clauses and provisions of this act, save so far as they shall be expressly varied or excepted by any such act, shall apply to the undertaking authorized thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other act, which shall be incorporated with such act, form part of such act, and be construed together therewith, as forming one act.

Act to apply
 to all under-
 takings au-
 thorized by acts
 hereafter to be
 passed.

Interpretations
 in this act :
 special act :

And with respect to the construction of this act and of acts to be incorporated therewith, be it enacted as follows:

prescribed :

II. The expression "the special act," used in this act, shall be construed to mean any act which shall be hereafter passed which shall authorize the taking of lands for the undertaking to which the same relates, and with which this act shall be so incorporated as aforesaid; and the word "prescribed," used in this act in reference to any matter herein stated, shall be construed to refer such matter as the same shall be prescribed or provided for in the special act, and the sentence in which such word shall occur shall be construed as if, instead of the word "prescribed," the expression "prescribed for that purpose in the special act" had been used; and the expression "the works" or "the undertaking" shall mean the works or undertaking, of whatever nature, which shall by the special act be authorized to be executed; and the expression "the promoters of the undertaking" shall mean the parties, whether company, undertakers, commissioners, trustees, corporations,

the works :

Promoters
 of the under-
 taking."

or private persons, by the special act empowered to execute such works or undertaking. **Lands clauses consolidation.**

III. The following words and expressions, both in this and the special act, shall have the several meanings hereby assigned to them, unless there be something either in the subject or context repugnant to such construction; (that is to say,) **Interpretations in this and the special act:**

Words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular number : **Number :**

Words importing the masculine gender only shall include females : **Gender :**
The word "lands" shall extend to messuages, lands, tenements, and hereditaments of any tenure : **"Lands :"**

The word "lease" shall include an agreement for a lease : **"Lease :"**
The word "month" shall mean calendar month : **"Month :"**

The expression "superior courts" shall mean her Majesty's superior courts of record at Westminster or Dublin, as the case may require : **"Superior Courts :"**

The word "oath" shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath : **"Oath :"**

The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town : **"County :"**

The word "sheriff" shall include under sheriff, or other legally competent deputy; and where any matter in relation to any lands is required to be done by any sheriff, or by any clerk of the peace, the expression "the sheriff," or the expression "the clerk of the peace," shall in such case be construed to mean the sheriff or the clerk of the peace of the county, city, borough, liberty, cinque port, or place where such lands shall be situate; and if the lands in question, being the property of one and the same party, be situate not wholly in one county, city, borough, liberty, cinque port, or place, the same expression shall be construed to mean the sheriff or clerk of the peace of any county, city, borough, liberty, cinque port or place where any part of such lands shall be situate : **"the sheriff :"**
"the clerk of the peace :"

The word "justices" shall mean justices of the peace acting for the county, city, liberty, cinque port, or place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter; and where such matter shall arise in respect of lands being the property of one and the same party, situate not wholly in any one county, city, borough, liberty, cinque port, or place, the same shall mean a justice acting for the county, city, borough, liberty, cinque port or place where any part of such lands shall be situate, and who shall not be interested in such matter; and where any matter shall be authorized or required to be done by two justices, the expression "two justices" shall be understood to mean two justices assembled and acting together. **"Justices :"**
"two justices :"

Where under the provisions of this or the special act, or any act incorporated therewith, any notice shall be required to be given to the owner of any lands, or where any act shall be authorized or required to be done with the consent of any such owner, the word "owner," shall be understood to mean any person or **"Owner :"**

Lands clauses
consolidation.

“the Bank.”

Short title of
the act.

Form in which
portions of this
act may be in-
corporated
with other acts.

Purchase of
lands by agree-
ment.

Power to
purchase lands
by agreement.

Parties under
disability en-
abled to sell
and convey.

corporation who, under the provisions of this or the special act would be enabled to sell and convey lands to the promoters of the undertaking:

The expression “the bank” shall mean the bank of England where the same shall relate to monies to be paid or deposited in respect of lands situate in England, and shall mean the bank of Ireland where the same shall relate to monies to be paid or deposited in respect of lands situate in Ireland.

IV. And be it enacted, that in citing this act in other acts of Parliament, and in legal instruments, it shall be sufficient to use the expression “The Lands Clauses Consolidation Act, 1845.”

V. And whereas it may be convenient in some cases to incorporate with acts of Parliament hereafter to be passed some portion only of the provisions of this act; be it therefore enacted, that, for the purpose of making any such incorporation, it shall be sufficient in any such act to enact that the clauses of this act with respect to the matter so proposed to be incorporated (describing such matter as it is described in this act in the words introductory to the enactment with respect to such matter,) shall be incorporated with such act, and thereupon all the clauses and provisions of this act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such act, form part of such act, and such act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such act shall relate.

And with respect to the purchase of lands by agreement, be it enacted as follows:

VI. Subject to the provisions of this and the special act it shall be lawful for the promoters of the undertaking to agree with the owners of any lands by the special act authorized to be taken, and which shall be required for the purposes of such act, and with all parties having any estate or interest in such lands or by this or the special act enabled to sell and convey the same, for the absolute purchase, for a consideration in money, of any such lands, or such parts thereof as they shall think proper, and of all estates and interests in such lands of what kind soever.

VII. It shall be lawful for all parties, being seised, possessed of, or entitled to any such lands, or any estate or interest therein, to sell and convey or release the same to the promoters of the undertaking, and to enter into all necessary agreements for that purpose; and particularly it shall be lawful for all or any of the following parties so seised, possessed, or entitled as aforesaid so to sell, convey, or release; (that is to say,) all corporations, tenants in tail or for life, married women seised in their own right or entitled to dower, guardians, committees of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest; and the power so to sell and convey or release as aforesaid may lawfully be exercised by all such parties, other than

married women entitled to dower, or lessees for life, or for lives and years, or for years, or for any less interest, not only on behalf of themselves and their respective heirs, executors, administrators, and successors, but also for and on behalf of every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties, and as to such married women, whether they be of full age or not, as if they were sole and of full age, and as to such guardians, on behalf of their wards, and as to such committees, on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards, lunatics and idiots respectively could have exercised the same power under the authority of this or the special act if they had respectively been under no disability, and as to such trustees, executors, and administrators, on behalf of their cestuique trusts, whether infants, issue unborn, lunatics, femmes covert, or other persons, and that to the same extent as such cestuique trusts respectively could have exercised the same powers under the authority of this and the special act if they had respectively been under no disability.

Lands clauses
consolidation.

VIII. The power herein-after given to enfranchise copyhold lands, as well as every other power required to be exercised by the lord of any manor pursuant to the provisions of this or the special act, or any act incorporated therewith, and the power to release lands from any rent, charge, or incumbrance, and to agree for the apportionment of any such rent, charge, or incumbrance, shall extend to and may lawfully be exercised by every party herein-before enabled to sell and convey or release lands to the promoters of the undertaking.

Parties under
disability to
exercise other
powers.

IX. The purchase money or compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity, and not having power to sell or convey such lands except under the provisions of this or the special act, and the compensation to be paid for any permanent damage or injury to any such lands, shall not, except where the same shall have been determined by the verdict of a jury, or by arbitration, or by the valuation of a surveyor, appointed by two justices under the provision herein-after contained, be less than shall be determined by the valuation of two able practical surveyors, one of whom shall be nominated by the promoters of the undertaking, and the other by the other party, and if such two surveyors cannot agree in the valuation then by such third surveyor as any two justices shall upon application of either party, after notice to the other party, for that purpose nominate; and each of such two surveyors if they agree, or if not then the surveyor nominated by the said justices shall annex to the valuation a declaration in writing, subscribed by them or him, of the correctness thereof; and all such purchase money or compensation shall be deposited in the Bank for the benefit of the parties interested, in manner herein-after-mentioned.

Amount of
compensation
in case of parties
under disability to be
ascertained by
valuation, and
paid into the
Bank.

X. It shall be lawful for any person seised in fee of, or entitled to dispose of absolutely for his own benefit, any lands authorised to be purchased for the purposes of the special act to sell and convey such lands or any part thereof unto the promoters of the undertaking, in consideration of an annual rent-charge, payable by the promoters of the undertaking, but, except as aforesaid, the consideration to be

Where vendor
absolutely en-
titled, lands
may be sold
on chief rents.

Lands clauses consolidation.

paid for the purchase of any such lands, or for any damage done thereto, shall be in a gross sum.

Payments of rents to be charged on tolls.

XI. The yearly rents reserved by any such conveyance shall be charged on the tolls or rates, if any, payable under the special act, and shall be otherwise secured in such manner as shall be agreed between the parties, and shall be paid by the promoters of the undertaking as such rents become payable; and if at any time any such rents be not paid within thirty days after they so become payable, and after demand thereof in writing, the person to whom any such rent shall be payable may either recover the same from the promoters of the undertaking, with costs of suit, by action of debt in any of the superior courts, or it shall be lawful for him to levy the same by distress of the goods and chattels of the promoters of the undertaking.

Power to purchase lands required for additional accommodation.

XII. In case the promoters of the undertaking shall be empowered by the special act to purchase lands for extraordinary purposes, it shall be lawful for all parties who, under the provisions herein-before contained, would be enabled to sell and convey lands, to sell and convey the lands so authorized to be purchased for extraordinary purposes.

Authority to sell and re-purchase such lands.

XIII. It shall be lawful for the promoters of the undertaking to sell the lands which they shall have so acquired for extraordinary purposes, or any part thereof, in such manner and for such considerations, and to such persons, as the promoters of the undertaking may think fit, and again to purchase other lands for the like purposes, and afterwards sell the same, and so from time to time; but the total quantity of land to be held at any one time by the promoters of the undertaking, for the purposes aforesaid, shall not exceed the prescribed quantity.

Restraint on purchase from incapacitated persons.

XIV. The promoters of the undertaking shall not, by virtue of the power to purchase land for extraordinary purposes, purchase more than the prescribed quantity from any party under legal disability, or who would not be able to sell and convey such lands, except under the powers of this and the special act; and if the promoters of the undertaking purchase the said quantity of land from any party under such legal disability, and afterwards sell the whole or any part of the land so purchased, it shall not be lawful for any party, being under legal disability to sell to the promoters of the undertaking any other lands in lieu of the land so sold or disposed of by them.

Municipal corporations not to sell without the approbation of the treasury.

XV. Nothing in this or the special act contained shall enable any municipal corporation to sell for the purposes of the special act, without the approbation of the commissioners of her Majesty's treasury of the United Kingdom of Great Britain and Ireland, or any three of them, any lands which they could not have sold without such approbation before the passing of the special act, other than such lands as the company are by the powers of this or the special act empowered to purchase or take compulsorily.

Purchase of lands otherwise than by agreement.

And with respect to the purchase and taking of lands otherwise than by agreement, be it enacted as follows :

XVI. Where the undertaking is intended to be carried into effect by means of a capital to be subscribed by the promoters of the undertaking, the whole of the capital or estimated sum for defraying the expenses of the undertaking shall be subscribed under contract binding the parties thereto, their heirs, executors, and administrators, for the payment of the several sums by them respectively subscribed, before it shall be lawful to put in force any of the powers of this or the special act or any act incorporated therewith, in relation to the compulsory taking of land for the purposes of the undertaking.

Lands clauses consolidation.

Capital to be subscribed before compulsory powers of purchase put in force.

XVII. A certificate under the hands of two justices, certifying that the whole of the prescribed sum has been subscribed shall be sufficient evidence thereof, and on the application of the promoters of the undertaking, and the production of such evidence as such justices think proper and sufficient, such justices shall grant such certificate accordingly.

A certificate of two justices to be evidence that the capital has been subscribed.

XVIII. When the promoters of the undertaking shall require to purchase or take any of the lands which by this or the special act, or any act incorporated therewith, they are authorized to purchase or take, they shall give notice thereof to all the parties interested in such lands, or to the parties enabled by this act to sell and convey or release the same, or such of the said parties as shall, after diligent inquiry, be known to the promoters of the undertaking, and by such notice shall demand from such parties the particulars of their estate and interest in such lands, and of the claims made by them in respect thereof; and every such notice shall state the particulars of the lands so required, and that the promoters of the undertaking are willing to treat for the purchase thereof, and as to the compensation to be made to all parties for the damage that may be sustained by them by reason of the execution of the works.

Notice of intention to take lands.

XIX. All notices required to be served by the promoters of the undertaking upon the parties interested in or entitled to sell any such lands shall either be served personally on such parties or left at their last usual place of abode, if any such can after diligent inquiry be found, and in case any such parties shall be absent from the united kingdom, or cannot be found after diligent inquiry, shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

Services of notices on owners and occupiers of lands.

XX. If any such party be a corporation aggregate such notice shall be left at the principal office of business of such corporation, or if no such office can after diligent inquiry be found, shall be served on some principal member, if any, of such corporation, and such notice shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

Service of notice on corporation aggregate.

XXI. If, for twenty-one days after the service of such notice, any such party shall fail to state the particulars of his claim in respect of any such land, or to treat with the promoters of the undertaking in respect thereof, or if such party and the promoters of the undertaking

If parties fail to treat or in case of dispute, question to be

Lands clauses consolidation.

be settled as after mentioned.

shall not agree as to the amount of the compensation to be paid by the promoters of the undertaking for the interest in such lands belonging to such party, or which he is by this or the special act enabled to sell, or for any damage that may be sustained by him by reason of the execution of the works, the amount of such compensation shall be settled in the manner hereinafter provided for settling cases of disputed compensation.

Disputes as to compensation where the amount claimed does not exceed 50*l.* to be settled by two justices.

XXII. If no agreement be come to between the promoters of the undertaking and the owners of or parties by this act enabled to sell and convey or release any lands taken or required for or injuriously affected by the execution of the undertaking, or any interest in such lands, as to the value of such lands or of any interest therein, or as to the compensation to be made in respect thereof, and if in any such case the compensation claimed shall not exceed fifty pounds, the same shall be settled by two justices.

Compensation exceeding 50*l.* to be settled by arbitration or jury, at the option of the party claiming compensation.

XXIII. If the compensation claimed or offered in any such case shall exceed fifty pounds, and if the party claiming compensation desire to have the same settled by arbitration, and signify such desire by notice in writing to the promoters of the undertaking, before they have issued their warrant to the sheriff to summon a jury in respect of such lands, under the provisions hereinafter contained, stating in such notice the nature of the interest in respect of which such party claims compensation, and the amount of the compensation so claimed, the same shall be so settled accordingly; but unless the party claiming compensation shall as aforesaid signify his desire to have the question of such compensation settled by arbitration, or if when the matter shall have been referred to arbitration the arbitrators or their umpire shall for three months have failed to make their or his award, or if no final award shall be made, the question of such compensation shall be settled by the verdict of a jury, as hereinafter provided.

Method of proceeding for settling disputes as to compensation by justices.

XXIV. It shall be lawful for any justice, upon the application of either party with respect to any question of disputed compensation by this or the special act, or any act incorporated therewith, authorized to be settled by two justices, to summon the other party to appear before two justices, at a time and place to be named in the summons, and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such justices to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, upon oath, and the costs of every such inquiry shall be in the discretion of such justices, and they shall settle the amount thereof.

Appointment of arbitrator when questions are to be determined by arbitration.

XXV. When any question of disputed compensation by this or the special act, or any act incorporated therewith, authorized or required to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall nominate and appoint an arbitrator, to whom such dispute shall be referred; and every appointment of an arbitrator shall be made on the part of the promoters of the undertaking under the hands of the said promoters

or any two of them, or of their secretary or clerk, and on the part of any other party under the hand of such party, or if such party be a corporation aggregate under the common seal of such corporation; and such appointment shall be delivered to the arbitrator, and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing, in which shall be stated the matter so required to be referred to arbitration, shall have been served by the one party on the other party to appoint an arbitrator, such last mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute, and in such case the award or determination of such single arbitrator shall be final.

Lands clauses
consolidation.

XXVI. If, before the matters so referred shall be determined, any arbitrator appointed by either party die, or become incapable, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place, and if, for the space of seven days after notice in writing from the other party for that purpose, he fail to do so, the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death or disability as aforesaid.

Vacancy of
arbitrator to
be supplied.

XXVII. Where more than one arbitrator shall have been appointed such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint, by writing under their hands, an umpire to decide on any such matters on which they shall differ, or which shall be referred to him under the provisions of this or the special act, and if such umpire shall die, or become incapable to act, they shall forthwith after such death or incapacity appoint another umpire in his place, and the decision of every such umpire on the matters so referred to him shall be final.

Appointment
of umpire.

XXVIII. If in either of the cases aforesaid the said arbitrators shall refuse, or shall, for seven days after request of either party to such arbitration, neglect to appoint an umpire, the Board of Trade, in any case in which a railway company shall be one party to the arbitration, and two justices in any other case, shall, on the application of either party to such arbitration, appoint an umpire, and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special act, shall be final.

Board of Trade
empowered to
appoint an umpire
on neglect
of the arbitra-
tors, in case of
railway com-
panies.

XXIX. If, when a single arbitrator shall have been appointed, such arbitrator shall die or become incapable to act before he shall have made his award, the matters referred to him shall be determined by

In case of death
of single arbi-
trator the
matter to be
given *de novo*.

clauses
consolidation.

arbitration under the provisions of this or the special act in the same manner as if such arbitrator had not been appointed.

If either arbitrator refuse to act the other to proceed *ex parte*.

XXX. If, where more than one arbitrator shall have been appointed, either of the arbitrators refuse or for seven days neglect to act the other arbitrator may proceed *ex parte*, and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

If arbitrators fail to make their award within twenty-one days the matter to go to the umpire.

XXXI. If, where more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time (if any,) as shall have been appointed for that purpose by both such arbitrators under their hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid.

Power of arbitrators to call for books, &c.

XXXII. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

Arbitrator or umpire to make a declaration.

XXXIII. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him, he shall in the presence of a justice make and subscribe the following declaration; that is to say,

“I, A. B., do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the act [naming the special act.] A. B.

Made and subscribed in the presence of
And such declaration shall be annexed to the award when made; and if any arbitrator or umpire having made such declaration shall wilfully act contrary thereto he shall be guilty of a misdemeanor.

Costs of arbitration how to be borne.

XXXIV. All the costs of any such arbitration, and incident thereto, to be settled by the arbitrators, shall be borne by the promoters of the undertaking, unless the arbitrators shall award the same or a less sum than shall have been offered by the promoters of the undertaking, in which case each party shall bear his own costs incident to the arbitration, and the costs of the arbitrators shall be borne by the parties in equal proportions.

Award to be delivered to the promoters of the undertaking.

XXXV. The arbitrators shall deliver their award in writing to the promoters of the undertaking, and the said promoters shall retain the same, and shall forthwith, on demand, at their own expense, furnish a copy thereof to the other party to the arbitration, and shall at all times, on demand, produce the said award, and allow the same to be inspected or examined by such party or any person appointed by him for that purpose.

Submission may be made a rule of Court.

XXXVI. The submission to any such arbitration may be made a

rule of any of the superior courts, on the application of either of the parties.

Lands clauses
consolidation.

XXXVII. No award made with respect to any question referred to arbitration under the provisions of this or the special act shall be set aside for irregularity or error in matter of form.

Award not
void through
error in form.

XXXVIII. Before the promoters of the undertaking shall issue their warrant for summoning a jury for settling any case of disputed compensation they shall give not less than ten days' notice to the other party of their intention to cause such jury to be summoned, and in such notice the promoters of the undertaking shall state what sum of money they are willing to give for the interest in such lands sought to be purchased by them from such party, and for the damage to be sustained by him by the execution of the works.

Promoters of
the under-
taking to give
notice before
summoning a
jury.

XXXIX. In every case in which any such question of disputed compensation shall be required to be determined by the verdict of a jury the promoters of the undertaking shall issue their warrant to the sheriff, requiring him to summon a jury for that purpose, and such warrant shall be under the common seal of the promoters of the undertaking if they be a corporation, or if they be not a corporation under the hands and seals of such promoters or any two of them; and if such sheriff be interested in the matter in dispute, such application shall be made to some coroner of the county in which the lands in question, or some part thereof, shall be situate, and if all the coroners of such county be so interested, such application may be made to some person having filled the office of sheriff or coroner in such county, and who shall be then living there, and who shall not be interested in the matter in dispute; and with respect to the persons last mentioned preference shall be given to one who shall have most recently served either of the said offices; and every ex-sheriff, coroner, or ex-coroner shall have power, if he think fit, to appoint a deputy or assessor.

Warrant for
summoning
jury to be ad-
dressed to the
sheriff.

XL. Throughout the enactments contained in this act relating to the reference to a jury, where the term "sheriff" is used, the provisions applicable thereto shall be held to apply to every coroner or other person lawfully acting in his place; and in every case in which any such warrant shall have been directed to any other person than the sheriff, such sheriff shall, immediately on receiving notice of the delivery of the warrant, deliver over, on application for that purpose, to the person to whom the same shall have been directed, or to any person appointed by him to receive the same, the jurors' book and special jurors' list belonging to the county where the lands in question shall be situate.

Provisions ap-
plicable to
sheriff to apply
to coroner.

XLI. Upon the receipt of such warrant the sheriff shall summon a jury of twenty-four indifferent persons, duly qualified to act as common jurymen in the superior courts, to meet at a convenient time and place, to be appointed by him for that purpose, such time not being less than fourteen nor more than twenty-one days after the receipt of such warrant, and such place not being more than eight miles distant from the lands in question, unless by consent of the parties interested, and he shall forthwith give notice to the promoters of the works of the time and place so appointed by him.

Jury to be
summoned.

Lands clauses consolidation.

Jury to be impanelled.

XLII. Out of the jurors appearing upon such summons a jury of twelve persons shall be drawn by the sheriff, in such manner as juries for trials of issues joined in the superior courts are by law required to be drawn, and if a sufficient number of jurymen do not appear in obedience to such summons the sheriff shall return other indifferent men, duly qualified as aforesaid, of the bystanders, or others that can speedily be procured, to make up the jury to the number aforesaid; and all parties concerned may have their lawful challenges against any of the jurymen, but no such party shall challenge the array.

Sheriff to preside; witnesses to be summoned.

XLIII. The sheriff shall preside on the said inquiry, and the party claiming compensation shall be deemed the plaintiff, and shall have all such rights and privileges as the plaintiff is entitled to in the trial of actions at law; and if either party so request in writing, the sheriff shall summon before him any person considered necessary to be examined as a witness touching the matters in question, and on the like request the sheriff shall order the jury, or any six or more of them, to view the place or matter in controversy, in like manner as views may be had in the trial of actions in the superior courts.

Penalty on sheriff and jury for default.

XLIV. If the sheriff make default in any of the matters hereinbefore required to be done by him in relation to any such trial or inquiry, he shall forfeit fifty pounds for every such offence, and such penalty shall be recoverable by the promoters of the undertaking by action in any of the superior courts; and if any person summoned and returned upon any jury under this or the special act, whether common or special, do not appear, or if appearing, he refuse to make oath, or in any other manner unlawfully neglect his duty, he shall, unless he show reasonable excuse to the satisfaction of the sheriff, forfeit a sum not exceeding ten pounds, and every such penalty payable by a sheriff or jurymen shall be applied in satisfaction of the costs of the inquiry, so far as the same will extend; and, in addition to the penalty hereby imposed, every such jurymen shall be subject to the same regulations, pains, and penalties as if such jury had been returned for the trial of an issue joined in any of the superior courts.

Penalty on witnesses making default.

XLV. If any person duly summoned to give evidence upon any such inquiry, and to whom a tender of his reasonable expenses shall have been made, fail to appear at the time and place specified in the summons without sufficient cause, or if any person, whether summoned or not, who shall appear as a witness refuse to be examined on oath touching the subject matter in question, every person so offending shall forfeit to the party aggrieved a sum not exceeding ten pounds.

Notice of inquiry.

XLVI. Not less than ten days' notice of the time and place of the inquiry shall be given in writing by the promoters of the undertaking to the other party.

If the party make default the inquiry not to proceed.

XLVII. If the party claiming compensation shall not appear at the time appointed for the inquiry, such inquiry shall not be further proceeded in, but the compensation to be paid shall be such as shall be ascertained by a surveyor appointed by two justices in manner hereinafter provided.

XLVIII. Before the jury proceed to inquire of and assess the compensation or damage, in respect of which their verdict is to be given they shall make oath that they will truly and faithfully inquire of and assess such compensation or damage, and the sheriff shall administer such oaths, as well as the oaths of all persons called upon to give evidence.

Lands clauses consolidation.

Jury to be sworn.

XLIX. Where such inquiry shall relate to the value of lands to be purchased, and also to compensation claimed for injury done or to be done to the lands held therewith the jury shall deliver their verdict separately for the sum of money to be paid for the purchase of the lands required for the works, or of any interest therein belonging to the party with whom the question of disputed compensation shall have arisen, or which, under the provisions herein contained, he is enabled to sell or convey, and for the sum of money to be paid by way of compensation for the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such lands by the exercise of the powers of this or the special act, or any act incorporated therewith.

Sums to be paid for purchase of lands and for damage, to be assessed separately.

L. The sheriff before whom such inquiry shall be held shall give judgment for the purchase money or compensation assessed by such jury, and the verdict and judgment shall be signed by the sheriff, and being so signed shall be kept by the clerk of the peace among the records of the general or quarter sessions of the county in which the lands or any part thereof shall be situate in respect of which such purchase money or compensation shall have been awarded; and such verdicts and judgments shall be deemed records, and the same or true copies thereof shall be good evidence in all courts and elsewhere, and all persons may inspect the said verdicts and judgments, and may have copies thereof or extracts therefrom on paying for each inspection thereof one shilling, and for every one hundred words copied or extracted therefrom sixpence, which copies or extracts the clerk of the peace is hereby required to make out, and to sign and certify the same to be true copies.

Verdict and judgment to be recorded.

LI. On every such inquiry before a jury, where the verdict of the jury shall be given for a greater sum than the sum previously offered by the promoters of the undertaking, all the costs of such inquiry shall be born by the promoters of the undertaking; but if the verdict of the jury be given for the same or a less sum than the sum previously offered by the promoters of the undertaking, or if the owner of the lands shall have failed to appear at the time and place appointed for the inquiry, having received due notice thereof, one half of the costs of summoning, impannelling, and returning the jury, and of taking the inquiry and recording the verdict and judgment thereon, in case such verdict shall be taken, shall be defrayed by the owner of the lands, and the other half by the promoters of the undertaking, and each party shall bear his own costs, other than as aforesaid incident to such inquiry.

Costs of the inquiry how to be borne.

LII. The costs of any such inquiry shall, in case of difference, be settled by one of the masters of the Court of Queen's Bench of Eng-

Particulars of the costs.

Lands clauses consolidation.

land or Ireland, according as the lands are situate, on the application of either party, and such costs shall include all reasonable costs, charges, and expenses incurred in summoning, impannelling, and returning the jury, taking the inquiry, the attendance of witnesses, the employment of counsel and attornies, recording the verdict and judgment thereon, and otherwise incident to such inquiry.

Payment of costs.

LIII. If any such costs shall be payable by the promoters of the undertaking, and if within seven days after demand such costs be not paid to the party entitled to receive the same, they shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly; and if any such costs shall be payable by the owner of the lands or of any interest therein, the same may be deducted and retained by the promoters of the undertaking, out of any money awarded by the jury to such owner, or determined by the valuation of a surveyor, under the provision herein-after contained; and the payment or deposit of the remainder, if any, of such money shall be deemed payment and satisfaction of the whole thereof, or if such costs shall exceed the amount of the money so awarded or determined, the excess shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly.

Special jury to be summoned at the request of either party.

LIV. If either party desire any such question of disputed compensation as aforesaid to be tried before a special jury such question shall be so tried, provided that notice of such desire, if coming from the other party, be given to the promoters of the undertaking before they have issued their warrant to the sheriff; and for that purpose the promoters of the undertaking shall by their warrant to the sheriff require him to nominate a special jury for such trial; and thereupon the sheriff shall, as soon as conveniently may be after the receipt by him of such warrant, summon both the parties to appear before him, by themselves or their attornies, at some convenient time and place appointed by him for the purpose of nominating a special jury (not being less than five nor more than eight days from the service of such summons), and at the place and time so appointed the sheriff shall proceed to nominate and strike a special jury, in the manner in which such juries shall be required by the laws for the time being in force to be nominated or struck by the proper officers of the superior courts, and the sheriff shall appoint a day not later than the eighth day after striking of such jury, for the parties or their agents to appear before him to reduce the number of such jury, and thereof shall give four days' notice to the parties; and on the day so appointed the sheriff shall proceed to reduce the said special jury to the number of twenty, in the manner used and accustomed by the proper officers of the superior courts.

Efficiency of special jury.

L.V. The special jury on such inquiry shall consist of twelve of the said twenty who shall first appear on the names being called over, the parties having their lawful challenges against any of the said jurymen; and if a full jury do not appear, or if after such challenges a full jury do not remain, then, upon the application of either party, the sheriff shall add to the list of such jury the names of any other disinterested persons qualified to act as special or common jurymen, who shall not have been previously struck off the aforesaid list, and

who may then be attending the court, or can speedily be procured, so as to complete such jury, all parties having their lawful challenges against such persons; and the sheriff shall proceed to the trial and adjudication of the matters in question by such jury, and such trial shall be attended in all respects with the like incidents and consequences, and the like penalties shall be applicable, as herein-before provided in the case of a trial by common jury.

Lands clauses consolidation.

LVI. Any other inquiry than that for the trial of which such special jury may have been struck and reduced as aforesaid may be tried by such jury, provided the parties thereto respectively shall give their consent to such trial.

Other inquiries before same special jury.

LVII. No jurymen shall, without his consent, be summoned or required to attend any such proceeding as aforesaid more than once in any year.

Jurymen not to attend more than once a year.

LVIII. The purchase money or compensation to be paid for any lands to be purchased or taken by the promoters of the undertaking from any party who, by reason of absence from the kingdom, is prevented from treating, or who cannot after diligent inquiry be found, or who shall not appear at the time appointed for the inquiry before the jury as hereinbefore provided for, after due notice thereof, and the compensation to be paid for any permanent injury to such lands, shall be such as shall be determined by the valuation of such able practical surveyor as two justices shall nominate for that purpose as hereinafter mentioned.

Compensation to absent parties to be determined by a surveyor appointed by two justices.

LIX. Upon application by the promoters of the undertaking to two justices, and upon such proof as shall be satisfactory to them that any such party is, by reason of absence from the kingdom, prevented from treating, or cannot after diligent inquiry be found, or that any such party failed to appear on such inquiry before a jury as aforesaid, after due notice to him for that purpose, such justices shall, by writing under their hands, nominate an able practical surveyor for determining such compensation as aforesaid, and such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof,

Two justices to nominate a surveyor.

LX. Before such surveyor shall enter upon the duty of making such valuation as aforesaid he shall, in the presence of such justices, or one of them, make and subscribe the declaration following at the foot of such nomination; (that is to say,)

Declaration to be made by the surveyor.

" I, A. B., do solemnly and sincerely declare, that I will faithfully, impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me.

A. B.

Made and subscribed in the presence of "

And if any surveyor shall corruptly make such declaration, or having made such declaration shall wilfully act contrary thereto, he shall be guilty of a misdemeanor.

LXI. The said nomination and declaration shall be annexed to the valuation to be made by such surveyor, and shall be preserved

Valuation, &c. to be produced.

lands clauses
consolidation.

to the owner of
the lands.

expenses to
be borne by
promoters.

Purchase-
money and
compensation,
how to be es-
timated.

Where com-
pensation to
absent party
has been de-
termined by a
surveyor, the
party may have
the same sub-
mitted to
arbitration.

Question to be
submitted to
the arbitrators.

If further sum
awarded, pro-
motors to pay
or deposit same
within 14 days.

Costs of the
arbitration.

together therewith by the promoters of the undertaking, and they shall at all times produce the said valuation and other documents, on demand, to the owner of the lands comprised in such valuation, and to all other parties interested therein.

LXII. All the expenses of and incident to every such valuation shall be borne by the promoters of the undertaking.

LXIII. In estimating the purchase money or compensation to be paid by the promoters of the undertaking, in any of the cases aforesaid, regard shall be had by the justices, arbitrators, or surveyors, as the case may be, not only to the value of the land to be purchased or taken by the promoters of the undertaking, but also to the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise of the powers of this or the special act, or any act incorporated therewith.

LXIV. When the compensation payable in respect of any lands, or any interest therein, shall have been ascertained by the valuation of a surveyor, and deposited in the Bank under the provisions herein contained, by reason that the owner of or party entitled to convey such lands or such interest therein as aforesaid could not be found or was absent from the kingdom, if such owner or party shall be dissatisfied with such valuation, it shall be lawful for him, before he shall have applied to the court of Chancery for payment or investment of the monies so deposited under the provisions herein contained, by notice in writing to the promoters of the undertaking, to require the question of such compensation to be submitted to arbitration, and thereupon the same shall be so submitted accordingly, in the same manner as in other cases of disputed compensation hereinbefore authorized or required to be submitted to arbitration.

LXV. The question to be submitted to the arbitrators in the case last aforesaid shall be, whether the said sum so deposited as aforesaid by the promoters of the undertaking was a sufficient sum, or whether any and what further sum ought to be paid or deposited by them.

LXVI. If the arbitrators shall award that a further sum ought to be paid or deposited by the promoters of the undertaking, they shall pay or deposit, as the case may require, such further sum within fourteen days after the making of such award, or in default thereof the same may be enforced by attachment, or recovered with costs by action or suit in any of the superior courts.

LXVII. If the arbitrators shall determine that the sum so deposited was sufficient, the costs of and incident to such arbitration, to be determined by the arbitrators, shall be in the discretion of the arbitrators but if the arbitrators shall determine that a further sum ought to be paid or deposited by the promoters of the undertaking, all the costs of and incident to the arbitration shall be borne by the promoters of the undertaking.

LXVIII. If any party shall be entitled to any compensation in respect of any lands, or of any interest therein, which shall have been taken for or injuriously affected by the execution of the works, and for which the promoters of the undertaking shall not have made satisfaction under the provisions of this or the special act, or any act incorporated therewith, and if the compensation claimed in such case shall exceed the sum of fifty pounds, such party may have the same settled either by arbitration or by the verdict of a jury, as he shall think fit; and if such party desire to have the same settled by arbitration, it shall be lawful for him to give notice in writing to the promoters of the undertaking of such his desire, stating in such notice the nature of the interest in such lands in respect of which he claims compensation and the amount of the compensation so claimed therein; and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and shall enter into a written agreement for that purpose within twenty-one days after the receipt of any such notice from any party so entitled, the same shall be settled by arbitration in the manner herein provided; or if the party so entitled as aforesaid desire to have such question of compensation settled by jury, it shall be lawful for him to give notice in writing of such his desire to the promoters of the undertaking, stating such particulars as aforesaid, and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and enter into a written agreement for that purpose, they shall, within twenty-one days after the receipt of such notice, issue their warrant to the sheriff to summon a jury for settling the same in the manner herein provided, and in default thereof they shall be liable to pay to the party so entitled as aforesaid the amount of compensation so claimed, and the same may be recovered by him with costs, by action in any of the superior courts.

And with respect to the purchase money or compensation coming to parties having limited interests, or prevented from treating, or not making title, be it enacted as follows:

LXIX. If the purchase money or compensation which shall be payable in respect of any lands, or any interest therein, purchased or taken by the promoters of the undertaking from any corporation, tenant for life or in tail, married woman seized in her own right or entitled to dower, guardian, committee of lunatic or idiot, trustee, executor or administrator, or person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same except under the provisions of this or the special act, or the compensation to be paid for any permanent damage to any such lands, amount to or exceed the sum of two hundred pounds, the same shall be paid into the Bank, in the name and with the privity of the accountant general of the Court of Chancery in England if the same relate to lands in England or Wales, or the accountant general of the Court of Exchequer in Ireland if the same relate to lands in Ireland, to be placed to the account there of such accountant general, *ex parte* the promoters of the undertaking (describing them by their proper name,) in the matter of the special act (citing it,) pursuant to the method prescribed by any act for the time being in force for regulating monies paid into the said courts; and such monies shall remain so de-

Lands clauses
consolidation.

To be settled
by arbitration
or jury, at the
option of the
party claiming
compensation.

Application of
compensation.

Purchase-
money payable
to parties
under disability
amounting to
200*l.* to be de-
posited in the
Bank.

Lands clauses
consolidation.

posited until the same be applied to some one or more of the following purposes; (that is to say,)

Application of
monies de-
posited.

In the purchase or redemption of the land tax, or the discharge of any debt or incumbrance affecting the land in respect of which such money shall have been paid, or affecting other lands settled therewith to the same or the like uses, trusts, or purposes; or

In the purchase of other lands to be conveyed, limited, and settled upon the like uses, trusts, and purposes, and in the same manner, as the lands in respect of which such money shall have been paid stood settled; or

If such money shall be paid in respect of any buildings taken under the authority of this or the special act, or injured by the proximity of the works, in removing or replacing such buildings, or substituting others in their stead, in such manner as the Court of Chancery shall direct; or

In payment to any party becoming absolutely entitled to such money.

Order for ap-
plication and
investment
meanwhile.

LXX. Such money may be so applied as aforesaid upon an order of the Court of Chancery in England or the Court of Exchequer in Ireland, made on the petition of the party who would have been entitled to the rents and profits of the lands in respect of which such money shall have been deposited; and until the money can be so applied it may, upon the like order, be invested by the said accountant general in the purchase of three per centum consolidated or three per centum reduced Bank annuities, or in government, or real securities, and the interest, dividends, and annual proceeds thereof paid to the party who would for the time being have been entitled to the rents and profits of the lands.

Sums from 20l.
to 200l. to be
deposited or
paid to trust-
ees.

LXXI. If such purchase money or compensation shall not amount to the sum of two hundred pounds, and shall exceed the sum of twenty pounds, the same shall either be paid into the Bank, and applied in the manner herein-before directed with respect to sums amounting to or exceeding two hundred pounds, or the same may lawfully be paid to two trustees, to be nominated by the parties entitled to the rents, or profits of the lands in respect whereof the same shall be payable, such nomination to be signified by writing under the hands of the party so entitled; and in case of the coverture, infancy, lunacy, or other incapacity of the parties entitled to such monies, such nomination may lawfully be made by their respective husbands, guardians, committees, or trustees; but such last mentioned application of the monies shall not be made unless the promoters of the undertaking approve thereof and of the trustees named for the purpose; and the money so paid to such trustees, and the produce arising therefrom, shall be by such trustees applied in the manner herein-before directed with respect to money paid into the Bank, but it shall not be necessary to obtain any order of the court for that purpose.

Sums not ex-
ceeding 20l. to be
paid to par-

LXXII. If such money shall not exceed the sum of twenty pounds, the same shall be paid to the parties entitled to the rents and profits of the lands in respect whereof the same shall be payable, for their own use and benefit, or in case of the coverture, infancy, idiocy,

lunacy, or other incapacity of any such parties, then such money shall be paid, for their use, to the respective husbands, guardians, committees, or trustees of such persons.

Lands clauses
consolidation

LXXIII. All sums of money exceeding twenty pounds, which may be payable by the promoters of the undertaking in respect of the taking, using, or interfering with any lands under a contract or agreement with any person who shall not be entitled to dispose of such lands, or of the interest therein contracted to be sold by him, absolutely for his own benefit, shall be paid into the Bank or to trustees in manner aforesaid; and it shall not be lawful for any contracting party not entitled as aforesaid to retain to his own use any portion of the sums so agreed or contracted to be paid for or in respect of the taking, using, or interfering with any such lands, or in lieu of bridges, tunnels, or other accommodation works, or for assenting to or not opposing the passing of the bill authorizing the taking of such lands, but all such monies shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession as in remainder, reversion, or expectancy: provided always, that it shall be in the discretion of the Court of Chancery in England or the Court of Exchequer in Ireland, or the said trustees, as the case may be, to allot to any tenant for life, or for any other partial or qualified estate, for his own use, a portion of the sum so paid into the bank, or to such trustees as aforesaid, as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken, and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works.

All sums payable under contract with persons not absolutely entitled, to be paid into Bank

LXXIV. Where any purchase money or compensation paid into the Bank under the provisions of this or the special act shall have been paid in respect of any lease for a life or lives or years, or for a life or lives and years, or any estate in lands less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate, it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland, on the petition of any party interested in such money, to order that the same shall be laid out, invested, accumulated, and paid in such manner as the said court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be.

Court of Chancery may direct application of money in respect of leases or reversions as they may think just

LXXV. Upon deposit in the Bank in manner herein-before provided of the purchase money or compensation agreed or awarded to be paid in respect of any lands purchased or taken by the promoters of the undertaking under the provisions of this or the special act, or any act incorporated therewith, the owner of such lands, including in such term all parties by this act enabled to sell or convey lands, shall, when required so to do by the promoters of the undertaking, duly convey such lands to the promoters of the undertaking, or as they shall direct; and in default thereof, or if he fail to adduce a good title to such lands to their satisfaction, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll

Upon deposit being made, the owner of the lands to convey or in default the lands to vest in the promoters of the undertaking.

lands clauses
consolidation.

under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the promoters, or any two of them, containing a description of the lands in respect of which such default shall be made, and reciting the purchase or taking thereof by the promoters of the undertaking, and the names of the parties from whom the same were purchased or taken, and the deposit made in respect thereof, and declaring the fact of such default having been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party between whom and the promoters of the undertaking such agreement shall have been come to, or as between whom and the promoters of the undertaking such purchase money or compensation shall have been determined by a jury, or by arbitrators, or by a surveyor appointed by two justices as herein provided, and shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking, and as against such parties, and all parties on behalf of whom they are herein-before enabled to sell and convey, the promoters of the undertaking shall be entitled to immediate possession of such lands.

Where parties refuse to convey, or do not show title, or cannot be found the purchase-money to be deposited.

LXXVI. If the owner of any such lands purchased or taken by the promoters of the undertaking, or of any interest therein, on tender of the purchase money or compensation either agreed or awarded to be paid in respect thereof, refuse to accept the same, or neglect or fail to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of the promoters of the undertaking, or if he refuse to convey or release such lands as directed by the promoters of the undertaking, or if any such owner be absent from the kingdom, or cannot after diligent inquiry be found, or fail to appear on the inquiry before a jury, as herein provided for, it shall be lawful for the promoters of the undertaking to deposit the purchase money or compensation payable in respect of such lands, or any interest therein, in the Bank, in the name and with the privity of the accountant general of the Court of Chancery in England or the Court of Exchequer in Ireland, to be placed, except in the cases herein otherwise provided for, to his account there, to the credit of the parties interested in such lands (describing them so far as the promoters of the undertaking can do), subject to the control and disposition of the said court.

Upon deposit being made a receipt to be given, and the lands to vest upon a deed poll being executed.

LXXVII. Upon any such deposit of money as last aforesaid being made the cashier of the Bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what and for whose use (described as aforesaid) the same shall have been received, and in respect of what purchase the same shall have been paid in; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters, or any two of them, containing a description of the lands in respect whereof such deposit shall have been made, and declaring the circumstances under which and the names of

the parties to whose credit such deposit shall have been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of the parties for whose use and in respect whereof such purchase money or compensation shall have been deposited shall vest absolutely in the promoters of the undertaking, and as against such parties they shall be entitled to immediate possession of such lands.

Lands clauses
consolidation.

LXXVIII. Upon the application by petition of any party making claim to the money so deposited as last aforesaid, or any part thereof, or to the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same, the said Court of Chancery in England or the Court of Exchequer in Ireland may, in a summary way, as to such court shall seem fit, order such money to be laid out or invested in the public funds, or may order distribution thereof, or payment of the dividends thereof, according to the respective estates, titles, or interests of the parties making claim to such money or lands, or any part thereof, and may make such other order in the premises as to such court shall seem fit.

Application of
monies so de-
posited.

LXXIX. If any question arise respecting the title to the lands in respect whereof such monies shall have been so paid or deposited as aforesaid, the parties respectively in possession of such lands, as being the owners thereof, or in receipt of the rents of such lands, as being entitled thereto at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands, until the contrary be shown to the satisfaction of the court; and unless the contrary be shown as aforesaid, the parties so in possession, and all parties claiming under them, or consistently with their possession, shall be deemed entitled to the money so deposited, and to the dividends or interest of the annuities or securities purchased therewith, and the same shall be paid and applied accordingly.

Party in
possession to
be deemed the
owner.

LXXX. In all cases of monies deposited in the Bank under the provisions of this or the special act, or an act incorporated therewith, except where such monies shall have been so deposited by reason of the wilful refusal of any party entitled thereto to receive the same, or to convey or release the lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party to make out a good title to the land required, it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking; (that is to say,) the costs of the purchase or taking of the lands, or which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for, and the costs of the investment of such monies in government or real securities, and of the reinvestment thereof in the purchase of other lands, and also the costs of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such monies shall be invested,

Costs in cases
of money de-
posited.

Lands clauses consolidation.

and for the payment out of court of the principal of such monies, or of the securities whereon the same shall be invested, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants: provided always, that the costs of one application only for reinvestment in land shall be allowed, unless it shall appear to the Court of Chancery in England or the Court of Exchequer in Ireland that it is for the benefit of the parties interested in the said monies that the same should be invested in the purchase of lands, in different sums and at different times, in which case it shall be lawful for the court, if it think fit, to order the costs of any such investments to be paid by the promoters of the undertaking.

Conveyances.

And with respect to the conveyances of lands, be it enacted as follows:

Form of conveyances.

LXXXI. Conveyances of lands to be purchased under the provisions of this or the special act, or any act incorporated therewith, may be according to the Forms in the Schedules (A.) and (B.) respectively to this act annexed, or as near thereto as the circumstances of the case will admit, or by deed in any other form which the promoters of the undertaking may think fit; and all conveyances made according to the Forms in the said Schedules, or as near thereto as the circumstances of the case will admit shall be effectual to vest the lands thereby conveyed in the promoters of the undertaking, and shall operate to merge all terms of years attendant by express declaration, or by construction of law, on the estate or interest so thereby conveyed, and to bar and to destroy all such estates tail, and all other estates, rights, titles, remainders, reversions, limitations, trusts, and interests whatsoever, of and in the lands comprised in such conveyances which shall have been purchased or compensated for by the consideration therein mentioned; but although terms of years be thereby merged, they shall in equity afford the same protection as if they had been kept on foot, and assigned to a trustee for the promoters of the undertaking to attend the reversion and inheritance.

Costs of conveyances.

LXXXII. The costs of all such conveyances shall be borne by the promoters of the undertaking, and such costs shall include all charges and expenses incurred, on the part as well of the seller as of the purchaser, of all conveyances and assurances of any such lands, and of any outstanding terms or interests therein, and of deducing, evidencing, and verifying the title to such lands, terms, or interests, and of making out and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all other reasonable expenses incident to the investigation, deduction, and verification of such title.

Taxation of costs of conveyances.

LXXXIII. If the promoters of the undertaking and the party entitled to any such costs shall not agree as to the amount thereof, such costs shall be taxed by one of the taxing masters of the court of Chancery, or by a Master in Chancery in Ireland, upon an order of the same court, to be obtained on petition in a summary way by either of the parties; and the promoters of the undertaking shall pay what the said master shall certify to be due in respect of such costs to the party entitled thereto, or in default thereof the same may be

recovered in the same way as any other costs payable under an order of the said court, or the same may be recovered by distress, in the manner hereinbefore provided in other cases of costs; and the expense of taxing such costs shall be borne by the promoters of the undertaking, unless upon such taxation one sixth part of the amount of such costs shall be disallowed, in which case the costs of such taxation shall be borne by the party whose costs shall be so taxed, and the amount thereof shall be ascertained by the said master, and deducted by him accordingly in his certificate of such taxation.

Lands clauses
consolidation.

And with respect to the entry upon lands by the promoters of the undertaking, be it enacted as follows:

Entry on lands.

LXXXIV. The promoters of the undertaking shall not, except by consent of the owners and occupiers, enter upon any lands which shall be required to be purchased or permanently used for the purposes and under the powers of this or the special act, until they shall either have paid to every party having any interest in such lands, or deposited in the Bank, in the manner herein mentioned, the purchase money or compensation agreed or awarded to be paid to such parties respectively for their respective interests therein: Provided always, that for the purpose merely of surveying and taking levels of such lands, and of probing or boring to ascertain the nature of the soil, and of setting out the line of the works, it shall be lawful for the promoters of the undertaking, after giving not less than three nor more than fourteen days' notice to the owners or occupiers thereof, to enter upon such lands without previous consent, making compensation for any damage thereby occasioned to the owners or occupiers thereof.

Payment of
price to be
made previous
to entry, except
to survey, &c.

LXXXV. Provided also, that if the promoters of the undertaking shall be desirous of entering upon and using any such lands before an agreement shall have been come to or an award made, or verdict given for the purchase money, or compensation to be paid by them in respect of such lands, it shall be lawful for the promoters of the undertaking to deposit in the Bank, by way of security, as hereinafter mentioned, either the amount of purchase money or compensation claimed by any party interested in or entitled to sell and convey such lands, and who shall not consent to such entry, or such a sum as shall by a surveyor appointed by two justices in the manner hereinbefore provided in the case of parties who cannot be found, be determined to be the value of such lands, or of the interest therein which such party is entitled to or enabled to sell and convey, and also to give to such party a bond, under the common seal of the promoters if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters, or any two of them, with two sufficient sureties to be approved of by two justices, in case the parties differ, in a penal sum equal to the sum so to be deposited, conditioned for payment to such party, or for deposit in the Bank for the benefit of the parties interested in such lands, as the case may require, under the provisions herein contained, of all such purchase money or compensation, as may in manner hereinbefore provided be determined to be payable by the promoters of the undertaking in respect of the lands so entered upon, together with interest thereon, at the rate of five pounds per centum per annum, from the time of entering on such lands until such purchase money or compensation shall be paid to such party, or deposited

Promoters to
be allowed to
enter on lands
before purchase,
on making deposit
by way of
security and
giving bond.

Lands clauses consolidation.

in the Bank for the benefit of the parties interested in such lands, under the provisions herein contained; and upon such deposit by way of security being made as aforesaid, and such bond being delivered or tendered to such non-consenting party as aforesaid it shall be lawful for the promoters of the undertaking to enter upon and use such lands, without having first paid or deposited the purchase money or compensation in other cases required to be paid or deposited by them before entering upon any lands to be taken by them under the provisions of this or the special act.

Upon deposit being made cashier to give receipt.

LXXXVI. The money so to be deposited as last aforesaid shall be paid into the Bank in the name and with the privity of the accountant general of the Court of Chancery in England, or the Court of Exchequer in Ireland, to be placed to his account there, to the credit of the parties interested in or entitled to sell and convey the lands so to be entered upon, and who shall not have consented to such entry, subject to the control and disposition of the said court; and upon such deposit being made, the cashier of the Bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what purpose and to whose credit the same shall have been paid in.

Deposit to remain as a security, and to be applied under the direction of the court.

LXXXVII. The money so deposited as last aforesaid shall remain in the Bank, by way of security to the parties whose lands shall so have been entered upon for the performance of the condition of the bond to be given by the promoters of the undertaking, as hereinbefore mentioned, and the same may, on the application by petition of the promoters of the undertaking, be ordered to be invested in bank annuities or government securities, and accumulated; and upon the condition of such bond being fully performed it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland, upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the promoters of the undertaking, or if such condition shall not be fully performed, it shall be lawful for the said court to order the same to be applied in such manner as it shall think fit for the benefit of the parties for whose security the same shall so have been deposited.

The company may pay the deposit money into the Bank by way of security during the time that he office of the accountant general is closed.

LXXXVIII. If at any time the company be unable, by reason of the closing of the office of the accountant general of the Court of Chancery in England or the Court of Exchequer in Ireland, to obtain his authority in respect of the payment of any sum of money so authorized to be deposited in the Bank by way of security as aforesaid, it shall be lawful for the company to pay into the Bank to the credit of such party or matter as the case may require (subject nevertheless to being dealt with as hereinafter provided, and not otherwise), such sum of money as the promoters of the undertaking shall, by some writing signed by their secretary or solicitors for the time being, addressed to the governor and company of the Bank in that behalf, request, and upon any such payment being made the cashier of the Bank shall give a certificate thereof; and in every such case, within ten days after the re-opening of the said accountant general's office, the solicitor for the promoters of the undertaking shall

there bespeak the direction for the payment of such sum into the name of the accountant general, and upon production of such direction at the Bank of England the money so previously paid in shall be placed to the credit of the said accountant general accordingly, and the receipt for the said payment be given to the party making the same in the usual way for the purpose of being filed at the report office.

Lands clauses consolidation.

LXXXIX. If the promoters of the undertaking or any of their contractors shall, except as aforesaid, wilfully enter upon and take possession of any lands which shall be required to be purchased or permanently used for the purposes of the special act, without such consent as aforesaid, or without having made such payment for the benefit of the parties interested in the lands, or such deposit by way of security as aforesaid, the promoters of the undertaking shall forfeit to the party in possession of such lands the sum of ten pounds over and above the amount of any damage done to such lands by reason of such entry and taking possession as aforesaid, such penalty and damage respectively to be recovered before two justices; and if the promoters of the undertaking or their contractors shall, after conviction in such penalty as aforesaid, continue in unlawful possession of any such lands, the promoters of the undertaking shall be liable to forfeit the sum of twenty-five pounds for every day they or their contractors shall so remain in possession as aforesaid, such penalty to be recoverable by the party in possession of such lands, with costs, by action in any of the superior courts; provided always, that nothing herein contained shall be held to subject the promoters of the undertaking to the payment of any such penalties as aforesaid, if they shall *bona fide* and without collusion have paid the compensation agreed or awarded to be paid in respect of the said lands to any person whom the promoters of the undertaking may have reasonably believed to be entitled thereto, or shall have deposited the same in the Bank for the benefit of the parties interested in the lands, or made such deposit by way of security in respect thereof as hereinbefore mentioned, although such person may not have been legally entitled thereto.

Penalty on the promoters of the undertaking entering upon lands without consent before payment of the purchase-money.

XC. On the trial of any action for any such penalty as aforesaid the decision of the justices under the provision herein-before contained shall not be held conclusive as to the right of entry on any such lands by the promoters of the undertaking.

Decision of justices not conclusive as to the right of the promoters.

XCI. If in any case in which, according to the provisions of this or the special act, or any act incorporated therewith, the promoters of the undertaking are authorized to enter upon and take possession of any lands required for the purposes of the undertaking, the owner or occupier of any such lands or any other person refuse to give up the possession thereof, or hinder the promoters of the undertaking from entering upon or taking possession of the same, it shall be lawful for the promoters of the undertaking to issue their warrant to the sheriff to deliver possession of the same to the person appointed in such warrant to receive the same, and upon the receipt of such warrant the sheriff shall deliver possession of any such lands accordingly, and the costs accruing by reason of the issuing and execution of such warrant, to be settled by the sheriff, shall be paid by the person refusing to give pos-

Proceedings in case of refusal to deliver possession of lands.

Lands clauses consolidation.

session, and the amount of such costs shall be deducted and retained by the promoters of the undertaking from the compensation, if any, then payable by them to such party, or if no such compensation be payable to such party, or if the same be less than the amount of such costs, then such costs, or the excess thereof beyond such compensation, if not paid on demand, shall be levied by distress, and upon application to any justice for that purpose he shall issue his warrant accordingly.

Parties not to be required to sell part of a house.

XCII. And be it enacted that no party shall at any time be required to sell or convey to the promoters of the undertaking a part only of any house or other building or manufactory if such party be willing and able to sell and convey the whole thereof.

Intersected lands.

Owners of intersected lands may insist on sale.

And with respect to small portions of intersected land, be it enacted as follows:

XCIII. If any lands, not being situate in a town or built upon shall be so cut through and divided by the works as to leave, either on both sides or on one side thereof, a less quantity of land than half a statute acre, and if the owner of such small parcel of land require the promoters of the undertaking to purchase the same along with the other land required for the purposes of the special act, the promoters of the undertaking shall purchase the same accordingly, unless the owner thereof have other land adjoining to that so left into which the same can be thrown, so as to be conveniently occupied therewith; and if such owner have any other land so adjoining the promoters of the undertaking shall, if so required by the owner, at their own expense, throw the piece of land so left into such adjoining land, by removing the fences and levelling the sites thereof, and by soiling the same in a sufficient and workmanlike manner.

Promoters of the undertaking may insist on purchase where expense of bridges, &c. exceeds the value.

XCIV. If any such land shall be so cut through and divided as to leave on either side of the works a piece of land of less extent than half a statute acre, or of less value than the expense of making a bridge, culvert, or such other communication between the land so divided as the promoters of the undertaking are, under the provisions of this or the special act, or any act incorporated therewith, compellable to make, and if the owner of such lands have not other lands adjoining such piece of land, and require the promoters of the undertaking to make such communication, then the promoters of the undertaking may require such owner to sell to them such piece of land, and any dispute as to the value of such piece of land, or as to what would be the expense of making such communication, shall be ascertained as herein provided for cases of disputed compensation; and on the occasion of ascertaining the value of the land required to be taken for the purposes of the works, the jury or the arbitrators, as the case may be, shall, if required by either party, ascertain by their verdict or award, the value of any such severed piece of land, and also what would be the expense of making such communication.

Copyholds.

Conveyance of copyhold lands to be enrolled.

And with respect to copyhold lands, be it enacted as follows:
XCv. Every conveyance to the promoters of the undertaking, of any lands which shall be of copyhold or customary tenure, or of the nature thereof, shall be entered on the rolls of the manor of which the same shall be held or parcel; and on payment to the stewards of such

manor of such fees as would be due to him on the surrender of the same lands to the use of a purchaser thereof, he shall make such enrolment; and every such conveyance, when so enrolled, shall have the like effect, in respect of such copyhold or customary lands, as if the same had been of freehold tenure, nevertheless, until such lands shall have been enfranchised by virtue of the powers herein-after contained, they shall continue subject to the same fines, rents, heriots, and services as were theretofore payable and of right accustomed.

Lands clause
consolidation.

XCVI. Within three months after the enrolment of the conveyance of any such copyhold or customary lands, or within one month after the promoters of the undertaking shall enter upon and make use of the same for the purposes of the works, whichever shall first happen, or if more than one parcel of such lands holden of the same manor shall have been taken by them, then within one month after the last of such parcels shall have been so taken or entered on by them, the promoters of the undertaking shall procure the whole of the lands holden of such manor so taken by them to be enfranchised, and for that purpose shall apply to the lord of the manor whereof such lands are holden to enfranchise the same, and shall pay to him such compensation in respect thereof as shall be agreed upon between them and him, and if the parties fail to agree respecting the amount of the compensation to be paid for such enfranchisement the same shall be determined as in other cases of disputed compensation; and in estimating such compensation the loss in respect of the fines, heriots, and other services payable on death, descent, or alienation, or any other matters which would be lost by the vesting of such copyhold or customary lands in the promoters of the undertaking, or by the enfranchisement of the same shall be allowed for.

Copyhold
lands to be
enfranchised.

XCVII. Upon payment or tender of the compensation so agreed upon or determined, or on deposit thereof in the Bank in any of the cases herein-before in that behalf provided, the lord of the manor whereof such copyhold or customary lands shall be holden shall enfranchise such lands, and the lands so enfranchised shall for ever thereafter be held in free and common soccage; and in default of such enfranchisement by the lord of the manor, or if he fail to adduce a good title thereto, to the satisfaction of the promoters of the undertaking, it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped in the manner herein-before provided in the case of the purchase of lands by them, and thereupon the lands in respect of the enfranchisement whereof such compensation shall have been deposited as aforesaid, shall be deemed to be enfranchised, and shall be for ever thereafter held in free and common soccage.

Lord of the
manor to en-
franchise on
payment of
compensation.

XCVIII. If any such copyhold or customary lands be subject to any customary or other rent, and part only of the land subject to any such rent be required to be taken for the purposes of the special act, the apportionment of such rent may be settled by agreement between the owner of the lands and the lord of the manor on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement, then the same shall be settled by two justices; and the enfranchisement of any copyhold or customary lands taken by virtue of this or the special act, or the ap-

Apportion-
ment of copy-
hold rents.

Lands clauses consolidation.

portionment of such rents shall not affect in other respects any custom by or under which any such copyhold or customary lands not taken for such purposes shall be held; and if any of the lands so required be released from any portion of the rents to which they were subject jointly with any other lands, such last-mentioned lands shall be charged with the remainder only of such rents; and with reference to any such apportioned rents, the lord of the manor shall have all the same rights and remedies over the lands to which such apportioned rent shall have been assigned or attributed as he had previously over the whole of the lands subject to such rents for the whole of such rents.

Common lands.

Compensation for common lands, where held of a manor, &c. how to be paid.

And with respect to any such lands being common or waste lands, be it enacted as follows:

XCIX. The compensation in respect of the right in the soil of any lands subject to any rights of common shall be paid to the lord of the manor, in case he shall be entitled to the same, or to such party, other than the commoners, as shall be entitled to such right in the soil; and the compensation in respect of all other commonable and other rights in or over such lands, including therein any commonable or other rights to which the lord of the manor may be entitled, other than his right in the soil of such lands, shall be determined and paid and applied in manner herein-after provided with respect to common lands the right in the soil of which shall belong to the commoners; and upon payment or deposit in the Bank of the compensation so determined all such commonable and other rights shall cease and be extinguished.

Lord of the manor, &c. to convey to the promoters of the undertaking, on receiving compensation for his interest.

C. Upon payment or tender to the lord of the manor, or such other party as aforesaid, of the compensation which shall have been agreed upon or determined in respect of the right in the soil of any such lands or on deposit thereof in the Bank in any of the cases herein-before in that behalf provided, such lord of the manor, or such other party as aforesaid, shall convey such lands to the promoters of the undertaking and such conveyance shall have the effect of vesting such lands in the promoters of the undertaking, in like manner as if such lord of the manor, or such other party as aforesaid, had been seised in fee simple of such lands at the time of executing such conveyance; and in default of such conveyance it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner herein-before provided in the case of the purchase of lands by them, and thereupon the lands in respect whereof such last-mentioned compensation shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking, and they shall be entitled to immediate possession thereof, subject nevertheless to the commonable and other rights theretofore affecting the same, until such rights shall have been extinguished by payment or deposit of the compensation for the same in manner herein-after provided.

Compensation for common lands where not held of a manor how to be ascertained.

CL. The compensation to be paid with respect to any such lands, being common lands, or in the nature thereof, the right to the soil of which shall belong to the commoners, as well as the compensation to be paid for the commonable and other rights in or over common lands the right in the soil whereof shall not belong to the commoners, other

than the compensation to the lord of the manor, or other party entitled to the soil thereof, in respect of his right in the soil thereof, shall be determined by agreement between the promoters of the undertaking and a committee of the parties entitled to commonable or other rights in such lands, to be appointed as next herein-after mentioned.

Lands clauses consolidation.

CII. It shall be lawful for the promoters of the undertaking to convene a meeting of the parties entitled to commonable or other rights over or in such lands to be held at some convenient place in the neighbourhood of the lands, for the purpose of their appointing a committee to treat with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable or other rights; and every such meeting shall be called by public advertisement, to be inserted once at least in two consecutive weeks in some newspaper circulating in the county or in the respective counties and in the neighbourhood in which such lands shall be situate, the last of such insertions being not more than fourteen nor less than seven days prior to any such meeting; and notice of such meeting shall also, not less than seven days previous to the holding thereof, be affixed upon the door of the parish church where such meeting is intended to be held, or if there be no such church some other place in the neighbourhood to which notices are usually affixed; and if such lands be parcel or holden of a manor, a like notice shall be given to the lord of such manor.

A meeting of the parties interested to be convened.

CIII. It shall be lawful for the meeting so called to appoint a committee, not exceeding five in number, of the parties entitled to any such rights; and at such meeting the decision of the majority of the persons entitled to commonable rights present shall bind the minority and all absent parties.

Meeting to appoint committee.

CIV. It shall be lawful for the committee so chosen to enter into an agreement with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable and other rights, and all matters relating thereto, for and on behalf of themselves and all other parties interested therein; and all such parties shall be bound by such agreement; and it shall be lawful for such committee to receive the compensation so agreed to be paid, and the receipt of such committee, or of any three of them, for such compensation, shall be an effectual discharge for the same; and such compensation, when received, shall be apportioned by the committee among the several persons interested therein, according to their respective interests, but the promoters of the undertaking, shall not be bound to see to the apportionment or to the application of such compensation, nor shall they be liable for the misapplication or nonapplication thereof.

Committee to agree with the promoters of the undertaking.

CV. If upon such committee being appointed they shall fail to agree with the promoters of the undertaking as to the amount of the compensation to be paid as aforesaid, the same shall be determined as in other cases of disputed compensation.

Disputes to be settled as in other cases.

CVI. If, upon being duly convened by the promoters of the undertaking, no effectual meeting of the parties entitled to such commonable

If no committee be ap-

**Lands clauses
consolidation.**

**pointed the
amount to be
determined by
a surveyor.**

**Upon payment
of compensa-
tion payable
to commoners
the lands to
rest.**

or other rights shall take place, or if, taking place, such meeting fail to appoint such committee, the amount of such compensation shall be determined by a surveyor, to be appointed by two justices, as herein-before provided in the case of parties who cannot be found.

CVII. Upon payment or tender to such committee or any three of them, or if there shall be no such committee then upon deposit in the Bank in the manner provided in the like case of the compensation which shall have been agreed upon or determined in respect of such commonable or other rights, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner herein-before provided in the case of the purchase of lands by them, and thereupon the lands in respect of which such compensation shall have been so paid or deposited shall vest in the promoters of the undertaking, freed and discharged from all such commonable or other rights, and they shall be entitled to immediate possession thereof; and it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland, by an order to be made upon petition, to order payment of the money so deposited to a committee to be appointed as aforesaid, or to make such other order in respect thereto, for the benefit of the parties interested as it shall think fit.

**Lands in
mortgage.**

**Power to re-
deem mort-
gages.**

And with respect to lands subject to mortgage, be it enacted as follows:

CVIII. It shall be lawful for the promoters of the undertaking to purchase or redeem the interest of the mortgagee of any such lands which may be required for the purpose of the special act, and that whether they shall have previously purchased the equity of redemption of such lands or not, and whether the mortgagee thereof be entitled thereto in his own right, or in trust for any other party, and whether he be in possession of such lands by virtue of such mortgage or not, and whether such mortgage affect such lands solely, or jointly with any other lands not required for the purposes of the special act, and in order thereto the promoters of the undertaking may pay or tender to such mortgagee the principal and interest due on such mortgage, together with his costs and charges, if any, and also six months' additional interest, and thereupon such mortgagee shall immediately convey his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct, or the promoters of the undertaking may give notice in writing to such mortgagee that they will pay off the principal and interest due on such mortgage at the end of six months, computed from the day of giving such notice; and if they shall have given any such notice, or if the party entitled to the equity of redemption of any such lands shall have given six months' notice of his intention to redeem the same, then at the expiration of either of such notices, or at any intermediate period, upon payment or tender by the promoters of the undertaking to the mortgagee of the principal money due on such mortgage, and the interest which would become due at the end of six months from the time of giving either of such notices, together with his costs and expenses, if any, such mortgagee shall convey or release his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct.

CIX. If, in either of the cases aforesaid, upon such payment or tender, any mortgagee shall fail to convey or release his interest in such mortgage as directed by the promoters of the undertaking, or if he fail to adduce a good title thereto to their satisfaction, then it shall be lawful for the promoters of the undertaking to deposit in the Bank, in the manner provided by this act in like cases, the principal and interest, together with the costs, if any, due on such mortgage, and also, if such payment be made before the expiration of six months' notice as aforesaid, such further interest as would at that time become due; and it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped in the manner herein-before provided in the case of the purchase of lands by them; and thereupon, as well as upon such conveyance by the mortgagee, if any such be made, all the estate and interest of such mortgagee, and of all persons in trust for him, or for whom he may be a trustee, in such lands, shall vest in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession.

Lands classed
consolidation

Deposit of
mortgage
money on re-
fusal to accep-

CX. If any such mortgaged lands shall be of less value than the principal, interest, and costs secured thereon, the value of such lands, or the compensation to be made by the promoters of the undertaking in respect thereof, shall be settled by agreement between the mortgagee of such lands and the party entitled to the equity of redemption thereof on the one part, and the promoters of the undertaking on the other part, and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation being so agreed upon or determined shall be paid by the promoters of the undertaking to the mortgagee, in satisfaction of his mortgage debt, so far as the same will extend, and upon payment or tender thereof the mortgagee shall convey or release all his interest in such mortgaged lands to the promoters of the undertaking, or as they shall direct.

Sum to be paid
when mortgage
exceeds the
value of the
lands.

CXI. If, upon such payment or tender as aforesaid being made, any such mortgagee fail so to convey his interest in such mortgage, or to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such value or compensation in the Bank, in the manner provided by this act in like cases, and every such payment or deposit shall be accepted by the mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of such mortgaged lands from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner herein-before provided in the case of the purchase of lands by them; and thereupon such lands, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, shall become absolutely vested in the promoters of the undertaking, and they shall be entitled to immediate possession thereof, in case such mortgagee were himself entitled to such possession; nevertheless, all rights and remedies possessed by the mortgagee against the mortgagor, by virtue of any bond or covenant or other obligation, other than the right to such lands, shall remain in force in

Deposit of
money when
refused on
tender.

Lands clauses
consolidation.

respect of so much of the mortgage debt as shall not have been satisfied by such payment or deposit.

Sum to be paid
where part
only of mort-
gaged lands
taken.

CXII. If a part only of any such mortgaged lands be required for the purposes of the special act, and if the part so required be of less value than the principal money, interest, and costs secured on such lands, and the mortgagee shall not consider the remaining part of such lands a sufficient security for the money charged thereon, or be not willing to release the part so required, then the value of such part, and also the compensation (if any) to be paid in respect of the severance thereof or otherwise, shall be settled by agreement between the mortgagee and the party entitled to the equity of redemption of such land on the one part, and the promoters of the undertaking on the other, and if the parties aforesaid fail to agree respecting the amount of such value or compensation the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to such mortgagee in satisfaction of his mortgage debt, so far as the same will extend; and thereupon such mortgagee shall convey or release to them, or as they shall direct, all his interest in such mortgaged lands the value whereof shall have been so paid; and a memorandum of what shall have been so paid shall be endorsed on the deed creating such mortgage, and shall be signed by the mortgagee; and a copy of such memorandum shall at the same time (if required) be furnished by the promoters of the undertaking, at their expense, to the party entitled to the equity of redemption of the lands comprised in such mortgage deed.

Deposit of
money when
refused on
tender.

CXIII. If, upon payment or tender to any such mortgagee of the amount of the value or compensation so agreed upon or determined, such mortgagee shall fail to convey or release to the promoters of the undertaking, or as they shall direct, his interest in the lands in respect of which such compensation shall so have been paid or tendered, or if he shall fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking it shall be lawful for the promoters of the undertaking to pay the amount of such value or compensation into the Bank in the manner provided by this act in the case of monies required to be deposited in such Bank, and such payment or deposit shall be accepted by such mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of the portion of the mortgaged lands so required from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll duly stamped, in the manner herein-before provided in the case of the purchase of lands by them; and thereupon such lands shall become absolutely vested in the promoters of the undertaking, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, and in case such mortgagee were himself entitled to such possession they shall be entitled to immediate possession thereof; nevertheless every such mortgagee shall have the same powers and remedies for recovering or compelling payment of the mortgage money, or the residue thereof (as the case may be), and the interest thereof respectively, upon and out of the residue of such mortgaged lands, or the portion thereof not required for the purposes of the special act, as he would otherwise have

had or been entitled to for recovering or compelling payment thereof upon or out of the whole of the lands originally comprised in such mortgage. **Lands clauses consolidation.**

CXIV. Provided always that in any of the cases herein-before provided with respect to lands subject to mortgage, if in the mortgage deed a time shall have been limited for payment of the principal money thereby secured, and under the provisions herein-before contained the mortgagee shall have been required to accept payment of his mortgage money, or of part thereof, at a time earlier than the time so limited the promoters of the undertaking shall pay to such mortgagee, in addition to the sum which shall have been so paid off, all such costs and expenses as shall be incurred by such mortgagee in respect of or which shall be incidental to the re-investment of the sum so paid off, such costs, in case of difference, to be taxed and payment thereof enforced in the manner herein provided with respect to the costs of conveyances; and if the rate of interest secured by such mortgage be higher than at the time of the same being so paid off can reasonably be expected to be obtained on re-investing the same, regard being had to the then current rate of interest such mortgagee shall be entitled to receive from the promoters of the undertaking, in addition to the principal and interest herein-before provided for, compensation in respect of the loss to be sustained by him by reason of his mortgage money being so prematurely paid off, the amount of such compensation to be ascertained, in case of difference, as in other cases of disputed compensation; and until payment or tender of such compensation as aforesaid the promoters of the undertaking shall not be entitled, as against such mortgagee, to possession of the mortgaged lands under the provision herein-before contained.

Compensation to be made in certain cases if mortgage paid off before the stipulated time.

And with respect to lands charged with any rent service, rent-charge, or chief or other rent, or other payment or incumbrance not herein-before provided for, be it enacted as follows:

Rent-charges.

CXV. If any difference shall arise between the promoters of the undertaking and the party entitled to any such charge upon any lands required to be taken for the purposes of the special act, respecting the consideration to be paid for the release of such lands therefrom, or from the portion thereof affecting the lands required for the purposes of the special act, the same shall be determined as in other cases of disputed compensation.

Release of lands from rent-charges.

CXVI. If part only of the lands charged with any such rent service, rent-charge, chief or other rent, payment, or incumbrance, be required to be taken for the purposes of the special act, the apportionment of any such charge may be settled by agreement between the party entitled to such charge and the owner of the lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement the same shall be settled by two justices; but if the remaining part of the lands so jointly subject be a sufficient security for such charge, then, with consent of the owner of the lands so jointly subject, it shall be lawful for the party entitled to such charge to release therefrom the lands required, on condition or in consideration of such other lands remaining exclusively subject to the whole thereof.

Release of part of lands from charge.

Lands clauses consolidation.

Deposit in case of refusal to release.

CXVII. Upon payment or tender of the compensation so agreed upon or determined to the party entitled to any such charge as aforesaid, such party shall execute to the promoters of the undertaking a release of such charge; and if he fail so to do, or if he fail to adduce good title to such charge, to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such compensation in the Bank in the manner herein-before provided in like cases, and also, if they think fit, to execute a deed poll, duly stamped, in the manner herein-before provided in the case of the purchase of lands by them, and thereupon the rent service, rent-charge, chief or other rent, payment or incumbrance, or the portion thereof in respect whereof such compensation shall so have been paid, shall cease and be extinguished.

Charge to continue on lands not taken.

CXVIII. If any such lands be so released from any such charge or incumbrance, or portion thereof, to which they were subject jointly with other lands, such last-mentioned lands shall alone be charged with the whole of such charge, or with the remainder thereof, as the case may be, and the party entitled to the charge shall have all the same rights and remedies over such last-mentioned lands, for the whole or for the remainder of the charge, as the case may be, as he had previously over the whole of the lands subject to such charge; and if upon any such charge or portion of charge being so released the deed or instrument creating or transferring such charge be tendered to the promoters of the undertaking for the purpose, they or two of them shall subscribe, or if they be a corporation shall affix their common seal to a memorandum of such release endorsed on such deed or instrument, declaring what part of the lands originally subject to such charge shall have been purchased by virtue of the special act, and if the lands be released from part of such charge, what proportion of such charge shall have been released, and how much thereof continues payable, or if the lands so required shall have been released from the whole of such charge, then that the remaining lands are thenceforward to remain exclusively charged therewith; and such memorandum shall be made and executed at the expense of the promoters of the undertaking, and shall be evidence in all courts and elsewhere of the facts therein stated, but not so as to exclude any other evidence of the same facts.

Leases.

Where part only of lands under lease taken, the rent to be apportioned.

And with respect to lands subject to leases, be it enacted as follows:

CXIX. If any lands shall be comprised in a lease for a term of years unexpired, part only of which lands shall be required for the purposes of the special act, the rent payable in respect of the lands comprised in such lease shall be apportioned between the lands so required and the residue of such lands; and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement between the parties, such apportionment shall be settled by two justices; and after such apportionment the lessee of such lands shall, as to all future accruing rent, be liable only to so much of the rent as shall be so apportioned in respect of the lands not required for the purposes of the special act; and as to the lands not so required, and

as against the lessee, the lessor shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease: and all the covenants, conditions, and agreements of such lease, except as to the amount of rent to be paid, shall remain in force with regard to that part of the land which shall not be required for the purposes of the special act, in the same manner as they would have done in case such part only of the land had been included in the lease.

Lands clauses consolidation.

CXX. Every such lessee as last aforesaid shall be entitled to receive from the promoters of the undertaking compensation for the damage done to him in his tenancy by reason of the severance of the lands required from those not required, or otherwise by reason of the execution of the works.

Tenants to be compensated.

CXXI. If any such lands shall be in the possession of any person having no greater interest therein than as tenant for a year or from year to year, and if such person be required to give up possession of any lands so occupied by him before the expiration of his term or interest therein, he shall be entitled to compensation for the value of his unexpired term or interest in such lands, and for any just allowance which ought to be made to him by an in-coming tenant, and for any loss or injury he may sustain, or if a part only of such lands be required, compensation for the damage done to him in his tenancy by severing the lands held by him, or otherwise injuriously affecting the same; and the amount of such compensation shall be determined by two justices, in case the parties differ about the same; and upon payment or tender of the amount of such compensation all such persons shall respectively deliver up to the promoters of the undertaking, or to the person appointed by them to take possession thereof, any such lands in their possession required for the purposes of the special act.

Compensation to be made to tenants at will, &c.

CXXII. If any party, having a greater interest than as tenant at will, claim compensation in respect of any unexpired term or interest under any lease or grant of any such lands, the promoters of the undertaking may require such party to produce the lease or grant in respect of which such claim shall be made, or the best evidence thereof in his power; and if, after demand made in writing by the promoters of the undertaking, such lease or grant, or such best evidence thereof, be not produced within twenty-one days, the party so claiming compensation shall be considered as a tenant holding only from year to year, and be entitled to compensation accordingly.

Where greater interest claimed than from year to year, lease to be produced.

CXXIII. And be it enacted, that the powers of the promoters of the undertaking for the compulsory purchase or taking of lands for the purposes of the special act shall not be exercised after the expiration of the prescribed period, and if no period be prescribed not after the expiration of three years from the passing of the special act.

Limit of time for compulsory purchase.

And with respect to interests in lands which have by mistake been omitted to be purchased, be it enacted as follows:

Interests omitted to be purchased.

Lands clauses consolidation.

Promoters of the undertaking empowered to purchase interest in lands the purchase whereof may have been omitted by mistake.

CXXIV. If, at any time after the promoters of the undertaking shall have entered upon any lands which under the provisions of this or the special act, or any act incorporated therewith, they were authorized to purchase, and which shall be permanently required for the purposes of the special act, any party shall appear to be entitled to any estate, right, or interest in or charge affecting such lands which the promoters of the undertaking shall through mistake or inadvertence have failed or omitted duly to purchase or to pay compensation for, then, whether the period allowed for the purchase of lands shall have expired or not, the promoters of the undertaking shall remain in the undisturbed possession of such lands, provided, within six months after notice of such estate, right, interest, or charge, in case the same shall not be disputed by the promoters of the undertaking, or in case the same shall be disputed then within six months after the right thereto shall have been finally established by law in favour of the party claiming the same, the promoters of the undertaking shall purchase or pay compensation for the same, and shall also pay to such party, or to any other party who may establish a right thereto, full compensation for the mesne profits or interest which would have accrued to such parties respectively in respect thereof during the interval between the entry of the promoters of the undertaking thereon and the time of the payment of such purchase money or compensation by the promoters of the undertaking, so far as such mesne profits or interest may be recoverable in law or equity; and such purchase money or compensation shall be agreed on or awarded and paid in like manner as according to the provisions of this act the same respectively would have been agreed on or awarded and paid in case the promoters of the undertaking had purchased such estate, right, interest, or charge before their entering upon such land, or as near thereto as circumstances will admit.

How value of such lands to be estimated.

CXXV. In estimating the compensation to be given for any such last-mentioned lands, or any estate or interest in the same, or for any mesne profits thereof, the jury, or arbitrators, or justices, as the case may be, shall assess the same according to what they shall find to have been the value of such lands, estate or interest, and profits at the time such lands were entered upon by the promoters of the undertaking, and without regard to any improvements or works made in the said lands by the promoters of the undertaking, and as though the works had not been constructed.

Promoters of the undertaking to pay the costs of litigation as to such lands.

CXXVI. In addition to the said purchase money, compensation, or satisfaction, and before the promoters of the undertaking shall become absolutely entitled to any such estate, interest, or charge, or to have the same merged or extinguished for their benefit, they shall, when the right to any such estate, interest, or charge shall have been disputed by the company, and determined in favour of the party claiming the same, pay the full costs and expenses of any proceedings at law or in equity for the determination or recovery of the same to the parties with whom any such litigation in respect thereof shall have taken place; and such costs and expenses shall, in case the same shall be disputed, be settled by the proper officer of the court in which such litigation took place.

And with respect to lands acquired by the promoters of the undertaking under the provisions of this or the special act, or any act incorporated therewith, but which shall not be required for the purposes thereof, be it enacted as follows :

CXXVII. Within the prescribed period, or if no period be prescribed within ten years after the expiration of the time limited by the special act for the completion of the works, the promoters of the undertaking shall absolutely sell and dispose of all such superfluous lands, and apply the purchase money arising from such sales to the purposes of the special act; and in default thereof all such superfluous lands remaining unsold at the expiration of such period shall thereupon vest in and become the property of the owners of the lands adjoining thereto, in proportion to the extent of their lands respectively adjoining the same.

CXXVIII. Before the promoters of the undertaking dispose of any such superfluous lands they shall, unless such lands be situate within a town, or be lands built upon or used for building purposes, first offer to sell the same to the person then entitled to the lands (if any) from which the same were originally severed; or if such person refuse to purchase the same, or cannot after diligent inquiry be found, then the like offer shall be made to the person or to the several persons whose lands shall immediately adjoin the lands so proposed to be sold, such persons being capable of entering into a contract for the purchase of such lands: and where more than one such person shall be entitled to such right of pre-emption such offer shall be made to such persons in succession, one after another, in such order as the promoters of the undertaking shall think fit.

CXXIX. If any such persons be desirous of purchasing such lands then within six weeks after such offer of sale they shall signify their desire in that behalf to the promoters of the undertaking, or if they decline such offer, or if for six weeks they neglect to signify their desire to purchase such lands, the right of pre-emption of every such person so declining or neglecting in respect of the lands included in such offer shall cease; and a declaration in writing made before a justice by some person not interested in the matter in question, stating that such offer was made and was refused, or not accepted within six weeks from the time of making the same, or that the person or all the persons entitled to the right of pre-emption were out of the country, or could not after diligent inquiry be found, or were not capable of entering into a contract for the purchase of such lands, shall in all courts be sufficient evidence of the facts therein stated.

CXXX. If any person entitled to such pre-emption be desirous of purchasing any such lands, and such persons and the promoters of the undertaking do not agree as to the price thereof, then such price shall be ascertained by arbitration, and the costs of such arbitration shall be in the discretion of the arbitrators.

CXXXI. Upon payment or tender to the promoters of the undertaking of the purchase money so agreed upon or determined as aforesaid they shall convey such lands to the purchasers thereof by deed under the common seal of the promoters of the undertaking, if they

Lands clauses consolidation.

Sale of superfluous land.

Lands not wanted to be sold, or in default to vest in owners of adjoining lands.

Lands to be offered to owner of lands from which they were originally taken, or to adjoining owners.

Right of pre-emption to be claimed within six weeks.

Differences as to price to be settled by arbitration.

Lands to be conveyed to the purchasers.

Lands clauses consolidation.

be a corporation, or if not a corporation under the hands and seals of the promoters of the undertaking or any two of the directors or managers thereof acting by the authority of the body; and a deed so executed shall be effectual to vest the lands comprised therein in the purchaser of such lands for the estate which shall so have been purchased by him; and a receipt under such common seal, or under the hands of two of the directors or managers of the undertaking as aforesaid, shall be a sufficient discharge to the purchaser of any such lands for the purchase money in such receipt expressed to be received.

Effect of the word "grant" in conveyances.

CXXXII. In every conveyance of lands to be made by the promoters of the undertaking under this or the special act the word "grant" shall operate as express covenants by the promoters of the undertaking, for themselves and their successors, or for themselves, their heirs, executors, administrators and assigns, as the case may be, with the respective grantees therein named, and the successors, heirs, executors, administrators, and assigns of such grantees, according to the quality or nature of such grants, and of the estate or interest therein expressed to be thereby conveyed, as follows, except so far as the same shall be restrained or limited by express words contained in any such conveyance; (that is to say,)

A covenant that, notwithstanding any act or default done by the promoters of the undertaking, they were at the time of the execution of such conveyance seised or possessed of the lands or premises thereby granted for an indefeasible estate of inheritance in fee simple, free from all incumbrances done or occasioned by them, or otherwise for such estate or interest as therein expressed to be thereby granted, free from incumbrances done or occasioned by them :

A covenant that the grantee of such lands, his heirs, successors, executors, administrators, and assigns, (as the case may be,) shall quietly enjoy the same against the promoters of the undertaking, and their successors, and all other persons claiming under them, and be indemnified and saved harmless by the promoters of the undertaking and their successors from all incumbrances created by the promoters of the undertaking :

A covenant for further assurance of such lands, at the expense of such grantee, his heirs, successors, executors, administrators, or assigns, (as the case may be,) by the promoters of the undertaking, or their successors, and all other persons claiming under them :

And all such grantees, and their several successors, heirs, executors, administrators and assigns respectively, according to their respective quality or nature, and the estate or interest in such conveyance expressed to be conveyed, may in all actions brought by them assign breaches of covenants, as they might do if such covenants were expressly inserted in such conveyances.

CXXXIII. And be it enacted, that if the promoters of the undertaking become possessed by virtue of this or the special act, or any act incorporated therewith, of any lands charged with the land tax, or liable to be assessed to the poor's rate, they shall from time to time, until the works shall be completed and assessed to such land tax or

Land tax and poor's rate to be made good.

poor's rate, be liable to make good the deficiency in the several assessments for land tax and poor's rate by reason of such lands having been taken or used for the purposes of the works, and such deficiency shall be computed according to the rental at which such lands, with any building thereon, were valued or rated at the time of the passing of the special act; and on demand of such deficiency the promoters of the undertaking, or their treasurer, shall pay all such deficiencies to the collector of the said assessments respectively; nevertheless, if at any time the promoters of the undertaking think fit to redeem such land tax, they may do so in accordance with the powers in that behalf given by the acts for the redemption of the land tax.

Lands clauses consolidation.

CXXXIV. And be it enacted, that any summons or notice, or any writ or other proceeding at law or in equity, requiring to be served upon the promoters of the undertaking, may be served by the same being left at or transmitted through the post directed to the principal office of the promoters of the undertaking, or one of the principal offices where there shall be more than one, or being given or transmitted through the post directed to the secretary, or in case there be no secretary the solicitor of the said promoters.

Services of notices upon company.

CXXXV. And be it enacted, that if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special act, or any act incorporated therewith, or by virtue of any power or authority thereby given, and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last mentioned party shall not recover in any such action; and if no such tender shall have been made it shall be lawful for the defendant, by leave of the court where such action shall be pending, at any time before issue joined, to pay into court such sum of money as he shall think fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court.

Tender of amends.

And with respect to the recovery of forfeitures, penalties and costs, be it enacted as follows:

Recovery of penalties.

CXXXVI. Every penalty or forfeiture imposed by this or the special act, or by any bye law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices; and on complaint being made to any justice he shall issue a summons requiring the party complained against to appear before two justices at a time and place to be named in such summons; and every such summons shall be served on the party offending either in person or by leaving the same with some inmate at his usual place of abode; and upon the appearance of the party complained against, or in his absence, after proof of the due service of such summons, it shall be lawful for any two justices to proceed to the hearing of the complaint, and that although no information in writing or in print shall have been exhibited before them; and upon proof of the offence, either by the confession of the party complained against, or upon the oath of one credible witness or more, it shall be lawful for such justices to convict the offender, and upon such conviction to adjudge the offender to pay the penalty or forfeiture in-

Penalties to be summarily recovered before two justices.

Lands clauses-consolidation. curred, as well as such costs attending the conviction as such justices shall think fit.

Penalties to be levied by distress. CXXXVII. If, forthwith upon any such adjudication as aforesaid, the amount of the penalty or forfeiture, and of such costs as aforesaid, be not paid, the amount of such penalty and costs shall be levied by distress, and such justices or either of them shall issue their or his warrant of distress accordingly.

Distress how to be levied. CXXXVIII. Where in this or the special act, or any act incorporated therewith, any sum of money, whether in the nature of penalty, costs, or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

Application of penalties. CXXXIX. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one-half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed: to be applied in aid of the poor's rate of such parish, or if the place wherein the offence shall have been committed shall be extra-parochial then such justices shall direct such remainder to be applied in aid of the poor's rate of such extra-parochial place, or if there shall not be any poor's rate therein in aid of the poor's rate of any adjoining parish or district.

Distress against the treasurer. CXL. If any such sum shall be payable by the promoters of the undertaking, and if sufficient goods of the said promoters cannot be found whereon to levy the same, it may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the said promoters, and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer or left at his residence; and if such treasurer pay any money under such distress as aforesaid he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the promoters of the undertaking coming into his custody or control, or he may sue them for the same.

Distress not unlawful for want of form. CXLI. No distress levied by virtue of this or the special act, or any act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

CXLII. No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this or the special act, or any act incorporated therewith, for any offence made cognizable before a justice, unless the complaint respecting such offence shall have been made before such justice within six months next after the commission of such offence.

Lands clauses consolidation.

Penalties to be sued for within six months.

CXLIII. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction under the provisions of this or the special act at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence.

Penalty on witnesses making default.

CXLIV. The justices, before whom any person shall be convicted of any offence against this or the special act, or any act incorporated therewith, may cause the conviction to be drawn up according to the form in the Schedule (C.) to this act annexed.

Form of conviction.

CXLV. No proceeding in pursuance of this or the special act, or any act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by certiorari or otherwise into any of the superior Courts.

Proceedings not to be quashed for want of form.

CXLVI. If any party shall feel aggrieved by any determination or adjudication of any justice, with respect to any penalty or forfeiture under the provisions of this or the special act, or any act incorporated therewith, such party may appeal to the general quarter sessions, for the county or place in which the cause of appeal shall have arisen; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days' notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such notice enter into recognizances, with two sufficient sureties, before a justice, conditioned duly to prosecute such appeal, and to abide the order of the Court thereon.

Parties allowed to appeal to quarter sessions, on giving security.

CXLVII. At the quarter sessions for which such notice shall be given the Court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the Court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

Court to make such order as they think reasonable.

Lands clauses consolidation.

Receiver of the metropolitan police district to receive penalties incurred within his district.

2 & 3 Vict.
c. 71.

CXLVIII. Provided always, and be it enacted, that notwithstanding any thing herein or in the special act, or any act incorporated therewith, contained, every penalty or forfeiture imposed by this or the special act or any act incorporated therewith, or by any bye law in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by an act passed in the third year of the reign of her present Majesty, intituled "An Act for regulating the Police Courts in the Metropolis," and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal and upon the same terms as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned act; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses as he or they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned act.

Persons giving false evidence liable to penalties of perjury.

CXLIX. And be it enacted, that any person who upon any examination upon oath under the provisions of this or the special act, or any act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

Access to special act.

Copies of special act to be kept and deposited, and allowed to be inspected.

And with respect to the provision to be made for affording access to the special act by all parties interested, be it enacted as follows:

CL. The company shall, at all times after the expiration of six months after the passing of the special act, keep in their principal office of business a copy of the special act, printed by the printers to her Majesty, or some of them; and where the undertaking shall be a railway, canal, or other like undertaking, the works of which shall not be confined to one town or place, shall also, within the space of such six months, deposit in the office of each of the clerks of the peace of the several counties into which the works shall extend a copy of such special act so printed as aforesaid; and the said clerks of the peace shall receive, and they and the company respectively shall retain, the said copies of the special act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner and upon the like terms and under the like penalty for default as is provided in the case of certain plans and sections, by an act passed in the first year of the reign of her present Majesty, intituled "An Act to compel Clerks of the Peace for Counties, and other Persons, to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament." (a)

7 W. 4 &
1 Vict. c. 83.

CLI. If the company shall fail to keep or deposit as herein-
before mentioned any of the said copies of the special act, they shall
forfeit twenty pounds for every such offence, and also five pounds for
every day afterwards during which such copy shall be not so kept or
deposited.

Lands clauses
consolidation.
Penalty.

CLII. And be it enacted, that this act shall not extend to Scotland.

SCHEDULES referred to in the foregoing act.

SCHEDULE (A.)

Form of Conveyance.

I of in consideration of the sum of paid to
me [or as the case may be,] into the Bank of England [or Bank of
Ireland], in the name and with the privity of the accountant general
of the Court of Chancery *ex parte*, "The promoters of the undertak-
ing," [naming them], or to A. B. of and C. D. of
two trustees appointed to receive the same] pursuant to the [here
name the special act] by the [here name the company or other promoters
of the undertaking,] incorporated [or constituted] by the said act do
hereby convey to the said company [or other description], their succes-
sors and assigns, all [describing the premises to be conveyed], together
with all ways, rights, and appurtenances thereto belonging, and all such
estate, right, title, and interest in and to the same as I am or shall be-
come seised or possessed of, or am by the said act empowered to con-
vey, to hold the premises to the said company [or other description],
their successors and assigns, for ever, according to the true intent and
meaning of the said act. In witness whereof I have hereunto set my
hand and seal, the day of in the year of our Lord

SCHEDULE (B.)

Form of Conveyance on Chief Rent.

I of in consideration of the rent-charge to be paid
to me, my heirs and assigns, as herein-after mentioned, by "The pro-
moters of the undertaking" [naming them], incorporated [or consti-
tuted] by virtue of the [here name the special act], do hereby convey
to the said company [or other description], their successors and assigns,
all [describing the premises to be conveyed], together with all ways,
rights, and appurtenances thereunto belonging, and all my estate,
right, title, and interest in and to the same and every part thereof, to
hold the said premises to the said company [or other description], their
successors and assigns, for ever, according to the true intent and
meaning of the said act, they the said company [or other description],
their successors and assigns, yielding and paying unto me, my heirs
and assigns, one clear yearly rent of by equal quarterly [or
half-yearly [as agreed upon] portions, henceforth, on the [stating the
days] clear of all taxes and deductions. In witness whereof I hereunto
set my hand and seal, the day of in the year of our
Lord

Lands clauses
consolidation.

SCHEDULE (C).
Form of Conviction.

to wit.
Be it remembered, That on the day of in the
year of our Lord A. B. is convicted before us C., D., two of her
Majesty's justices of the peace for the county of [here describe
the offence generally, and the time and place when and where committed]
contrary to the [here name the special act]. Given under our hands,
and seals, the day and year first above written.

C.
D.

8 VICT. CHAP. 19.

*An Act for consolidating in one Act certain Provisions usually inserted
in Acts authorizing the taking of Lands for Undertakings of a public
Nature in Scotland.* [8th May, 1845.]

Lands clauses
consolidation.
(Scotland.)

Whereas it is expedient to comprise in one general act sundry provisions usually introduced into acts of Parliament relative to the acquisition of lands in Scotland required for undertakings or works of a public nature, and the compensation to be made for the same, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, That this act shall apply to every undertaking in Scotland, authorized by any act of Parliament which shall hereafter be passed, and which shall authorize the taking of lands for such undertaking, and this act shall be incorporated with such act; and all the provisions of this act, save so far as they shall be expressly varied or excepted by any such act, shall apply to the undertaking authorized thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other act, which shall be incorporated with such act, form part of such act, and be construed together therewith, as forming one act.

This act to apply to all undertakings authorized by acts hereafter passed.

Interpretations
in this act :

“ special act :”

And with respect to the construction of this act, and other acts to be incorporated therewith, be it enacted as follows:

“ prescribed :”

II. The expression “the special act,” used in this act, shall be construed to mean any act which shall be hereafter passed and which shall authorize the taking of lands for the undertaking to which the same relates, and with which this act shall be so incorporated as aforesaid; and the word “prescribed,” used in this act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special act, and the sentence in which such word shall occur shall be construed as if, instead of the word “prescribed,” the expression “prescribed for that purpose in the

special act" had been used; and the expression "the works" or "the undertaking" shall mean the works or undertaking of whatever nature, which shall by the special act be authorized to be executed; and the expression "the promoters of the undertaking" shall mean the parties, whether company, undertakers, commissioners, trustees, corporations, or private persons, by the special act empowered to execute such works or undertaking.

Lands clauses
consolidation.
Scotland.)

"the works :"
"Promoters
of the under-
taking."

III. And be it enacted, that the following words and expressions both in this and the special act, shall have the several meanings hereby assigned to them, unless there be something either in the subject or context repugnant to such construction; (that is to say,)

Interpretations
in this and the
special act.

Words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular number :

"Number :"

Words importing the masculine gender only shall include females :
The word "lands" shall extend to houses, lands, tenements, and heritages of any description or tenure :

"Gender :"

"Lands :"

The word "lease" shall include a missive of lease :

"Lease :"

The word "month" shall mean calendar month :

"Month :"

The "lord ordinary" shall mean the lord ordinary of the Court of session in Scotland officiating on the bills in time of vacation, or the junior lord ordinary, if in time of session, as the case may be .

"Lord Ord-
inary :"

The word "oath" shall include affirmation in the case of Quakers, or other declaration or solemnity lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath :

"Oath :"

The word "county" shall include any ward or other like division of a county :

"County :"

The word "sheriff" shall include the sheriff substitute :

"sheriff :"

The word "justices" shall mean justices of the peace acting for the county, city, liberty, or place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter; and where such matter shall arise in respect of lands being the property of one and the same party, situate not wholly in any one county, city, liberty, or place, the same shall mean a justice acting for the county, city, liberty, or place where any part of such lands shall be situate, and who shall not be interested in such matter; and where any matter shall be authorized or required to be done by two justices, the expression "two justices" shall be understood to mean two or more justices assembled and acting together.

"Justices :"

"two jus-
tices :"

Where under the provisions of this or the special act, or any act incorporated therewith, any notice shall be required to be given to the owner of any lands, or where any act shall be authorized or required to be done with the consent of any such owner, the word "owner," shall be understood to mean any person or corporation or trustees or others, who, under the provisions of this or the special act, would be enabled to sell and convey lands to the promoters of the undertaking :

"Owner :"

The expression "the Bank" shall mean any of the incorporated or chartered banks in Scotland.

"the Bank."

IV. And be it enacted, that in citing this act in other acts of Parlia-

Short title
of the act.

Lands clauses
consolidation.
(Scotland.)

Form in which
portions of this
act may be in-
corporated
with other acts.

Purchase of
lands by agree-
ment.

Power to
purchase lands
by agreement.

Parties under
disability en-
abled to sell
and convey.

ment, and in legal instruments, it shall be sufficient to use the expression "The Lands Clauses Consolidation (Scotland) Act, 1845."

V. And whereas it may be convenient in some cases to incorporate with acts of Parliament hereafter to be passed some portion only of the provisions of this act; be it therefore enacted, that, for the purpose of making any such incorporation, it shall be sufficient in any such act to enact that the clauses of this act with respect to the matter so proposed to be incorporated (describing such matter as it is described in this act in the words introductory to the enactment with respect to such matter,) shall be incorporated with such act; and thereupon all the clauses and provisions of this act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such act, form part of such act, and such act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such act shall relate.

And with respect to the purchase of lands by agreement, be it enacted as follows:

VI. Subject to the provisions of this and the special act it shall be lawful for the promoters of the undertaking to agree with the owners of any lands by the special act authorized to be taken, and which shall be required for the purposes of such act, and with all parties having any right or interest in such lands or by this or the special act enabled to sell and convey the same, for the absolute purchase of any such lands, or such parts thereof as they shall think proper, and for the purchase of all rights and interests in such lands of what kind soever.

VII. It shall be lawful for all parties, being possessed of any lands, or any such right or interest therein, to contract for, sell, convey, and dispose of such lands, or of such right therein, to the promoters of the undertaking, and to enter into all necessary agreements for these purposes, and particularly it shall be lawful for the parties following so to do; (that is to say,) all corporations, heirs of entail, life renters, or persons holding any other partial or qualified estate or interest, married women seised in their own right or entitled to terce or dower, or any other right or interest, husbands, tutors, curators, and other guardians for infants, minors, lunatics or idiots, fatuous or furious persons, or for persons under any other disability or incapacity, judicial factors, trustees or feoffees in trust for charitable or other purposes, executors and administrators; and the power so to contract for, sell, convey, and dispose of as aforesaid may lawfully be exercised by all such parties, not only on behalf of themselves and their respective heirs, executors, administrators, and successors, but also for and on behalf of every person entitled in reversion, or expectancy after them, and as to such married women as if they were sole, and as to such tutors, curators, guardians, judicial factors, and trustees, on behalf of those for whom they respectively act, whether infants, minors, issue unborn, bankrupts, lunatics, idiots, fatuous and furious persons, married women, or other incapacitated persons, and that to the same extent as such infants, minors, bankrupts, lunatics, idiots, fatuous and furious persons, married women,

and other incapacitated persons respectively could have exercised the same powers under the authority of this and the special act if they had respectively been under no disability.

Lands clause
consolidation
(Scotland.)

VIII. The power herein-after given to discharge any lands, from feu duties or casualties of superiority, as well as every other power required to be exercised by any superior, pursuant to the provisions of this or the special act, or any act incorporated therewith, and the power to discharge lands from any rent, payment, charge, feu duties, ground annuals, or other real burdens or incumbrances, and to agree for the apportionment of any such rent, payment, charge, feu duties, ground annuals, or other real burdens and incumbrances, shall extend to and may lawfully be exercised by every party herein-before enabled to contract for, sell, dispose of, or convey lands or rights or interest therein to the company.

Parties under
disability may
exercise other
powers.

IX. The purchase money or compensation to be paid for any lands, or any rights or interests therein, to be purchased or taken from any party under any disability or incapacity, and not having power to sell or convey such lands, or rights or interest therein, except under the provisions of this or the special act, and the compensation to be paid for any permanent damage or injury to any such lands, shall not, except where the same shall have been determined by the sheriff or by the verdict of a jury, or by arbitration, or by the valuation of a valuator appointed by the sheriff under the provision herein-after contained, be less than shall be determined by the valuation of two able practical valuers, one of whom shall be nominated by the promoters of the undertaking, and the other by the other party, and if such two valuers cannot agree in the valuation then by such third valuator as the sheriff shall, upon application of either party, after notice to the other party, for that purpose nominate; and each of such two valuers if they agree, or if not then the valuator nominated by the said sheriff shall annex to the valuation a declaration in writing, subscribed by them or him, of the correctness thereof; and all such purchase money or compensation shall be deposited in the Bank for the benefit of the parties interested, in manner herein-after mentioned.

Amount of
compensation
in case of par-
ties under dis-
ability to be
ascertained by
valuation, and
paid into the
Bank.

X. It shall be lawful for all parties entitled to dispose of absolutely any lands authorized to be purchased for the purposes of the special act to convey such lands or any part thereof unto the promoters of the undertaking in consideration of an annual feu duty or ground annual payable by the promoters of the undertaking.

Where vendee
absolutely en-
titled, lands
may be sold
on feu duties
&c.

XI. The feu duties or ground annuals stipulated by any such conveyance shall be charged on the tolls or rates, if any, payable under the special act, and shall be otherwise secured in such manner as shall be agreed between the parties, and shall be paid by the promoters of the undertaking as such feu duties or ground annuals become payable; and if at any time the same be not paid within thirty days after they so become payable, and after demand thereof in writing, the person to whom any such feu duties or ground annuals shall be payable may either recover the same from the promoters of the undertaking, with expenses of suit, by action in any competent court,

Payment of
which to be
charged on
tolls.

lands clauses consolidation. (Scotland.)

or it shall be lawful for him to levy the same by pointing and sale of the goods and effects of the promoters of the undertaking.

power to purchase lands required for additional accommodation.

XII. In case the promoters of the undertaking shall be empowered by the special act to purchase lands for extraordinary purposes, it shall be lawful for all parties who, under the provisions herein-before contained, would be enabled to sell, feu, and convey lands, to sell, feu, and convey the lands so authorized to be purchased for extraordinary purposes.

authority to sell and re-purchase such lands.

XIII. It shall be lawful for the promoters of the undertaking to sell the lands which they shall have so acquired for extraordinary purposes, or any part thereof, in such manner and for such considerations and to such persons as the promoters of the undertaking may think fit, and again to purchase other lands for the like purposes, and afterwards sell the same, and so from time to time, but the total quantity of land to be held at any one time by the promoters of the undertaking for the purposes aforesaid shall not exceed the prescribed quantity.

restraint on purchase from incapacitated persons.

XIV. The promoters of the undertaking shall not, by virtue of the power to purchase land for extraordinary purposes, purchase or acquire more than the prescribed quantity from any party under legal disability, or who would not be able to sell or convey such lands, except under the powers of this and the special act; and if the promoters of the undertaking purchase or acquire the said quantity of land from any party under such legal disability, and afterwards sell or dispose of the whole or any part of the land so purchased, it shall not be lawful for any party, being under legal disability, to sell or convey to the promoters of the undertaking any other lands in lieu of the land so sold or disposed of by them.

capital to be subscribed before compulsory powers of purchase put in force.

XV. Where the undertaking is intended to be carried into effect by means of a capital to be subscribed by the promoters of the undertaking the whole of the capital of the company or estimated sum for defraying the expenses of the undertaking shall be subscribed under contract binding the parties thereto, their heirs, executors, and administrators, for the payment of the several sums by them respectively subscribed before it shall be lawful to put in force any of the powers of this or the special act, or any act incorporated therewith, in relation to the compulsory taking of land for the purposes of the undertaking.

certificate of sheriff to evidence that the capital has been subscribed.

XVI. A certificate, under the hands of the sheriff, certifying that the whole of the prescribed sum has been subscribed, shall be sufficient evidence thereof; and on the application of the promoters of the undertaking, and the production of such evidence as such sheriff thinks proper and sufficient, such sheriff shall grant such certificate accordingly.

purchase of lands otherwise than by agreement.

And with respect to the purchase and taking of lands otherwise than by agreement, be it enacted as follows:
XVII. When the promoters of the undertaking shall require to purchase any of the lands which by this or the special act, or any act

incorporated therewith, they are authorized to purchase or take, they shall give notice thereof to all the parties interested in such lands, or to the parties enabled by this or the special act to sell and convey the same, or their rights and interests therein, or such of the said parties as shall, after diligent inquiry, be known to the promoters of the undertaking, and by such notice shall demand from such parties the particulars of their interest in such lands, and of the claims made by them in respect thereof; and every such notice shall state the particulars of the lands so required, and that the promoters of the undertaking are willing to treat for the purchase thereof, and as to the compensation to be made to all parties for the damage that may be sustained by them by reason of the execution of the works.

Lands class
consolidation
(Scotland)

Notice of in-
tention to take
lands.

XVIII. All notices required to be served by the promoters of the undertaking upon the parties interested in or entitled to sell any such lands shall either be served personally on such parties, or left at their last usual place of abode, if any such can, after diligent inquiry, be found; and in case any such parties shall be absent from the United Kingdom, or cannot be found after diligent inquiry, such notices when the same are to be given to an owner of lands shall be served on the factor or agent, if any, of such owner, and shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

Service of
notices on
owners and
occupiers of
lands.

XIX. If for twenty-one days after the service of such notice any such party shall fail to state the particulars of his claim in respect of any such land, or to treat with the promoters of the undertaking in respect thereof, or if such party and the promoters of the undertaking shall not agree as to the amount of the compensation to be paid by the promoters of the undertaking for the interest in such lands belonging to such party, or which he is by this or the special act enabled to sell, or for any damage that may be sustained by him by reason of the execution of the works, the amount of such compensation shall be settled in the manner hereinafter provided for settling cases of disputed compensation.

If parties fail
to treat, or in
case of dispute
question to be
settled as after
mentioned.

XX. If no agreement be come to between the promoters of the undertaking and the owners of or parties by this or the special act enabled to sell and convey any lands taken or required for or injuriously affected by the execution of the undertaking, or any interest in such lands, as to the value of such lands, or of any interest therein, or as to the compensation to be made in respect thereof, it shall be lawful for the parties to refer the same to arbitration.

Dispute as
to compensa-
tion may be
referred to
a arbitration.

XXI. If the compensation claimed and disputed shall not exceed fifty pounds, unless both parties agree to refer such compensation to arbitration, the same shall be settled by the sheriff.

If claim does
not exceed £50
to be settled
the sheriff.

XXII. It shall be lawful for the sheriff, upon the application of either party with respect to any such question of disputed compensation, to issue an order for the other party to appear before such sheriff, at a time and place to be named in the order; and upon the appearance of such parties, or in the absence of any of them upon proof of due service of the order, it shall be lawful for such sheriff to

Method of pro-
ceeding for
settling dis-
putes as to
compensation
by sheriff.

APPENDIX.—STATUTES.

lands clauses
consolidation.
(Scotland.)

hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, upon oath, without written pleadings or reducing the evidence to writing; and the expenses of every such inquiry, excepting the remunerative expenses of the sheriff, shall be in the discretion of such sheriff, and he shall settle the amount thereof; and the determination of the sheriff upon such question shall be final and conclusive, and not subject to review or appeal in any form or court whatever.

Where com-
pensation
claimed ex-
ceeds 50*l.*, it
may be settled
by arbitration
claimant so
desire.

XXIII. If the compensation claimed or offered in any case shall exceed fifty pounds, and if the party claiming such compensation desire to have the same settled by arbitration, and signify such desire to the promoters of the undertaking, before they have presented their petition to the sheriff to summon a jury in respect of such lands, under the provisions hereinafter contained, by a notice in writing, stating in such notice the nature of the interest in such lands in respect of which he claims compensation, and the amount of the compensation so claimed, and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and shall enter into a written agreement for that purpose, then, within twenty-one days after the receipt of any such notice from any party so entitled, the same shall be settled by arbitration in the manner hereinafter provided.

Appointment
of arbiters
when questions
are to be de-
termined by
arbitration.

XXIV. When any question of disputed compensation by this or the special act, or any act incorporated therewith, authorized or required to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbiter, each party, on the request of the other party, shall nominate and appoint an arbiter, to whom such dispute shall be referred; and every appointment of an arbiter shall be made on the part of the company under the hand of the secretary or any two of the directors of the company, and on the part of any other party under the hand of such party, or if such party be a company or corporation under the hand of the proper officer or person authorized by such company or corporation, and such appointment shall be delivered to the arbiters and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as such revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing, in which shall be stated the matters so required to be referred to arbitration, shall have been served by the one party on the other party to appoint an arbiter, such other party fail to appoint an arbiter, then upon such failure the party making the request, and having himself appointed an arbiter, may appoint such arbiter to act on behalf of both parties, and such arbiter may proceed to hear and determine the matters which shall be in dispute, and in such case the award or determination of such single arbiter shall be final.

vacancy of
arbiter to be
supplied.

XXV. If, before the matters so referred shall be determined, any arbiter appointed by either party die, or become incapable, the party by whom such arbiter was appointed may nominate and appoint in

writing some other person to act in his place, and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so, the remaining or other arbiter may proceed *ex parte*, and every arbiter so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbiter at the time of such his death or disability as aforesaid.

Lands clauses consolidation.
(Scotland.)

XXVI. Where more than one arbiter shall have been appointed such arbiters shall, before they enter upon the matters referred to them, nominate and appoint, by writing under their hands, an oversman to decide on any such matters on which they shall differ, or which shall be referred to him under the provisions of this or the special act; and if such oversman shall die, or become incapable to act, they shall forthwith after such death or incapacity appoint another oversman in his place; and the decision of every such oversman on the matters on which the arbiters shall differ shall be final.

Appointment of oversman.

XXVII. If in either of the cases aforesaid the said arbiters shall refuse, or shall, for seven days after request of either party to such arbitration, neglect to appoint an oversman, it shall be lawful for the lord ordinary, on the application of either party to such arbitration, to appoint an oversman, and the decision of such oversman on the matters on which the arbiters shall differ, or which shall be referred to him under this or the special act, shall be final.

Lord ordinary empowered to appoint an oversman on neglect of the arbiters.

XXVIII. If, when a single arbiter shall have been appointed, such arbiter shall die, or become incapable to act, before he shall have made his award, the matters referred to him shall be determined by arbitration, under the provisions of this or the special act, in the same manner as if such arbiter had not been appointed.

In case of death of single arbiter, the matter to begin *de novo*.

XXIX. If, when more than one arbiter shall have been appointed, either of the arbiters refuse or for seven days neglect to act, the other arbiter may proceed *ex parte*, and the decision of such arbiter shall be as effectual as if he had been the single arbiter appointed by both parties.

If either arbiter refuse to act, the other to proceed *ex parte*.

XXX. If, where more than one arbiter shall have been appointed, and neither of them shall refuse or neglect to act as aforesaid, such arbiters shall fail to make their award within twenty-one days after the day on which the last of such arbiters shall have been appointed, or within such extended time as shall have been appointed for that purpose by both such arbiters under this act, the matters referred to them shall be determined by the umpire to be appointed as aforesaid.

If arbiters fail to make their award within 21 days, the matter to go to the umpire.

XXXI. The said arbiters or their oversman may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose, and take all evidence competent according to the law of Scotland.

Power of arbiters to call for books, &c.

XXXII. All the expenses of any such arbitration and incident thereto, to be settled by the arbiters or oversman, as the case may be,

Costs of arbitration how to be borne.

Lands clauses
consolidation.
(*Scotland.*)

shall be borne by the promoters of the undertaking, unless the arbiters or oversman shall award the same sum as or a less sum than shall have been offered by the promoters of the undertaking, in which case each party shall bear his own expenses incident to the arbitration; and in all cases the expenses of the arbiters or oversman, as the case may be, and of recording the decreet arbitral or award in the books of the council and session, shall be borne by the promoters of the undertaking.

Award to be
delivered to the
promoters of the
undertaking.

XXXIII. The arbiters shall make their decreet arbitral or award in writing, and shall cause the same to be recorded in the books of council and session, or shall deliver the same to the promoters of the undertaking, to be by them so recorded, and the said promoters shall, on demand, at their own expense, furnish an extract thereof from the said books to the other party to the arbitration; and extracts of decreets arbitral or awards shall bear faith in all courts and cases the same as the original writings, unless the originals be improven.

Award not to
be set aside for
error in form.

XXXIV. No award made with respect to any question referred to arbitration under the provisions of this or the special act, shall be set aside for irregularity or error in matter of form.

If arbitration
or award not
made within a
limited time,
compensation
to be settled by
a jury.

XXXV. If the party claiming compensation shall not, as herein-before provided, signify his desire to have the question of such compensation settled by arbitration, or if, when the matter shall have been referred to arbitration, the arbiters or their umpire shall for three months have failed to make their or his award, the question of such compensation shall be settled by the verdict of a jury, as herein-after provided.

Party claiming
compensation
may require a
jury to be sum-
moned.

XXXVI. But if any party entitled to any compensation in respect of any such lands or interest therein, exceeding fifty-pounds as aforesaid, shall desire to have the amount of such compensation determined by a jury, it shall in like manner be lawful for him to give notice in writing to the promoters of the undertaking of such his desire, stating in such notice the nature of the interest in such lands in respect of which he claims compensation, and the amount of compensation so claimed by him; and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and shall enter into a written agreement for that purpose, then, within twenty-one days after the receipt of any such notice from any party so entitled, they shall, unless the question shall previously have been agreed to be settled by arbitration, present their petition to the sheriff to summon a jury for settling the same in the manner herein-after provided, and in default thereof they shall be liable to pay to the party so entitled as aforesaid the amount of compensation so claimed, and the same may be recovered by him, with costs, by action in any competent court.

Notice to be
given before
summoning a
jury.

XXXVII. Before the promoters of the undertaking shall present their petition for summoning a jury for settling any case of disputed compensation they shall give not less than ten days notice to the other party of their intention to cause such jury to be summoned; and in such notice the promoters of the undertaking shall state what sum of

money they are willing to give for the interest in such lands sought to be purchased by them from such party, and for the damage to be sustained by him by the execution of the works.

**Lands clauses
consolidation.
(Scotland.)**

XXXVIII. In every case in which any such question of disputed compensation shall be required to be determined by the verdict of a jury the promoters of the undertaking shall present their petition to the sheriff to summon a jury for that purpose; and such petition shall if the promoters be a company or corporation, be signed by the secretary or proper officer or person authorized by such company or corporation, and if they be not a company or corporation such petition shall be signed by the promoters, or any two of them if more than one.

**Petition for
summoning
jury to be ad-
dressed to the
sheriff.**

XXXIX. Upon the receipt of such petition as aforesaid the sheriff shall summon a jury of twenty-five indifferent persons, duly qualified to act as common jurymen for the trial of civil causes in the court of session, to meet at a time and place to be named by the sheriff in the warrant for that purpose.

**Jurymen to be
summoned.**

XL. Not less than ten days notice of the time and place of the inquiry shall be given in writing by the promoters of the undertaking to the other party, or to his known agent.

**Notice of in-
quiry.**

XLI. Out of the jurors appearing upon such summons a jury of thirteen persons shall be drawn by ballot; and if a sufficient number of jurymen do not appear in obedience to such summons the sheriff shall return other indifferent men, duly qualified as aforesaid, of the bystanders, or others that can speedily be procured, to make up the jury to the number aforesaid; and all parties concerned may have their lawful challenges for cause against any of the jurymen; and each party may have three peremptory challenges.

**Jury to be
impannelled.**

XLII. The sheriff shall preside on the said inquiry; and the party claiming compensation shall be deemed the pursuer, and the proceedings at such trials shall be conducted in like manner as in criminal trials; and, if either party so request, the sheriff shall order the jury, or any seven or more of them, to view the place or matter in controversy.

**Sheriff to pre-
side; jury may
view.**

XLIII. If any person summoned and returned upon any jury under this or the special act, whether common or special, do not appear, or if appearing he refuse to make oath, or in any other manner unlawfully neglect his duty, he shall, unless he shew reasonable excuse to the satisfaction of the sheriff, forfeit a sum not exceeding ten pounds; and every such penalty shall be applied in satisfaction of the costs of the inquiry, so far as the same will extend; and, in addition to the penalty hereby imposed, every such jurymen shall be subject to the same regulations, pains, and penalties as if such jury had been returned for the trial of a civil cause in the court of session.

**Penalty on
jury for de-
fault.**

XLIV. If either party so request in writing, the sheriff shall sum-

**Witnesses to
be summoned.**

Lands clauses consolidation.
(*Scotland.*)

Penalty on witnesses making default.

mon before him any person considered necessary to be examined as a witness touching the matters in question.

XLV. If any person duly summoned to give evidence upon any such inquiry, and to whom a tender of his reasonable expenses shall have been made, fail to appear at the time and place specified in the summons, without sufficient cause, or if any person, whether summoned or not, who shall appear as a witness, refuse to be examined on oath touching the subject matter in question, every person so offending shall forfeit to the party aggrieved a sum not exceeding ten pounds, and, in addition to the penalty hereby imposed, shall be subject to the same regulations, pains, and penalties as if such witness, having been duly summoned, had failed to appear, or having appeared had refused to be examined in any other cause.

If the party make default the inquiry not to proceed.

XLVI. If the party claiming compensation shall not appear at the time appointed for the inquiry, such inquiry shall not be further proceeded in, but the compensation to be paid shall be such as shall be ascertained by a valuator appointed by the sheriff in manner hereinafter provided.

Jury to be sworn.

XLVII. Before the jury proceed to inquire of and assess the compensation or damage in respect of which their verdict is to be given they shall make oath that they will truly and faithfully inquire of and assess such compensation or damage: and the sheriff shall administer such oaths, as well as the oaths of all persons called upon to give evidence.

Sums to be paid for purchase of lands and for damage, to be assessed separately.

XLVIII. Where such inquiry shall relate to the value of lands to be purchased, and also to compensation claimed for injury done or to be done to the lands held therewith, the jury shall deliver their verdict by a majority of their number separately for the sum of money to be paid for the purchase of the lands required for the works, or of any interest therein belonging to the party with whom the question of disputed compensation shall have arisen, or which under the provisions herein contained, such party is entitled to sell or convey, and for the sum of money to be paid by way of compensation for the damage, if any, to be sustained by the owner of the lands by reason of severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such lands by the exercise of the powers of this or the special act, or any act incorporated therewith: Provided always, that if the parties agree to dispense with such separation the verdict may be returned for one sum.

Verdict and judgment to be recorded.

XLIX. The sheriff before whom such inquiry shall be held shall give judgment for the purchase money or compensation assessed by such jury; and the verdict and judgment shall be signed by the sheriff, and being so signed shall be kept by the clerk of the sheriff court among the records of that court; and such verdicts and judgments shall be deemed records, and the same or official copies thereof shall be good evidence in all courts and elsewhere; and all persons may inspect the said verdicts and judgments, and may have copies thereof or extracts therefrom on paying for each inspection thereof

one shilling, and for every one hundred words copied or extracted therefrom sixpence.

Lands clauses
consolidation.
(Scotland.)

L. On every such inquiry before a jury all the expenses of such inquiry shall be borne by the promoters of the undertaking, unless the verdict of the jury be given for the same or a less sum than the sum previously offered by the promoters of the undertaking, or unless the owner of or party interested in the lands shall have failed to appear at the time and place appointed for the inquiry, having received due notice thereof, in either of which cases one-half of the expenses of the promoters of the undertaking shall be defrayed by the owner of or party interested in the lands.

Expenses of
the inquiry
how to be
borne.

LI. The expenses of any such inquiry shall, in case of difference, be settled by the sheriff on the application of either party; and such expenses shall include all reasonable charges and expenses incurred in summoning, impannelling, and returning the jury, taking the inquiry, the attendance of witnesses, the employment of counsel and agents, recording the verdict and judgment thereon, and otherwise incident to such inquiry, including the remuneration to the sheriff for his time and labour, and his reasonable travelling expenses, which remuneration for time and labour, exclusive of travelling expenses, shall be five guineas and no more for any inquiry as aforesaid, whether with or without a jury, unless such inquiry shall occupy more than one day or period of eight hours, in which case there shall be paid to the sheriff a sum of five guineas for each day or period of eight hours the inquiry may occupy, including the time necessarily occupied in travelling to and from the place of trial: provided always, that the time occupied in travelling shall not in reference to any inquiry be computed at more than two days: and in all cases of inquiry as aforesaid before the sheriff, with or without a jury, the remuneration or expenses of the sheriff shall be borne by the promoters of the undertaking.

Particulars of
the expenses.

LII. If any such costs shall be payable by the promoters of the undertaking, and if within seven days after demand such expenses be not paid to the party entitled to receive the same, they shall be recoverable by pointing and sale, and on application to the sheriff he shall issue his warrant accordingly; and if any such expenses shall be payable by the owner of the lands, or of any interest therein, the same may be deducted and retained by the promoters of the undertaking out of any money awarded by the jury to such owner or party interested, or determined by the valuation of a valuator under the provision herein-after contained; and the payment or deposit of the remainder, if any, of such money shall be deemed payment and satisfaction of the whole thereof, or, if such expenses shall exceed the amount of the money so awarded or determined, the excess shall be recoverable by pointing and sale, and on application to the sheriff he shall issue his warrant accordingly.

Payment of
expenses.

LIII. If either party desire any such question of disputed compensation as aforesaid to be tried before a special jury such question shall be so tried, provided that notice of such desire, if coming from the other party, be given to the promoters of the undertaking before they have presented their petition to the sheriff; and for that purpose the pro-

Special jury
to be sum-
moned at the
request of
either party.

**Lands clauses
consolidation.**
(*Scotland.*)

moters of the undertaking shall by their petition to the sheriff require him to nominate a special jury for such trial; and thereupon the sheriff shall, as soon as conveniently may be after the receipt by him of such petition, summon both the parties to appear before him, by themselves or their agents, at some convenient time and place appointed by him for the purpose of nominating a special jury (not being less than five days from the service of such summons), and at the place and time so appointed the sheriff shall proceed to nominate a special jury, in the manner in which such juries shall be required by the laws for the time being in force to be nominated by the sheriff in other cases, and the sheriff shall appoint a day for the parties or their agents to appear before him to reduce the number of such jury, and thereof shall give four days' notice to the parties; and on the day so appointed the sheriff shall proceed to reduce the said special jury to the number of twenty, in the manner used and accustomed in reducing special juries in the court of session.

**Deficiency of
special jury-
men.**

LIV. The special jury on such inquiry shall consist of thirteen of the said twenty who shall first appear on the names being called over, the parties having their lawful challenges against any of the said jurymen; and if a full jury do not appear, or if after such challenges a full jury do not remain, then, upon the application of either party, the sheriff shall add to the list of such jury the names of any other disinterested persons qualified to act as special or common jurymen, who shall not have been previously struck off the aforesaid list, and who may then be attending the court, or can speedily be procured, so as to complete such jury, all parties having their lawful challenges against such persons; and the sheriff shall proceed to the trial and adjudication of the matters in question by such jury, and such trial shall be attended in all respects with the like incidents and consequences, and the like penalties shall be applicable, as herein-before provided in the case of a trial by common jury.

**Other inquiries
before
same special
jury by consent.**

LV. Any other inquiry than that for the trial of which such special jury may have been struck and reduced as aforesaid may be tried by such jury, provided the parties thereto respectively shall give their consent to such trial.

**Compensation
to absent parties
to be determined
by a valuator,
appointed by the
sheriff.**

LVI. The purchase money or compensation to be paid for any lands to be purchased or taken by the promoters of the undertaking from any party who, by reason of absence from the kingdom, is prevented from treating, or who can after diligent inquiry be found, or who shall not appear at the time appointed for the inquiry before the jury, after due notice thereof, and the compensation to be paid for any permanent injury to such lands, shall be such as shall be determined by the valuation of such valuator as the sheriff shall nominate for that purpose, as herein-after mentioned.

**Sheriff to
nominate a
valuator.**

LVII. Upon application by the promoters of the undertaking to the sheriff, and upon such proof as shall be satisfactory to him that any such party is, by reason of absence from the kingdom, prevented from treating, or cannot, after diligent inquiry be found, or that any such party failed to appear on such inquiry before a jury as aforesaid, after due notice to him for that purpose, such sheriff shall, by writing under

his hand, nominate a valuator for determining such compensation as aforesaid, and such valuator shall determine the same accordingly, and shall annex to his valuation a declaration in writing, subscribed by him of the correctness ~~thereof~~.

Lands clauses
consolidation.
(Scotland.)

LVIII. Before such valuator shall enter upon the duty of making such valuation as aforesaid he shall, in the presence of such sheriff, make and subscribe the oath following at the foot of such nomination; (that is to say,)

Declaration to
be made by the
valuator.

"I A. B. do solemnly swear, that I will faithfully, impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me. So help me God.

A. B.

"Sworn and subscribed in the presence of
And if any valuator shall corruptly make such oath, or having made such oath shall wilfully act contrary thereto, he shall be guilty of and incur the pains of perjury.

LIX. The said nomination and declaration shall be annexed to the valuation to be made by such valuator, and shall be preserved together therewith, by the promoters of the undertaking, and they shall at all times produce the said valuation and other documents, on demand, to the owner of the lands comprised in such valuation, and to all other parties interested therein.

Valuation, &c.
to be produced
to the owner of
the lands on
demand.

LX. All the expenses of and incident to every such valuation shall be borne by the promoters of the undertaking.

Expenses.

LXI. In estimating the purchase money or compensation to be paid by the promoters of the undertaking, in any of the cases aforesaid, regard shall be had not only to the value of the land to be purchased or taken by the promoters of the undertaking, but also to the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such lands by the exercise of the powers of this or the special act, or any other act incorporated therewith.

Purchase-
money and
compensation,
how to be es-
timated.

LXII. On estimating the purchase money or compensation to be paid by the promoters of the undertaking in any of the cases aforesaid, the sheriff, arbiters, valuator, or jury, as the case may be, shall apportion the said compensation among the parties who may be interested in the said lands as joint owners or lessees, or as holding some security or burden or claim thereon or interest therein, and who shall have been parties to the said trial or arbitration or valuation: provided always, that nothing herein contained shall prevent any person having a separate interest from having the same separately tried.

Compensation
may be appor-
tioned among
different par-
ties.

LXIII. When the compensation payable in respect of any lands, or any interest therein, shall have been ascertained by the valuation of a valuator, and deposited in the Bank under the provisions herein contained, by reason that the owner of or party entitled to convey such lands or such interest therein as aforesaid could not be found or was absent from the kingdom, and if such owner or party shall be dissatisfied with such valuation, it shall be lawful for him, before he

Where com-
pensation to
absent party
has been de-
termined by
a valuator.

**Lands clauses
consolidation.
(Scotland.)**

shall have applied to the court of session for payment or investment of the monies so deposited under the provisions herein contained, by notice in writing, to the promoters of the undertaking, to require the question of such compensation to be submitted to arbitration, and thereupon the same shall be so submitted to and settled by arbitration in the manner herein-before provided for settling disputes by arbitration.

**Question to be
submitted to
the arbiters.**

LXIV. The question to be submitted to the arbiters in the case last aforesaid shall be, whether the said sum so deposited as aforesaid by the promoters of the undertaking was a sufficient sum, or whether any and what further sum ought to be paid or deposited by them.

**If further sum
awarded, pro-
motors to pay
or deposit same
within 14 days.**

LXV. If the arbiters shall decide that a further sum ought to be paid or deposited by the promoters of the undertaking, they shall pay or deposit, as the case may require, such further sum within fourteen days after the making of such decret arbitral or award, or in default thereof the same may be enforced by diligence, or recovered with expenses by action in any competent court.

**Expenses of
the arbitration.**

LXVI. If the arbiters shall determine that the sum so deposited was sufficient, the expenses of and incident to such arbitration, to be determined by the arbiters, shall be in the discretion of the arbiters; but if the arbiters shall determine that a further sum ought to be paid or deposited by the promoters of the undertaking, all the expenses of and incident to the arbitration shall be borne by the promoters of the undertaking.

**Application of
compensation.**

And with respect to the purchase money or compensation coming to parties having limited interests, or prevented from treating, or not making title, be it enacted as follows;

**Purchase-
money payable
to parties
under disability
amounting to
200*l.* to be de-
posited in the
Bank.**

LXVII. The purchase money or compensation which shall be payable in respect of any lands, or any interest therein, purchased or taken by the promoters of the undertaking from any corporation, heir of entail, life-renter, married woman seised in her own right or entitled to terce or dower, or any other right or interest, husband, tutors, curators, or other guardians for any infant, minor, lunatic, or idiot, fatuous or furious person, or for any person under any other disability or incapacity, judicial factor, trustee, executor, or administrator, or person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same, except under the provisions of this or the special act, or the compensation to be paid for any permanent damage to any such lands, shall, if it amount to or exceed the sum of two hundred pounds, the same shall be paid into the Bank, to the intent that such monies shall be applied, under the authority of the court of session, to some one or more of the following purposes; (that is to say,)

**Application of
monies de-
posited.**

In the purchase or redemption of the land tax, or the discharge of any debt or incumbrance affecting the land in respect of which such money shall have been paid, or affecting other lands settled therewith on the same heirs, or for the same trusts, or purposes; or affecting succeeding heirs of entail in any such lands, whether imposed and constituted by the entailer, or in virtue of powers

given by the entail, or in virtue of powers conferred by any act of parliament;

In the purchase of other lands to be conveyed, limited, and settled upon the same heirs, and the like trusts, and purposes, and in the same manner, as the lands in respect of which such money shall have been paid stood settled; or

If such monies shall be paid in respect of any buildings taken under the authority of this or the special act, or injured by the proximity of the works, or in removing or replacing such buildings, or substituting others in their stead, in such manner as the said court shall direct; or

In payment to any party becoming absolutely entitled to such money.

Lands clauses
consolidation.
(Scotland.)

LXVIII. Such money may be so applied as aforesaid upon an order of the court of sessions, made on the petition of the party who would have been entitled to the rents and profits of the lands in respect of which such money shall have been deposited; and until the money can be so applied it shall be retained in the Bank at interest, or shall be laid out and invested in the public funds or in heritable securities, and the interest, dividends, and annual proceeds thereof, shall from time to time, under the like order, be paid to the party who would for the time being have been entitled to the rents and profits of the lands.

Order for ap-
plication and
investment
meanwhile.

LXIX. If such purchase money or compensation shall not amount to the sum of two hundred pounds, and shall exceed the sum of twenty pounds, the same shall either be paid into the Bank, and applied in the manner herein-before directed with respect to sums amounting to or exceeding two hundred pounds, or the same may lawfully be paid to two trustees, to be nominated by the parties entitled to the rents, or profits of the lands in respect whereof the same shall be payable, such nomination to be signified by writing under the hands of the party so entitled; and in case of the coverture, infancy, lunacy, or other incapacity of the parties entitled to such monies, such nomination may lawfully be made by their respective husbands, guardians, tutors, curators, judicial factors, or trustees; but such last mentioned application of the monies shall not be made unless the promoters of the undertaking approve thereof, and of the trustees named for the purpose; and the money so paid to such trustees, and the produce arising therefrom, shall, at the expense of the promoters of the undertaking, be by such trustees applied in the manner herein-before directed with respect to money paid into the Bank, but it shall not be necessary to obtain any order of court for that purpose.

Sums from 20l.
to 200l. to be
deposited or
paid to trust-
tees.

LXX. If such money shall not exceed the sum of twenty pounds the same shall be paid to the parties entitled to the rents and profits of the lands in respect whereof the same shall be payable, for their own use and benefit, or in case of the coverture, infancy, idiotcy, lunacy, or other incapacity of any such parties, then such money shall be paid, for their use, to the respective husbands, guardians, tutors, curators, judicial factors, or trustees of such persons.

Sums not ex-
ceeding 20l. to
be paid to par-
ties.

LXXI. All sums of money exceeding twenty pounds, which may

All sums pay-

Lands clauses consolidation.
(*Scotland.*)

able under contract with persons not absolutely entitled, to be paid into Bank.

be payable by the promoters of the undertaking in respect of the taking, using, or interfering with any lands under a contract or agreement with any person who shall not be entitled to dispose of such lands, or of the interest therein contracted to be sold by him, absolutely for his own benefit, shall be paid into the Bank or to trustees in manner aforesaid; and it shall not be lawful for any contracting party not entitled as aforesaid to retain to his own use any portion of the sums so agreed or contracted to be paid for or in respect of the taking, using, or interfering with any such lands, or for assenting to or not opposing the passing of the bill authorizing the taking of such lands, or in lieu of bridges, tunnels, or other accommodation works, but all such monies shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession as in succession, or expectancy: provided always, that it shall be in the discretion of the Court of Session or the said trustees, as the case may be, to allot to any life-renter or person holding for any other partial or qualified right or interest, for his own use, a portion of the sum so paid into the Bank, or to such trustees as aforesaid, as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken, and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works.

Court of Session may direct application of money in respect of leases or reversions as they may think just.

LXXII. Where any purchase money or compensation paid into the Bank under the provisions of this or the special act shall have been paid in respect of any lease for lives or years, or any right or interest in lands less than the fee thereof, or of any reversion dependent on any such lease, or right or interest it shall be lawful for the Court of Session, on the petition of any party interested in such money, to order that the same shall be laid out, invested, accumulated, and paid in such manner as the said court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, right, interest, or reversion in respect of which such money shall have been paid, or as near thereto as may be.

On the purchase of lands to be entailed, not necessary to insert the provisions *verbatim*.

LXXIII. If such money shall be laid out and invested in the purchase of lands to be held under entail, or under uses, trusts, intents, and purposes, it shall not be necessary to ingross verbatim in the titles to such new lands the provisions of the entail or other investiture of the said old lands, or to mention specifically the uses, trusts, intents, and purposes for and upon which the said new lands are to be held, but it shall be sufficient to state the dates of executing and recording the deed or deeds containing the provisions and conditions subject to which, or the uses, trusts, intents, and purposes to, for, and upon which, the said old lands were held, and to declare that the said new lands shall be held subject to the same provisions and conditions, and to, for, and upon the like uses, trusts, intents, and purposes, and to record the title deed containing such general reference in the register of tailzies, sasines, or other proper record, according to the nature of such title deed, which the keepers of the said registers are hereby authorized and required to do without a special order to that effect: Provided always, that upon the first occasion of completing titles to

the said entailed estates the lands acquired to the estate may be introduced into the titles then completed, after which they shall descend regularly as part and portion of the entailed estates.

Lands clauses
consolidation.
(Scotland.)

LXXIV. Upon deposit in the Bank in manner herein-before provided of the purchase money or compensation agreed or awarded to be paid in respect of any lands purchased or taken by the promoters of the undertaking under the provisions of this or the special act, or any act incorporated therewith, the owner of such lands, including in such term all parties by this act enabled to sell or convey lands, shall, when required so to do by the promoters of the undertaking, duly convey such lands to the promoters of the undertaking, or as they shall direct; and in default thereof, or if he fail to adduce a good title to such lands, it shall be lawful for the promoters of the undertaking, if they think fit, to expedite an instrument under the hands of a notary public, containing a description of the lands in respect of which such default shall be made, and reciting the purchase or taking thereof by the promoters of the undertaking, and the names of the parties from whom the same were purchased or taken, and the deposit made in respect thereof, and declaring the fact of such default having been made; and such instrument shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party between whom and the promoters of the undertaking such agreement shall have been come to, or as between whom and the promoters of the undertaking such purchase money or compensation shall have been determined by the sheriff, by a jury, or by arbiters, or by a valuation appointed by the sheriff, as herein provided, and shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking; and as against such parties, and all parties on behalf of whom they are hereinbefore enabled to sell and convey, the promoters of the undertaking shall be entitled to immediate possession of such lands; and such instrument, being registered in the register of sasines in manner hereinafter provided in regard to conveyances of lands, shall have the same effect as a conveyance so registered.

Upon deposit
being made,
the owners of
the lands to
convey or in
default the
lands to vest
in the pro-
moters of the
undertaking,
upon a notarial
instrument
being exe-
cuted.

LXXV. If the owner of any such lands purchased or taken by the promoters of the undertaking, or of any interest therein, on tender of the purchase money or compensation either agreed or awarded to be paid in respect thereof, refuse to accept the same, or neglect or fail to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of the promoters of the undertaking, or if he refuse or is unable validly to convey such lands as directed by the promoters of the undertaking, or to discharge or obtain a discharge of any burden or incumbrance thereon which was not specially excepted from discharge, or if any such owner be absent from the kingdom, or cannot after diligent inquiry be found, or fail to appear, on the inquiry before a jury, as herein provided for, it shall be lawful for the promoters of the undertaking to deposit the purchase money or compensation payable in respect of such lands or any interest therein in the Bank, to be placed, except in the cases herein otherwise provided for, to an account to be opened in the name of the

Where parties
refuse to con-
vey, or do not
show title, or
cannot be
found the pur-
chase-money to
be deposited.

Lands clauses consolidation.
(Scotland.)

parties interested in such lands (describing them, so far as the promoters of the undertaking can do), subject to the control and disposition of the court of Session.

Upon deposit being made a receipt to be given, and the lands to vest, upon a notarial instrument being executed.

LXXVI. Upon any such deposit of money as last aforesaid being made, the cashier or other proper officer of such Bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what and for whose use (described as aforesaid) the same shall have been received, and in respect of what purchase the same shall have been paid in; and it shall be lawful for the promoters of the undertaking, if they think fit, to expedite an instrument under the hands of a notary public, containing a description of the lands in respect whereof such deposit shall have been made, and declaring the circumstances under which and the names of the parties to whose credit such deposit shall have been made, and such instrument shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of the parties for whose use and in respect whereof such purchase money or compensation shall have been deposited shall vest absolutely in the promoters of the undertaking, and as against such parties they shall be entitled to immediate possession of such lands; and such instrument, being registered in the register of sasines in manner hereinafter directed in regard to conveyances of lands, shall have the same effect as a conveyance so registered.

Application of monies so deposited.

LXXVII. Upon the application by petition of any party making claim to the money so deposited as last aforesaid, or any part thereof, or to the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same, the said court of Session may, in a summary way, as to such court shall seem fit, order such money to be laid out or invested in the public funds, or on heritable securities, or may order distribution thereof, or payment of the dividends thereof, according to the respective estates, titles, or interests of the parties making claim to such money or lands, or any part thereof, and may make such other order in the premises as to such court shall seem fit.

Party in possession to be deemed the owner.

LXXVIII. If any question arise respecting the title to the lands in respect whereof such monies shall have been so paid or deposited as aforesaid, the parties respectively in possession of such lands, as being the owners thereof, at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands, until the contrary be shown to the satisfaction of the court; and unless the contrary be shown as aforesaid the parties so in possession, and all parties claiming under them, or consistently with their possession, shall be deemed entitled to the money so deposited, and to the dividends or interest of the annuities or securities purchased therewith, and the same shall be paid and applied accordingly.

Expenses in cases of money deposited.

LXXIX. In all cases of monies deposited in the Bank under the provisions of this or the special act, or any act incorporated therewith, except where such monies shall have been so deposited by reason of the wilful refusal of any party entitled thereto to receive the same

or to feu or convey the lands in respect whereof the same shall be payable, or by reason of his refusal or inability to discharge or obtain a discharge of any burden on such lands which was not specially excepted from discharge, or by reason of the failure or neglect of any party to make out a good title to the land required, it shall be lawful for the court of session to order the expenses of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking; (that is to say,) the expense of the purchase or taking of the lands, or which shall have been incurred in consequence thereof, other than such expenses as are herein otherwise provided for, and the expense of the investment of such monies in government or real securities, and of the re-investment thereof in the purchase of other lands, and of re-entailing any of such lands, and incident thereto, and also the expense of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such monies shall be invested and for the payment of the principal of such monies, or of the securities whereon the same shall be invested, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants; provided always, that the expense of one application only for re-investment in land shall be allowed, unless it shall appear to the court of session that it is for the benefit of the parties interested in the said monies that the same should be invested in the purchase of lands in different sums and at different times, in which case it shall be lawful for the court, if it think fit, to order the expenses of any such investments to be paid by the promoters of the undertaking.

Lands clauses
consolidation.
(Scotland.)

And with respect to the conveyances of lands, be it enacted as follows :

Conveyances.

LXXX. Feus and conveyances of lands so to be purchased as aforesaid may be according to the form in the schedules (A.) and (B.) respectively to this act annexed, or as near thereto as the circumstances of the case will admit; which feus and conveyances, being duly executed, and being registered in the particular register of sasines kept for the county, burgh, or district in which the lands are locally situated, or in the general register of sasines for Scotland kept at Edinburgh, within sixty days from the last date thereof which the respective keepers of the said registers are hereby authorized and required to do, shall give and constitute a good and undoubted right and complete and valid feudal title in all time coming to the promoters of the undertaking, and their successors and assigns, to the premises therein described, any law or custom to the contrary notwithstanding: provided always, that it shall not be necessary for the promoters of the undertaking to record in any register of sasines any feus or conveyances in their favour which shall contain a procuratory of resignation or precept of sasine, or which may be completed by infestment; and the title of the company under such last-mentioned feus or conveyances shall be regulated by the ordinary law of Scotland, until the said feus or conveyances, or the instruments of sasine thereon, shall have been recorded in a register of sasines.

Form of conveyances.

LXXXI. The expenses of all conveyances of lands shall be borne by the promoters of the undertaking; and such expenses shall include

Expenses of conveyances.

Lands clauses consolidation.
(*Scotland.*)

all charges and expenses, incurred on the part as well of the seller as of the purchaser, of all conveyances of any such lands, and of any interests therein, and of establishing the title to such lands, and all other reasonable expenses incident to the investigation of such title.

Taxation of expenses of conveyances.

LXXXII. If the promoters of the undertaking and the party entitled to any such expenses shall not agree as to the amount thereof, such amount shall be ascertained and decreed for by the lord ordinary, on a summary petition presented to him by the party entitled to recover the same; and the promoters of the undertaking shall pay to the party entitled thereto what the said lord ordinary shall decree for or in respect of such expenses, or in default thereof the same may be recovered in the same way as any other expenses payable under an order or decree of the court, or the same may be recovered by pointing and sale in the manner herein-before provided in other cases of expenses; and the expense of taxing such expenses shall be borne by the promoters of the undertaking, unless upon such taxation one-sixth part of the amount of such expenses shall be disallowed, in which case the expenses of such taxation and of or incident to the application to the lord ordinary, shall be borne by the party whose expenses shall be so taxed, and the amount thereof shall be ascertained by the said lord ordinary, and deducted by him accordingly in his judgment or decerniture.

Entry on lands.

And with respect to the entry upon lands by the promoters of the undertaking, be it enacted as follows:

Payment of price to be made previous to entry, except to survey, &c.

LXXXIII. The promoters of the undertaking shall not, except by consent of the owners and occupiers, enter upon any lands which shall be required to be purchased or permanently used for the purposes and under the powers of this or the special act, until they shall either have paid to every party having any interest in such lands, or deposited in the Bank in the manner herein mentioned, the purchase money or compensation agreed or awarded to be paid to such parties respectively for their respective interests therein: provided always, that for the purpose merely of surveying and taking levels of such lands, and of probing or boring to ascertain the nature of the soil, and of setting out the line of the works, it shall be lawful for the promoters of the undertaking, after giving not less than three nor more than fourteen days' notice to the owners or occupiers thereof, to enter upon such lands without previous consent, making compensation for any damage thereby occasioned to the owners or occupiers thereof.

Promoters to be allowed to enter on lands before purchase, on making deposit by way of security and giving bond.

LXXXIV. Provided also, that if the promoters of the undertaking shall be desirous of entering upon and using any such lands before an agreement shall have been come to or an award made, or verdict given for the purchase money, or compensation to be paid by them in respect of such lands, it shall be lawful for the promoters of the undertaking to deposit in the Bank, by way of security, as hereinafter mentioned, either the amount of purchase money or compensation claimed by any party interested in or entitled to sell and convey such lands, and who shall not consent to such entry, or such a sum as shall by a valuator appointed by the sheriff in the manner herein-before provided in the case of parties who cannot be found, be determined to be the value of such lands, or of the interest therein which such party is

entitled to or enabled to sell and convey, and also, if required so to do, to give to such party a bond, under the hand of the secretary or proper officer, or person authorized, if the promoters be a company or corporation, or if they be not a company or corporation under the hand of the promoters, or any two of them, if more than one, with two sufficient securities to be approved of by the sheriff, in case the parties differ, for a sum equal to the sum so to be deposited, for payment to such party, or for making a deposit in the Bank for the benefit of the parties interested in such lands, as the case may require, under the provisions herein contained, of all such purchase money or compensation, as may in manner herein-before provided be determined to be payable by the promoters of the undertaking in respect of the lands so entered upon, together with interest thereon, at the rate of five pounds per centum per annum, from the time of entering on such lands until such purchase money or compensation shall be paid to such party, or deposited in the Bank for the benefit of the parties interested in such lands, under the provisions herein contained; and upon such deposit by way of security being made as aforesaid, and such bond being delivered or tendered to such non-consenting party as aforesaid it shall be lawful for the promoters of the undertaking to enter upon and use such lands, without having first paid or deposited the purchase money or compensation in other cases required to be paid or deposited by them before entering upon any lands to be taken by them under the provisions of this or the special act.

Lands clauses
consolidation.
(*Scotlan t.*)

LXXXV. The money so to be deposited as last aforesaid shall be paid into the Bank to be placed to an account to be opened in the name of the parties interested in or entitled to sell and convey the lands so to be entered upon, and who shall not have consented to such entry, subject to the control and disposition of the court of session, and upon such deposit being made, the cashier or other proper officer of the Bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what purpose and to whose credit the same shall have been paid in.

Deposit to be
paid into Bank,
and cashier to
give a receipt.

LXXXVI. The money so deposited as last aforesaid shall remain in the Bank, by way of security to the parties whose lands shall so have been entered upon for the performance of the bond to be given by the promoters of the undertaking, as herein-before mentioned, and the same may, on the application by petition of the promoters of the undertaking, be ordered to be invested in the public funds or upon heritable securities, and accumulated; and upon the condition of such bond being fully performed it shall be lawful for the Court of Session, upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the promoters of the undertaking, or if such condition shall not be fully performed, it shall be lawful for the said court to order the same to be applied in such manner as it shall think fit for the benefit of the parties for whose security the same shall so have been deposited.

Deposit to re-
main as a se-
curity, and to
be applied
under the
direction of the
court.

LXXXVII. If the promoters of the undertaking or any of their con- tractors shall, except as aforesaid, wilfully enter upon and take possession

Penalty on the
promoters of

lands clauses
consolidation.
(Scotland.)

he under-
taking entering
upon lands
without con-
sent before
ayment of
be purchase-
money.

of any lands which shall be required to be purchased or permanently used for the purposes of the special act, without such consent as aforesaid, or without having made such payment for the benefit of the parties interested in the lands, or such deposit by way of security as aforesaid, the promoters of the undertaking shall forfeit to the party in possession of such lands the sum of ten pounds over and above the amount of any damage done to such lands, by reason of such entry and taking possession as aforesaid, such penalty and damage respectively to be recovered before the sheriff; and if the promoters of the undertaking or their contractors shall, after conviction in such penalty as aforesaid, continue in unlawful possession of any such lands, the promoters of the undertaking shall be liable to forfeit the sum of twenty-five pounds for every day they or their contractors shall so remain in possession as aforesaid, such penalty to be recoverable by the party in possession of such lands, with expenses, by action in any competent court: Provided always, that nothing herein contained shall be held to subject the promoters of the undertaking to the payment of any such penalties as aforesaid, if they shall *bonâ fide* and without collusion have paid the compensation agreed or awarded to be paid in respect of the said lands to any person whom the promoters of the undertaking may have reasonably believed to be entitled thereto, or shall have deposited the same in the Bank for the benefit of the parties interested in the lands, or made such deposit by way of security in respect thereof as herein-before mentioned, although such person may not have been legally entitled thereto.

decision of
sheriff not
conclusive as to
the right of the
promoters.

LXXXVIII. On the trial of any action for any such penalty as aforesaid the decision of the sheriff, under the provision herein-before contained, shall not be held conclusive as to the right of entry on any such lands by the promoters of the undertaking.

proceedings in
case of refusal
to deliver posses-
sion of
lands.

LXXXIX. If in any case in which, according to the provisions of this or the special act, or any act incorporated therewith, the promoters of the undertaking are authorized to enter upon and take possession of any lands required for the purposes of the undertaking, the owner or occupier of any such lands, or any other person, refuse to give up the possession thereof, or hinder the promoters of the undertaking from entering upon and taking possession of the same, it shall be lawful for the promoters of the undertaking to apply by petition to the sheriff for possession of the same, and upon such application the sheriff may authorize and order possession of any such lands accordingly; and the expenses accruing by reason of such application, to be settled and decreed for by the sheriff, shall be paid by the person wrongfully refusing to give or hindering possession; and the amount of such expenses shall be deducted and retained by the promoters of the undertaking from the compensation, if any, then payable by them to such party, or if no such compensation be payable to such party, or if the same be less than the amount of such expenses, then such expenses or the excess thereof beyond such compensation, if not paid on demand, may be levied by pouncing and sale, and the sheriff may issue his warrant accordingly.

part of a house.

XC. And be it enacted that no party shall at any time be required to sell or convey to the promoters of the undertaking a part only of

any house or other building or manufactory if such party be willing and able to sell and convey the whole thereof.

And with respect to small portions of intersected land, be it enacted as follows :

XCI. If any lands, not being situate in a town or built upon shall be so cut through and divided by the works as to leave, either on both sides or on one side thereof, a less quantity of land than half a statute acre, and if the owner of such small parcel of land require the promoters of the undertaking to purchase the same along with the other land required for the purposes of the special act, the promoters of the undertaking shall purchase the same accordingly, unless the owner thereof have other land adjoining to that so left into which the same can be thrown, and if such owner have any other land so adjoining, the promoters of the undertaking shall, if so required by the owner, at their own expense, throw the piece of land so left into such adjoining land, by removing the fences and levelling the sites thereof, and by soiling the same in a sufficient and workmanlike manner.

XCII. If any such land shall be so cut through and divided as to leave on either side of the works a piece of land of less extent than half a statute acre, or of less value than the expense of making a bridge, culvert, or such other communication between the land so divided as the promoters of the undertaking are, under the provisions of this or the special act, or any act incorporated therewith, compellable to make, and if the owner of such lands have not other lands adjoining such piece of land, and require the promoters of the undertaking to make such communication, then the promoters of the undertaking may require such owner to sell to them such piece of land, and any dispute as to the value of such piece of land, or as to what would be the expense of making such communication, shall be ascertained as herein provided for cases of disputed compensation; and on the occasion of ascertaining the value of the land required to be taken for the purposes of the works, the sheriff or the jury or the arbiters, as the case may be, shall, if required by either party, ascertain by their verdict or award, the value of any such severed piece of land, and also what would be the expense of making such communication.

And with respect to such lands as shall be of the nature of commonty be it enacted as follows :

XCIII. The promoters of the undertaking may convene a meeting of the parties entitled to any rights of property, or servitude, or other rights in or over such lands, to be held at some convenient place in the neighbourhood of the lands, for the purpose of their appointing a committee to treat with the promoters of the undertaking for the compensation to be paid for the extinction of such rights; and every such meeting shall be called by public advertisement, to be inserted once at least in two consecutive weeks in some newspaper circulating in the county or in the respective counties and in the neighbourhood in which such lands shall be situate, the last of such insertions being not more than fourteen nor less than seven days prior to any such meeting; and notice of such meeting shall also, not less than seven days previous to the holding thereof be affixed upon the door of the church of the parish where such meeting is intended to be held, or, if there be

Lands clauses consolidation.
(Scotland.)

Intersected lands.

Power to owners of intersected lands may insist on sale.³⁸

Power of promoters of the undertaking to insist on purchase where expense of bridges, &c. exceeds the value.

Common lands.

Proceedings regard to land in commonty, &c.

Lands clauses consolidation.
(Scotland.)

no such church, some other place in the neighbourhood to which notices are usually affixed; and if such lands be part of a barony a like notice shall be given to the superior or baron.

Meeting to appoint a committee.

X CIV. The meeting so called may appoint a committee, not exceeding five in number, of the parties entitled to any such rights; and at such meeting the decision of the majority of the persons entitled to such rights present shall bind the minority and all absent parties; but such meeting shall not be effectual for the purpose unless five at least of the parties entitled attend the same, if there be so many as five in all of the parties entitled to such rights.

Committee to agree with the promoters of the undertaking.

X CV. It shall be lawful for the committee so chosen to enter into an agreement with the promoters of the undertaking for the compensation to be paid for the extinction of such rights, and all matters relating thereto, for and on behalf of themselves and all other parties interested therein, and all such parties shall be bound by such agreement, and it shall be lawful for such committee to receive the compensation so agreed to be paid; and the receipt of such committee, or of any three of them, for such compensation, shall be an effectual discharge for the same; and such compensation, when received, shall be apportioned by the committee among the several persons interested therein, according to their respective interests; but the promoters of the undertaking shall not be bound to see to the apportionment or to the application of such compensation, nor shall they be liable for the misapplication or nonapplication thereof.

Disputes to be settled as in other cases.

X CVI. If upon such committee being appointed they shall fail to agree with the promoters of the undertaking as to the amount of the compensation to be paid as aforesaid, the same shall be determined as in other cases of disputed compensation, the said committee being deemed and held to be the proprietors of the said rights, with reference to all proceedings for ascertaining the value thereof.

If no committee be appointed the amount to be determined by valuator.

X CVII. If, upon being duly convened by the promoters of the undertaking, no effectual meeting of the parties entitled to such rights shall take place, or if, taking place, such meeting fail to appoint such committee, the amount of such compensation shall be determined by a valuator, to be appointed by the sheriff as hereinbefore provided in the case of parties who cannot be found.

Upon payment of compensation payable to commoners, no lands to vest.

X CVIII. Upon payment or tender to such committee, or any three of them, or if there shall be no such committee, then upon deposit in the Bank in the manner provided in the like case of the compensation which shall have been agreed upon or determined in respect of such rights, and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a disposition, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect of which such compensation shall have been so paid or deposited shall vest in the promoters of the undertaking freed and discharged from all such rights, and they shall be entitled to immediate possession thereof; and it shall be lawful for the court of session, by an order made upon petition, to order payment of the money so deposited as aforesaid,

and to make such other order in respect thereto, for the benefit of the parties interested, as it shall think fit.

Lands clauses
consolidation.
(Scotland.)

And with respect to lands subject to any security by real lien, wadset, heritable bond, redeemable bond of annuity, or other right in security, be it enacted as follows :

Lands in
mortgage.

XCIX. It shall be lawful for the promoters of the undertaking to purchase or redeem the interest of any holder of any security upon such lands the whole or part of which may be required for the purposes of the special act, and that whether such promoters shall have previously purchased the right to such lands under burden of the security thereon or not, and whether the holder of such security be entitled thereto in his own right or in trust for any other party, and whether he be in possession of such lands by virtue of such security or not, and whether such security affect such lands solely, or jointly with any other lands not required for the purposes of the special act, and in order thereto the promoters of the undertaking may pay or tender to the holder of such security the principal and interest due on such security, together with his expenses and charges, if any, and also six months' additional interest, and thereupon such holder shall immediately convey his interest in the lands comprised in such security to the promoters of the undertaking, or as they shall direct, or the promoters of the undertaking may give notice in writing to such holder that they will pay off the principal and interest due on such security at the end of six months, computed from the day of giving such notice ; and if they shall have given any such notice, or if the party entitled to the lands under burden of such security shall have given six months' notice of his intention to redeem the same, then at the expiration of either of such notices, or at any intermediate period, upon payment or tender by the promoters of the undertaking to the holder of such security of the principal money thereon due, and the interest which would become due at the end of six months from the time of giving either of such notices, together with his expenses, and charges, if any, such holder shall convey or discharge his interest in the lands comprised in such security to the promoters of the undertaking, or as they shall direct.

Power to re-
deem heritable
securities.

C. If, in either of the cases aforesaid, upon such payment or tender, any holder of such securities shall fail to convey or discharge his interest therein as directed by the promoters of the undertaking, or if he fail to adduce a good title thereto then it shall be lawful for the promoters of the undertaking to deposit in the Bank, in the manner provided by this act in like cases, the principal and interest, together with the expenses, if any, due on such security, and also, if such payment be made before the expiration of six months' notice as aforesaid, such further interest as would at that time become due ; and it shall be lawful for them, if they think fit, to expedite an instrument under the hands of a notary public, duly stamped, and to register the same in the manner herein-before provided in the case of the purchase of lands by them ; and thereupon, as well as upon such conveyance by the holder of the security, if any such be made, all the estate and interest of such holder, and of all persons in trust for him, or for whom he may be a trustee, in such lands, shall vest in the promoters of the undertaking, and they shall be entitled to

Deposit of
money on re-
fusal to accept
redemption.

Lands clauses
consolidation.
(Scotland.)

immediate possession thereof in case such holder were himself entitled to such possession.

Sum to be paid
when security
exceeds the
value of lands.

CI. If any such lands subject to such security as aforesaid shall be of less value than the principal, interest, and expenses secured thereon, the value of such lands, or the compensation to be made by the promoters of the undertaking in respect thereof, shall be settled by agreement between the holder of such security and the party claiming or entitled to the lands under burden on the one part, and the promoters of the undertaking on the other part, and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation being so agreed upon or determined shall be paid by the promoters of the undertaking to the holder of the security, in satisfaction of his claim, so far as the same will extend, and upon payment or tender thereof such holder shall, at the expense of the promoters of the undertaking, dispoise and assign his debt, so far as paid, and his security, and all his interest in such lands to the promoters of the undertaking, or as they shall direct, and thereupon the party claiming or entitled to the said lands under burden of the security shall cease to be interested in or have any right thereto, or to any part thereof.

Deposit of
money when
refused on
tender.

CII. If, upon such payment or tender as aforesaid being made, any holder of such security fail so to convey his interest therein, or to adduce a good title thereto to the promoters of the undertaking, it shall be lawful for them to deposit the amount of such value or compensation in the Bank, in the manner provided by this act in like cases, and every such payment or deposit shall be accepted by the holder of the security in satisfaction of his claim, so far as the same will extend, and shall be a full discharge of the lands from all money due thereon; and it shall be lawful for the promoters of the undertaking to expedite an instrument under the hands of a notary public, duly stamped, and to register the same in the manner herein-before provided in the case of the purchase of lands by them; and thereupon such lands, as to all such right and interest as were then vested in the holder of the security, or any person in trust for him, or in the party claiming or entitled to the lands under burden of the security, shall become absolutely vested in the promoters of the undertaking, and they shall be entitled to immediate possession thereof, nevertheless, all rights and remedies possessed by the holder of such security for recovering payment of his debt, or the residue thereof, (as the case may be,) or the interest thereof respectively, and all expenses shall remain in force as a claim against the grantor of such security, and against all other parties bound for the same, but not as a claim on the said lands, or against the promoters of the undertaking.

Sum to be paid
there part
only of lands
under security
then.

CIII. If a part only of any such lands subject to any security as aforesaid be required for the purposes of the special act, and if the part so required be of less value than the principal money, interest, and costs secured on such lands, and the holder of the security shall not consider the remaining part of such lands a sufficient security for the money charged thereon, or be not willing to discharge the part so required, and if the promoters of the undertaking be unwill-

ling to advance the debt on an assignment thereto, then the value of such part, and also the compensation (if any) to be paid in respect of the severance thereof or otherwise, shall be settled by agreement between the holder of the security and the party entitled to the land under burden of the security on the one part, and the promoters of the undertaking on the other, and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to the holder of the security, in satisfaction of his debt, so far as the same will extend; and thereupon such holder shall convey or discharge to them, or as they shall direct, all his interest in such lands the value whereof shall have been so paid; and the party claiming or entitled to the said lands under burden of the security shall cease to be interested in or have any right thereto or to any part thereof; and a memorandum of what shall have been so paid shall be indorsed on the deed or instrument creating such security, and shall be signed by the holder thereof; and a copy of such memorandum shall at the same time (if required) be furnished by the promoters of the undertaking, at their expense, to the party entitled to the lands under burden of the security.

Lands clauses
consolidation.
(Scotland.)

CIV. If, upon payment or tender to any holder of such security of the amount of the value or compensation so agreed upon or determined, such holder shall fail to convey or discharge to the promoters of the undertaking, or as they shall direct, his interest in the lands in respect of which such compensation shall so have been paid or tendered, or if he shall fail to adduce a good title thereto, it shall be lawful for the promoters of the undertaking to pay the amount of such value or compensation into the Bank in the manner provided by this act in the case of monies required to be deposited in such Bank, and such payment or deposit shall be accepted by the holder of such security in satisfaction of his claim, so far as the same will extend, and shall be a full discharge of the portion of the lands so required from all money due thereon; and shall bar the claim of the party claiming or entitled to the said lands under burden of the security; and it shall be lawful for the promoters of the undertaking, if they think fit, to expedite an instrument under the hands of a notary public duly stamped, and to register the same in the manner herein-before provided in the case of the purchase of lands by them; and thereupon such lands shall become absolutely vested in the promoters of the undertaking, as to all such right and interest as were then vested in the holder of such security, or any person in trust for him, and in case such holder were himself entitled to such possession they shall be entitled to immediate possession thereof; nevertheless every such holder shall have the same powers and remedies for recovering or compelling payment of his claim, or the residue thereof (as the case may be), and the interest thereof respectively, upon and out of the residue of the lands subject to such security, or the portion thereof not required for the purposes of the special act, as he would otherwise have had or been entitled to for recovering or compelling payment thereof upon or out of the whole of the lands originally comprised in such security.

Deposit of
money when
refused on
tender.

Lands clauses consolidation.
(*Scotland.*)

If sums secured paid off before the stipulated time, promoters to pay expenses incidental to re-investment.

CV. Provided always that in any of the cases herein-before provided with respect to lands subject to securities, if in the deed or instrument creating the same a time shall have been limited within which the holder of the security shall not be obliged to receive payment of the principal money thereby secured, and under the provisions herein-before contained the holder of the security shall have been required to accept payment of his claim, or of part thereof, at a time earlier than the time so limited the promoters of the undertaking shall pay to the holders of the security, in addition to the sum which shall have been so paid off, all such expenses as shall be incurred by him in respect of or which shall be incidental to the re-investment of the sum so paid off, such expenses, in case of difference, to be taxed, and payment thereof enforced, in the manner herein provided with respect to the expenses of conveyances.

Compensation in respect of loss of interest.

CVI. If the rate of interest secured by such deed be higher than at the time of the same being so paid off can reasonably be expected to be obtained on re-investing the same, regard being had to the then current rate of interest, the holder of such security shall be entitled to receive from the promoters of the undertaking, in addition to the principal and interest herein-before provided for, compensation in respect of the loss to be sustained by him by reason of his claim being so prematurely paid off, the amount of such compensation to be ascertained, in case of difference, as in other cases of disputed compensation; and until payment or tender of such compensation as aforesaid the promoters of the undertaking shall not be entitled, as against such holder, to possession of the lands under the provision herein-before contained.

Lands subject to rent-charges.

And with respect to any lands which shall be charged with any feu duty, ground annual, casualty of superiority, or any rent or other annual or recurring payment or incumbrance not herein-before provided for, be it enacted as follows:

Company to continue the payment of feu duties, &c.

CVII. It shall be lawful for the promoters of the undertaking to enter upon and continue in possession of such lands without redeeming the charges thereon, provided they pay the amount of such annual or recurring payment when due, and otherwise fulfil all obligations accordingly, and provided they shall not be called upon by the party entitled to the charge to redeem the same.

Discharge of lands from such charge.

CVIII. If any difference shall arise between the promoters of the undertaking and the party entitled to any such charge upon any lands required to be taken for the purposes of the special act, respecting the consideration to be paid for the discharge of such lands therefrom, or from the portion thereof affecting the lands required for the purposes of the special act, the same shall be determined as in other cases of disputed compensation.

Discharge of part of lands from charge.

CIX. If part only of the lands charged with any such feu duty, ground annual, casualty of superiority, or any rent, payment, or incumbrance, be required to be taken for the purposes of the special act, the apportionment of any such charge may be settled by agreement between the party entitled to such charge and the owner of the lands on the one part, and the promoters of the undertaking on the

other part, and if such apportionment be not so settled by agreement the same shall be settled by the sheriff; but if the remaining part of the lands so jointly subject be a sufficient security for such charge, then, with consent of the owner of the lands so jointly subject, it shall be lawful for the party entitled to such charge to discharge therefrom the lands required, on condition or in consideration of such other lands remaining exclusively subject to the whole thereof.

Lands clauses
consolidation
(Scotland.)

CX. Upon payment or tender of the compensation so agreed upon or determined to the party entitled to any such charge as aforesaid, such party shall execute to the promoters of the undertaking a discharge thereof; and if he fail so to do, or if he fail to adduce a good title to such charge, it shall be lawful for them to deposit the amount of such compensation in the Bank in the manner herein-before provided in like cases, and also, if they think fit, to expedite an instrument under the hands of a notary public, duly stamped, and to register the same in the manner herein-before provided in the case of the purchase of lands by them, and thereupon the feu duty, ground annual, casualty of superiority, rent, payment, or incumbrance, or the portion thereof in respect whereof such compensation shall so have been paid, shall cease and be extinguished.

Deposit in case
of refusal to
discharge.

CXI. If any such lands be so discharged from any such charge or incumbrance, or portion thereof, to which they were subject jointly with other lands, such last-mentioned lands shall alone be charged with the whole of such charge, or with the remainder thereof, as the case may be, and the party entitled to the charge shall have all the same rights and remedies over such last-mentioned lands, for the whole or for the remainder of the charge, as the case may be, as he had previously over the whole of the lands subject to such charge; and upon any such charge or portion of charge being so discharged the promoters of the undertaking, if required so to do, shall execute and grant in due form a probative deed or instrument, declaring what part of the lands originally subject to such charge shall have been purchased by virtue of the special act, and if the lands be discharged from part of such charge, what proportion of such charge shall have been discharged, and how much thereof continues payable, or if the lands so required shall have been discharged from the whole of such charge, then that the remaining lands are thenceforward to remain exclusively charged therewith; and such deed or instrument shall be made and executed at the expense of the promoters of the undertaking, and shall be competent evidence in all courts and elsewhere of the facts therein stated.

Charge to con-
tinue on lands
not taken.

And with respect to lands subject to leases, be it enacted as follows:

Lands subject
to leases.

CXII. If any lands shall be comprised in a lease or missive of lease for a term of years unexpired, part only of which lands shall be required for the purposes of the special act, the rent payable in respect of the lands comprised in such lease or missive of lease shall be apportioned between the lands so required and the residue of such lands; and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be

Where part
only of lands
under lease
taken, the re-
to be appor-
tioned.

Lands clauses
consolidation.
(Scotland)

not so settled by agreement between the parties, such apportionment shall be settled by the sheriff and after such apportionment the lessee of such lands shall, as to all future accruing rent, be liable only to so much of the rent as shall be so apportioned in respect of the lands not required for the purposes of the special act; and as to the lands not so required, and as against the lessee, the lessor shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease or missive of lease: and all the obligations, conditions, and agreements of such lease or missive of lease, except as to the amount of rent to be paid, shall remain in force with regard to that part of the land which shall not be required for the purposes of the special act, in the same manner as they would have been in case such part only of the land had been included in the lease or missive of lease.

Tenants to be
compensated.

CXIII. Every such lessee as last aforesaid shall be entitled to receive from the promoters of the undertaking compensation for the damage done to him in his tenancy by reason of the severance of the lands required from those not required, or otherwise by reason of the execution of the works.

Compensation
to be made to
tenants for a
year, &c.

CXIV. If any such lands shall be in the possession of any person having no greater interest therein than as tenant for a year or from year to year, and if such person be required to give up possession of any lands so occupied by him before the expiration of his term or interest therein, he shall be entitled to compensation for the value of his unexpired term or interest in such lands, and for any just allowance which ought to be made to him by any in-coming tenant, and for any loss or injury he may sustain, or if a part only of such lands be required, compensation for the damage done to him in his tenancy, by severing of the lands held by him, or otherwise injuriously affecting the same; and the amount of such compensation shall be determined by the sheriff, in case the parties differ about the same; and upon payment or tender of the amount of such compensation all such persons shall respectively deliver up to the promoters of the undertaking, or to the person appointed by them to take possession thereof, any such lands in their possession required for the purposes of the special act.

Where greater
interest
claimed than
from year to
year, the lease
missive to be
produced.

CXV. If any party, having a greater interest than as tenant for a year or from year to year, claim compensation in respect of any unexpired term or interest under any lease, missive of lease, or grant of any such lands, the promoters of the undertaking may require such party to produce the lease, missive of lease, or grant in respect of which such claim shall be made, or other legal evidence thereof in his power; and if, after demand made in writing by the promoters of the undertaking, such lease, missive of lease, or grant, or other legal evidence thereof, be not produced within twenty-one days, the party so claiming compensation shall be considered as a tenant holding only from year to year, and be entitled to compensation accordingly.

Limit of time
of compulsory
purchase.

CXVI. And be it enacted, that the powers of the promoters of the undertaking for the compulsory purchase or taking of lands for

the purposes of the special act shall not be exercised after the expiration of the prescribed period, and if no period be prescribed not after the expiration of three years from the passing of the special act.

Lands clauses
consolidation.
(Scotland.)

And with respect to interests in lands which have by mistake been omitted to be purchased, be it enacted as follows:

*Interests
omitted to be
purchased.*

CXVII. If, at any time after the promoters of the undertaking shall have entered upon any lands which under the provisions of this or the special act, or any act incorporated therewith, they were authorized to purchase, and which shall be permanently required for the purposes of the special act, any party shall appear to be entitled to any estate, right, or interest in or charge affecting such lands which the promoters of the undertaking shall through mistake or inadvertency have failed or omitted duly to purchase or to pay compensation for, then, whether the period allowed for the purchase of lands shall have expired or not, the promoters of the undertaking shall remain in the undisturbed possession of such lands, provided, within six months after notice of such estate, right, interest, or charge, in case the same shall not be disputed by the promoters of the undertaking, or in case the same shall be disputed then within six months after the right thereto shall have been finally established by law in favour of the party claiming the same, the promoters of the undertaking shall purchase or pay compensation for the same, and shall also pay to such party, or to any other party who may establish a right thereto, full compensation for the profits or interest which would have accrued to such parties respectively in respect thereof during the interval between the entry of the promoters of the undertaking thereon and the time of the payment of such purchase money or compensation by the promoters of the undertaking, so far as such profits or interest may be recoverable in law; and such purchase money or compensation shall be agreed on or awarded and paid in like manner as according to the provisions of this act the same respectively would have been agreed on or awarded and paid in case the promoters of the undertaking had purchased such estate, right, interest, or charge before their entering upon such land, or as near thereto as circumstances will admit.

*Promoters of
the under-
taking em-
powered to
purchase in-
terests in lands
the purchase
whereof may
have been
omitted by
mistake.*

CXVIII. In estimating the compensation to be given for any such last-mentioned lands, or any estate or interest in the same, or for any profits thereof, the jury, or arbiters, or sheriff, as the case may be, shall assess the same according to what they shall find to have been the value of such lands, estate or interest, and profits at the time such lands were entered upon by the promoters of the undertaking, and without regard to any improvements or works made in the said lands by the promoters of the undertaking, and as though the works had not been constructed.

*How value of
such lands to
be estimated.*

CXIX. In addition to the said purchase money, compensation, or satisfaction, and before the promoters of the undertaking shall become absolutely entitled to any such estate, interest, or charge, or to have the same merged or extinguished for their benefit, they shall, when the right to any such estate, interest, or charge shall have been disputed by the company, and determined in favour of the party

*Promoters of
the under-
taking to pay
the expenses
of litigation as
to such lands.*

Lands clauses
consolidation
(Scotland)

claiming the same, pay the full expenses of any proceedings at law or in equity for the determination or recovery of the same to the parties with whom any such litigation in respect thereof shall have taken place; and such expenses shall, in case the same shall be disputed, be settled by the proper officer of the court in which such litigation took place.

Sale of super-
fluous land.

And with respect to lands acquired by the promoters of the undertaking under the provisions of this or the special act, or any act incorporated therewith, but which shall not be required for the purposes thereof, be it enacted as follows:

Lands not
wanted to be
sold, or in
default to vest
in owners of
adjoining
lands.

CXX. Within the prescribed period, or if no period be prescribed within ten years after the expiration of the time limited by the special act for the completion of the works, the promoters of the undertaking shall absolutely sell and dispose of all such superfluous lands, in such manner as they may deem most advantageous, and apply the purchase money arising from such sales to the purposes of the special act; and in default thereof all such superfluous lands remaining unsold at the expiration of such period shall thereupon vest in and become the property of the owners of the lands adjoining thereto, in proportion to the extent of their lands respectively adjoining the same.

Lands to be
offered to
owner of lands
from which
they were se-
vered, or to ad-
joining owners.

CXXI. Before the promoters of the undertaking dispose of any such superfluous lands they shall, unless such lands be situate within a town, or be lands built upon or be used for building purposes, first offer to sell the same to the person then entitled to the lands (if any) from which the same were originally severed; or if such person refuse to purchase the same, or cannot after diligent inquiry be found, then the like offer shall be made to the person or to the several persons whose lands shall immediately adjoin the lands so proposed to be sold, such persons being capable of entering into a contract for the purchase of such lands: and where more than one such person shall be entitled to such right of pre-emption such offer shall be made to such persons in succession, one after another, in such order as the promoters of the undertaking shall think fit.

Right of pre-
emption to
be claimed
within six
weeks.

CXXII. If any such persons be desirous of purchasing such lands then within six weeks after such offer of sale they shall signify their desire in that behalf to the promoters of the undertaking, or if they decline such offer, or if for six weeks they neglect to signify their desire to purchase such lands, the right of pre-emption of every such person so declining or neglecting in respect of the lands included in such offer shall cease; and a declaration in writing made before the sheriff by some person not interested in the matter in question, stating that such offer was made and was refused, or not accepted within six weeks from the time of making the same, or that the person or all the persons entitled to the right of pre-emption were out of the country, or could not after diligent inquiry be found, or were not capable of entering into a contract for the purchase of such lands, shall in all courts be sufficient evidence of the facts therein stated.

Differences as
to price to be
settled by ar-
bitration.

CXXIII. If any person entitled to such pre-emption be desirous of purchasing any such lands, and such persons and the promoters of the undertaking do not agree as to the price thereof, then such price

shall be ascertained by arbitration, and the expenses of such arbitration shall be in the discretion of the arbiters.

Lands clauses
consolidation.
(Scotland.)

CXXIV. Upon payment or tender to the promoters of the undertaking of the purchase money so agreed upon or determined as aforesaid they shall convey such lands to the purchasers thereof by deed under the common seal of the promoters of the undertaking, if they be a corporation, or if not a corporation under the hands of the promoters of the undertaking or any two of the directors or managers thereof acting by the authority of the body; and a deed so executed shall be effectual to vest the lands comprised therein in the purchaser of such lands for the estate which shall so have been purchased by him, and a receipt under such common seal, or under the hands of two of the directors or managers of the undertaking, as aforesaid, shall be a sufficient discharge to the purchaser of any such lands for the purchase money in such receipt expressed to be received.

Lands to be
conveyed to
the purchasers.

CXXV. And be it enacted, That in every conveyance of lands to be made by the promoters of the undertaking under this or the special act the word "dispone" shall operate as a clause of absolute warrandice by the promoters of the undertaking, for themselves and their successors, or for themselves, their heirs, executors, administrators, and assigns, as the case may be, to the respective disponees therein named, and the successors, heirs, executors, administrators and assigns of such disponees, according to the quality or nature of such conveyances, and of the estate or interest therein expressed to be thereby conveyed, except so far as the same shall be restrained or limited by express words contained in such conveyance.

Effect of the
word "dis-
pone" in con-
veyances.

CXXVI. And be it enacted, That the rights and titles to be granted in manner herein mentioned in and to any lands taken and used for the purposes of this act shall, unless otherwise specially provided for, in nowise affect or diminish the right of superiority in the same, which shall remain entire in the person granting such rights and titles; but in the event of the lands so used or taken being a part or portion of other lands held by the same owner under the same titles, the said company shall not be liable for any feu duties or casualties to the superiors thereof, nor shall the said company be bound to enter with the said superiors: Provided always, that before entering into possession of any lands full compensation shall be made to the said superiors for all loss which they may sustain by being deprived of any casualties, or otherwise by reason of any procedure under this act.

Superiorities
not to be
affected.

CXXVII. And be it enacted, that if the promoters of the undertaking become possessed, by virtue of this or the special act, or any act incorporated therewith, of any lands charged with the land tax, or liable to be assessed to the poor's rate or prison assessment, they shall from time to time, until the works shall be completed and assessed to such land tax and poor's rate and prison assessment, be liable to make good the deficiency in the several assessments for land tax and poor's rate and prison assessment by reason of such lands having been taken or used for the purposes of the work; and such deficiency shall be computed according to the rental at which such lands, with any building thereon, were valued or rated at the time of

Land tax and
poor's rate to
be made good.

Lands clauses
consolidation
(Scotland.)

the passing of the special act; and on demand of such deficiency the promoters of the undertaking or their treasurer shall pay all such deficiencies to the collector of the said assessments respectively; nevertheless, if at any time the promoters of the undertaking think fit to redeem such land tax, they may do so, in accordance with the powers in that behalf given by the acts for the redemption of the land tax.

Notices.

Service of
notices upon
the promoters
of the under-
taking.

And with respect to the giving of notices, be it enacted as follows:

CXXVIII. Any summons or notice, or any writ or other proceeding at law or equity required to be served upon the promoters of the undertaking, may be served by the same being left at or transmitted through the post, directed to the principal office of the promoters of the undertaking, or one of the principal offices where there shall be more than one, or being given personally, or transmitted through the post, directed to the secretary, or in case there be no secretary then by being given to the solicitor of the said promoters.

Tender of
amends

CXXIX. And be it enacted, that if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special act, or any act incorporated therewith, or by virtue of any power or authority thereby given, and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender shall have been made it shall be lawful for the defender, by leave of the court where such action shall be pending, at any time before the record is closed to pay into court such sum of money as he shall think fit, and thereupon such proceedings shall be had as in other cases where defenders are allowed to pay money into court.

*Recovery of
penalties.*

Penalties to
be summarily
recovered be-
fore the sheriff
or two justices.

And with respect to the recovery of forfeitures, penalties, and expenses, be it enacted as follows:

CXXX. Every penalty or forfeiture imposed by this or the special act, or any act incorporated therewith, or by any bye law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before the sheriff or two justices; and on complaint being made to any sheriff or justice he shall issue an order requiring the party complained against to appear before himself, if the order be issued by a sheriff, or before two or more justices, if the order be issued by a justice, at a time and place to be named in such order; and every such order shall be served on the party offending either in person or by leaving the same with some inmate at his usual place of abode; and upon the appearance of the party complained against, or in his absence, after proof of the due service of such order, it shall be lawful for any sheriff or two justices to proceed to the hearing of the complaint, and upon proof of the offence, either by the confession of the party complained against, or upon the oath of one credible witness or more, it shall be lawful for such sheriff or justices to convict the offender, and upon such conviction to adjudge the offender to pay the penalty or forfeiture incurred, as well as such expenses attending the conviction as such sheriff or justices shall think fit.

CXXXI. If forthwith upon any such adjudication as aforesaid the amount of the penalty or forfeiture, and of such expenses as aforesaid be not paid, the amount of such penalty and expenses may be levied by pointing and sale, and such sheriff or justices shall issue his or their warrant of pointing and sale accordingly.

Lands clauses consolidation.
(Scotland.)

Penalties how levied.

CXXXII. If any such sum shall be payable by the promoters of the undertaking, and if sufficient goods of the said promoters cannot be found whereon to levy the same, it may, if the amount thereof do not exceed twenty pounds, be recovered by pointing and sale of the goods of the treasurer of the said promoters, and the sheriff, on application, shall issue his warrant accordingly; but no such pointing and sale shall be executed against the goods of such treasurer unless seven days' previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence; and if such treasurer pay any money under such pointing and sale as aforesaid he may retain the amount so paid by him, and all expenses occasioned thereby, out of any money belonging to the promoters of the undertaking coming into his custody or control, or he may sue the promoters of the undertaking for the same.

Pointing, &c. against the treasurer,

CXXXIII. Where in this or the special act, or any act incorporated therewith, any sum of money, whether in the nature of penalty, expenses, or otherwise, is directed to be levied by pointing and sale, such sum of money shall be levied by pointing and sale of the goods and effects of the party liable to pay the same, and the overplus arising from the sale of such goods and effects, after satisfying such sum of money, and the expenses of the pointing and sale, shall be returned, on demand, to the party whose goods shall have been seized.

Pointing, &c. how to be levied.

CXXXIV. No pointing and sale made by virtue of this or the special act, or any act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, or wrong-doer, on account of any defect or want of form in the summons, conviction, warrant or other proceeding relating thereto, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action before the sheriff court.

Pointing not unlawful for want of form.

CXXXV. The sheriff or justices by whom any such penalty or forfeiture shall be imposed, where the application thereof is not otherwise provided for, may award not more than one-half thereof to the informer, and shall award the remainder to the Kirk Session, or treasurer or collector of the funds for the poor of the parish in which the offence shall have been committed, for the benefit of the poor of such parish.

Application of penalties.

CXXXVI. No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this or the special act, or any act incorporated therewith for any offence made cognizable before the sheriff or justices, unless the complaint respecting such offence shall have been made before such sheriff, or some justice within six months next after the commission of such offence.

Penalties to be sued for within six months.

Lands clauses consolidation.
(Scotland.)

Form of conviction.

Proceedings not to be quashed for want of form.

Power of appeal from sheriff substitute to sheriff.

Parties allowed to appeal from justices to quarter sessions, on giving security.

Court to make such order as they think reasonable.

CXXXVII. The sheriff or justice or justices before whom any person shall be convicted of any offence against this or the special act, or any act incorporated therewith, may cause the conviction to be drawn up according to the form in the schedule (C.) to this act annexed.

CXXXVIII. No proceeding in pursuance of this or the special act, or any act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by suspension or otherwise into any superior court.

CXXXIX. In all cases which may come before any sheriff substitute under this or the special act, or any act incorporated therewith, in which written pleadings shall have been allowed, and a written record shall have been made up, and where the evidence which has been led by the parties shall have been reduced to writing, but in no other case whatever, it shall be competent for any of the parties thereto, within seven days after a final judgment shall have been pronounced by such sheriff substitute, to appeal against the same to the sheriff of the county, by lodging a minute of appeal with the sheriff clerk of such county or his depute; and the said sheriff shall thereupon review the proceedings of the said sheriff substitute, and whole process, and, if he think proper, hear the parties *vivâ voce* thereon, and pronounce judgment; and such judgment shall in no case be subject to review by suspension or advocacy, or by reduction on any ground whatever.

CXL. If any party shall feel aggrieved by any determination or adjudication of any justice or two or more justices, with respect to any penalty or forfeiture under the provisions of this or the special act, or any act incorporated therewith, such party may appeal to the general quarter sessions for the county or place in which the cause of appeal shall have arisen; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days' notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such notice, enter into recognizances, with two sufficient sureties, before a justice, conditioned duly to prosecute such appeal, and to abide the order of the court thereon.

CXLI. At the quarter sessions for which such notice shall be given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable, and they may make such order concerning the expenses, both of the adjudication and of the appeal as they may think reasonable.

And with respect to the provision to be made for affording access to the special act by all parties interested, be it enacted as follows

CXLII. The company shall at all times, after the expiration of six months after the passing of the special act, keep in their principal office of business a copy of the special act printed by the printers to her Majesty, or some of them; and where the undertaking shall be a railway, canal, or other like undertaking, the works of which shall not be confined to one county, shall also within the space of such six months deposit in the office of each of the sheriff clerks of the several counties into which the works shall extend a copy of such special act, so printed as aforesaid; and the said sheriff clerks shall receive, and they and the company respectively shall retain the said copies of the special act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an act passed in the first year of the reign of her present Majesty, intituled "An Act to compel Clerks of the Peace for Counties and other Persons to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament."

Lands clauses
consolidation.
(Scotland.)

Copies of special act to be kept and deposited, and allowed to be inspected.

7 W 4, &
1 Vict c. 83.

CXLIII. If the company shall fail to keep or deposit, as herein-before mentioned, any of the said copies of the special act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

Penalty on company failing to keep and deposit act

SCHEDULES referred to in the foregoing Act.

SCHEDULE (A.)

Form of Conveyance.

I of in consideration of the sum of paid to me [*or, as the case may be, into the* Bank (*or to A. B. of and C. D. of* two trustees appointed to receive the same)], pursuant to an act passed, &c. intituled, &c., by the [*here name the company*], incorporated by the said act, do hereby sell, alienate, dispoise, convey, assign, and make over from me, my heirs and successors to the said company, their successors and assignees, forever, according to the true intent and meaning of the said act, all [*describing the premises to be conveyed*] together with all rights and pertinents thereto belonging, and all such right, title, and interest in and to the same as I and my aforesaid are or shall become possessed of, or are by the said act empowered to convey. [*Here insert the conditions (if any) of the conveyance, and a registration clause for preservation and diligence, and a testing clause, according to the form of the law of Scotland.*].

SCHEDULE (B.)

Form of Conveyance in consideration of Feu Duty or Rent-charge.

I of in consideration of the feu duty or rent to be paid to me, my heirs and assigns, as herein-after mentioned by the

Lands clauses
consolidation.
(Scotland.)

[*here name the company*], established and incorporated by virtue of an act passed, &c. intituled, &c. do hereby dispoſe, convey, and make over from me, my heirs and ſucceſſors, to the ſaid company, their ſucceſſors and aſſignees for ever, according to the true intent and meaning of the ſaid act, all [*describing the premises to be conveyed*] together with all rights and pertinents, thereunto belonging, and all my right, title, and intereſt in and to the ſame and every part thereof, they the ſaid company, their ſucceſſors and aſſignees, yielding and paying unto me, my heirs and aſſignees, one clear annual fee duty or rent of _____ by equal half-yearly portions henceforth on the [*stating the days. Here insert conditions of the conveyance (if any,) and insert a registration clause for preservation and diligence, and a testing clause, according to the form of the law of Scotland.*]

SCHEDULE (C.)

Form of Conviction before

to wit.

Be it remembered, that on the _____ day of _____ in the year _____ of our Lord _____ A. B. is convicted before me C., the ſheriff, [*or before us D. E., two of her Majesty's juſtices of the peace*] for the county of _____ [*here describe the offence generally, and the time and place when and where committed*] contrary to the [*here name the ſpecul Act*]. Given under my hand [*or under our hands*], the day and year firſt above written.

C.

D.

E.

8 VICT. CHAP. 20.

An Act for consolidating in One Act certain Provisions usually inserted in Acts authorizing the making of Railways. [8th May, 1845.]

Railway
clauses con-
solidation.

WHEREAS it is expedient to comprise in one general act ſundry provisions usually introduced into acts of Parliament authorizing the conſtruction of railways, and that, as well for the purpoſe of avoiding the neceſſity of repeating ſuch provisions in each of the ſeveral acts relating to ſuch undertakings, as for ensuring greater uniformity in the provisions themſelves: and whereas a bill is now pending in Parliament, intituled "An Act for conſolidating in One Act certain Provisions usually inserted in Acts authorizing the taking of Lands for Undertakings of a public Nature," and which is intended to be called "The Lands Clauses Consolidation Act, 1845:" (a) may it therefore pleaſe your Maſteſty that it may be enacted; and be it enacted by the Queen's moſt excellent Maſteſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent Parliament aſſembled, and by the authority of the ſame, that this act ſhall apply to every railway which ſhall by any act which ſhall hereafter be paſſed be authorized to be conſtructed, and this act ſhall be incorporated with ſuch act; and all the clauses and

Operation of
this act con-
fined to future
railways

(a) See 8 Vict. c. 18, *ante*. p. 408.

provisions of this act, save so far as they shall be expressly varied or excepted by any such act, shall apply to the undertaking authorized thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other act which shall be incorporated with such act, form part of such act, and be construed together therewith as forming one act.

Railway
clauses con-
solidation.

And with respect to the construction of this act and of other acts to be incorporated therewith, be it enacted as follows:

Interpretations
in this act .

II. The expression "the special act," used in this act, shall be construed to mean any act which shall be hereafter passed authorizing the construction of a railway, and with which this act shall be so incorporated as aforesaid; and the word "prescribed," used in this act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special act; and the sentence in which such word shall occur shall be construed as if, instead of the word "prescribed," the expression "prescribed for that purpose in the special act" had been used; and the expression "the lands" shall mean the lands which shall by the special act be authorized to be taken or used for the purposes thereof; and the expression "the undertaking" shall mean the railway and works, of whatever description, by the special act authorized to be executed.

"special act."

"prescribed:"

the "lands:"

"the under-
taking."

III. The following words and expressions, both in this and the special act, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

Interpretations
in this and the
special act.

Words importing the singular number only shall include the plural number; and words importing the plural number only shall include also the singular number:

"Number:"

Words importing the masculine gender only shall include females: The word "lands" shall include messuages, lands, tenements, and hereditaments of any tenure:

"Gender:"

"Lands."

The word "lease" shall include an agreement for a lease:

"Lease."

The word "toll" shall include any rate or charge or other payment payable under the special act for any passenger, animal, carriage, goods, merchandize, articles, matters, or things conveyed on the railway:

"Toll:"

The word "goods" shall include things of every kind conveyed upon the railway.

"Goods:"

The word "month" shall mean calendar month:

"Month."

The expression "superior Courts" shall mean her Majesty's superior Courts of Record at Westminster or Dublin, as the case may require:

"Superior
courts:"

The word "oath" shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath:

"Oath:"

The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town:

"County."

The word "sheriff" shall include under sheriff or other legally competent deputy; and where any matter in relation to any

"sheriff."

- Railway clauses consolidation.**
 "the clerk of the peace:" lands is required to be done by any sheriff or clerk of the peace, the expression "the sheriff," or the expression "the clerk of the peace," shall in such case be construed to mean the sheriff or the clerk of the peace of the county, city, borough, liberty, cinque port, or place where such lands shall be situate; and if the lands in question, being the property of one and the same party, be situate not wholly in one county, city, borough, liberty, cinque port or place, the same expression shall be construed to mean the sheriff or clerk of the peace of any county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate:
- "Justice " The word "justice" shall mean justice of the peace acting for the county, city, borough, liberty, cinque port, or place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter; and where such matter shall arise in respect of lands, being the property of one and the same party, situate not wholly in any one county, city, borough, liberty, cinque port, or place, shall mean a justice acting for the county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate, and who shall not be interested in such matter; and where any matter shall be authorized or required to be done by two justices, the expression "two justices" shall be understood to mean two justices assembled and acting together:
- "two justices."
- "Owner." Where under the provisions of this or the special act any notice shall be required to be given to the owner of any lands, or where any act shall be authorized or required to be done with the consent of any such owner, the word, "owner" shall be understood to mean any person or corporation who, under the provisions of this or the special act, or any act incorporated therewith, would be enabled to sell and convey lands to the company.
- "the company " The expression "the company" shall mean the company or party which shall be authorized by the special act to construct the railway:
- "the railway:" The expression "the railway" shall mean the railway and works by the special act authorized to be constructed;
- "Board of Trade." The expression "the board of trade" shall mean the lords of the committee of her Majesty's privy council appointed for trade and foreign plantations:
- "the Bank." The expression "the Bank" shall mean the Bank of England, where the same shall relate to monies to be paid or deposited in respect of lands situate in England; and shall mean the Bank of Ireland where the same shall relate to monies to be paid or deposited in respect of lands situate in Ireland:
- "Turnpike road," Ireland. The expression "turnpike road" shall, when applied to any road in Ireland, include any road upon which her Majesty's mails are or shall be carried in mail carriages; or such other roads as the commissioners of public works in Ireland shall consider to require arches of greater width or height than by this act is required for public carriage roads:
- Surveyor." The expression "surveyor," applied to a road or highway, shall, as to railways in Ireland, include the county surveyor.
- Overseers of a poor." The expression "overseers of the poor," when applied to Ireland

shall include the poor law guardians of the electoral division and the clerk of the guardians of the union through which such railway may pass.

Railway clauses consolidation.

IV. And be it enacted, that in citing this act in other acts of Parliament, and in legal instruments, it shall be sufficient to use the expression "The Railways Clauses Consolidation Act, 1845."

Short title of the act.

V. And whereas it may be convenient, in some cases, to incorporate with acts hereafter to be passed some portion only of the provisions of this act; be it therefore enacted, that for the purpose of making any such incorporation, it shall be sufficient in any such act to enact that the clauses of this act with respect to the matter so proposed to be incorporated (describing such matter as it is described in this act, in the words introductory to the enactment with respect to such matter,) shall be incorporated with such act, and thereupon all the clauses and provisions of this act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such act, form part of such act, and such act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such act shall relate.

Form in which portions of this act may be incorporated in other acts,

And with respect to the construction of the railway and the works connected therewith, be it enacted as follows :

Construction of railway.

VI. In exercising the power given to the company by the special act to construct the railway, and to take lands for that purpose, the company shall be subject to the provisions and restrictions contained in this act and in the said Lands Clauses Consolidation Act; and the company shall make to the owners and occupiers of and all other parties interested in any lands taken or used for the purposes of the railway, or injuriously affected by the construction thereof full compensation for the value of the lands so taken or used, and for all damage sustained by such owners, occupiers, and other parties, by reason of the exercise as regards such lands, of the powers by this or the special act, or any act incorporated therewith, vested in the company; and except where otherwise provided by this or the special act, the amount of such compensation shall be ascertained and determined in the manner provided by the said Lands Clauses Consolidation Act for determining questions of compensation with regard to lands purchased or taken under the provisions thereof; and all the provisions of the said last-mentioned act shall be applicable to determining the amount of any such compensation, and to enforcing the payment or other satisfaction thereof.

The construction of the railway to be subject to the provisions of this act and the Lands Clauses Consolidation Act.

VII. If any omission, mis-statement, or erroneous description shall have been made of any lands, or of the owners, lessees, or occupiers of any lands, described on the plans or books of reference mentioned in the special act, or in the schedule to the special act, it shall be lawful for the company, after giving ten days' notice to the owners of the lands affected by such proposed correction, to apply to two justices for the correction thereof; and if it shall appear to such justices that such omission, mis-statement, or erroneous description arose from mistake, they shall certify the same accordingly, and they shall in such certificate state the particulars of any such omission, and in what respect any such matter shall have been mis-stated or erroneously

Errors and omissions in plans to be corrected

Railway clauses consolidated.

described: and such certificate shall be deposited with the clerks of the peace of the several counties in which the lands affected thereby shall be situate, and shall also be deposited with the parish clerks of the several parishes in England, and with the postmasters of the post towns in or nearest to such parishes in Ireland, in which the lands affected thereby shall be situate; and such certificate shall be kept by such clerks of the peace, parish clerks, and postmasters respectively along with the other documents to which they relate; and thereupon such plan, book of reference, or schedule shall be deemed to be corrected according to such certificate; and it shall be lawful for the company to make the works in accordance with such certificate.

Works not to be proceeded with until plans of all alterations authorized by Parliament have been deposited.

VIII. It shall not be lawful for the company to proceed in the execution of the railway unless they shall have previously to the commencement of such work deposited with the clerks of the peace of the several counties in or through which the railway is intended to pass a plan and section of all such alterations from the original plan and section as shall have been approved of by Parliament, on the same scale and containing the same particulars as the original plan and section of the railway, and shall also have deposited with the clerks of the several parishes in England, and the postmasters of the post towns in or nearest to such parishes in Ireland, in or through which such alterations shall have been authorized to be made, copies or extracts of or from such plans and sections as shall relate to such parishes respectively.

Clerks of the peace, &c. to receive plans of alterations and allow inspection.

IX. The said clerks of the peace, parish clerks, and postmaster shall receive the said plans and sections of alterations, and copies and extracts thereof respectively, and shall retain the same, as well as the said original plans and sections, and shall permit all persons interested to inspect any of the documents aforesaid, and to make copies and extracts of and from the same, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of the original plans and sections by an act passed in the first year of the reign of her present Majesty, intituled "An Act to compel Clerks of the Peace for Counties and other Persons to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either House of Parliament." (a)

E. W. 4, & 1 Vict. c. 83.

Copies of plans, &c. to be evidence.

X. True copies of the said plans and books of reference, or of any alteration or correction thereof, or extract therefrom, certified by any such clerk of the peace, which certificate such clerk of the peace shall give to all parties interested, when required, shall be received in all courts of justice or elsewhere as evidence of the contents thereof.

Limiting deviation from datum line described on sections, &c.

XI. In making the railway it shall not be lawful for the company to deviate from the levels of the railway, as referred to the common datum line described in the section approved of by Parliament, and as marked on the same, to any extent exceeding in any place five feet, or, in passing through a town, village, street, or land continuously built upon, two feet, without the previous consent in writing of the owners and occupiers of the land in which such deviation is intended to be made; or in case any street or public highway shall be affected

by such deviation, then the same shall not be made without the like consent of the trustees or commissioners having the control of such street or public highway, or if there be no such trustees or commissioners, without the like consent of two or more justices of the peace in petty sessions assembled for that purpose, and acting for the district in which such street or public highway may be situated, or without the like consent of the commissioners for any public sewers, or the proprietors of any canal, navigation, gas works, or waterworks affected by such deviation; Provided always that it shall be lawful for the company to deviate from the said levels to a further extent without such consent as aforesaid, by lowering solid embankments or viaducts, provided that the requisite height of headway as prescribed by act of Parliament be left for roads, streets, or canals passing under the same: Provided also, that notice of every petty sessions to be holden for the purpose of obtaining such consent of two justices as is herein-before required shall fourteen days previous to the holding of such petty sessions, be given in some newspaper circulating in the county, and also be affixed upon the door of the parish church in which such deviation or alteration is intended to be made, or if there be no church, some other place to which notices are usually affixed.

Railway clauses consolidation.

Proviso

Proviso,

XII. Before it shall be lawful for the company to make any greater deviation from the level than five feet, or in any town, village, street, or land continuously built upon, two feet, after having obtained such consent as aforesaid, it shall be incumbent on the company to give notice of such intended deviation by public advertisement, inserted once at least in two newspapers, or twice at least in one newspaper, circulating in the district or neighbourhood where such deviation is intended to be made, three weeks at least before commencing to make such deviation; and it shall be lawful for the owner of any lands prejudicially affected thereby, at any time before the commencement of the making of such deviation, to apply to the Board of Trade after giving ten days' notice to the company, to decide whether, having regard to the interests of such applicants, such proposed deviation is proper to be made; and it shall be lawful for the Board of Trade, if they think fit, to decide such question accordingly, and by their certificate in writing either to disallow the making of such deviation or to authorize the making thereof, either simply or with any such modification as shall seem proper to the Board of Trade; and after any such certificate shall have been given by the Board of Trade it shall not be lawful for the company to make such deviation, except in conformity with such certificate.

Public notice to be given previous to making deviations.

Power to the owners of adjoining lands to appeal to the Board of Trade against such deviations.

XIII. Where in any place it is intended to carry the railway on an arch or arches or other viaduct, as marked on the said plan or section, the same shall be made accordingly; and where a tunnel is marked on the said plan or section as intended to be made at any place, the same shall be made accordingly, unless the owners, lessees, and occupiers of the land in which such tunnel is intended to be made shall consent that the same shall not be so made.

Arches, tunnels, &c. to be made as marked on deposited plans.

XIV. It shall not be lawful for the company to deviate from or alter the gradients, curves, tunnels, or other engineering works de-

Limiting deviations from

Railway
clauses con-
solidation

gradients,
curves, &c

scribed in the said plan or section, except within the following limits, and under the following conditions; (that is to say.)

Subject to the above provisions in regard to altering levels, it shall be lawful for the company to diminish the inclination or gradients of the railway to any extent, and to increase the said inclination or gradients as follows; (that is to say,) in gradients of an inclination not exceeding one in a hundred, to any extent not exceeding ten feet per mile, or to any further extent which shall be certified by the Board of Trade to be consistent with the public safety, and not prejudicial to the public interest; and in gradients of or exceeding the inclination of one in a hundred to any extent not exceeding three feet per mile, or to any further extent which shall be so certified by the Board of Trade as aforesaid:

It shall be lawful for the company to diminish the radius of any curve described in the said plan to any extent which shall leave a radius of not less than half a mile, or to any further extent authorized by such certificate as aforesaid from the Board of Trade:

It shall be lawful for the company to make a tunnel, not marked on the said plan or section, instead of a cutting, or a viaduct instead of a solid embankment, if authorized by such certificate as aforesaid from the Board of Trade.

Lateral de-
viations

XV. It shall be lawful for the company to deviate from the line delineated on the plans so deposited, provided that no such deviation shall extend to a greater distance than the limits of deviation delineated upon the said plans, nor to a greater extent in passing through a town, village, or lands continuously built upon than ten yards, or elsewhere to a greater extent than one hundred yards from the said line, and that the railway by means of such deviation be not made to extend into the lands of any person, whether owner, lessee, or occupier, whose name is not mentioned in the books of reference, without the previous consent in writing of such person, unless the name of such person shall have been omitted by mistake, and the fact that such omission proceeded from mistake shall have been certified in manner herein or in the special act provided for in cases of unintentional errors in the said books of reference.

Works to be
executed.

XVI. Subject to the provisions and restrictions in this and the special act, and any act incorporated therewith, it shall be lawful for the company, for the purpose of constructing the railway, or the accommodation works connected therewith, herein-after mentioned, to execute any of the following works; (that is to say.)

Inclined
planes, &c

They may make or construct, in, upon, across, under, or over any lands, or any streets, hills, valleys, roads, railroads, or tramroads, rivers, canals, brooks, streams, or other waters, within the lands described in the said plans, or mentioned in the said books of reference or any correction thereof, such temporary or permanent inclined planes, tunnels, embankments, aqueducts, bridges, roads, ways, passages, conduits, drains, piers, arches, cuttings, and fences as they think proper;

Alteration of
course of
rivers, &c.

They may alter the course of any rivers not navigable, brooks, streams, or watercourses, and of any branches of navigable

rivers, such branches not being themselves navigable, within such lands, for the purpose of constructing and maintaining tunnels, bridges, passages, or other works over or under the same, and divert or alter, as well temporarily as permanently, the course of any such rivers or streams of water, roads, streets, or ways, or raise or sink the level of any such rivers or streams, roads, streets, or ways, in order the more conveniently to carry the same over or under or by the side of the railway, as they may think proper;	Railway clauses consolidation.
They make drains or conduits into, through, or under any lands adjoining the railway, for the purpose of conveying water from or to the railway;	Drains, &c
They may erect and construct such houses, warehouses, offices, and other buildings, yards, stations, wharfs, engines, machinery, apparatus, and other works and conveniences as they think proper:	Warehouses, &c.
They may from time to time alter, repair, or discontinue the before-mentioned works or any of them, and substitute others in their stead; and	Alterations and repairs.
They may do all other acts necessary for making, maintaining, altering, or repairing, and using the railway:	General power
Provided always, that in the exercise of the powers by this or the special act granted the company shall do as little damage as can be, and shall make full satisfaction in manner herein and in the special act, and any act incorporated therewith, provided, to all parties interested, for all damage by them sustained by reason of the exercise of such powers.	Proviso as to damages

XVII. It shall not be lawful for the company to construct on the shore of the sea, or of any creek, bay, arm of the sea, or navigable river communicating therewith, where and so far up the same as the tide flows and reflows, any work, or to construct any railway or bridge across any creek, bay, arm of the sea, or navigable river, where and so far up the same as the tide flows and reflows, without the previous consent of her Majesty, her heirs and successors, to be signified in writing under the hands of two of the commissioners of her Majesty's woods, forests, land revenues, works, and buildings, and of the lord high admiral of the United Kingdom of Great Britain and Ireland, or the commissioners for executing the office of lord high admiral aforesaid for the time being, to be signified in writing under the hand of the secretary of the admiralty, and then only according to such plan and under such restrictions and regulations as the said commissioners of her Majesty's woods, forests, land revenues, works, and buildings, and the said lord high admiral, or the said commissioners, may approve of, such approval being signified as last aforesaid; and where any such work, railway, or bridge shall have been constructed it shall not be lawful for the company at any time to alter or extend the same without obtaining previously to making any such alteration or extension, the like consents or approvals; and if any such work, railway, or bridge shall be commenced or completed contrary to the provisions of this act, it shall be lawful for the said commissioners of her Majesty's woods, forests, land revenues, works, and buildings, or the said lord high admiral, or the said commissioners for executing the office of lord high

Works below high-water mark not to be executed without the consent of the Lords of the Admiralty

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admiral, to abate and remove the same, and to restore the site thereof to its former condition, at the cost and charge of the company; and the amount thereof may be recovered in the same manner as a penalty is recoverable against the company..

Alterations of water and gas pipes, &c.

XVIII. It shall be lawful for the company, for the purpose of constructing the railway, to raise, sink, or otherwise alter the position of any of the watercourses, waterpipes, or gas pipes belonging to any of the houses adjoining or near to the railway, and also the mains and other pipes laid down by any company or society who may furnish the inhabitants of such houses or places with water or gas, and also to remove all other obstructions to such construction, so as the same respectively be done with as little detriment and inconvenience to such company, society, or inhabitants as the circumstances will admit, and be done under the superintendence of the company to which such water pipes or gas pipes belong, and of the several commissioners or trustees, or persons having control of the pavements, sewers, roads, streets, highways, lanes, and other public passages and places within the parish or district where such mains, pipes, or obstructions shall be situate, or of their surveyor, if they or he think fit to attend, after receiving not less than forty-eight hours' notice for that purpose.

Company not to disturb pipes until they have laid down others.

XIX. Provided always, that it shall not be lawful for the company to remove or displace any of the mains or pipes (other than private service pipes), syphons, plugs, or other works belonging to any such company or society, or to do any thing to impede the passage of water or gas into or through such mains or pipes, until good and sufficient mains or pipes, syphons, plugs, and all other works necessary or proper for continuing the supply of water or gas as sufficiently as the same was supplied by the mains or pipes proposed to be removed or displaced, shall, at the expense of the company, have been first made and laid down in lieu thereof, and be ready for use, in a position as little varying from that of the pipes or mains proposed to be removed or displaced as may be consistent with the construction of the railway, and to the satisfaction of the surveyor or engineer of such water or gas company or society, or in case of disagreement between such surveyor or engineer and the company, as a justice shall direct.

Pipes not to be laid contrary to any act.

Surface road to be retained.

XX. It shall not be lawful for the company to lay down any such pipes contrary to the regulations of any act of Parliament relating to such water or gas company or society, or to cause any road to be lowered for the purposes of the railway, without leaving a covering of not less than eighteen inches from the surface of the road over such mains or pipes.

Company to make good all damage.

XXI. The company shall make good all damage done to the property of the water or gas company or society, by the disturbance thereof, and shall make full compensation to all parties for any loss or damage which they may sustain by reason of any interference with the mains, pipes, or works of such water or gas company or society, or with the private service pipes of any person supplied by them with water.

When company to make culvert.

XXII. If it shall be necessary to construct the railway or any of the works over any mains or pipes of any such water or gas company or

society, the company shall, at their own expense, construct and maintain a good and sufficient culvert over such main or pipe, so as to leave the same accessible for the purpose of repairs

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XXIII. If by any such operations as aforesaid the company shall interrupt the supply of any water or gas they shall forfeit twenty pounds for every day that such supply shall be so interrupted, and such penalty shall be appropriated to the benefit of the poor of the parish in which such obstruction shall occur, in such manner as the overseers of the poor of the parish shall direct.

Penalty for obstructing supply of gas or water.

XXIV. If any person wilfully obstruct any person acting under the authority of the company in the lawful exercise of their power in setting out the line of the railway, or pull up or remove any poles or stakes driven into the ground for the purpose of so setting out the line of the railway, or deface or destroy any marks made for the same purpose, he shall forfeit a sum not exceeding five pounds for every such offence.

Penalty for obstructing construction of railway.

And whereas there are large tracts of land in Ireland subject to flood and injury by water, and the rivers, streams, and watercourses are in many places obstructed by shoals, insufficient bridges, culverts, weirs, and other works, whereby the waters thereof are elevated above their natural level And whereas an act of Parliament was passed in the second year of the reign of his late Majesty, King William the Fourth, intituled "An Act to empower landed proprietors in Ireland to sink, embank, and remove obstructions in rivers;" and whereas another act was passed in the sixth year of the reign of her present Majesty, intituled "An Act to promote the drainage of lands, and improvement of navigation and water power in connexion with such drainage in Ireland;" and by the said last-mentioned act public commissioners were appointed to carry the said last-recited act into execution; And whereas it is essential, for carrying into effect the purposes of the said acts, and for the improvement of agriculture, that ample provision be made in all railway works in Ireland for the free and uninterrupted passage of the waters at such level as will be sufficient not only for the present but all future discharge of the waters from lands crossed by or being on either side of such works, and that the bridges of railways crossing all watercourses, rivers, lakes, or estuaries which are or hereafter may be made navigable shall be so constructed as to admit of the commodious navigation of the same: Therefore, with respect to the provision to be made for the drainage of land in Ireland which may be crossed by the railway, and for the protection of the navigation connected therewith be it enacted as follows:

Drainage of lands.

1 & 2 W, 4, c. 57.

5 & 6 Vict. c. 89.

XXV. If the special act shall authorize the construction of a railway in Ireland, the company shall and they are hereby required, from time to time, before proceeding to construct any portion of the railway, to submit to the commissioner's acting in execution of the said act of the sixth year of her present Majesty, or any act amending the same, such plans, sections, and surveys as shall be necessary to enable the said commissioners to decide upon the number and adequacy of the waterways of all bridges, culverts, tunnels, watercourses, and other works across the line of such portion as aforesaid of the railway, for the free and uninterrupted discharge of the waters from all lands

The company to submit to the Drainage Commissioners in Ireland plans, &c. of the portion of the railway which they are about to execute.

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crossed by or lying on either side of or near the railway, at such level as shall in the opinion of the said commissioners be sufficient for the present and prospective drainage and improvement of such lands, and (in cases of rivers, lakes, estuaries or watercourses, which are now or may be capable of being made navigable) upon the height and adequacy of all bridges and works crossing the same for the commodious navigation thereof.

Such commissioners to investigate and report on the works necessary for drainage.

XXVI. The said commissioners shall and they are hereby required without any unnecessary delay, to investigate by such means as to them shall seem fit, the adequacy of all such works for such purposes as aforesaid, and to decide and certify, by a writing under their hands, or the hands of any two of them, the number, situation, and least possible dimensions as to breadth, depth, and height of the several openings of such bridges, culverts, tunnels, or other works, connected with such portion of the railway as aforesaid, which shall be necessary for the passage of water, or for navigation under or across such railway; and it shall not be lawful for the company to proceed with the execution of any of the works connected with any portion of the railway without having first obtained such a certificate as aforesaid respecting such portion of the railway, under the hands of the said commissioners or any two of them, as aforesaid; nor shall the company be at liberty to deviate from such certificate in respect to such works, nor to execute the same otherwise than in conformity therewith without the previous approbation in writing of the said commissioners.

Summary application to the Court of Chancery to enforce the execution of such works.

XXVII. It shall be lawful for the said commissioners to apply by petition in a summary way to the Court of Chancery, complaining of any omission on the part of the company to submit such plans, sections, and surveys to the said commissioners as aforesaid, or of the omission to construct any such bridge, culvert, tunnel, or other works for the passage of water in such manner as shall be so certified by the said commissioners, and thereupon it shall be lawful for the said court to direct such works to be made or constructed by the company in such manner as shall be conformable to the certificate of the said commissioners, and to the said court shall seem necessary or proper, and to make from time to time such further or other order for restraining the company or any other persons from proceeding with any of the works connected with such portion of railway, except in conformity with the certificate of the said commissioners, and to issue any writ of injunction for the purpose aforesaid, and such court shall have power to award costs to be paid by such company or persons.

Saving of the powers of the Drainage Commissioners.

XXVIII. Nothing in this or the special act shall extend or be construed to prejudice or affect the powers or authorities of the commissioners acting in execution of the said act of the sixth year of her present Majesty, but all such powers shall be in full force as to the formation of any cut, river, or watercourse across the railway, but such powers shall not be exercised so as to prevent or obstruct the working or using of the railway.

The Drainage Commissioners in Ireland to have power to

XXIX. And whereas it is expedient to encourage the establishment of manufactories to be worked by water power in Ireland; be it therefore enacted that whenever it may be requisite for the formation

of a watercourse for manufacturing purposes, to construct an arch, culvert, tunnel, or watercourse beneath, or an aqueduct above any railway in Ireland, and that differences shall have arisen between the directors of such railway and the person interested in obtaining the water power, either as to the manner in which such works shall be executed, or the amount of compensation which should be paid, it shall be lawful to refer the questions in issue to the commissioners acting under the said recited act of the fifth and sixth years of the reign of her Majesty Queen Victoria, and their decision thereon shall be final and conclusive; and if the said commissioners shall be of opinion that the proposed works can be executed without injury to the railway, and if they shall think proper so to do, they may undertake the execution of so much of the said works as shall be in connexion with such railway, at the expense of the parties for whose benefit the watercourse shall be made, with the same powers and authorities as are given by the said act for the execution of any works for drainage

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decide questions as to the execution of works or to execute works for carrying watercourses across the railway.

And with respect to the temporary occupation of lands near the railway during the construction thereof, be it enacted as follows :

Temporary use of lands.

XXX. Subject to the provisions herein and in the special act contained, it shall be lawful for the company, at any time before the expiration of the period by the special act limited for the completion of the railway, to enter upon and use any existing private road, being a road gravelled or formed with stones or other hard materials, and not being an avenue or a planted or ornamental road, or an approach to any mansion house within the prescribed limits, if any, or, if no limits be prescribed, not being more than five hundred yards distant from the centre of the railway as delineated on the plans; but before the company shall enter upon or use any such existing road they shall give three weeks' notice of their intention to the owners and occupiers of such road, and of the lands over which the same shall pass, and shall in such notice state the time during which, and the purposes for which they intend to occupy such road, and shall pay to the owners and occupiers of such road and of the lands through which the same shall pass, such compensation for the use and occupation of such road, either in a gross sum of money or by half-yearly instalments, as shall be agreed upon between such owners and occupiers respectively and the company, or in case they differ about the compensation the same shall be settled by two justices in the same manner as any compensation not exceeding fifty pounds is directed to be settled by the said Lands' Clauses Consolidation Act.

Company may occupy temporarily private roads within five hundred yards of the railway.

XXXI. It shall be lawful for the owners and occupiers of any such road, and of the lands over which the same passes, within ten days after the service of the aforesaid notice, by notice in writing to the company to object to the company making use of such road, on the ground that other roads, such as the company are hereinbefore authorized to use for the purposes aforesaid, or that some public road would be more fitting to be used for the same; and upon the objection being so made such proceedings may be had as are herein-after mentioned with respect to lands temporarily occupied by the company, in respect of which three weeks' notice is hereinafter required to be given, and in the same manner as if in the provisions relative to such proceedings the word road or roads, or the words road and the land over which

Power to owners and occupiers of road and land to object that other roads should be taken.

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solidation.

Power to take
temporary pos-
session of land
without pre-
vious payment
of price.

same passes, as the case may require, had been substituted in such provisions for the word lands.

XXXII. Subject to the provisions herein and in the special act contained, it shall be lawful for the company, at any time before the expiration of the period by the special act limited for the completion of the railway, without making any previous payment, tender, or deposit, to enter upon any lands within the prescribed limits, or, if no limits be prescribed, not being more than two hundred yards distant from the centre of the railway as delineated on the plans, and not being a garden, orchard, or plantation attached or belonging to a house, nor a park, planted walk, avenue, or ground ornamentally planted, and not being nearer to the mansion house of the owner of any such lands than the prescribed distance, or if no distance be prescribed, then not nearer than five hundred yards therefrom, and to occupy the said lands so long as may be necessary for the construction or repair of that portion of the railway, or of the accommodation works connected therewith, herein-after mentioned, and to use the same for any of the following purposes; (that is to say,)

For the purpose of taking earth or soil by side cuttings therefrom;

For the purpose of depositing spoil thereon;

For the purpose of obtaining materials therefrom for the construction or repair of the railway or such accommodation works as aforesaid; or

For the purpose of forming roads thereon to or from or by the side the railway:

And in exercise of the powers aforesaid it shall be lawful for the company to deposit and also to manufacture and work upon such lands materials of every kind used in constructing the railway, and also to dig and take from out of any such lands any clay, stone, gravel, sand, or other things that may be found therein useful or proper for constructing the railway or any such roads as aforesaid, and for the purposes aforesaid to erect thereon workshops, sheds, and other buildings of a temporary nature: Provided always, that nothing in this act contained shall exempt the company from an action for nuisance or other injury, if any done, in the exercise of the powers herein-before given to the lands or habitations of any party other than the party whose lands shall be so taken or used for any of the purposes aforesaid: Provided also, that no stone or slate quarry, brick field, or other like place, which at the time of the passing of the special act shall be commonly worked or used for getting materials therefrom for the purpose of selling or disposing of the same, shall be taken or used by the company, either wholly or in part, for any of the purposes lastly herein-before mentioned.

Company to
give notice
previous to
such temporary
possession

XXXIII. In case any such lands shall be required for spoil banks or for side cuttings, or for obtaining materials for the construction or repair of the railway, the company shall before entering thereon (except in the case of accident to the railway requiring immediate reparation) give three weeks' notice in writing to the owners and occupiers of such lands of their intention to enter upon the same for such purposes; and in case the said lands are required for any of the other purposes herein-before mentioned the company shall (except in the

cases aforesaid) give ten days' like notice thereof, and the company shall in such notices respectively state the substance of the provisions hereinafter-contained respecting the right of such owner or occupier to require the company to purchase any such lands, or to receive compensation for the temporary occupation thereof, as the case may be.

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XXXIV. The said notices shall either be served personally on such owners and occupiers, or left at their last usual place of abode, if any such can, after diligent inquiry, be found, and in case any such owner shall be absent from the United Kingdom, or cannot be found after diligent inquiry, shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

Service of notices on owners and occupiers of lands.

XXXV. In any case in which a notice of three weeks is hereinbefore required to be given it shall be lawful for the owner or occupier of the lands therein referred to, within ten days after the service of such notice, by notice in writing to the company to object to the company making use of such lands, either on the ground that the lands proposed to be taken for the purposes aforesaid, or some part thereof, or of the materials contained therein, are essential to be retained by such owner, in order to the beneficial enjoyment of other neighbouring lands belonging to him, or on the ground that other lands lying contiguous or near to those proposed to be taken would be more fitting to be used for such purposes by the company: and upon objection being so made such proceedings may be had as hereinafter mentioned.

Power to owner to object that other lands ought to be taken.

XXXVI. If the objection so made be on the ground that the lands proposed to be taken, or some part thereof, or of the materials contained therein, are essential to be retained by the owner in order to the beneficial enjoyment of other neighbouring lands belonging to him, it shall be lawful for any justice, on the application of such owner, to summon the company to appear before two justices at a time and place to be named in the summons, such time not being later than the expiration of the said twenty-one days' notice; and on the appearance of the company, or, in their absence, upon proof of due service of the summons, it shall be lawful for such justices to inquire into the truth of such ground of objection; and if it appear to such justices that for some special reason, to be stated in the order after mentioned, the lands so proposed to be taken, or any part thereof, or of the materials contained therein, are essential to be retained by the owner of such lands in order to the beneficial enjoyment of other neighbouring lands belonging to him, and ought not therefore to be taken or used by the company, it shall be lawful for such justices, by writing under their hands, to order that the lands so proposed to be taken, or some part thereof, or of the materials contained therein, to be specified in such order, shall not be taken or used by the company, and after service of such order on the company it shall not be lawful for them to take or use, without the previous consent in writing of the owner thereof, any of the lands or materials which by such order they are ordered not to take or use.

Power to two justices to order that the lands and materials shall not be taken.

XXXVII. If the objection so made as aforesaid be on the ground

Power to justices to order

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other lands to
be taken.

that other lands lying contiguous to those proposed to be taken, and being sufficient in quantity, and such as the company are herein-before authorized to use for the purposes aforesaid, would be more fitting to be used by the company, and if in such case the company shall refuse to occupy such other lands in lieu of those mentioned in the notice, it shall be lawful for any justice, on the application of such owner or occupier, to summon the company and the owners and occupiers of such other lands to appear before two justices at a time and place to be named in such summons, such time not being more than fourteen days after such application nor less than seven days from the service of such summons; and on the appearance of the parties, or, in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such justices to determine summarily which of the said lands shall be used by the company for the purposes aforesaid, and to authorize the company to occupy and use the same accordingly.

Power to the
justices to
summon other
owners before
them.

XXXVIII. If in the case last mentioned it shall appear to such justices, upon the inquiry before them, that the lands of any other party not summoned before them, being sufficient in quantity, and such as the company are herein-before authorized to take or use for the purposes aforesaid, would be more fitting to be used by the company than the lands of the person who shall have been so summoned as aforesaid, it shall be lawful for the said justices to adjourn such inquiry, and to summon such other person to appear before them at any time, not being more than fourteen days from such inquiry nor less than seven days from the service of such summons; and on the appearance of the parties, or, in the absence of any of them, on proof of due service of the summons, it shall be lawful for such justices to determine finally which lands shall be used for the purposes aforesaid, and to authorize the company to occupy and use the same accordingly.

The company
to give sure-
ties, if re-
quired.

XXXIX. Before entering, under the provisions herein-before contained, upon any such lands as shall be required for spoil banks or for side cuttings, or for obtaining materials or forming roads as aforesaid, the company shall, if required by the owner or occupier thereof, seven days at least before the expiration of the notice to take such lands as herein-before mentioned, find two sufficient persons, to be approved of by a justice, in case the parties differ, who shall enter into a bond to such owner or occupier in a penalty of such amount as shall be approved of by such justice, in case the parties differ, conditioned for the payment of such compensation as may become payable in respect of the same in manner herein mentioned.

Company to
separate the
lands before
using them.

XL. Before the company shall use any such lands for any of the purposes aforesaid they shall, if required so to do by the owner or occupier thereof, separate the same by a sufficient fence from the lands adjoining thereto, with such gates as may be required by the said owner or occupier for the convenient occupation of such lands, and shall also, to all private roads used by them as aforesaid, put up fences and gates in like manner, in all cases where the same may be necessary to prevent the straying of cattle from or upon the lands traversed by such roads, and in case of any difference between the

owners or occupiers of such roads and lands and the company as to the necessity for such fences and gates, such fences and gates, as any two magistrates shall deem necessary for the purposes aforesaid, on application being made to them in like manner as herein-before is provided in respect to the use of such roads.

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XLI. That if any land shall be taken or used by the company, under the provisions of this or the special act, for the purpose of getting materials therefrom for the construction or repair of the railway, or the accommodation works, connected therewith, they shall work the same in such manner as the surveyor or agent of the owner of such land shall direct, or, in case of disagreement between such surveyor or agent and the company, in such manner as any justice shall direct, on the application of either party, after notice of the hearing the application shall have been given to the other party.

Lands taken for getting materials, &c. to be worked as the surveyor of owner may direct.

XLII. In all cases in which the company shall in exercise of the powers aforesaid enter upon any lands for the purpose of making spoil banks or side cuttings thereon, or for obtaining therefrom materials for the construction or repair of the railway, it shall be lawful for the owners or occupiers of such lands, or parties having such estates or interests therein as, under the provisions in the said Lands' Clauses Consolidation Act mentioned, would enable them to sell or convey lands to the company, at any time during the possession of any such lands by the company, and before such owners or occupiers shall have accepted compensation from the company in respect of such temporary occupation, to serve a notice, in writing on the company requiring them to purchase the said lands, or the estates and interests therein capable of being sold and conveyed by them respectively; and in such notice such owners or occupiers shall set forth the particulars of such their estate or interest in such lands, and the amount of their claim in respect thereof; and the company shall thereupon be bound to purchase the said lands, or the estate and interest therein capable of being sold and conveyed by the parties serving such notice.

Owners of lands may compel company to purchase lands, temporarily occupied.

XLIII. In any of the cases aforesaid, where the company shall not be required to purchase such lands, and in all other cases where they shall take temporary possession of lands by virtue of the powers herein or in the special act granted, it shall be incumbent on the company, within one month after their entry upon such lands, upon being required so to do, to pay to the occupier of the said lands the value of any crop or dressing that may be thereon, as well as full compensation for any other damage of a temporary nature which he may sustain by reason of their so taking possession of his lands, and shall also from time to time during their occupation of the said lands pay half-yearly to such occupier or to the owner of the lands, as the case may require, a rent to be fixed by two justices, in case the parties differ, and shall also within six months after they shall have ceased to occupy the said lands, and not later than six months after the expiration of the time by the special act limited for the completion of the railway, pay to such owner and occupier, or deposit in the Bank for the benefit of all parties interested, as the case may require, compensation for all

Compensation to be made for temporary occupation.

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permanent or other loss, damage, or injury that may have been sustained by them by reason of the exercise, as regards the said lands, of the powers herein or in the special act granted, including the full value of all clay, stone, gravel, sand, and other things taken from such lands.

Compensation to be ascertained under the Lands' Clauses Act.

XLIV. The amount and application of the purchase money and other compensation payable by the company in any of the cases aforesaid shall be determined in the manner provided by the said Lands' Clauses Consolidation Act for determining the amount and application of the compensation to be paid for lands taken under the provisions thereof.

Lands for additional stations.

Land to be taken for additional stations, &c.

XLV. And be it enacted, that it shall be lawful for the company, in addition to the lands authorized to be compulsorily taken by them under the powers of this or the special act, to contract with any party willing to sell the same for the purchase of any land adjoining or near to the railway, not exceeding in the whole the prescribed number of acres for extraordinary purposes; (that is to say.)

For the purpose of making and providing additional stations, yards, wharfs, and places for the accommodation of passengers, and for receiving, depositing, and loading or unloading goods or cattle to be conveyed upon the railway, and for the erection of weighing machines, toll houses, offices, warehouses, and other buildings and conveniences:

For the purpose of making convenient roads or ways to the railway, or any other purpose which may be requisite or convenient for the formation or use of the railway.

Crossing of roads, and construction of bridges.

Crossing of roads.

And with respect to the crossing of roads, or other interference therewith, be it enacted as follows:

XLVI. If the line of the railway cross any turnpike road or public highway, then (except where otherwise provided by the special act) either such road shall be carried over the railway, or the railway shall be carried over such road, by means of a bridge, of the height and width and with the ascent or descent by this or the special act in that behalf provided; and such bridge, with the immediate approaches, and all other necessary works connected therewith, shall be executed and at all times thereafter maintained at the expense of the company. provided always that, with the consent of two or more justices in petty sessions, as after mentioned, it shall be lawful for the company to carry the railway across any highway, other than a public carriage road, on the level.

Provision in cases where roads are crossed on a level.

XLVII. If the railway cross any turnpike road or public carriage road on a level, the company shall erect and at all times maintain good and sufficient gates across such road, on each side of the railway where the same shall communicate therewith, and shall employ proper persons to open and shut such gates; and such gates shall be kept constantly closed across such road on both sides of the railway, except during the time when horses, cattle, carts, or carriages passing along the same shall have to cross such railway; and such gates shall be of such dimensions and so constructed as when closed to fence in the railway, and prevent cattle or horses passing along the road from

entering upon the railway; and the person intrusted with the care of such gates shall cause the same to be closed as soon as such horses, cattle, carts, or carriages shall have passed through the same, under a penalty of forty shillings for every default therein: provided always, that it shall be lawful for the Board of Trade, in any case in which they are satisfied that it will be more conducive to the public safety that the gates on any level crossing over any such road should be kept closed across the railway, to order that such gates shall be kept so closed, instead of across the road, and in such case such gates shall be kept constantly closed across the railway, except when engines or carriages passing along the railway shall have occasion to cross such road, in the same manner and under the like penalty as above directed with respect to the gates being kept closed across the road.

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XLVIII. Where the railway crosses any turnpike road on a level adjoining to a station, all trains on the railway shall be made to slacken their speed before arriving at such turnpike road, and shall not cross the same at any greater rate of speed than four miles an hour; and the company shall be subject to all such rules and regulations with regard to such crossings as may from time to time be made by the Board of Trade.

As to crossing
of turnpike
roads adjoining
stations.

XLIX. Every bridge to be erected for the purpose of carrying the railway over any road shall (except where otherwise provided by the special act) be built in conformity with the following regulations; (that is to say,)

Construction of
bridges over
roads

The width of the arch shall be such as to leave thereunder a clear space of not less than thirty-five feet if the arch be over a turnpike road, and of twenty-five feet if over a public carriage road, and of twelve feet if over a private road:

The clear height of the arch from the surface of the road shall not be less than sixteen feet for a space of twelve feet if the arch be over a turnpike road, and fifteen feet for a space of ten feet if over a public carriage road; and in each of such cases the clear height at the springing of the arch shall not be less than twelve feet:

The clear height of the arch for a space of nine feet shall not be less than fourteen feet over a private carriage road:

The descent made in the road in order to carry the same under the bridge shall not be more than one foot in thirty feet if the bridge be over a turnpike road, one foot in twenty feet if over a public carriage road, and one foot in sixteen feet if over a private carriage road, not being a tramroad or railroad, or if the same be a tramroad or railroad the descent shall not be greater than the prescribed rate of inclination, and if no rate be prescribed the same shall not be greater than as it existed at the passing of the special act.

L. Every bridge erected for carrying any road over the railway shall (except as otherwise provided by the special act) be built in conformity with the following regulations; (that is to say,)

Construction of
bridges over
railway.

There shall be a good and sufficient fence on each side of the bridge of not less height than four feet, and on each side of

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solidation.

the immediate approaches of such bridge of not less than three feet :

The road over the bridge shall have a clear space between the fences thereof of thirty-five feet if the road be a turnpike road, and twenty-five feet if a public carriage road, and twelve feet if a private road :

The ascent shall not be more than one foot in thirty feet if the road be a turnpike road, one foot in twenty feet if a public carriage road, and one foot in sixteen feet if a private carriage road, not being a tramroad or railroad, or if the same be a tramroad or railroad the ascent shall not be greater than the prescribed rate of inclination, and if no rate be prescribed the same shall not be greater than as it existed at the passing of the special act.

The width of
the bridges
need not ex-
ceed the width
of the road in
certain cases.

LI. Provided always, that in all cases where the average available width for the passage of carriages of any existing roads within fifty yards of the points of crossing the same is less than the width herein-before prescribed for bridges over or under the railway, the width of such bridges need not be greater than such average available width of such roads, but so nevertheless that such bridges be not of less width, in the case of a turnpike road or public carriage road, than twenty feet : provided also, that if at any time after the construction of the railway the average available width of any such road shall be increased beyond the width of such bridge on either side thereof, the company shall be bound, at their own expense, to increase the width of the said bridge to such extent as they may be required by the trustees or surveyors of such road, not exceeding the width of such road as so widened, or the maximum width herein or in the special act prescribed for a bridge in the like case over or under the railway.

Existing in-
clinations of
roads crossed
or diverted
need not be
improved.

LII. Provided also, that if the mesne inclination of any road within two hundred and fifty yards of the point of crossing the same, or the inclination of such portion of any road as may require to be altered, or for which another road shall be substituted, shall be steeper than the inclination herein-before required to be preserved by the company, then the company may carry any such road over or under the railway, or may construct such altered or substituted road at an inclination not steeper than the said mesne inclination of the road so to be crossed, or of the road so requiring to be altered, or for which another road shall be substituted.

Before roads
interfered
with, others to
be substituted.

LIII. If, in the exercise of the powers by this or the special act granted, it be found necessary to cross, cut through, raise, sink, or use any part of any road, whether carriage road, horse road, tramroad, or railway, either public or private, so as to render it impassable for or dangerous or extraordinarily inconvenient to passengers or carriages, or to the persons entitled to the use thereof, the company shall, before the commencement of any such operations, cause a sufficient road to be made instead of the road to be interfered with, and shall at their own expense maintain such substituted road in a state as convenient for passengers and carriages as the road so interfered with, or as nearly so as may be.

LIV. If the company do not cause another sufficient road to be so made before they interfere with any such existing road as aforesaid, they shall forfeit twenty pounds for every day during which such substituted road shall not be made after the existing road shall have been interrupted; and such penalty shall be paid to the trustees, commissioners, surveyor, or other person having the management of such road, if a public road, and shall be applied for the purposes thereof, or in case of a private road the same shall be paid to the owner thereof, and every such penalty shall be recoverable with costs by action in any of the superior courts.

Railway clauses cond^{ns} solidation.

Penalty for not substituting a road.

LV. If any party entitled to a right of way over any road so interfered with by the company shall suffer any special damage by reason that the company shall fail to cause another sufficient road to be made before they interfere with the existing road, it shall be lawful for such party to recover the amount of such special damage from the company with costs, by action on the case in any of the superior courts, and that whether any party shall have sued for such penalty as aforesaid or not, and without prejudice to the right of any party to sue for the same.

Party suffering damage from interruption of road to recover in an action on the case.

LVI. If the road so interfered with can be restored compatibly with the formation and use of the railway, the same shall be restored to as good a condition as the same was in at the time when the same was first interfered with by the company, or as near thereto as may be; and if such road cannot be restored compatibly with the formation and use of the railway the company shall cause the new or substituted road, or some other sufficient substituted road, to be put into a permanently substantial condition, equally convenient as the former road, or as near thereto as circumstances will allow; and the former road shall be restored, or the substituted road put into such condition as aforesaid, as the case may be, within the following periods after the first operation on the former road shall have been commenced, unless the trustees or parties having the management of the road to be restored by writing under their hands consent to an extension of the period, and in such case within such extended period; (that is to say,) if the road be a turnpike road, within six months, and if the road be not a turnpike road within twelve months.

Period for restoration of roads interfered with.

LVII. If any such road be not so restored, or the substituted road so completed as aforesaid, within the periods herein or in the special act fixed for that purpose, the company shall forfeit to the trustees, commissioners, surveyor, or other person having the management of the road interfered with by the company, if a public road, or if a private road to the owner thereof, five pounds for every day after the expiration of such periods respectively during which such road shall not be so restored or the substituted road completed; and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof to be laid out in executing the work in respect whereof such penalty was incurred.

Penalty for failing to restore road.

LVIII. If in the course of making the railway the company shall use or interfere with any road they shall from time to time make good all damage done by them to such road; and if any question shall arise as

Company to repair roads used by them.

Railway
classes con-
solidation.

to the damage done to any such road by the company, or as to the repair thereof by them, such question shall be referred to the determination of two justices; and such justices may direct such repairs to be made in the state of such road, in respect of the damage done by the company, and within such period as they think reasonable, and may impose on the company for not carrying into effect such repairs, any penalty not exceeding five pounds per day as to such justices shall seem just; and such penalty shall be paid to the surveyor or other person having the management of the road interfered with by the company, if a public road, and be applied for the purposes of such road, or if a private road the same shall be paid to the owner thereof: Provided always, that in determining any such question with regard to a turnpike road the said justices shall have regard to and shall make full allowance for any tolls that may have been paid by the company on such road in the course of the using thereof.

Proceedings
on application
to justices to
consent to
level crossings
of brideways
and footways.

LIX. When the company shall intend to apply for the consent of two justices, as herein-before provided, so as to authorize them to carry the railway across any highway other than a public carriage road on the level, they shall, fourteen days at least previous to the holding of the petty sessions at which such application is intended to be made, cause notice of such intended application to be given in some newspaper circulating in the county, and also to be affixed upon the door of the parish church of the parish in which such crossing is intended to be made, or if there be no such church some other place to which notices are usually affixed; and if it appear to any two or more justices acting for the district in which such highway at the proposed crossing thereof is situate and assembled in petty sessions, after such notice as aforesaid, that the railway can, consistently with a due regard to the public safety and convenience, be carried across such highway on the level, it shall be lawful for such justices to consent that the same may be so carried accordingly.

Appeal against
the determina-
tion of the jus-
tices.

LX. If either party shall feel aggrieved by the determination of such justices upon any such application as aforesaid, it shall be lawful for such party in like manner, and subject to the like conditions as are hereinafter provided in the case of appeals in respect of penalties and forfeitures, to appeal to the quarter sessions of the county or place in which the cause of appeal shall have arisen; and it shall be lawful for the justices in such quarter sessions, upon the hearing of such appeal, either to confirm or quash the determination, or to make such other order in regard to the method of carrying the railway across such highway as aforesaid, as to them shall seem fit, and to make such order concerning the costs both of the original application and of the appeal as to them shall seem reasonable.

Company to
make sufficient
approaches and
fences to
brideways and
footways cross-
ing on the
level.

LXI. If the railway shall cross any highway other than a public carriageway on the level, the company shall at their own expense make and at all times maintain convenient ascents and descents and other convenient approaches, with handrails or other fences, and shall, if such highway be a bridleway, erect and at all times maintain good and sufficient gates, and if the same shall be a footway, good and sufficient gates or stiles on each side of the railway where the highway shall communicate therewith.

LXII. If, where the railway shall cross any highway on the level, the company fail to make convenient ascents and descents or other convenient approaches, and such handrails, fences, gates, and stiles as they are herein-before required to make, it shall be lawful for two justices, on the application of the surveyor of roads, or of any two householders within the parish or district where such crossing shall be situate, after not less than ten days' notice to the company, to order the company to make such ascent and descent, or other approach, or such handrails, fences, gates, or stiles as aforesaid, within a period to be limited for that purpose by such justices; and if the company fail to comply with such order they shall forfeit five pounds for every day that they fail so to do; and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof to be applied in such manner and by such person as they think fit, in executing the work in respect whereof such penalty was incurred.

Railway clauses consolidation.

Justices to have power to order approaches and fences to be made to highways crossing on the level.

LXIII. If the commissioners or trustees of any turnpike road, or the surveyor of any highway, apprehend danger to the passengers on such road in consequence of horses being frightened by the sight of the engines or carriages travelling upon the railway, it shall be lawful for such commissioners, or trustees, or surveyor, after giving fourteen days' notice to the company, to apply to the Board of Trade with respect thereto; and if it shall appear to the said board that such danger might be obviated or lessened by the construction of any works in the nature of a screen near to or adjoining the side of such road, it shall be lawful for them if they shall think fit, to certify the works necessary or proper to be executed by the company for the purpose of obviating or lessening such danger, and by such certificate to require the company to execute such works within a certain time after the service of such certificate to be appointed by the said board.

Screens for turnpike roads.

Screen for roads to be made, if required by the Board of Trade.

LXIV. Where, by any such certificate as aforesaid, the company shall have been required to execute any such work in the nature of a screen, they shall execute and complete the same within the period appointed for that purpose in such certificate; and if they fail so to do they shall forfeit to the said commissioners, or trustees, or surveyor, five pounds for every day during which such works shall remain uncompleted beyond the period so appointed for their completion; and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof to be laid out in executing the work in respect whereof such penalty was incurred.

Penalty for failing to construct.

LXV. Where, under the provisions of this or the special act, or any act incorporated therewith, the company are required to maintain or keep in repair any bridge, fence, approach, gate, or other work executed by them, it shall be lawful for two justices, on the application of the surveyor of roads, or of any two householders of the parish or district where such work may be situate, complaining that any such work is out of repair, after not less than ten days' notice to the company, to order the company to put such work into complete repair within a period to be limited for that purpose by such justices; and if the company fail to comply with such order they shall forfeit five pounds for every day that they fail so to do; and it shall be lawful for the justices

Construction of bridges.

Justices to have power to order repair of bridges.

Railway clauses consolidation.

Board of Trade empowered to modify the construction of certain roads, bridges, &c., where a strict compliance with the act is impossible or inconvenient.

by whom any such penalty is imposed to order the whole or any part thereof to be applied in such manner and by such persons as they think fit in putting such work into repair.

LXVI. And whereas expense might frequently be avoided, and public convenience promoted by a reference to the Board of Trade upon the construction of public works of an engineering nature connected with the railway, where a strict compliance with the provisions of this or the special act might be impossible, or attended with inconvenience to the company, and without adequate advantage to the public; be it enacted, that in case any difference in regard to the construction, alteration, or restoration of any road or bridge, or other public work of an engineering nature, required by the provisions of this or the special act, shall arise between the company and any trustees, commissioners, surveyors, or other persons having the control of or being authorized by law to enforce the construction of such road, bridge, or work, it shall be lawful for either party, after giving fourteen days' notice in writing of their intention so to do to the other party to apply to the Board of Trade to decide upon the proper manner of constructing, altering, or restoring such road, bridge, or other work; and it shall be lawful for the Board of Trade, if they shall think fit, to decide the same accordingly, and to authorize, by certificate in writing, any arrangement or mode of construction in regard to any such road, bridge, or other work which shall appear to them either to be in substantial compliance with the provisions of this and the special act, or to be calculated to afford equal or greater accommodation to the public using such road, bridge, or other work; and after any such certificate shall have been given by the Board of Trade, the road, bridge, or other work therein mentioned shall be constructed by the company in conformity with the terms of such certificate, and being so constructed shall be deemed to be constructed in conformity with the provisions of this and the special act: Provided always, that no such certificate shall be granted by the Board of Trade unless they shall be satisfied that existing private rights or interests will not be injuriously affected thereby.

Authentication of certificates of the Board of Trade, service of notices, &c.

LXVII. And be it enacted, that all regulations, certificates, notices, and other documents in writing purporting to be made or issued by or by the authority of the Board of Trade, and signed by some officer appointed for that purpose by the Board of Trade, shall, for the purposes of this and the special act, and any act incorporated therewith, be deemed to have been so made and issued, and that without proof of the authority of the person signing the same, or of the signature thereto, which matters shall be presumed until the contrary be proved; and service of any such document, by leaving the same at one of the principal offices of the railway company, or by sending the same by post addressed to the secretary at such office, shall be deemed good service upon the company; and all notices and other documents required by this or the special act to be given to or laid before the Board of Trade shall be delivered at, or sent by post addressed to the office of the Board of Trade in London.

Works for protection and accommodation of lands.

And with respect to works for the accommodation of lands adjoining the railway, be it enacted as follows:

LXVIII. The company shall make and at all times thereafter maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway; (that is to say.)

Railway
clauses con-
solidation.

Such and so many convenient gates, bridges, arches, culverts, and passages over, under, or by the sides of or leading to or from the railway as shall be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway shall be made; and such works shall be made forthwith after the part of the railway passing over such lands shall have been laid out or formed, or during the formation thereof:

Gates,
bridges, &c.

Also sufficient posts, rails, hedges, ditches, mounds, or other fences for separating the land taken for the use of the railway from the adjoining lands not taken, and protecting such lands from trespass, or the cattle of the owners or occupiers thereof from straying thereout, by reason of the railway, together with all necessary gates made to open towards such adjoining lands, and not towards the railway, and all necessary stiles; and such posts, rails, and other fences shall be made forthwith after the taking of any such lands, if the owners thereof shall so require, and the said other works as soon as conveniently may be:

Fences

Also all necessary arches, tunnels, culverts, drains, or other passages, either over or under or by the sides of the railway, of such dimensions as will be sufficient at all times to convey the water as clearly from the lands lying near or affected by the railway as before the making of the railway, or as nearly so as may be; and such works shall be made from time to time as the railway works proceed:

Drains:

Also proper watering places for cattle where by reason of the railway the cattle of any person occupying any lands lying near thereto shall be deprived of access to their former watering places; and such watering places shall be so made as to be at all times as sufficiently supplied with water as theretofore, and as if the railway had not been made, or as nearly so as may be; and the company shall make all necessary water courses and drains for the purpose of conveying water to the said watering places:

Watering
places.

Provided always that the company shall not be required to make such accommodation works in such manner as would prevent or obstruct the working or using of the railway, nor to make any accommodation works with respect to which the owners and occupiers of the lands shall have agreed to receive and shall have been paid compensation instead of the making them.

LXIX. If any difference arise respecting the kind or number of any such accommodation works, or the dimensions or sufficiency thereof, or respecting the maintaining thereof, the same shall be determined by two justices; and such justices shall also appoint the time within which such works shall be commenced and executed by the company.

Differences as
to accommo-
dation works
to be settled by
justices.

LXX. If for fourteen days next after the time appointed by such justices for the commencement of any such works the company shall fail to commence such works, or having commenced shall fail to pro-

Execution of
works by
owners on de-

Railway
clauses con-
solidation.

fault by the
company.

ceed diligently to execute the same in a sufficient manner, it shall be lawful for the party aggrieved by such failure himself to execute such works or repairs; and the reasonable expenses thereof shall be repaid by the company to the party by whom the same shall so have been executed; and if there be any dispute about such expenses the same shall be settled by two justices: provided always, that no such owner or occupier or other person shall obstruct or injure the railway, or any of the works connected therewith, for a longer time nor use them in any other manner than is unavoidably necessary for the execution or repair of such accommodation works.

Power to
owners of land
to make addi-
tional accom-
modation
works.

LXXI. If any of the owners or occupiers of lands affected by such railway shall consider the accommodation works made by the company, or directed by such justices to be made by the company, insufficient for the commodious use of their respective lands, it shall be lawful for any such owner or occupier, at any time, at his own expense, to make such further works for that purpose as he shall think necessary, and as shall be agreed to by the company, or, in case of difference, as shall be authorized by two justices.

Such works to
be constructed
under the su-
perintendence
of the com-
pany's en-
gineer.

LXXII. If the company so desire, all such last-mentioned accommodation works shall be constructed under the superintendence of their engineer, and according to plans and specifications to be submitted to and approved by such engineer; nevertheless the company shall not be entitled to require, either that plans should be adopted which would involve a greater expense than that incurred in the execution of similar works by the company, or that the plans selected should be executed in a more expensive manner than that adopted in similar cases by the company.

Accommoda-
tion works not
to be required
after five years.

LXXIII. The company shall not be compelled to make any further or additional accommodation works for the use of owners and occupiers of land adjoining the railway after the expiration of the prescribed period, or, if no period be prescribed, after five years from the completion of the works, and the opening of the railway for public use.

Owners to be
allowed to
cross until ac-
commodation
works are
made.

LXXIV. Until the company shall have made the bridges or other proper communications which they shall under the provisions herein, or in the special act, or any act incorporated therewith, contained, have been required to make between lands intersected by the railway, and no longer, the owners and occupiers of such lands, and any other persons whose right of way shall be affected by the want of such communication, and their respective servants, may at all times freely pass and repass, with carriages, horses and other animals, directly (but not otherwise) across the part of the railway made in or through their respective lands, solely for the purpose of occupying the same lands, or for the exercise of such right of way, and so as not to obstruct the passage along the railway, or to damage the same; nevertheless, if the owner or occupier of any such lands have in his arrangements with the company received or agreed to receive compensation for or on account of any such communications, instead of the same being formed, such owner or occupier, or those claiming under him, shall not be entitled so to cross the railway.

LXXV. If any person omit to shut and fasten any gate set up at either side of the railway, for the accommodation of the owners or occupiers of the adjoining lands, as soon as he, and the carriage, cattle or other animals, under his care, have passed through the same, he shall forfeit for every such offence any sum not exceeding forty shillings.

Railway clauses consolidation:

Omission to fasten gates.

Branch railways.

Power to parties to make private branch railways communicating with the railway.

5 & 6 Vict. c. 55.

LXXVI. And be it enacted, that this or the special act shall not prevent the owners or occupiers of lands adjoining to the railway, or any other persons, from laying down, either upon their own lands or upon the lands of other persons, with the consent of such persons, any collateral branches of railway to communicate with the railway, for the purpose of bringing carriages to or from or upon the railway, but under and subject to the provisions and restrictions of an act passed in the sixth year of the reign of her present Majesty, intitled "An Act for the better Regulation of Railways, and for the Conveyance of Troops; (a) and the company shall, if required, at the expense of such owners and occupiers and other persons, and subject also to the provisions of the said last-mentioned act, make openings in the rails, and such additional lines of rail as may be necessary for effecting such communication, in places where the communication can be made with safety to the public, and without injury to the railway, and without inconvenience to the traffic thereon; and the company shall not take any rate or toll or other monies for the passing of any passengers' goods, or other things along any branch so to be made by any such owner or occupier or other person; but this enactment shall be subject to the following restrictions and conditions; (that is to say,)

No such branch railway shall run parallel to the railway:

Restrictions and conditions.

The company shall not be bound to make any such openings in any place which they shall have set apart for any specific purpose with which such communication would interfere, nor upon any inclined plane or bridge, nor in any tunnel:

The persons making or using such branch railways shall be subject to all bye-laws and regulations of the company from time to time made with respect to passing upon or crossing the railway, and otherwise; and the persons making or using such branch railways shall be bound to construct, and from time to time, as need may require, to renew, the offset plates and switches according to the most approved plan adopted by the company, and under the direction of their engineer.

And with respect to mines lying under or near the railway, be it enacted as follows:

Working of mines.

LXXVII. The company shall not be entitled to any mines of coal, ironstone, slate or other minerals under any land purchased by them, except only such parts thereof as shall be necessary to be dug or carried away or used in the construction of the works, unless the same shall have been expressly purchased; and all such mines, excepting as aforesaid, shall be deemed to be excepted out of the conveyance of such lands, unless they shall have been expressly named therein and conveyed thereby.

Company not to be entitled to minerals.

Railway
classes con-
solidation.

Mines lying
near the rail-
way not to be
worked if the
company
willing to pur-
chase them

LXXVIII. If the owner, lessee, or occupier of any mines or minerals lying under the railway, or any of the works connected therewith, or within the prescribed distance, or, where no distance shall be prescribed, forty yards therefrom, be desirous of working the same, such owner, lessee, or occupier shall give to the company notice in writing of his intention so to do thirty days before the commencement of working; and upon the receipt of such notice it shall be lawful for the company to cause such mines to be inspected by any person appointed by them for the purpose; and if it appear to the company that the working of such mines or minerals is likely to damage the works of the railway, and if the company be willing to make compensation for such mines or any part thereof to such owner, lessee, or occupier thereof, then he shall not work or get the same; and if the company, and such owner, lessee or occupier, do not agree as to the amount of such compensation, the same shall be settled as in other cases of disputed compensation.

If company
unwilling to
purchase,
owner may
work the
mines.

LXXIX. If before the expiration of such thirty days the company do not state their willingness to treat with such owner, lessee, or occupier for the payment of such compensation, it shall be lawful for him to work the said mines or any part thereof for which the company shall not have agreed to pay compensation, so that the same be done in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the district where the same shall be situate; and if any damage or obstruction be occasioned to the railway or works by improper working of such mines, the same shall be forthwith repaired or removed, as the case may require, and such damage made good by the owner, lessee, or occupier of such mines or minerals, and at his own expense; and if such repair or removal be not forthwith done, or, if the company shall so think fit, without waiting for the same to be done by such owner, lessee, or occupier, it shall be lawful for the company to execute the same, and recover from such owner, lessee, or occupier the expense occasioned thereby, by action in any of the superior courts.

Mining com-
munications.

LXXX. If the working of any such mines under the railway or works, or within the above-mentioned distance therefrom, be prevented as aforesaid by reason of apprehended injury to the railway, it shall be lawful for the respective owners, lessees, and occupiers of such mines, and whose mines shall extend so as to lie on both sides of the railway, to cut and make such and so many airways, headways, gateways, or water levels through the mines, measures, or strata, the working whereof shall be so prevented, as may be requisite to enable them to ventilate, drain, and work their said mines, but no such airway, headway, gateway, or water level shall be of greater dimensions or section than the prescribed dimensions and sections, and where no dimensions shall be described not greater than eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the railway or works, or so as to injure the same, or to impede the passage thereon.

Company to
make com-
pensation

LXXXI. The company shall from time to time pay to the owner, lessee, or occupier of any such mines extending so as to lie on both

sides of the railway all such additional expenses and losses as shall be incurred by such owner, lessee, or occupier by reason of the severance of the lands lying over such mines by the railway, or of the continuous working of such mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the railway, and for any minerals not purchased by the company which cannot be obtained by reason of making and maintaining the railway; and if any dispute or question shall arise between the company and such owner, lessee, or occupier as aforesaid, touching the amount of such losses or expenses the same shall be settled by arbitration.

Railway clauses consolidated.

for injury done to mines.

LXXXII. If any loss or damage be sustained by the owner or occupier of the lands lying over any such mines the working whereof shall have been so prevented as aforesaid (and not being the owner, lessee, or occupier of such mines), by reason of the making of any such airway or other work as aforesaid, which or any like work would not have been necessary to be made but for the working of such mines having been so prevented as aforesaid, the company shall make full compensation to such owner or occupier of the surface lands for the loss or damage so sustained by him.

and also for any airway or other work made necessary by the railway.

LXXXIII. For better ascertaining whether any such mines are being worked or have been worked so as to damage the railway or works, it shall be lawful for the company, after giving twenty-four hours' notice in writing, to enter upon any lands through or near which the railway passes wherein any such mines are being worked or are supposed so to be, and to enter into and return from any such mines or the works connected therewith; and for that purpose it shall be lawful for them to make use of any apparatus or machinery belonging to the owner, lessee, or occupier of such mines, and to use all necessary means for discovering the distance from the railway to the parts of such mines which are being worked or about so to be.

Power to company to enter and inspect the working of mines.

LXXXIV. If any such owner, lessee, or occupier of any such mine shall refuse to allow any person appointed by the company for that purpose to enter into and inspect any such mines or works in manner aforesaid, every person so offending shall for every such refusal forfeit to the company a sum not exceeding twenty pounds.

Penalty for refusal to inspect.

LXXXV. If it appear that any such mines have been worked contrary to the provisions of this or the special act, the company may, if they think fit, give notice to the owner, lessee, or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the railway, and preventing injury thereto; and if after such notice any such owner, lessee, or occupier do not forthwith proceed to construct the works necessary for making safe the railway, the company may themselves construct such works, and recover the expense thereof from such owner, lessee, or occupier by action in any of the superior courts.

If mines improperly worked, the company may require means to be adopted for the safety of the railway.

And with respect to the carrying of passengers and goods upon the railway, and the tolls to be taken thereon, be it enacted as follows:

Passengers and goods on railway.

Railway clauses consolidation.

Company to employ locomotive power, carriages, &c.

Company empowered to contract with other companies.

Contracts not to affect persons not parties thereto.

Company not to be liable to a greater extent than common carriers.

Power to vary tolls

Tolls to be charged equally under

LXXXVI. It shall be lawful for the company to use and employ locomotive engines or other moving power, and carriages and waggons to be drawn or propelled thereby, and to carry and convey upon the railway all such passengers and goods as shall be offered to them for that purpose, and to make such reasonable charges in respect thereof as they may from time to time determine upon, not exceeding the tolls by the special act authorized to be taken by them.

LXXXVII. It shall be lawful for the company from time to time to enter into any contract with any other company, being the owners or lessees or in possession of any other railway, for the passage over or along the railway by the special act authorized to be made of any engines, coaches, waggons, or other carriages, of any other company, or which shall pass over any other line of railway, or for the passage over any other line of railway of any engines, coaches, waggons, or other carriages of the company, or which shall pass over their line of railway, upon the payment of such tolls and under such conditions and restrictions as may be mutually agreed upon; and for the purpose aforesaid it shall be lawful for the respective parties to enter into any contract for the division or apportionment of the tolls to be taken upon their respective railways.

LXXXVIII. Provided always, that no such contract as aforesaid shall in any manner alter, affect, increase, or diminish any of the tolls which the respective companies, parties to such contracts, shall for the time being be respectively authorized and entitled to demand or receive from any person or any other company, but that all other persons and companies shall, notwithstanding any such contract, be entitled to the use and benefit of any of the said railways, upon the same terms and conditions, and on payment of the same tolls, as they would have been in case no such contract had been entered into.

LXXXIX. Nothing in this or the special act contained shall extend to charge or make liable the company further or in any other case than where, according to the laws of the realm, stage coach proprietors and common carriers would be liable, nor shall extend in any degree to deprive the company of any protection or privilege which common carriers or stage coach proprietors may be entitled to, but, on the contrary, the company shall at all times be entitled to the benefit of every such protection and privilege.

XC. And whereas it is expedient that the company should be enabled to vary the tolls upon the railways so as to accommodate them to the circumstances of the traffic, but that such power of varying should not be used for the purpose of prejudicing or favouring particular parties, or for the purpose of collusively and unfairly creating a monopoly, either in the hands of the company or of particular parties; it shall be lawful, therefore, for the company, subject to the provisions and limitations herein and in the special act contained, from time to time to alter or vary the tolls by the special act authorized to be taken, either upon the whole or upon any particular portions of the railway, as they shall think fit; provided that all such tolls be at all times charged equally to all persons, and after the same rate, whether per ton per mile or otherwise, in respect of all

passengers, and of all goods or carriages of the same description, and conveyed or propelled by a like carriage or engine, passing only over the same portion of the line of railway under the same circumstances; and no reduction or advance in any such tolls shall be made either directly or indirectly in favour of or against any particular company or person travelling upon or using the railway.

Railway clauses consolidation. / like circumstances.

XCI. And whereas authority has been given by various acts of Parliament to railway companies to demand tolls for the conveyance of passengers and goods and for other services over the fraction of a mile equal to the toll which they are authorized to demand for one mile; therefore, in cases in which any railway shall be amalgamated with any other adjoining railway or railways, such tolls shall be calculated and imposed at such rates as if such amalgamated railways had originally formed one line of railway.

How tolls to be calculated where railways amalgamated.

XCII. It shall not be lawful for the company at any time to demand or take a greater amount of toll, or make any greater charge for the carriage of passengers or goods, than they are by this and the special act authorized to demand; and upon payment of the tolls from time to time demandable all companies and persons shall be entitled to use the railway, with engines and carriages properly constructed as by this and the special act directed, subject nevertheless to the provisions and restrictions of the said act of the sixth year of her present Majesty, intituled "An Act for the better Regulation of Railways, and for the conveyance of troops" (a), and to the regulations to be from time to time made by the company by virtue of the powers in that behalf hereby and by the special act conferred upon them.

Railway to be free on payment of tolls.

5 & 6 Vict. c. 55.

XCIII. A list of all the tolls authorized by the special act to be taken, and which shall be exacted by the company, shall be published by the same being painted upon one toll board or more in distinct black letters on a white ground, or white letters on a black ground, or by the same being printed in legible characters on paper affixed to such board, and by such board being exhibited in some conspicuous place on the stations or places where such tolls shall be made payable.

List of tolls to be exhibited on a board.

XCIV. The company shall cause the length of the railway to be measured, and milestones, posts, or other conspicuous objects to be set up and maintained along the whole line thereof, at the distance of one quarter of a mile from each other, with numbers or marks inscribed thereon denoting such distances.

Milestones.

XCv. No tolls shall be demanded or taken by the company for the use of the railway during any time at which the boards hereinbefore directed to be exhibited shall not be so exhibited, or at which the milestones hereinbefore directed to be set up and maintained shall not be so set up and maintained; and if any person wilfully pull down, deface, or destroy any such board or milestone, he shall forfeit a sum not exceeding five pounds for every such offence.

Tolls to be taken only whilst board exhibited and milestones set up.

Railway
clauses con-
solidation.

XCVI. The tolls shall be paid to such persons, and at such places upon or near to the railway, and in such manner and under such regulations, as the company shall, by notice to be annexed to the list of tolls, appoint.

Tolls how to be
paid.

In default of
payment of
tolls, goods,
&c. may be
detained and
sold.

XCVII. If, on demand, any person fail to pay the tolls due in respect of any carriage or goods, it shall be lawful for the company to detain and sell such carriage, or all or any part of such goods, or if the same shall have been removed from the premises of the company, to detain and sell any other carriages or goods within such premises belonging to the party liable to pay such tolls, and out of the monies arising from such sale to retain the tolls payable as aforesaid, and all charges and expenses of such detention and sale, rendering the overplus, if any, of the monies arising by such sale, and such of the carriages or goods as shall remain unsold, to the person entitled thereto, or it shall be lawful for the company to recover any such tolls by action at law.

Account of
lading, &c. to
be given.

XCVIII. Every person being the owner or having the care of any carriage or goods passing or being upon the railway shall, on demand, give to the collector of tolls, at the places where he attends for the purpose of receiving goods or of collecting tolls for the part of the railway on which such carriage or goods may have travelled or be about to travel, an exact account in writing signed by him of the number or quantity of goods conveyed by any such carriage, and of the point on the railway from which such carriage or goods have set out or are about to set out, and at what point the same are intended to be unloaded or taken off the railway; and if the goods conveyed by any such carriage, or brought for conveyance as aforesaid, be liable to the payment of different tolls, then such owner or other person shall specify the respective numbers or quantities thereof liable to each or any of such tolls.

Penalty for
not giving ac-
count of
lading.

XCIX. If any such owner or other such person fail to give such account, or to produce his way-bill or bill of lading to such collector or other officer or sergant of the company demanding the same, or if he give a false account, or if he unload or take off any part of his lading or goods at any other place than shall be mentioned in such account, with intent to avoid the payment of any tolls payable in respect thereof, he shall for every such offence forfeit to the company a sum not exceeding ten pounds for every ton of goods, or for any parcel not exceeding one hundred weight, and so in proportion for any less quantity of goods than one ton, or for any parcel exceeding one hundred weight, (as the case may be,) which shall be upon any such carriage; and such penalty shall be in addition to the toll to which such goods may be liable.

Disputes as to
amount of
tolls charge-
able.

C. If any dispute arise concerning the amount of the tolls due to the company, or concerning the charges occasioned by any detention or sale thereof under the provisions herein or in the special act contained, the same shall be settled by a justice; and it shall be lawful for the company in the meanwhile to detain the goods, or (if the case so require) the proceeds of the sale thereof.

CI. If any difference arise between any toll collector or other officer or servant of the company and any owner of or person having the charge of any carriage passing or being upon the railway, or of any goods conveyed or to be conveyed by such carriage, respecting the weight, quantity, quality, or nature of such goods, such collector or other officer may lawfully detain such carriage or goods, and examine, weigh, gauge, or otherwise measure the same; and if upon such measuring or examination such goods appear to be of greater weight or quantity, or of other nature than shall have been stated in the account given thereof, then the person who shall have given such account shall pay, and the owner of such carriage, or the respective owners of such goods, shall also at the option of the company, be liable to pay the costs of such measuring and examining; but if such goods appear to be of the same or less weight or quantity than and of the same nature as shall have been stated in such account, then the company shall pay such costs, and they shall also pay to such owner of or person having charge of such carriage, and to the respective owners of such goods such damage (if any) as shall appear to any justice, on a summary application to him for that purpose, to have arisen from such detention.

Railway clauses con-
solidation.
Differences of
to weights, &c.

CII. If at any time it be made to appear to any justice upon the complaint of the company, that any such detention, measuring, or examining of any carriage or goods, as herein-before mentioned, was without reasonable ground, or that it was vexatious on the part of such collector or other officer, then the collector or other officer shall himself pay the costs of such detention and measuring, and the damage occasioned thereby; and in default of immediate payment of any such costs or damage the same may be recovered by distress of the goods of such collector, and such justice shall issue his warrant accordingly.

Toll collector
to be liable for
wrongful de-
tention of
goods.

CIII. If any person travel or attempt to travel in any carriage of the company, or of any other company or party using the railway, without having previously paid his fare, and with intent to avoid payment thereof, or if any person, having paid his fare for a certain distance, knowingly and wilfully proceed in any such carriage beyond such distance without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof, or if any person knowingly and wilfully refuse or neglect, on arriving, at the point to which he has paid his fare, to quit such carriage, every such person shall for every such offence forfeit to the company a sum not exceeding forty shillings.

Penalty on
passengers
practising
frauds on the
company.

CIV. If any person be discovered either in or after committing or attempting to commit any such offence as in the preceding enactment mentioned, all officers and servants and other persons on behalf of the company, or such other company or party as aforesaid, and all constables, gaolers, and peace officers, may lawfully apprehend and detain such person until he can conveniently be taken before some justice, or until he be otherwise discharged by due course of law.

Detention of
offenders.

CV. No person shall be entitled to carry, or to require the company to carry, upon the railway, any aquafortis, oil of vitriol, gunpowder, lucifer matches, or any other goods which in the judgment of the company may be of a dangerous nature; and if any person send by the

Penalty for
bringing dan-
gerous goods
on the railway

Railway clauses consolidation.

¹ailway any such goods without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing to the book-keeper or other servant of the company with whom the same are left, at the time of so sending, he shall forfeit to the company twenty pounds for every such offence; and it shall be lawful for the company to refuse to take any parcel that they may suspect to contain goods of a dangerous nature, or require the same to be opened to ascertain the fact.

Delivery of matters in possession or custody of toll collector at removal.

CVI. If any collector of tolls or other officer employed by the company be discharged or suspended from his office, or die, abscond, or absent himself, and if such collector, or officer, or the wife, widow, or any of the family or representatives of any such collector or other officer, refuse or neglect, after seven days' notice in writing for that purpose, to deliver up to the company or to any person appointed by them for that purpose, any station, dwelling-house, office, or other building, with its appurtenances, or any books, papers, or other matters belonging to the company in the possession or custody of any such collector or officer, at the occurrence of any such event as aforesaid, then upon application being made by the company to any justice it shall be lawful for such justice to order any constable, with proper assistance, to enter upon such station or other building, and to remove any person found therein, and to take possession thereof, and of any such books, papers, or other matters, and to deliver the same to the company, or any person appointed by them for that purpose.

Annual account to be made up, and a copy transmitted to the clerk of the peace, &c.

CVII. And be it enacted, that the company shall every year cause an annual account in abstract to be prepared, showing the total receipts and expenditure of all funds levied by virtue of this or the special act for the year ending on the thirty-first day of December, or some other convenient day in each year, under the several distinct heads of receipt and expenditure, with a statement of the balance of such account duly audited and certified by the directors or some of them, and by the auditors, and shall, if required, transmit a copy of the said account, free of charge, to the overseers of the poor of the several parishes through which the railway shall pass, and also to the clerks of the peace of the counties through which the railway shall pass, on or before the thirty-first day of January then next; which last-mentioned account shall be open to the inspection of the public at all seasonable hours, on payment of the sum of one shilling for every such inspection: Provided always, that if the said company shall omit to prepare or transmit such account as aforesaid, if required so to do by any such clerk of the peace or overseers of the poor, they shall forfeit for every such omission the sum of twenty pounds.

Bye-laws.

Company to regulate the use of the railway.

And with respect to the regulating of the use of the railway, be it enacted as follows:

CVIII. It shall be lawful for the company, from time to time, subject to the provisions and restrictions in this and the special act contained, to make regulations for the following purposes; (that is to say,)

For regulating the mode by which and the speed at which carriages using the railway are to be moved or propelled;

For regulating the times of the arrival and departure of any such carriages ;

For regulating the loading or unloading of such carriages, and the weights which they are respectively to carry ;

For regulating the receipt and delivery of goods and other things which are to be conveyed upon such carriages ;

For preventing the smoking of tobacco, and the commission of any other nuisance in or upon such carriages, or in any of the stations or premises occupied by the company..

And, generally, for regulating the travelling upon, or using and working of the railway :

But no such regulation shall authorize the closing of the railway, or prevent the passage of engines or carriages on the railway at reasonable times, except at any time when in consequence of any of the works being out of repair, or from any other sufficient cause, it shall be necessary to close the railway or any part thereof.

CIX. For better enforcing the observance of all or any of such regulations it shall be lawful for the company, subject to the provisions of an act passed in the fourth year of the reign of her present Majesty, intituled "An Act for regulating railways," (a) to make bye-laws, and from time to time to repeal or alter such bye-laws, and make others, provided that such bye-laws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect, or to the provisions of this or the special act ; and such bye-laws shall be reduced into writing, and shall have affixed thereto the common seal of the company ; and any person offending against any such bye-law shall forfeit for every such offence any sum not exceeding five pounds, to be imposed by the company in such bye-laws as a penalty for any such offence ; and if the infraction or non-observance of any such bye-law or other such regulation as aforesaid be attended with danger or annoyance to the public or hindrance to the company in the lawful use of the railway, it shall be lawful for the company summarily to interfere to obviate or remove such danger, annoyance, or hindrance, and that without prejudice to any penalty incurred by the infraction of any such bye-law.

Railway clauses consolidation.

Power to make regulations by bye-law.

3 & 4 Vict. c. 97.

CX. The substance of such last-mentioned bye-laws, when confirmed or allowed according to the provisions of any act in force regulating the allowance or confirmation of the same shall be painted on boards, or printed on paper and pasted on boards, and hung up and affixed and continued on the front or other conspicuous part of every wharf or station belonging to the company, according to the nature or subject matter of such bye-laws respectively, and so as to give public notice thereof to the parties interested therein or affected thereby ; and such boards shall from time to time be renewed as often as the bye-laws thereon, or any part thereof shall be obliterated or destroyed ; and no penalty imposed by any such bye-law shall be recoverable unless the same shall have been published and kept published in manner aforesaid.

Publication of such bye-laws.

CXI. Such bye-laws, when so confirmed, published, and affixed Such bye-laws

(a) *Ante*, p. 111.

Railway clauses consolidation.
to be binding on all parties.

shall be binding upon and be observed by all parties, and shall be sufficient to justify all persons acting under the same; and for proof of the publication of any such bye-laws it shall be sufficient to prove that a printed paper or painted board, containing a copy of such bye-laws, was affixed and continued in manner by this act directed, and in case of its being afterwards displaced or damaged then that such paper or board was replaced as soon as conveniently might be.

Leasing of railway.

And with respect to leasing the railway, be it enacted as follows:

Exercise of power to lease the railway.

CXII. Where the company shall be authorized by the special act to lease the railway or any part thereof to any company or person, the lease to be executed in pursuance of such authority shall contain all usual and proper covenants on the part of the lessee for maintaining the railway, or the portion thereof comprised in such lease, in good and efficient repair and working condition during the continuance thereof, and for so leaving the same at the expiration of the term thereby granted, and such other provisions, conditions, covenants, and agreements as are usually inserted in leases of a like nature.

Powers vested in the company may be exercised by the lessees.

CXIII. Such lease shall entitle the company or person to whom the same shall be granted to the free use of the railway or portion of railway comprised therein, and during the continuance of any such lease all the powers and privileges granted to and which might otherwise be exercised and enjoyed by the company, or the directors thereof, or their officers, agents, or servants, by virtue of this or the special act, with regard to the possession, enjoyment, and management of the railway, or of the part thereof comprised in such lease, and the tolls to be taken thereon, shall be exercised and enjoyed by the lessee, and the officers and servants of such lessee, under the same regulations and restrictions as are by this or the special act imposed on the company, and their directors, officers, and servants; and such lessee shall, with respect to the railway comprised in such lease, be subject to all the obligations by this or the special act imposed on the company.

Carriages and engines.

And with respect to the engines and carriages to be brought on the railway be it enacted as follows:

Engines to consume their smoke.

CXIV. Every locomotive steam engine to be used on the railway shall, if it use coal or other similar fuel emitting smoke, be constructed on the principle of consuming and so as to consume its own smoke; and if any engine be not so constructed the company or party using such engine shall forfeit five pounds for every day during which such engine shall be used on the railway.

Engines to be approved by the company, and certificate of approval given.

CXV. No locomotive or other engine, or other description of moving power, shall at any time be brought upon or used on the railway, unless the same have first been approved of by the company; and within fourteen days after notice given to the company by any party desirous of bringing any such engine on the railway the company shall cause their engineer or other agent to examine such engine at any place within three miles distance from the railway to be appointed by the owner thereof, and to report thereon to the company; and within seven days after such report, if such engine be

proper to be used on the railway, the company shall give a certificate to the party requiring the same of their approval of such engine; and if at any time the engineer or other agent of the company report that any engine used upon the railway is out of repair, or unfit to be used upon the railway, the company may require the same to be taken off, or may forbid its use upon the railway until the same shall have been repaired to the satisfaction of the company, and upon the engine being so repaired the company shall give a certificate to the party requiring the same of their approval of such engine; and if any difference of opinion arise between the company and the owner of any such engine as to the fitness or unfitness thereof for the purpose of being used on the railway, such difference shall be settled by arbitration.

Railway clauses consolidation.

Unfit engines to be removed.

CVI. If any person whether the owner or other person having the care thereof, bring or use upon the railway any locomotive or other engine, or any moving power, without having first obtained such certificate of approval as aforesaid, or if, after notice given by the company to remove any such engine from the railway, such person do not forthwith remove the same, or if, after notice given by the company not to use any such engine on the railway, such person do so use such engine, without having first repaired the same to the satisfaction of the company, and obtained such certificate of approval, every such person shall in any of the cases aforesaid forfeit to the company a sum not exceeding twenty pounds, and in any such case it shall be lawful for the company to remove such engine from the railway.

Penalty for using improper engines.

CVII. No carriage shall pass along or be upon the railway (except in directly crossing the same, as herein or by the special act authorized,) unless such carriage be at all times, so long as it shall be used, or shall remain on the railway, of the construction and in the condition which the regulations of the company for the time being shall require; and if any dispute arise between the company and the owner of any such carriage as to the construction or condition thereof, in reference to the then existing regulations of the company, such dispute shall be settled by arbitration.

Carriages to be constructed according to company's regulations.

CVIII. The regulations from time to time to be made by the company respecting the carriages to be used on the railway shall be drawn up in writing, and be authenticated by the common seal of the company, and shall be applicable alike to the carriages of the company and to the carriages of other companies or persons using the railway; and a copy of such regulations shall, on demand, be furnished by the secretary of the company to any person applying for the same.

Regulations to apply also to company's carriages.

CVIX. If any carriage, not being of such construction or in such condition as the regulations of the company for the time being require, be made to pass or be upon any part of the railway (except as aforesaid), the owner thereof, or any person having for the time being the charge of such carriage, shall forfeit to the company a sum not exceeding ten pounds for every such offence, and it shall be lawful for the company to remove any such carriage from the railway.

Penalty for using improper carriages.

Railway clauses consolidation.

Owner's name &c. to be registered, and exhibited on carriages.

CXX. The respective owners of carriages using the railway shall cause to be entered with the secretary or other officer of the company appointed for that purpose the names and places of abode of the owners of such carriages respectively, and the numbers, weights, and gauges of their respective carriages; and such owners shall also, if so required by the company, cause the same particulars to be painted in legible characters on some conspicuous part of the outside of every such carriage, so as to be always open to view; and every such owner shall, whenever required by the company, permit his carriage to be weighed, measured, or gauged at the expense of the company.

On non-compliance carriage may be removed.

CXXI. If the owner of any carriage fail to comply with the requisitions contained in the preceding enactment, it shall be lawful for the company to refuse to allow such carriage to be brought upon the railway, or to remove the same therefrom until such compliance.

Carriages improperly loaded, or suffered to obstruct the road, may be unloaded or removed.

CXXII. If the loading of any carriage using the railway be such as to be liable to collision with other carriages properly loaded, or to be otherwise dangerous, or if the person having the care of any carriage or goods upon the railway suffer the same or any part thereof to remain on the railway so as to obstruct the passage or working thereof, it shall be lawful for the company to cause such carriage or goods to be unloaded and removed in any manner proper for preventing such collision or obstruction, and to detain such carriage or goods, or any part thereof, until the expenses occasioned by such unloading, removal, or detention be paid.

Company not to be liable for damage by such unloading, &c.

CXXIII. The company shall not be liable for any damage or loss occasioned by any such unloading, removal, or detention as aforesaid, except for damage wilfully or negligently done to any carriage or goods so unloaded, removed, or detained; nor shall they be liable for the safe custody of any such carriage or goods so detained, unless the same be wrongfully detained by them, and then only for so long a time as the same shall have been so wrongfully detained.

Owners liable for damage by their servants

CXXIV. The respective owners of engines and carriages passing or being upon the railway shall be answerable for any trespass or damage done by their engines or carriages, or by any of the servants or persons employed by them, to or upon the railway, or the machinery or works belonging thereto, or to or upon the property of any other person; and every such servant or other person may lawfully be convicted of such trespass or damage before any two justices of the peace, either by the confession of the party offending, or upon the oath of some credible witness; and upon such conviction every such owner shall pay to the company, or to the person injured, as the case may be, the damage to be ascertained by such justices, so that the same do not exceed fifty pounds.

Owners may recover from servants.

CXXV. It shall be lawful for any owner of an engine or carriage who shall pay the amount of any damage caused by the misfeasance or negligence of any servant or other person employed by him to recover the amount so paid by him from such servant or other person by the same means as the company are enabled to recover the amount of such damage from the owner of any engine or carriage.

And with respect to the settlement of disputes by arbitration, be it enacted as follows:

CXXVI. When any dispute authorized or directed by this or the special act, or any act incorporated therewith, to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall nominate and appoint an arbitrator to whom such dispute shall be referred; and every appointment of an arbitrator shall be made on the part of the company, under the hand of the secretary or any two of the directors of the company, and on the part of any other party under the hand of such party, or if such party be a corporation aggregate, under the common seal of such corporation, and such appointment shall be delivered to the arbitrators, and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing, in which shall be stated the matters so required to be referred to arbitration, shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties; and such arbitrator may proceed to hear and determine the matters which shall be in dispute; and in such case the award or determination of such single arbitrator shall be final.

CXXVII. If before the matters so referred shall be determined any arbitrator appointed by either party die, or become incapable to act, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place, and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so the remaining or other arbitrator may proceed ex parte; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death or incapacity as aforesaid.

CXXVIII. Where more than one arbitrator shall have been appointed, such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ, or which shall be referred to him under this or the special act; and if such umpire shall die, or become incapable to act, they shall forthwith after such death or incapacity appoint another umpire in his place; and the decision of every such umpire on the matters so referred to him shall be final.

CXXIX. If, in either of the cases aforesaid the said arbitrators shall refuse, or shall for seven days after request of either party to such arbitration neglect to appoint an umpire, the Board of Trade shall, on the application of either party to such arbitration, appoint an umpire; and the decision of such umpire on the matters on

Railway clauses consolidated.

Arbitration.

Where questions are to be determined by arbitration, the arbitrators to be appointed within fourteen days after notice.

In case of failure to appoint by one party the other may appoint.

Vacancy of arbitrator to be supplied.

Appointment of umpire.

Board of Trade empowered to appoint an umpire.

Railway^{ways} clauses consolidation.

which the arbitrators shall differ, on which shall be referred to him under this or the special act, shall be final.

In case of death of single arbitrator the matter to begin *de novo*.

CXXX. If, where a single arbitrator shall have been appointed such arbitrator shall die, or become incapable to act, before he shall have made his award, the matters referred to him shall be determined by arbitration, under the provisions of this or the special act, in the same manner as if such arbitrator had not been appointed.

If either arbitrator refuse to act the other to proceed *ex parte*.

CXXXI. If, where more than one arbitrator shall have been appointed, either of the arbitrators refuse, or for seven days neglect to act, the other arbitrator may proceed *ex parte*, and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

If arbitrators fail to make their award within twenty-one days the matter to go to the umpire.

CXXXII. If, where more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time, if any, as shall have been appointed for that purpose by both such arbitrators under their hands, the matter referred to them shall be determined by the umpire to be appointed as aforesaid.

Power for arbitrators to call for books, &c.

CXXXIII. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

Arbitrator and umpire to make declaration.

CXXXIV. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him he shall, in the presence of a justice, make and subscribe the following declaration; that is to say.

"I *A. B.* do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me, under the provisions of the act [*naming the special act*]."
A. B.

Made and subscribed in the presence of

And such declaration shall be annexed to the award when made; and if any arbitrator or umpire, having made such declaration, shall wilfully act contrary thereto, he shall be guilty of a misdemeanor.

Costs to be in the discretion of the arbitrators.

CXXXV. Except where by this or the special act, or any act incorporated therewith, it shall be otherwise provided, the costs of and attending every such arbitration, to be determined by the arbitrators, shall be in the discretion of the arbitrators.

Submission may be made a rule of court.

CXXXVI. The submission to any such arbitration may be made a rule of any of the superior courts, on the application of either of the parties.

The award not to be set aside.

CXXXVII. No award made with respect to any question referred

to arbitration under the provisions of this or the special act shall be set aside for irregularity or error in matter of form.

Railway clauses consolidation.

CXXXVIII. And be it enacted, that any summons or notice, or any writ, or other proceeding at law or in equity, requiring to be served upon the company, may be served by the same being left at or transmitted through the post directed to the principal office of the company, or one of their principal offices where there shall be more than one, or being given personally to the secretary, or in case there be no secretary then by being given to any one director of the company.

Service of notices upon company.

CXXXIX. And be it enacted, that if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special act, or any act incorporated therewith, or by virtue of any power or authority thereby given, and if before action brought in respect thereof such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender shall have been made it shall be lawful for the defendant, by leave of the court where such action shall be pending, at any time before issue joined to pay into court such sum of money as he shall think fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court.

Tender of amends.

And with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, be it enacted as follows:

Recovery of damages and penalties.

CXL. In all cases where any damages, costs, or expenses are by this or the special act, or any act incorporated therewith, directed to be paid, and the method of ascertaining the amount or enforcing the payment thereof is not provided for, such amount, in case of dispute, shall be ascertained and determined by two justices; and if the amount so ascertained be not paid by the company or other party liable to pay the same within seven days after demand, the amount may be recovered by distress of the goods of the company or other party liable as aforesaid; and the justices by whom the same shall have been ordered to be paid, or either of them, or any other justice on application, shall issue their or his warrant accordingly.

Provision for damages not otherwise provided for.

CXLL. If sufficient goods of the company cannot be found whereon to levy any such damages, costs, and expenses payable by the company, the same may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the company; and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days' previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence; and if such treasurer pay any money under such distress as aforesaid he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the company, coming into his custody or control, or he may sue the company for the same.

Distress against the treasurer.

Railway
companies' con-
solidation.

Method of pro-
ceeding before
justices in
questions of
damages, &c.

CXLII. Where in this or the special act any question of compensation, expenses, charges, or damages, or other matter, is referred to the determination of any one justice or more, it shall be lawful for any justice upon the application of either party to summon the other party to appear before one justice, or before two justices, as the case may require, at a time and place to be named in such summons; and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such one justice, or such two justices as the case may be, to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses on oath; and the cost of every such inquiry shall be in the discretion of such justices, and they shall determine the amount thereof.

Publication of
penalties.

CXLIII. The company shall publish the short particulars of the several offences for which any penalty is imposed by this or the special act, or by any bye-law of the company affecting other persons than the shareholders, officers, or servants of the company and of the amount of every such penalty, and shall cause such particulars to be painted on a board, or printed upon paper and pasted thereon, and shall cause such board to be hung up or affixed on some conspicuous part of the principal place of business of the company, and where any such penalties are of local application shall cause such boards to be affixed in some conspicuous place in the immediate neighbourhood to which such penalties are applicable or have reference; and such particulars shall be renewed as often as the same or any part thereof is obliterated or destroyed; and no such penalty shall be recoverable unless it shall have been published and kept published in the manner herein-before required.

Penalty for de-
facing boards
used for such
publication.

CXLIV. If any person pull down or injure any board put up or affixed as required by this or the special act for the purpose of publishing any bye-law or penalty, or shall obliterate any of the letters or figures thereon, he shall forfeit for every such offence a sum not exceeding five pounds, and shall defray the expenses attending the restoration of such board.

Penalties to be
summarily re-
covered before
two justices.

CXLV. Every penalty or forfeiture imposed by this or the special act, or by any bye-law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices; and on complaint being made to any justice he shall issue a summons requiring the party complained against to appear before two justices, at a time and place to be named in such summons, and every such summons shall be served on the party offending either in person or by leaving the same with some inmate at his usual place of abode; and upon the appearance of the party complained against, or in his absence, after proof of the due service of such summons, it shall be lawful for any two justices to proceed to the hearing of the complaint, and that although no information in writing or in print shall have been exhibited before them; and upon proof of the offence, either by the confession of the party complained against, or upon the oath of one credible witness or more, it shall be lawful for such justices to convict the offender, and upon

such conviction to adjudge the offender to pay the penalty or forfeiture incurred, as well as such costs attending the conviction as such justices shall think fit.

Railway
clauses con-
solidation.

CXLVI. If forthwith upon any such adjudication as aforesaid the amount of the penalty or forfeiture, and of such costs as aforesaid, be not paid, the amount of such penalty and costs shall be levied by distress, and such justices or either of them, shall issue their or his warrant of distress accordingly.

Penalties to be
levied by dis-
tress.

CXLVII. It shall be lawful for any such justice to order any offender so convicted as aforesaid to be detained and kept in safe custody until return can be conveniently made to the warrant of distress to be issued for levying such penalty or forfeiture and costs, unless the offender give sufficient security by way of recognizance or otherwise, to the satisfaction of the justice, for his appearance before him on the day appointed for such return, such day not being more than eight days from the time of taking such security; but if before issuing such warrant of distress it shall appear to the justice, by the admission of the offender or otherwise, that no sufficient distress can be had within the jurisdiction of such justice whereon to levy such penalty or forfeiture and costs, he may, if he thinks fit, refrain from issuing such warrant of distress; and in such case, or if such warrant shall have been issued, and upon the return thereof such insufficiency as aforesaid shall be made to appear to the justice, then such justice shall by warrant cause such offender to be committed to gaol, there to remain without bail for any term not exceeding three months, unless such penalty or forfeiture and costs be sooner paid and satisfied.

Imprisonment
in default of
distress.

CXLVIII. Where in this or the special act, or any act incorporated therewith, any sum of money, whether in the nature of penalty or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after satisfying such sums of money, and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

Distress how
to be levied.

CXLIX. No distress levied by virtue of this or the special act, or any act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser ab initio on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

Distress not
unlawful for
want of form,

CL. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one-half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, to be applied in aid of the poor's rate of such parish, or if the place wherein the offence shall

Application of
penalties.

Railway clauses consolidation.

have been committed shall be extra-parochial, then such justices shall direct such remainder to be applied in aid of the poor's rate of such extra-parochial place, or, if there shall not be any poor's rate therein, in aid of the poor's rate of any adjoining parish or district.

Penalties to be sued for within six months.

CLI. No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this or the special act, or any act incorporated therewith, for any offence made cognizable before a justice, unless the complaint respecting such offence shall have been made before such justice within six months next after the commission of such offence.

Damage to be made good in addition to penalty.

CLII. If, through any act, neglect, or default on account whereof any person shall have incurred any penalty imposed by this or the special act, any damage to the property of the company shall have been committed by such person, he shall be liable to make good such damage as well as to pay such penalty; and the amount of such damages shall, in case of dispute, be determined by the justices by whom the party incurring such penalty shall have been convicted; and on nonpayment of such damages, on demand, the same shall be levied by distress, and such justices, or one of them, shall issue their or his warrant accordingly.

Penalty on witnesses making default.

CLIII. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction under the provisions of this or the special act, at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence.

Transient offenders.

CLIV. It shall be lawful for any officer or agent of the company, and all persons called by him to his assistance, to seize and detain any person who shall have committed any offence against the provisions of this or the special act, and whose name and residence shall be unknown to such officer or agent, and convey him, with all convenient despatch, before some justice, without any warrant or other authority than this or the special act; and such justice shall proceed with all convenient despatch to the hearing and determining of the complaint against such offender.

Form of conviction.

CLV. The justices before whom any person shall be convicted of any offence against this or the special act, or any act incorporated therewith, may cause the conviction to be drawn up according to the form in the schedule to this act annexed.

Proceedings not to be quashed for want of form.

CLVI. No proceeding in pursuance of this or the special act, or any act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by certiorari or otherwise into any of the superior courts.

CLVII. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special act, or any act incorporated therewith, such party may appeal to the general quarter sessions for the county or place in which the cause of appeal shall have arisen; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days' notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such notice enter into recognizances, with two sufficient sureties, before a justice, conditioned duly to prosecute such appeal, and to abide the order of the court thereon.

Railway clauses consolidation.

Parties allowed to appeal to quarter sessions, on giving security

CLVIII. At the quarter sessions for which such notice shall be given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

Court to make such order as they think reasonable.

CLIX. Provided always, and be it enacted, that notwithstanding anything herein or in the special act, or any act incorporated therewith, contained, every penalty or forfeiture imposed by this or the special act, or any act incorporated therewith, or by any bye-law, in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied in the same manner as penalties or forfeitures other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid and applied by an act passed in the third year of the reign of her present Majesty, intituled "An Act for regulating the Police Courts in the Metropolis;" and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty, shall be subject to the like appeal, and upon the same terms as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned act; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses as he or they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned act.

Receiver of metropolitan police district to receive penalties incurred within his district.

2 & 3 Vict. c. 71.

CLX. And be it enacted, that every person who, upon any examination upon oath, under the provisions of this or the special act, or any

Persons giving false evidence liable to penalties of perjury.

Railway clauses consolidation.

Money paid into the Bank of Ireland to be exempt from usher's poundage. 1 & 2 Vict. c. 117.

Access to special act.

Copies of special act to be kept and deposited, and allowed to be inspected.

7 W. 4, & 1 Vict. c. 83.

Penalty on company failing to keep or deposit such copies.

Act not to extend to Scotland.

act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

CLXI. And be it declared and enacted, that all sums of money which have been or shall be paid into the Bank of Ireland in the name and with the privity of the accountant-general of the Court of Chancery of Ireland, under the provisions of an act (a) passed in the second year of her present Majesty, intituled "An Act to provide for the Custody of certain Monies paid in pursuance of the Standing Orders of either House of Parliament by subscribers to Works or Undertakings to be effected under the authority of Parliament" shall and may be paid out and applied under any order of the said Court of Chancery exempt from usher's poundage.

And with respect to the provision to be made for affording access to the special act by all parties interested, be it enacted as follows :

CLXII. The company shall at all times, after the expiration of six months after the passing of the special act, keep in their principal office of business a copy of the special act printed by the printers to her Majesty, or some of them; shall also within the space of such six months deposit in the office of each of the clerks of the peace of the several counties into which the works shall extend a copy of such special act, so printed as aforesaid; and the said clerks of the peace shall receive and they and the company respectively shall retain the said copies of the special act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an act (b) passed in the first year of the reign of her present Majesty, intituled "An Act to compel Clerks of the Peace for Counties and other Persons to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament."

CLXIII. If the company shall fail to keep or deposit, as herein-before mentioned, any of the said copies of the special act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

CLXIV. And be it enacted, that this act shall not extend to Scotland

SCHEDULE referred to by the foregoing act.

to wit.

Be it remembered, that on the _____ day of _____ in the year of our Lord _____ A. B. is convicted before us C. D., two of her Majesty's justices of the peace for the county of _____ [here describe the offence generally, and the time and place when and where committed] contrary to the [here name the special Act]. Given under our hands and seals, the day and year first above written,

C.
D.

(a) Ante, 102.

(b) Ante, 87.

An Act to empower Canal Companies and the Commissioners of Navigable Rivers to vary their Tolls, Rates, and Charges on different Parts of their Navigations. [30th June, 1845.]

WHEREAS by divers acts of Parliament various canal companies and the commissioners or trustees of several navigable rivers have been authorized and empowered to levy and receive certain tolls, rates, and charges for the use of their respective canals and navigations, which tolls, rates, and charges are for the most part required to be levied at one uniform rate *per ton* or *per mile* throughout the entire length of the said navigations and rivers respectively, without regard to any difference of circumstances which may exist in reference thereto. And whereas by an act (a) of Parliament passed in this present Session, called "The Railway Clauses Consolidation Act, 1845," powers have been given to railway companies to vary the tolls, rates, and charges upon railways, so as to accommodate them to the circumstances of the traffic thereon: and whereas greater competition for the public advantage would be obtained if canal companies and the commissioners or trustees of navigable rivers which have already been or may hereafter be from time to time incorporated or established, or which are regulated under the authority of Parliament, were to have the like powers granted to them in respect of their several canals and navigations and other works connected therewith; but such beneficial purposes cannot be effected without the authority of Parliament: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this act, and subject to the provisions and limitations herein contained, it shall be lawful for the company or proprietors of any canal, or for the undertakers, commissioners, or trustees of any navigation or navigable river, already or hereafter to be established or incorporated or which is regulated under the authority of Parliament, or for their respective lessees, committees, directors, or managers, or their superintendents, or other agents by them severally authorized, in such manner as may be required by their respective acts of incorporation or for regulating such canals or navigations, from time to time to alter or vary the tolls, rates, and duties granted to them, or by them respectively authorized to be levied and received for the use of their several canals or navigations, or any branches thereof, or any railways or tramways connected therewith, and made under the authority of such canal or navigation acts respectively, either upon the whole or upon or for any particular portion or portions of such canals, navigations, branches, railways, or tramways, according to local circumstances, or the quantity of traffic or otherwise, as they shall think fit, and also from time to time to lower or reduce, and again to raise or advance, such tolls, rates, and duties, and also any tolls or charges by them respectively authorized to be levied and received for any haulage, trackage, or other power supplied by them, either upon the whole or upon any particular portion or portions of

Canal Com-
panies.

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vance their
tolls or rates.

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their said several canals, navigations, branches, railways, and tramways, as to such companies, commissioners, trustees, or lessees, or their committees, directors, managers, or superintendents respectively, shall seem fit, any thing in the several acts of incorporation, or for regulating any such canals or navigations, contained to the contrary notwithstanding: provided always, that in no case shall the tolls, rates, duties, and charges to be at any time levied or made by any such companies, commissioners, trustees, or lessees; for the use of any such canals, navigations, branches, railways, or tramways, or for the supply of any such haulage, trackage, or other power, exceed the amount which they are by their said several acts respectively authorized to levy or receive.

Tolls to be charged equally to all persons under the like circumstances.

II. Provided always, and be it enacted, that all tolls, rates, and duties for the use of any such canals, navigations, branches, railways, or tramways shall be at all times charged equally to all persons, and after the same rate, whether *per mile*, or *per ton per mile*, or otherwise, in respect of all boats, barges, and other vessels of a like description passing along or using the same portion of the said canal, navigation, branches, railways, or tramways respectively, and upon all goods, animals, articles, and things of a like description, and conveyed or propelled in a like boat, barge, or other vessel passing along or using the same portion of the said canal, navigation, branches, railways, or tramways, under the like circumstances; and that all tolls and charges for haulage or trackage or other power, to be supplied by any such company, commissioners, trustees, or lessees, shall be at all times charged equally to all persons, and after the same rate, whether *per mile*, or *per ton per mile*, or otherwise, in respect of all goods, animals, articles, and things of a like description, and conveyed in a like boat or vessel, drawn or propelled by a like power, and passing along or using the same portion of any such canal, navigation, branches, railways, or tramways, under the like circumstances; and no reduction or advance in any tolls or charges for the use of any such canal, navigation, branches, railways, or tramways, or for the supply of any haulage, trackage, or other power by the said companies, commissioners, trustees, or lessees, shall be made, either directly or indirectly, in favour of or against any particular company or person passing along or using the same portion of such canal, navigation, branches, railways, or tramways.

Act not to apply to existing companies until a meeting of shareholders has determined therefor in cases unproved by trustees or proprietors, and notices hereof duly published.

III. Provided always, and be it enacted, that this act shall not apply to any canal or navigation the property wherein is vested in shareholders until a meeting of the shareholders thereof shall have been duly convened, in such manner as meetings are by their respective acts of incorporation or settlement required to be called, or are usually called, and it shall have been determined, by a majority of two-thirds of the votes of the shareholders in such meeting assembled, either in person or by proxy (where by such acts of incorporation or settlement voting by proxy is allowed), to adopt the powers hereby granted, and where such navigations are vested in commissioners or trustees, without any body of shareholders or proprietors, until a special meeting of such commissioners or trustees shall have been duly convened in such manner as special meetings are by the respective acts for regulating such navigations required to be called, or are usually called, and it shall have been

determined by a majority of such commissioners or trustees in such meeting assembled to adopt the powers by this act granted, or to any canal or navigation the property wherein is vested in one or more owner or owners, proprietor or proprietors, unless the owner or owners, proprietor or proprietors thereof shall determine to adopt the powers and provisions hereby granted, nor in either case until public notice of such determination and intention shall have been inserted in the *London Gazette* in respect of canals or navigations in England or Wales, in the *Edinburgh Gazette* in respect of canals or navigations in Scotland, and in the *Dublin Gazette* in respect of canals or navigations in Ireland, and in some newspaper circulating in the county or counties wherein such canal or navigation, or some part thereof, shall pass, one month at the least previously to the exercise of such powers, whereupon, or immediately after the expiration of such notice, every such company, and all such commissioners, trustees, or lessees, owners and proprietors, or their respective committees, directors, or managers, or their agents by them duly authorized in manner aforesaid, may from time to time put in force and exercise the said powers or any of them in the manner by this act authorized.

Canal Companies

IV. Provided always, and be it enacted, that nothing in this act contained shall be deemed or construed to deprive any canal or navigation company, or the commissioners, trustees, undertakers, or proprietors of any canal, river, or navigation or the owners, lessees, or occupiers of any lands, collieries, quarries, or other hereditaments adjoining or near to any of such canals or navigations, or the overseers or surveyors of the roads of any parish, township, or hamlet through which any such canal or navigation may pass, of any powers, rights, privileges, exemptions, or advantages specifically and expressly secured to them by any existing act of Parliament: Provided also, that where by any canal or navigation act or acts now passed the tolls, rates, or duties (whether tolls *per nule* or tolls in gross) upon any description of goods, animals, articles, or things, or upon any boats, barges, or other vessels which shall be navigated, carried, or conveyed along any canal or navigation, or any portion thereof, and which shall pass into, out of, or along any such canal or navigation, or any portion thereof, from, into, or along any other canal or navigation, canals or navigations, adjoining or communicating therewith, or any portion thereof, or from or to the junction or junctions with any such adjoining or communicating canal or navigation, canals or navigations, are or shall be specially fixed, determined, or limited, either absolutely, or with reference to the tolls, rates, or duties to be levied or received from time to time on goods, animals, articles, or things, boats, barges, or other vessels passing into, out of, or along such canal or navigation, or any portion or portions thereof respectively, from, into, or along any other adjoining or communicating canal or navigation, canals or navigations, or from or to the junction or junctions, with such other adjoining or communicating canal or navigation, canals or navigations; or where in any such act or acts any special enactment or provision shall have been inserted for securing a rateable reduction or advance of the respective tolls, rates, or duties to be levied or received from time to time on goods,

Saving rights specifically reserved to canal companies and others by existing acts of Parliament.

Canal Companies.

animals, articles, or things, boats, barges, or other vessels, or on goods, animals, articles, or things of the same description, passing over, along, into, or from any canal or navigation, or several and distinct portions of any canal or navigation, into or along two or more adjoining or communicating canals or navigations, or from, or to the respective junctions of two or more adjoining or communicating canals or navigations, no alteration or variation of the tolls, rates and duties so specially fixed, determined, or limited, or any or either of them, other than such alterations or variations as are respectively authorized to be made under the several acts for regulating such canals or navigations, shall be made under the authority of this act without the previous consent in writing of the proprietors, trustees, undertakers, or commissioners of the canal or navigation, or of all the several canals or navigations, who are expressly mentioned in such special enactments or provisions, or of the committee, directors, or managers of the company, trustees, undertakers, or commissioners, or respective companies, trustees, undertakers, or commissioners of such canal or navigation, canals or navigations, which consents such companies, trustees, undertakers, and commissioners, or their respective committees, directors, or managers, are hereby authorized to give, either under their common seals respectively, or under the hand of their respective clerks or secretaries, although any such companies, trustees, or undertakers so consenting may not have adopted the other powers of this act.

Canal companies subject to a limitation of profits not to raise their dues so as to exceed the maximum of profits.

V. Provided also, and be it enacted, that where in any canal or navigation act there shall have been inserted any special provision, which shall be still in force and unrepealed, whereby the amount of the annual dividends, interest, or profits to be shared or divided amongst the proprietors or shareholders of such canal or navigation shall have been limited not to exceed a certain per-centage or amount, and the maximum of such per-centage or amount shall have been attained at the time of the passing of this act, it shall not be lawful for the company of proprietors, trustees, or undertakers of any such canal or navigation to avail themselves of any of the powers of this act for the purpose of raising or increasing the tonnage rates, tolls, or duties which on the first day of January immediately before the passing of this act were charged or levied upon any boats, barges, or other vessels carried upon or passing along such canal or navigation, or any part thereof.

Nothing herein to exempt any canal, &c. from any general act.

VI. And be it enacted, that nothing herein contained shall be construed to exempt any canal or navigation company who shall adopt the powers of this act from the operation of any general act regulating the manner of charging tolls and other charges upon canals and navigations in respect of passengers, goods, animals, articles, and things of a like description, which may be passed in the course of any future session of Parliament.

8 & 9 VICT. CHAP. 33.

An Act for consolidating in one Act certain provisions usually inserted in Acts authorizing the making of Railways in Scotland.
[21st July 1845.]

- Preamble, the same as in the English act (a), except that the words "in Scotland" are inserted in the Scotch act. Railway clauses consolidation. (Scotland.)
- Sect. 2. The same as sect. 2 of the English act. " Lands :"
- Sect. 3. The same as sect. 3 of the English act, except the following: The word "lands" shall include lands, houses, tenements, and heritages of any tenure: " Lease ."
- The word "lease" shall include a missive or an agreement for a lease. " Lord ordinary ."
- The "lord ordinary" shall mean the lord ordinary of the court of session in Scotland officiating on the bills in time of vacation, or the junior lord ordinary if in time of session, as the case may be: " County :"
- The word "county" shall include any ward or other like division of a county: " Sheriff ."
- The word "sheriff" shall include the sheriff substitute: " Justico :"
- The word "justice" shall mean justice of the peace acting for the county, city, or place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter, and where such matter shall arise in respect of lands being the property of one and the same party, situate not wholly in any one county, city, or place, shall mean a justice acting for the county, city, or place where any part of such lands shall be situate, and who shall not be interested in such matter; and where any matter shall be authorized or required to be done by two justices, the expression "two justices" shall be understood to mean two or more justices assembled and acting together: " two justices"
- The expression "the Bank" shall mean any one of the incorporated or chartered banks in Scotland. " the Bank"
- Sect. 4. Same as sect. 4 of the English act, except that the word "Scotland" is inserted.
- Sect. 5. Same as sect. 5 of the English act.
- Sect. 6. Same as sect. 6 of the English Act, except that the word "Scotland" is inserted.
- Sect. 7. Same as sect. 7 of the English act, except that the words "sheriff" and "office of the principal sheriff clerk in every county," are inserted.
- Sect. 8. Same as sect. 8 of the English act, except that the plans and sections are required to be deposited "in the office of the principal sheriff clerk in every county," and copies or extracts "with the schoolmasters of the several parishes, (or, in the royal burghs, with the town clerks)."
- Sect. 9. "The said sheriff clerks, schoolmasters, and town clerks," shall, &c., in the same words as in sect. 9 of the English act.
- Sect. 10. Same as sect. 10 of the English act, except that "sheriff clerk in Scotland" are inserted.
- Sect. 11. Same as sect. 11 of the English act, except that "of the sheriff" follow the word "consent," and in providing for notice

Railway
clauses con-
solidation.

(Scotland.)

Alteration of
course of
rivers, &c.

of application, these words are inserted: "Provided also, that notice of every application to the sheriff for the purpose of considering the matter shall, fourteen days previous to such application,"

Sects. 12, 13, 14. Same as sects. 12, 13, 14 of the English act. (a)

Sect. 15. Same as sect. 15 of the English act, but omitting "village or lands continuously built upon," after the word "town" of the latter statute.

Sect. 16. Same as sect. 16 of the English act, except the following:

They may alter the course of any rivers not navigable, canals, brooks, streams, or watercourses, and of any branches of navigable rivers, such branches not being themselves navigable, within such lands, for the purpose of constructing and maintaining tunnels, bridges, passages, or other works over or under the same, and divert or alter, as well temporarily as permanently, the course of any such rivers or streams of water, roads, streets, or ways, or raise or sink the level of any such rivers or streams, roads, streets, or ways, in order the more conveniently to carry the same over or under or by the side of the railway, as they may think proper.

Sects. 17, 18, 19, 20, 21, 22, 23, and 24. The same as sections of the same numbers in the English act, except that in sect. 23 the words "minister and kirk session" are inserted.

Sect. 25. The same as sect. 30 of the English act, except that the compensation is to be settled by "the sheriff" in the same manner as any compensation not exceeding fifty pounds is directed to be settled by the Lands Clauses Consolidation ("Scotland") Act, 1845.

Sects. 26, 27, and 28. The same as sects. 31, 32, and 33 of the English act.

Sect. 29. The same as sect. 34 of the English act, except that "such notice shall be served on the factor or agent (if any) of such owner, "and," are introduced after the word "inquiry," and before the word "shall."

Sect. 30. The same as sect. 35 of the English act, except "and if in such case the company shall refuse to occupy such other lands in lieu of those mentioned in the notice, it shall be lawful for the sheriff, on the application of such owner or occupier, to summon the company and the owners and occupiers of such other lands to appear before him at a time and place to be named in such summons, such time not being more than fourteen days after such application nor less than seven days from the service of such summons, and on the appearance of the parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such sheriff to determine summarily which of the said lands shall be used by the company for the purposes aforesaid, and to authorize the company to occupy and use the same accordingly."

Sects. 31, 32, 33, and 34. The same as sects. 38, 39, 40, and 41 of the English act, except that in sections 31 and 32 the word "sheriff" is inserted.

Sect. 35. Same as sect. 42 of the English act, except that it is confined to "interests," the words "estates or" being left out of the Scotch act.

Sects. 36 and 37. The same as sects. 43 and 44 of the English act, except that the rent mentioned in sect. 36 Scotch and 43 English, is to be fixed by "the sheriff" in Scotland.

Sect. 38. Same as sect. 45 of the English act, except that after the word "railway," and before the word "not," there are introduced, "or to any other railway communicating therewith, and on which the traffic thereupon may pass, and in any town or city adjoining to or near such railways."

Sect. 39. The same as sect. 46 of the English act, except that in the Scotch, the consent is to be that of "the sheriff."

Sects. 40, 41, 42, 43, 44, and 45. The same as sects. 47, 48, 49, 50, 51, and 52 of the English act.

Sect. 46. The same as sect. 53 of the English act, but omitting the words "or extraordinarily inconvenient," after the word "dangerous."

Sect. 47. The same as sect. 54 of the English act, except that the action is to be brought in any "competent court."

Sect. 48. The same as sect. 55 of the English act to the words "from the company, with expenses by action in the court of session, if the damage claimed exceeds twenty-five pounds, or in the sheriff court, if the damage claimed does not exceed twenty-five pounds, and that whether any party shall have sued for such penalty as aforesaid or not, and without prejudice to the right of any party to sue for the same."

Sect. 49. The same as sect. 56 of the English act.

Sect. 50. The same as sect. 57 of the English act, except that the penalty is made five pounds instead of twenty pounds, and the "sheriff" is empowered to act.

Sect. 51. The same as sect. 58 of the English act, except that the following words are introduced after the words "repair thereof by them," and before the word "may," "the same shall be determined by the sheriff or two justices; and such sheriff or justices," and the "sheriff," as well as justices are empowered to inflict the penalty, &c.

Sects. 52, 53, 54, 55, 56, 57, 58, and 59. The same as sections 61, 59, 62, 63, 64, 65, 66, and 67 of the English act respectively, except that in sections 53, 54, and 57, the words "sheriff or" precedes "justices."

Sect. 60. The same as sect. 68 of the English act, except that the following words are inserted after the words "using of the railway," and before the word "nor," in the last paragraph of the clause, "and that the company may in lieu of such accommodation works, make compensation to the owners and occupiers of the lands, for the want thereof, in such manner as may be agreed upon between the company and such owners and occupiers."

Sects. 61, 62, 63, 64, 65, and 66. The same as sects. 69, 70, 71, 72, 73, and 74 of the English act, except that in sects. 61, 62, and 63, the words "sheriff or" precede the word "justices."

Sect. 67. During the execution of any contract made with the company the works in course of being done under such contract, and all the materials of every description brought upon or near such works for the purpose of being used in the execution of such contract, shall, in all proceedings instituted by them for the purpose of protecting the same, or by the public prosecutor for the purpose of punishment on account of offences committed against the same, be held to be the property of the company.

Sects. 68, 69, 70. The same as sections 75, 76, 77 of the English act.

Sect. 71. The same as sect. 78 of the English act down to the word

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clauses con-
solidation.
(Scotland.)

Materials, &c.,
to vest in
company for
purposes of
prosecution.

Railway
clauses con-
solidation
(Scotland.)

If company
unwilling to
purchase,
owner may
work the
mines.

“purpose;” and if it appear to the company that the working of such mines, either wholly or partially, is likely to damage the works of the railway, and if the company be desirous that such mines or any parts thereof should be left unworked, and if they be willing to make compensation for such mines or minerals. The section then concludes in the same words as the English.

Sect. 72. If before the expiration of such thirty days the company do not give notice of their desire to have such mines left unworked, and of their willingness to make such compensation as aforesaid, it shall be lawful for such owner, lessee or occupier to work the said mines, or such parts thereof for which the company shall not have agreed to pay compensation, up to the limits of the mines or minerals for which they shall have agreed to make compensation, in such manner as such owner, lessee, or occupier shall think fit, for the purpose of getting the minerals contained therein; and if any damage or obstruction be occasioned to the railway or works by the working or getting of any such minerals which the company shall so have required to be left unworked, and for which they shall so have agreed to make compensation, the same shall be forthwith repaired or removed, as the case may require, and such damage made good by the owner, lessee, or occupier of such mines or minerals, and at his own expense; and if such repair or removal be not forthwith done, or, if the company shall so think fit, without waiting for the same to be done by such owner, lessee, or occupier, it shall be lawful for the company to execute the same, and recover from such owner, lessee, or occupier the expense occasioned thereby by action in any competent court.

Sect. 73. The same as sect. 80 of the English act, except that the words “or minerals,” are inserted after the word “mines” in the first line.

Sect. 74. The same as sect. 81 of the English act, (a) except that the words “as in other cases of disputed compensation,” follow the word “settled,” in the last line of the clause in the English act.

Sect. 75. The same as sect. 82 of the English act.

Sect. 76. The same as sect. 83 of the English act down to the word “machinery;” then follow these words:—“Connected with such mines belonging to the owner, lessee, or occupier of such mines upon payment of the reasonable cost of using and working the same, and of any loss thereby occasioned to the working of the mines, or otherwise, and to use all necessary means for discovering the distance from the railway to the parts of such mines which are being worked or about so to be.”

Sect. 77. The same as sect. 84 of the English act.

Sect. 78. The same as sect. 85 of the English act, except that the words “supports or” precede the word “works,” and the words “competent Court” follow the words “actions in any” in the last line.

Sects. 79, 80, 81. The same as sects. 86, 87, 88, of the English act.

Sects. 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, and 92. The same as sects. 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99 of the English act, (b) with the exception that in sect. 82 the word “Scotland” follows the “Laws of.”

(a) *Ante*, p. 515.

(b) *Ante*, p. 516—518.

Sects. 93, 94. The same as sects. 100, 101 of the English act, except that the requisite powers are given to "the sheriff or two justices," instead of being confined to justices, as in the English act.

Sects. 95, 96, 97, 98, 99. The same as sects. 102, 103, 104, 105, 106 of the English act, except that in sects. 95, 97, 99 the power is given to "the sheriff" as well as justices, and that the recovery of the penalty mentioned in sect. 95 may be "by pouncing and sale of the goods of such collector."

Sect. 100. The same as sect. 107 of the English act, except that the amount is to be sent to the "sheriff clerks of the counties."

Sects. 101, 102, 103, 104. The same as sects. 108, 109, 110, 111 of the English act.

Sect. 105. The same as sect. 112 of the English act, except that the word "obligations" is introduced.

Sects. 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116 are the same as sects. 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123 of the English act.

Sect. 117. The respective owners of engines and carriages passing or being upon the railway shall be answerable for any damage done by their engines or carriages, or by any of the servants or persons employed by them, to or upon the railway, or the machinery or works belonging thereto, or to or upon the property of any other person.

Sect. 118. It shall be lawful for any owner of any engine or carriage who shall pay the amount of any damage caused by the misfeasance or negligence of any servant or other person employed by him to recover the amount so paid by him from such servant or other person.

Sect. 119. When any dispute directed by this or the special act, or any act incorporated therewith, to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbiter, each party, on the request of the other party, shall nominate and appoint an arbiter to whom such dispute shall be referred; and every appointment of an arbiter shall be made on the part of the company under the hand of the secretary or any two of the directors of the company, and on the part of any other party under the hand of such party, or if such party be a company or corporation, under the hand of the proper officer or person authorized by such company or corporation; and such appointment shall be delivered to the arbiter, and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made. [The section then concludes as in sect. 126 of the English act, beginning with the words "and after," and ending with the word "final."]

Sects. 120, 121 are the same as 127, 128 of the English act, except the words "arbiter" and "oversman" are substituted for "arbitrator" and "umpire" respectively.

Sect. 122. If in either of the cases aforesaid the said arbiters shall refuse, or shall for seven days after request of either party to such arbitration neglect to appoint an oversman, the Lord Ordinary, on the application of either party to such arbitration, shall appoint an oversman; and the decision of such oversman on the matters on which the arbiters shall differ, or which shall be referred to them under this or the special act, shall be final.

Sects. 123, 124, 125 are the same as sects. 130, 131, 132 of the English act, except that the words "arbiter" and "oversman" are used as above mentioned.

Sect. 126. The said arbiters or their oversman may call for the

Railway clauses consolidated.

(*Scottland.*)

Owners liable for damage by servants.

Owners to recover from servants.

Where questions are to be determined by arbitration arbiters to be appointed within fourteen days after notice.

Lord Ordinary to appoint an oversman on neglect of arbiters.

Railway clauses consolidation.
(Scotland.)

Power of arbiters to call for books, &c.

Expenses to be in the discretion of the arbiters.

Awards to be in writing and recorded.

Method of proceeding before the sheriff or justices in questions of damages.

production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose, and may also grant diligence for the recovery of such documents as either party may require, or for citing witnesses, and on application to the Lord Ordinary letters of supplement, or such other writ as may be necessary, shall be issued by the Lord Ordinary in support of such diligence.

Sect. 127. Except where by this or the special act, or any act incorporated therewith, it shall be otherwise provided; the expenses of and attending every such arbitration, to be determined by the arbiters, including the expense of recording the decret arbitral or award in the books of council and session, and of furnishing extracts thereof from the said books, shall be in the discretion of the arbiters or the oversman, as the case may be.

Sect. 128. The arbiters or oversman, as the case may be, shall make the decret arbitral or award in writing, and shall cause the same to be recorded in the books of council and session; and extracts of decreets arbitral or awards so recorded shall make faith in all Courts and cases in like manner as the original decreets arbitral or awards themselves, except where the originals are offered to be improven.

Sects. 129, 130 are the same as sects. 137, 138 of the English act.

Sect. 131 is the same as sect. 139 of the English act, substituting "defender" for "defendant," and "the record is closed" for "issue joined."

Sects. 132, 133 are the same as sects. 140, 141, except that the word "charges" is substituted for "costs," "the sheriff" for "two justices," "poinding and sale" for "distress."

Sect. 134. Where in this or the special act, or any act incorporated therewith, any question of damages, charges, expenses, or other matter is referred to the determination of any sheriff or justices, it shall be lawful for the sheriff or any justice, upon the application of either party, to order the other party to appear before such sheriff if the order shall be issued by the sheriff, or before two justices if the order shall have been issued by a justice, at a time and place to be named in such summons; and upon the appearance of such parties, or in the absence of any of them upon proof of due service of the summons, it shall be lawful for such sheriff or such two justices, as the case may be, to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, on oath; and the expenses of every such inquiry shall be in the discretion of such sheriff or justices, and he or they shall determine the amount thereof.

Sects. 135, 136 are the same as sects. 143, 144 of the English act, except that the words "or any act incorporated therewith" are inserted in the Scotch act immediately after the words "by this or the special act."

Sect. 137 is the same as 145 of the English act, except that it adds the words "the sheriff or" before "justices," substitutes "order" for "summons," "expenses" for "costs," and omits the words "and that although no information in writing or in print shall have been exhibited before them."

Sects. 138, 139 are the same as sects. 146, 147 of the English act,

substituting "expenses" for "costs," "pounding and sale" for "distress," and prefixing the words "sheriff or" to "justices."

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(Scotland)

Sect. 140 is the same as sect. 148 of the English act, substituting "pounding and sale" for "distress," and "seized" for "distrained."

Pounding not unlawful for want of form.

Sect. 141. No pounding and sale made by virtue of this or the special act, or any act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser or wrongdoer, on account of any defect or want of form in the summons, conviction, warrant, or other proceeding relating thereto, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action before the Sheriff Court.

Sect. 142. The sheriff or justices by whom any such penalty or forfeiture shall be imposed, where the application thereof is not otherwise provided for, may award not more than one-half thereof to the informer, and shall award the remainder to the Kirk Session, or treasurer or collector of the funds for the poor, of the parish in which the offence shall have been committed, for the benefit of the poor of such parish.

Application of penalties.

Sect. 143 is the same as sect. 151 of the English act, prefixing the words "sheriff or" to the word "justices."

Sects. 144, 145, 146 are the same as sects. 152, 153, 154 of the English act, adding the words "or any act incorporated therewith," "sheriff or," and substituting "pounding and sale" for "distress."

Sect. 147. Any sheriff to whom any application is authorized to be made, and before whom any judicial proceeding shall in consequence take place or become necessary under or by virtue of this or the special act, or any act incorporated therewith, shall and he is hereby authorized and required summarily to call before him all parties who appear to him to be interested therein, and to proceed forthwith to hear *vivâ voce*, and pronounce judgment regarding the matters mentioned in such application or proceedings, or to do the several matters and things required by this act to be done by him, without waiting the ordinary course of the roll of causes before him, and without written pleadings or a written record, or reducing any evidence which may be led by either of the parties to writing, unless and except where the said sheriff shall consider that the matters mentioned in such application or proceedings can with more advantage be decided with written pleadings and with a written record, in which case he shall proceed to make up a record, and bring the said matters to a conclusion with all convenient despatch; and the orders and judgments of the said sheriff when pronounced without a record shall be final and conclusive, and not subject to review by suspension or advocacy or to reduction on any ground whatever.

Proceedings by sheriff need not be in writing.

Sect. 148. The same as sect. 155 of the English act, prefixing "sheriff or" to the word "justice."

Sect. 149. The same as sect. 156 of the English act, substituting "suspension" for "certiorari."

Sect. 150. In all cases which may come before any sheriff substitute under this or the special act, or any act incorporated therewith, in which written pleadings shall have been allowed, and a written record shall have been made up, and where the evidence which has been led by the parties shall have been reduced to writing, but in no other case whatever, it shall be competent for any of the parties thereto, within

Power of appeal to sheriff.

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clauses con-
solidation
(Scotland.)

seven days after a final judgment shall have been pronounced by such sheriff substitute, to appeal against the same to the sheriff of the county, by lodging a minute of appeal with the sheriff clerk of such county or his depute; and the said sheriff shall thereupon review the proceedings of the said sheriff substitute and whole process, and, if he think proper, hear the parties *visà voce* thereon, and pronounce judgment; and such judgment shall in no case be subject to review by suspension or advocacy or to reduction on any ground whatever.

Sect. 151 is the same as sect. 157, substituting the word "matter" for "penalty or forfeiture," and prefixing "unless otherwise specially provided" to the word "appeal."

Sect. 152 is the same as sect. 158, substituting "expense" for "costs."

Sect. 153 is the same as sect. 162, substituting "sheriff clerks" for "clerks of the peace."

SCHEDULE referred to by the foregoing Act.

Form of Conviction before

to wit.

Be it remembered, That on the day of in the year
of our Lord A. B. is convicted before me C., the sheriff [or
before us D., E., two of her Majesty's justices of the peace] for the
county of [here describe the offence generally, and the time and
place when and where committed], contrary to the [here name the special
act]. Given under my hand [or under our hands], the day and year
first above written.

C.
or
D.
E.

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