Francis Forbes Society for Australian Legal History
Introduction to Australian Legal History Tutorials

Development of Corporations law – 26 October 2016

Justice Ashley Black

Introduction

In a paper delivered in this series in 2013, the Chief Justice reviewed the early history of corporate law, as well as more recent developments. I will not here repeat the Chief Justice's survey of early developments and I will focus largely on developments in the corporate form during the 18th and 19th centuries. I will give particular attention to two key features of a corporation, namely that it is treated as a separate legal person from its shareholders and that its shareholders are allowed limited liability.[1] I will not address the twentieth century in any detail, since the Chief Justice's previous paper provided a full outline of the constitutional travails of national corporations legislation in that century.

I should note, by way of preliminary comment, that the use of the term "company" in the 18th and early 19th centuries applied more widely to persons associated for a common purpose, often in connection with trade and did not depend on incorporation. The use of the term "company" to refer to a limited liability company developed by the end of the 19th century.[2]

I should also note that that segment of the Australian population which today appears in corporations lists would today take the benefits of the corporate form for granted. That view has not always been held. In *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776), Adam Smith took a narrower view, arguing that the corporate form was only suitable for a limited number of enterprises, such as banking, insurance, canals and water supply that required high capital input or had public benefit or utility and where the company's operations were capable of being reduced to a "routine" or to such a "uniformity of method as admits of little or no variation".

Earlier unincorporated entities, joint stock companies and the Bubble Act

In his 2013 paper, the Chief Justice noted the development of the corporate form in medieval times and pointed to early examples of the use of corporate forms in the corporation sole which was used to hold property of public and ecclesiastical officers, including the Crown and bishops, and the corporation aggregate which was used for local government and universities. The Chief Justice then traced the development of the joint stock company in England. Whether such an entity had a separate legal personality, or was an unincorporated partnership, depended on whether it was chartered by the Crown or Parliament. Where a trading company was granted a royal charter or incorporated by private Act of Parliament, it would then exist in

[1] The significance of these matters for the legal history of the corporation is noted by M Wibisono, "Corporations" in JT Gleeson et al (eds), *Historical Foundations of Australian Law - Volume II,* 2013, p 384.
[2] R McQueen, *A Social History of Company Law: Great Britain and the Australian Colonies 1854–1920*, 2009, p 18.

perpetuity, have the capacity to sue and be sued and would have separate legal existence from its members, and members of companies granted a royal charter would also generally have limited liability.

The Chief Justice also noted the development of early trading companies such as the East India Company in the 17th century; the expansion of domestic companies structured as joint stock companies and the speculation surrounding those companies; and that, by the end of the 17th century, courts had recognised that individual members of an incorporated body were not liable for its debts, although this does not seem to have been regarded as an important benefit of incorporation, possibly because of the power to make calls conferred by the relevant charters or the possibility of remedies analogous to subrogation.[3]

The Chief Justice also referred to the introduction of the *Bubble Act* 1720[4] which prohibited enterprises which

> "presume to act as if they were corporate bodies … without any legal authority, either by Act of Parliament, or by any Charter from the Crown".

Acting as a corporate body was defined as "raising or pretending to raise transferable stock" and doing so without authority was treated as a "publick nuisance" which would be treated as a praemunire, a non-capital criminal offence punishable by imprisonment and the forfeiture of property to the Crown.[5]

The traditional view is that the *Bubble Act* was passed to seek to address the risk of an overheated market in the period prior to the failure of the South Sea Company, which had taken over the national debt of the British Government in exchange for the rights to trade with Spanish territories in South America. An alternative view is that the *Bubble Act* was promoted by the South Sea Company to seek to limit competitive investments in unincorporated joint stock companies, which would not have the exemption which the *Bubble Act* provided to the South Sea company.[6] There is also a debate in the historical literature as to whether the *Bubble Act* retarded the development of English company law; a later view, promoted by Dr Rob McQueen, points to the development of deed of settlement companies, as well as railway and canal companies incorporated by charter or by Act of Parliament in the period in which the *Bubble Act* was in force, as a positive matter.[7]

After the passage of the *Bubble Act*, companies could still be incorporated by charter or statute in the United Kingdom. That typically occurred in the case of companies involved with construction of infrastructure such as water and gas works, canals and railways and only a small number of manufacturing companies were incorporated.[8]

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[3] T F Bathurst, "The Historical Development of Corporations Law", 3 September 2013, p 4.
[4] The full title of the *Bubble Act* described it as "An Act to Restrain the Extravagant and Unwarrantable Practice of Raising Money by Voluntary Subscriptions for Carrying on Projects Dangerous to the Trade and Subjects of this Kingdom."
[5] J Taylor, *Boardroom Scandal: The Criminalisation of Company Fraud in Nineteenth-Century Britain*, 2013, p 10.
[6] Wibisono, "Corporations", note 1 above, p 390.
[7] McQueen, *A Social History of Company Law: Great Britain and the Australian Colonies 1854–1920*, note 2 above, p 20.
[8] S Watson, "How the company became an entity: a new understanding of corporate law" (2015) *JBL* 120 at 123.

Charters or private Acts of Parliament were sought, not so much for any particular benefit attributed to incorporation but because they were often associated with conferring other rights such as the right to use a particular route for a railway or canal.[9] It has also been suggested that the use of incorporated or unincorporated forms of the joint stock company varied from industry to industry, depending on the extent to which existing industry participants resisted incorporation. For example, existing participants in the insurance industry often sought to block private legislation to incorporate new insurance companies, which generally incorporated as unincorporated joint stock companies which did not require such legislation. On the other hand, existing enterprises in the transport industry were less threatened by new industry participants operating in different regions, and there was greater use of private Acts of incorporation and incorporated joint stock companies in the transport field, promoted, as noted above, by the need for rights of compulsory acquisition or access to land.[10]

Unincorporated deed of settlement "companies" were also used in the period after the *Bubble Act* and were treated as a partnership at common law but recognised as a "company" by the Court of Chancery.[11] A deed of settlement "company" arguably did not contravene the *Bubble Act,* since s 25 of the *Act* provided that it did not:

> "prohibit or restrain the carrying on of any home or foreign trade in partnership in such manner as hath hitherto usually and may be lawfully done according to the Laws of this Realm now in force".[12]

A deed of settlement "company" was not a separate legal entity from its members or shareholders.[13] By the terms of the deed of settlement, members agreed to become associated in an enterprise with a prescribed joint stock divided into a prescribed amount of shares; the deed could be amended by agreement of a majority of the shareholders; management was delegated to a committee of directors; and property was vested in trustees.[14] The appointment of trustees mitigated the difficulties arising from change of membership, to the extent that proceedings could be brought by or against the trustees on the firm's behalf. The deed of settlement would typically provide for shares in the partnership to be transferable, and a person to whom the share was transferred was required to agree to perform the obligations of a member provided under the deed of settlement, and to be bound by that deed of settlement.

There were nonetheless practical difficulties with the deed of settlement company. Although the deed of settlement would typically provide that members were liable only to the extent of their contributed capital, that provision did not bind a third party creditor, even if it had notice of it, unless the creditor agreed to the limitation of

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[9] P Lipton, "The Evolution of the Joint Stock Company to 1800: A Study of Institutional Change", Monash University, Workplace and Corporate Law Research Group, Working Paper No 15, p 25.
[10] Ibid, pp 24–25.
[11] Watson, "How the company became an entity: a new understanding of corporate law", note 8 above, 129.
[12] Bathurst, "The Historical Development of Corporations Law", note 3 above, pp 7–8.
[13] Watson, "How the company became an entity: a new understanding of corporate law", note 8 above, 126.
[14] P Johnson, *Making the Market: Victorian Origins of Corporate Capitalism*, 2010, p 116.

liability.[15] Litigation between members of deed of settlement companies was also practically difficult, because there was no requirement for any public register of members.[16] It was also difficult to enforce calls on partly paid shares, because all shareholders were required to be joined as party to the action which might potentially require an inquiry into the state of the partnership accounts. The extent of these difficulties was illustrated by *Van Sandau v Moore* (1826) 1 Russ 441 **[Document 1]**, where Lord Eldon held that a shareholder's application to dissolve an unincorporated company and for accounts to be taken required joinder of some 14 directors and 300 shareholders of the entity.

There was also a degree of controversy as to the legal status of unincorporated companies, and particularly the provision for transferable shares. In *R v Dodd* (1808) 9 East 516; 103 ER 670 **[Document 1A]**, Ellenborough CJ observed that a promise of limited liability in respect of an unincorporated joint stock entity was "a mischievous delusion, calculated to ensnare the unwary public" but did not convict the promoter where the *Bubble Act* had not been enforced for many years and where the prosecution was initiated by an opponent of the promoter, who had acquired shares in order to commence it.[17] Several cases in the early 1820s also treated deed of settlement companies as unlawful under the *Bubble Act* or at common law.[18] In *Josephs v Pebrer* (1825) 3 B & C 639 at 644; 107 ER 870 **[Document 2]** the *Bubble Act* was applied to deny recovery to a stockbroker in a claim against an investor who declined to pay for shares on the collapse of the market. On the other hand, in *Nockels v Crosby* (1825) 3 B & C 814; 107 ER 935 **[Document 3]**, the *Bubble Act* did not prevent an investor recovering money paid into a failed project. In *Kinder v Taylor* (1825) 3 LJ Ch 68, Lord Eldon noted that "acting as a corporation without being such is illegal at common law". Dr McQueen has argued that the opposition expressed by the courts to joint stock companies had little impact, given the commercial demand for such entities.[19] The *Bubble Act* was ultimately repealed by 6 Geo IV c 91 (1825).[20]

Developments in the first half of the 19th century in England

The corporate form was used to facilitate canal building and railways during the early 19th century, which were capital intensive and had relatively lengthy construction periods, but manufacturers were suspicious of that form, possibly because it could facilitate the entry of competitors.[21]

The *Chartered Companies Act* 1837 (UK) allowed incorporation by letters patent granted by the Board of Trade, but competing interests were from time to time

[15] *Walburn v Ingilby* (1833) 1 My & K 61; (1833) 39 ER 604; *Re Sea Fire & Life Insurance Co* (1854) 3 De GM & G 459; 43 ER 180; RP Austin & I Ramsay, *Ford's Principles of Corporations Law*, 2012, [2.120].
[16] Johnson, *Making the Market*, note 14 above, pp 119–120.
[17] Taylor, *Boardroom Scandal,* note 5 above, p 12.
[18] W R Cornish and G de N Clark, *Law and Society in England 1750-1950*, 1989, p 251.
[19] McQueen, *A Social History of Company Law: Great Britain and the Australian Colonies 1854–1920*, note 2 above, p 39.
[20] Johnson, *Making the Market*, note 14 above, p 117.
[21] McQueen, *A Social History of Company Law: Great Britain and the Australian Colonies 1854–1920*, note 2 above, pp 26, 40–42.

successful in preventing the grant of letters patent and the process was expensive.[22] Case law in the first half of the 19th century held that members of an incorporated joint stock company, and subsequently an unincorporated joint stock company, did not have an interest in the company's assets.[23] In the later decision in *Re Agriculturist Cattle Insurance Co (Baird's Case)* (1870) LR 5 Ch App 725 **[Document 4]**, James LJ distinguished the position in respect of an unincorporated deed of settlement company from that of a partnership, in holding that the principle of partnership law by which a person ceased to be a partner upon death, and that his or her estate was not thereafter liable for the partnership's debts, did not apply to a joint stock company, so that the executor of the shareholder's estate could be included in a list of contributories. His Lordship noted (at 734) that the aim of the joint stock company was to make the organisation:

> "… as nearly a corporation as possible, with continuous existence, with transmissible and transferable stock, but without any individual right in any associate to bind the other associates, or to deal with the assets of the association."

That decision treats a joint stock company, although developed from the partnership form, as distinct from it.

Developments in the first half of the 19th century in Australia

Developments in Australia in the early 19th century, not surprisingly, reflected the corresponding position in the United Kingdom. In 1817, Governor Macquarie conferred a charter on the Bank of New South Wales which granted limited liability to shareholders. Imperial authorities subsequently refused approval for the charter because of concerns as to the grant of limited liability, and the Bank subsequently operated as an unincorporated joint stock company, governed by a deed of settlement which provided for its shares to be transferable and for it to be managed by a board of directors.[24] Several unincorporated joint stock companies were incorporated under deeds of settlement in New South Wales, including the Australian Agricultural Company (1824) and the Australian Gas Light Company (1836).

Legislation in New South Wales in the late 1830s and early 1840s addressed practical issues arising from the status of unincorporated joint stock companies.[25] In 1843, the Bank of Australia, which had been formed in 1826 as a joint stock

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[22] S Ville, "Judging Salomon: Corporate Personality and the Growth of British Capitalism in a Comparative Perspective" (1999) 27 *Fed L Rev* 203 at 205.

[23] *Bligh v Brent* (1836) 2 Y&C Ex 268; 160 ER 397 (holding that shares in a company were personalty, irrespective of the nature of the company's property, because the shareholder in an incorporated joint stock company had an interest only in its profits and not in its assets); *Watson v Spratley* (1854) 10 Ex Ch 222; 156 ER 424 (holding that a shareholder in an unincorporated mining company had only an interest in the company's profits and not in its physical assets, so the share was personalty even if the company's assets were real property).

[24] Bathurst, "The Historical Development of Corporations Law", note 3 above, p 14.

[25] *An Act to make good Certain contracts which have been or may be entered into by certain Banking and other Copartnerships* 1839 (NSW) **[Document 5]**; *An Act for further facilitating proceedings by and against all Banking and other Companies in the Colony entitled to sue and be sued in the name of their Chairman Secretary or other Officer* 1842 (NSW) (allowing banks and other joint stock companies to sue and be sued in the name of an officer of the company) **[Document 6]**; *Companies (Process) Act* 1848 (NSW) (allowing joint stock companies to sue and be sued by members) **[Document 7]**; see P Lipton, "A History of Company Law in Colonial Australia: Economic Development and Legal Evolution" (2007) 31 *Melb U L Rev* 805 at 808, 810.

company without limited liability, collapsed. The Bank had borrowed money from an English bank, the Bank of Australasia, which brought successful proceedings against shareholders, and the Privy Council held that the deed of settlement permitted the directors to bind the company in borrowing funds and that shareholders were bound under partnership law.[26] I will refer below to the similar experience in England in the collapse of Overend Gurney & Co Ltd. Trading activities in the colonies in the early 19th century were still on a relatively small scale, limiting the need for incorporation.[27]

Developments in the mid 19th century in England - The Joint Stock Companies Act 1844

In his 2013 paper, the Chief Justice noted that several fundamental elements of the structure of the modern corporation were not established until the middle of the 19th century, including, legal personality, perpetual existence, transferable shares and limited liability. We will see those developments in the narrative that follows.

In 1837, a report prepared by Mr Bellenden Ker for the House of Commons took an early cross-jurisdictional approach to law reform and noted that:

> "In France … [limited liability] is very useful, as affording the means of directing to commercial enterprise much capital which otherwise would not be so employed as affording the means of bringing forward intelligent and skilful persons, who have not capital to enable them to enter into commercial speculation … In New York it is understood that the same effect is produced.[28]

Mr Ker recommended that partnership law be amended to permit limited liability. Although that report was considered by a select committee of the House of Commons in 1843, it expressed no view as to the merits of limited liability and did not advance a proposal for its introduction.

An 1844 Select Committee, under Gladstone's chairmanship, accepted that incorporation should be made more widely available, without the need for a royal charter or private Act, by a process of registration.[29] It also recommended minimum capital requirements in respect of the company, and minimum denomination requirements for stock, and those recommendations were largely adopted in the *Joint Stock Companies Act* 1844 (7 & 8 Vict c 110) ("1844 Act") **[Document 9]**.[30] The Gladstone Committee considered, but did not support, limited liability, which it recognised would provide an incentive for investment, but considered was not necessary given existing investment levels.[31] The Gladstone Committee also emphasised the value of disclosure, including by periodic meetings and publication of accounts.[32] That view remained controversial in the mid-nineteenth century,

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[26] *Bank of Australasia v Breillat* (1847) 6 Moore PC 152; 13 ER 642 **[Document 8]**; Lipton, "A History of Company Law in Colonial Australia", note 25 above, 810–811.
[27] Lipton, "A History of Company Law in Colonial Australia", note 25 above, 810.
[28] Report on the Law of Partnership, 1837, quoted D R Kahan, "Shareholder Liability for Corporate Torts: A Historical Perspective" (2009) 97 GEO LJ 1085 at 1093–1094.
[29] McQueen, *A Social History of Company Law: Great Britain and the Australian Colonies 1854–1920*, note 2 above, p 46.
[30] Ibid, pp 45–46.
[31] Ibid, p 45.
[32] Wibisono, "Corporations", note 1 above, p 399.

although it has subsequently had a strong influence in both companies and securities legislation.

The 1844 Act required that a partnership of more than 25 members, insurance companies and insuring friendly societies, and partnerships with shares that were transferable without the consent of co-partners, register with the Board of Trade, which did not undertake a merits assessment of the application for registration. The process of registration involved two stages. At the first stage, a company filed a prospectus and obtained provisional registration, which allowed it to raise capital, on giving details of the name and business of the company and the names, addresses and occupations of its promoters, and later its directors officers and shareholders and payment of a £5 fee (ss 4, 21). There was an obvious risk that companies would not proceed to final registration after capital had already been raised and about three-quarters of companies registered at the first stage did not proceed to complete registration between 1844 and 1855.[33]

The company could proceed to the second stage, completing registration, after a deed of settlement was signed by shareholders and submitted (ss 7, 21). The deed of settlement would include information about the company's objects, capital structure, directors and members.[34] After complete registration, the company had to make twice-yearly returns of all changes to the shareholder list (s 11) and to register audited balance sheets within a fortnight of each general meeting (s 43). Auditors were to be elected by shareholders and were required to examine the accounts and report on them to the general meeting (ss 38–43). The requirements for accounts and publicity introduced by the 1844 Act seem desirable to modern ears, but were criticised in the mid-nineteenth century as providing little practical benefit. The 1844 Act also provided for general meetings to be held at least once a year; shareholders could call extraordinary general meetings and members of the board were to be rotated regularly and could not hold office indefinitely (Sch A). The 1844 Act did not exclude personal liability of a company's members, although a creditor had to exhaust its remedies against the company before bringing proceedings against individual members.[35]

The 1844 Act was not particularly successful, because there was resistance to its disclosure requirements which were not enforced by the Board of Trade. The passage of the 1844 Act was followed, likely by coincidence rather than by any causal relationship, by a further investment "bubble" with a surge of provisional registrations of railway undertakings, although the creation of railways typically still involved specific Acts of Parliament to provide rights of compulsory purchase.[36] The 1844 Act was amended by the *Companies Consolidation Act* 1845 to require, inter alia, provision of a balance sheet which provided "a true statement of the capital stock, credits and property of every description belonging to the company, and the

[33] McQueen, *A Social History of Company Law: Great Britain and the Australian Colonies 1854–1920*, note 2 above, p 50; Watson, "How the company became an entity: a new understanding of corporate law", note 8 above, 124.
[34] Cornish and Clark, *Law and Society in England 1750-1950*, note 18 above, p 254.
[35] 1844 Act c 110, s 66; *Joint Stock Banks Act* 1844 (7 & 8 Vict c 113) s 10; RP Austin & I Ramsay, *Ford's Principles of Corporations Law*, note 15 above, [2.140]; Taylor, *Boardroom Scandal*, note 5 above, p 79.
[36] Johnson, *Making the Market*, note 14 above, p 120.

debts due by the company" and "a distinct view of the profit and loss which shall have arisen".[37]

Winding up provisions

The *Winding Up Act* 1844 (7 & 8 Vict c 111) **[Document 10]** provided for a company to be made bankrupt in the same way as an individual and provided for a winding up in the Chancery Court. Any creditor could petition for a company's bankruptcy, whether it was provisionally or completely registered. In a winding up, Chancery could order accounts, fix calls on shareholders to make up a shortfall and appoint receivers to collect payment. Provision for winding up on the just and equitable ground was subsequently introduced by the *Joint Stock Companies Act* 1848 (11 & 12 Vict c 45), amended by the *Joint Stock Companies Act* 1849 (12 & 13 Vict c 108).[38] The 1848 Act preserved the power of creditors to sue individual shareholders after a proposal to restrict that right was defeated in the House of Commons.[39]

The development of limited liability

Limited liability was introduced by the *Limited Liability Act* 1855 (18 & 19 Vict c 133) **[Document 11]**. The *Limited Liability Act* amended the 1844 Act to limit the liability of a shareholder to the amount of any unpaid portion of the nominal value of its shares. That limitation was subject to requirements that the documents lodged on the company's provisional registration state that the company proposed to limit its liability; that the nominal value of the company's shares be at least £10 each; that the word "limited" be included in the company's name and stated in all public documents; that the deed of settlement state that the company be formed with limited liability; and that it be signed by at least 25 shareholders, who held 75% of the capital of which 20% had to be paid up.[40] The *Limited Liability Act* also required that enterprises publicly file an annual balance sheet. Dr McQueen points out that the requirements for annual balance sheets were challenging where financial reporting processes were undeveloped, both in principle and in practice, and the *Act* was not suitable for the incorporation of small enterprises.[41]

Those who supported the expansion of limited liability contended that the existing regime restricted the development of useful enterprises, because investors were reluctant to take small shareholdings where exposed to unlimited liability, and that applications for a charter which could confer limited liability were only supported by the Board of Trade in restricted circumstances and were costly.[42] The introduction of limited liability at this point may also reflect developing investor expectations that they should not be held liable for the debts of the enterprise, together with

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[37] McQueen, *A Social History of Company Law: Great Britain and the Australian Colonies 1854–1920*, note 2 above, pp 48–49.
[38] Wibisono, "Corporations", note 1 above, p 403.
[39] Taylor, *Boardroom Scandal*, note 5 above, p 96.
[40] Wibisono, "Corporations", note 1 above, p 403; Cornish and Clark, *Law and Society in England 1750-1950*, note 18 above, p 256; Taylor, *Boardroom Scandal*, note 5 above, p 101.
[41] McQueen, *A Social History of Company Law: Great Britain and the Australian Colonies 1854–1920*, note 2 above, p 141.
[42] Johnson, *Making the Market*, note 14 above, p 42.

competition from European and American investment opportunities which recognised limited liability.[43]

However, there was an opposing, and common, view that participants and investors in commercial activities should accept responsibility for financial losses on failure and that limited liability would promote economic and moral failure.[44] The case against limited liability was reflected in Victorian popular culture in an operetta by Gilbert and Sullivan, titled "Utopia Limited", which records (without approval) the education of the King of the South Pacific Island of Utopia, away from his initial reaction that limited liability might seem dishonest and toward a recognition of its virtues. A short sample, which I draw with gratitude from a paper of Kunc J[45], is as follows:

> [Promoter]: "[If you come to grief, and creditors are craving
> (For nothing that is planned by mortal head
> Is certain in this Vale of Sorrow--saving
> That one's Liability is Limited),--
> Do you suppose that signifies perdition?
> If so, you're but a monetary dunce--
> You merely file a Winding-Up Petition,
> And start another Company at once!
> Though a Rothschild you may be
> In your own capacity,
> As a Company you've come to utter sorrow--
> But the Liquidators say,
> "Never mind--you needn't pay,"
> So you start another company to-morrow!"
>
> King: Well, at first sight it strikes us as dishonest,
> But if it's good enough for virtuous England--
> The first commercial country in the world--
> It's good enough for us."

Dr McQueen also points out that the business community, including larger manufacturing enterprises, generally did not support limited liability, since many manufacturing entities were family enterprises and recognised the risk that limited liability entities might increase competition.[46] The take up of limited liability remained relatively slow in the United Kingdom, and it took almost a half century after the introduction of the *Limited Liability Act* for a significant number of industrial enterprises to incorporate. Part of that resistance reflected a concern as to the introduction of outside shareholders or outside management within largely family enterprises.[47]

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[43] McQueen, *A Social History of Company Law: Great Britain and the Australian Colonies 1854–1920*, note 2 above, pp 32–33.
[44] Ibid, pp 138–140; Johnson*, Making the Market,* note 14 above, p 137.
[45] F Kunc, "Company Directors: Decisions, Duties and Dilemmas", 9 January 2015, pp 1–5; see also McQueen, *A Social History of Company Law: Great Britain and the Australian Colonies 1854–1920*, note 2 above, p 231.
[46] McQueen, *A Social History of Company Law: Great Britain and the Australian Colonies 1854–1920*, note 2 above, pp 78–79.
[47] Ibid, p 28.

The *Joint Stock Companies Act* 1844 and the *Limited Liability Act* 1855 were consolidated and replaced by the *Joint Stock Companies Act* 1856 (19 & 20 Vict c 47) ("1856 Act") **[Document 12]**. The 1856 Act distinguished companies from partnerships with the result that creditors would now lend to a company rather than to partners sharing joint and several liability.[48] The 1856 Act also removed several of the requirements for limited liability under the 1855 Act, including requirements as to the value of shares and the requirement that there be a minimum of 25 shareholders holding at least 75% of the company's capital, so that the availability of limited liability was extended to a company which had seven or more subscribers who held at least one share each and included the word "limited" in the name of the company. The sponsor of the 1856 Act, Robert Lowe, the then Vice-President of the Board of Trade, argued that:

> "[Limited liability] is not a question of privilege; if anything it is a right … The principle is the freedom of contract and the right of unlimited association – the right of people to make what contracts they please on behalf of themselves, whether those contracts may appear to the Legislature beneficial or not, as long as they do not commit fraud or otherwise act contrary to the general policy of the law ...".[49]

One commentator has suggested that the expansion of the availability of limited liability between 1855 and 1856 reflected wider political issues, including a government desire to facilitate enterprise and investment and increase revenue during the period of the Crimean War.[50]

The 1856 Act also removed the previous two-stage process of provisional and full registration, removed the statutory accounting and auditing requirements under the 1844 Act[51] and removed the requirements as to paid up capital in the *Limited Liability Act*. The 1856 Act introduced provision for liability of directors for payment of dividends while they knew the company was insolvent. The 1856 Act also permitted shareholders representing one-fifth in number and value of shares to appoint an inspector to examine a company's affairs and report back to the Board of Trade, and a simple majority of shareholders could appoint an inspector in general meeting (ss 14, 48, 51).[52] The 1856 Act amended the winding up procedure, to prevent creditors of the limited companies from pursuing actions against individual shareholders[53] and permitted creditors to seek winding up if a company could not pay a debt of over £50.[54] Banks and insurance companies were excluded from the 1856 Act.[55]

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[48] M Lobbin, "Nineteenth Century Frauds in Company Formation: Derry v Peek in Context" (1996) 112 LQR 287 at 318.
[49] R Lowe, *Speech on the Amendment of the Law of Partnership and Joint Stock Companies* 1856, quoted Johnson, *Making the Market*, note 14 above, p 138; C Mackie, "From Privilege to Right – Themes in the Emergence of Limited Liability" (2011) 4 *Jur Rev* 293 at 296.
[50] Mackie, "From Privilege to Right – Themes in the Emergence of Limited Liability", note 49 above.
[51] However, the model constitution provided under the 1856 Act continued to provide for the presentation and audit of accounts and included a template for balance sheets, which applied to a company unless its constitution made different provisions.
[52] Taylor, *Boardroom Scandal*, note 5 above, p 102.
[53] 19 and 20 Vict c 47, s 61.
[54] 19 and 20 Vict c 47, ss 67–69.
[55] Bathurst, "The Historical Development of Corporations Law", note 3 above, p 11; Taylor, *Boardroom Scandal*, note 5 above, p 101.

Events are not always kind to law reform, and the Royal British Bank failed shortly after the passage of the 1856 Act. That entity had been formed as a joint stock bank in 1849 and began trading before all of its shares had been subscribed and before half of those shares were paid up, as the Bank of England had required. Although it appears to have been insolvent since shortly after it was formed, it had continued to trade for nearly seven years issuing false accounts and paying dividends from capital. Its directors were subsequently convicted on charges of criminal conspiracy.[56] The shareholders brought a petition in the Court of Chancery to seek to wind up the Bank and raise and distribute contributions. Creditors brought parallel proceedings in the Court of Bankruptcy under the *Winding Up Act* 1844 (which had not been repealed) so that the Court of Bankruptcy had control of the Bank's assets while the Court of Chancery ordered payment by contributories.

Developments in the 1860s

The *Companies Act* 1862 (25 & 26 Vict c 89) ("1862 Act") [**Document 13**] took a form closer to modern companies legislation[57] and also now permitted the incorporation of insurance companies. The 1862 Act provided for winding up by the court, and for voluntary liquidation without the court's involvement or voluntary liquidation under the court's supervision. The court could direct an official liquidator to prosecute a director, manager, officer or member who appeared to be guilty of a criminal offence, with the costs of that prosecution to be paid out of the company's assets.[58]

In the familiar sequence of law reform and recurrent corporate failure, Overend, Gurney & Co Ltd ("Overend Gurney"), a financial firm, failed not long after the passage of the 1862 Act. Overend Gurney had converted to a public company in 1865 and then failed a year later in 1866. Overend Gurney had issued shares with a nominal value of £100, of which £25 was called up, and most investors purchased the shares at a premium of £45. The company subsequently sought to call up the balance unpaid on the shares.[59] These events demonstrated the risk of issuing partly paid shares of substantial value, with large amounts uncalled. Not surprisingly, subsequent practice moved toward the issue of fully paid shares of lesser value.[60] An aggrieved shareholder of Overend Gurney subsequently brought a private prosecution against its directors alleging fraud on the basis that the company had been registered as a limited liability company and shares issued when the directors knew the company was insolvent, but the directors were acquitted of that charge.[61]

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[56] Lobbin, "Nineteenth Century Frauds in Company Formation: Derry v Peek in Context", note 48 above, 313–314.
[57] Cornish and Clark, *Law and Society in England 1750-1950*, note 18 above, p 257.
[58] 1862 Act, ss 167–168.
[59] McQueen, *A Social History of Company Law: Great Britain and the Australian Colonies 1854–1920*, note 2 above, p 162. For discussion of a similar failure of a Scottish Bank, see KJC. Reid, "Embalmed in Rettie: The City of Glasgow Bank and the Liability of Trustees" in A Burrows et al (eds), *Judge and Jurist: Essays in Memory of Lord Rodger of Earls Ferry,* 2013, pp 489–508.
[60] Cornish and Clark, *Law and Society in England 1750-1950*, note 18 above, pp 257–259.
[61] The decision is referred to in *Peek v Gurney* (1871) LR 13 Eq 79 **[Document 13A]**; see R McQueen, "Life without Salomon*"* (1999) 27 *Fed L Rev* 181 at 191.

A further Select Committee in 1867 again considered limited liability, with some support for greater regulation by investors who had suffered loss as a result of the failure of Overend Gurney and subsequent company collapses. However, any amendment was opposed by Robert Lowe (by now holding the title Viscount Sherbrooke) who had promoted the 1856 amendments. Provisions for reduction of capital were introduced in the English companies legislation from 1867, following a crash in 1866, to facilitate payment of dividends despite substantial losses of capital.[62]

Throughout this period, and despite the passage of the companies legislation to which I have referred, company law was often perceived through the frame of English partnership law, reflecting the nature of a joint stock or deed of settlement company. In his text on *Partnership Law* published in 1863, Lord Lindley described a "company" in terms that echoed a partnership, as:

> "An association of many persons who contribute money or money's worth to a common stock and employ it in some trade or business."

His Lordship there treated a company as a partnership incorporated by registration.[63]

Developments in the 1850s and 1860s in Australia

Legislation was introduced to permit limited liability partnerships in New South Wales and Victoria in the early 1850s, by the *Act to Legalize Partnerships with Limited Liability* 1853 (NSW) **[Document 14]**, 1854 (Vic). As in the United Kingdom, those Acts were subsequently displaced by companies legislation which provided for the incorporation of companies with limited liability.[64]

The colonies placed particular focus on the introduction of corporate forms to deal with mining, which is not surprising given the extent of mining activity in the mid-nineteenth century. Incorporation and limited liability for mining companies and partnerships was introduced by *An Act for the Better Regulation of Mining Companies* 1853 (Vic), which allowed an entity that took the form of a partnership to be formed and registered with a local court, reflecting the model used for mining companies in Cornwall, which could be used by groups of miners to fund the development of shafts for underground gold mining. Legislation to limit the liability of members to the amount unpaid on their shares was introduced in Victoria by *An Act to Facilitate the Formation of Mining Associations* 1858 (Vic)[65] and similar legislation was introduced in New South Wales by *An Act to limit the Liability of Mining Partnerships* 1861 (NSW) **[Document 15]**.

The *Companies Statute* 1864 (Vic) was based on the 1862 Act and was passed at about the time the Victorian gold mining boom began, and allowed a company to be incorporated by lodgement of its constituent documents, introduced limited liability for members and prohibited associations of more than 20 members operating as a

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[62] McQueen, *A Social History of Company Law: Great Britain and the Australian Colonies 1854–1920*, note 2 above, pp 165–166.
[63] Watson, "How the company became an entity: a new understanding of corporate law", note 8 above, 130–131.
[64] *Companies Statute* 1864 (Vic) and *Companies Act* 1874 (NSW).
[65] Bathurst, "The Historical Development of Corporations Law", note 3 above, p 15.

partnership or unincorporated joint stock company.[66] The *Companies Act* 1874 (NSW) **[Document 16]**, although introduced 10 years later, was also based on the 1862 Act. Dr McQueen argues that the passage of colonial legislation that was similar to the 1862 Act allowed English companies easily to register under local provisions as foreign companies and that variations from the "model" provided by the 1862 Act were discouraged by the imperial authorities, which recognised that such variations could discourage English investment in the colonies.[67] He also notes that the common form of legislation allowed limited liability companies to be established with a board in both England and the relevant colony and facilitated listing on both English and colonial stock markets.[68] By contrast with McQueen, Lipton argues that the introduction of limited liability legislation in the colonies in the 1850s, followed by the legislation based on the 1862 Act, responded to economic developments in the colonies and promoted economic growth and the interests of business constituencies.[69] It appears that the form of company permitted by the legislation derived from the 1862 Act was not widely used at this time, other than for gold mining companies. Most colonial banks were either established by special Acts of the colonial legislature or established in England, and rail infrastructure was largely funded by government borrowings, rather than by private interests in a corporate form.

A simpler form of incorporation, which did not require the lodgement of annual reports, was introduced for mining companies by the *Mining Companies Limited Liability Act* 1864 (Vic). The corporate form was widely used by gold mining companies, which were by that time undertaking more expensive mining operations, including deep quartz gold mining which developed in the late 1860s and early 1870s.[70] The common practice in early colonial goldmining companies was to issue partly paid shares with a high par value, consistent with the English practice prior to the collapse of Overend Gurney.[71]

By the mid-1860s, a substantial volume of shares were trading on the Melbourne Stock Exchange although a large proportion of those shares were in entities not incorporated under companies legislation.[72] Limited resources were devoted to the administration of the companies legislation in the colonies in the nineteenth century, and administrative responsibility was allocated to the Masters of the Supreme Court in South Australia and Queensland, the Registrar-General's Department in New South Wales and the Titles Office in Victoria.[73]

Developments in the late nineteenth century

Commentators suggest that there was no immediate increase in the rate of incorporation after the introduction of limited liability in England in 1856, and it only rose to significant levels in the 1880s.[74] Dr McQueen notes that in England the

[66] Lipton, "A History of Company Law in Colonial Australia", note 25 above, 806.
[67] R McQueen, "Company Law as Imperialism" (1995) 5 *AJCL* 187 at 190.
[68] Ibid, 194.
[69] Lipton, "A History of Company Law in Colonial Australia", note 25 above, 807.
[70] Ibid, 817.
[71] Ibid, 815–816.
[72] Ibid, 816.
[73] McQueen, "Company Law as Imperialism", note 67 above, 195.
[74] Johnson, *Making the Market*, note 14 above, p 123.

limited liability company form began to be used in the iron, steel and shipping industries in the 1870s and 1880s, to facilitate raising capital for technological development and to meet overseas competition, and as the founders of family firms died or withdrew from the businesses.[75] That development was facilitated by the use of corporate structures involving preference shares which paid dividends but left control in the ordinary shares held by the existing owners of the business.[76] It also seems that limited liability became more significant in the 1870s as a means of limiting the risk to which existing controllers of companies were exposed.[77]

In a Select Committee on the *Companies Act* in 1877, Robert Lowe (as noted above, then holding the title Viscount Sherbrooke) recognised that the introduction of limited liability had brought about some losses for creditors, but treated that as a risk intrinsic to dealing with companies, in moving a resolution that:

> "recited the success of limited liability incorporation overall but noted the number of failures which had occurred. He however considered that the only remedy against loss in these, as in all matters of business, is that a man before he parts with his money or pledges his credit should inquire carefully into the nature of the undertaking, and the character and credit pecuniarily and morally of those with whom he is to be associated."[78]

Preference shares came into greater use in the 1880s, carrying a fixed rate of interest rather than an entitlement to variable dividends, and also carrying a right to the residue of assets in a winding up in priority to ordinary shareholders. Companies also began to issue debentures which allowed a charge over company assets as security, giving priority over ordinary creditors in a winding up.[79]

A regime was also developed in the colonies permitting mining companies to issue no liability shares, which could be forfeited and sold if the shareholder failed to pay a call, initially in the constituent documents of mining companies, and subsequently by the *Mining Companies Act* 1871 (Vic) **[Document 17]** which adopted the form which continues in s 254Q of the *Corporations Act* 2001 (Cth).[80] Dr McQueen treats this development as indicating the failure of the limited liability legislation to address the practice of "dummying", by which shareholders subscribed for shares in false names to minimise the risk of liability for calls. This development could more generously be seen as a pragmatic solution to the challenges in dealing with that issue, when administrative resources were scarce and the population was transient and spread over wide geographical areas.[81]

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[75] McQueen, *A Social History of Company Law: Great Britain and the Australian Colonies 1854–1920*, note 2 above, p 193.
[76] Ibid, p 194.
[77] Ibid, p 237.
[78] *Report of the Select Committee into the Operation of the Companies Acts 1862 & 1867,* B.P.P. VIII, 1877, 425; quoted McQueen, "Life without Salomon", note 61 above, 187.
[79] Cornish and Clark, *Law and Society in England 1750-1950*, note 18 above, p 259.
[80] Bathurst, "The Historical Development of Corporations Law", note 3 above, pp 15–16.
[81] McQueen, *A Social History of Company Law: Great Britain and the Australian Colonies 1854–1920*, note 2 above, pp 283–284; Lipton, "A History of Company Law in Colonial Australia", note 25 above, 819–820; B Kerchner, *An Unruly Child: A History of Law in Australia*, 1995, pp 134–135.

Small and medium enterprises began to take on a corporate form in the colonies from the late 1870s to 1880s[82] although mining companies continued to comprise the bulk of companies, generally formed under the no liability regime.[83] The *Joint Stock Companies Arrangement Act* 1891 (NSW) was in turn based on the *Joint Stock Companies Arrangement Act* 1870 (33 and 34 Vict c 104).[84]

A substantial crash took place in Victoria in the 1890s, involving a fall in land prices and the failure of several Victorian banks.[85] The *Companies Act* 1896 (Vic), introduced in response to the these events, required audits by certified auditors (s 28) and the preparation of audited balance sheets in a specified form to be filed and sent to shareholders (s 29), reflecting recommendations of the Davey Report in the United Kingdom.[86] There was little enforcement of the reporting requirements introduced by that Act, given limited administrative resources.[87] The *Companies Act* 1896 (Vic) also introduced a statutory duty of care applicable to directors, which was then not continued in the *Companies Act* 1910 (Vic) and which was subsequently reintroduced in s 107 of the *Companies Act* 1958 (Vic)[88]; prohibited misleading statements in prospectuses and the use of misleading company names (for example the term bank in a company title); introduced winding up provisions[89]; and introduced a regime dealing with proprietary companies, which could have no more than 25 members, could not borrow monies from non-members or raise capital from the public, and were not required to provide an audited balance sheet to members.[90]

Toward the end of the century in England, the decision in *Derry v Peek* (1889) 14 AC 337 took a relatively narrow view of the scope for director's liability in relation to the issue of shares, at least in respect of an action for deceit. Legislative reform followed, and the *Directors' Liability Act* 1890 (53 & 54 Vict c 64) imposed liability on directors, promoters and other officers for untrue statements in a prospectus, unless the statement was made with reasonable grounds to believe it was true, or in reliance on an expert whom the director had reasonable grounds to believe was competent, or in reliance on a public official document.[91]

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[82] McQueen, *A Social History of Company Law: Great Britain and the Australian Colonies 1854–1920*, note 2 above, p 288.
[83] Ibid, pp 286–287.
[84] Lipton, "A History of Company Law in Colonial Australia", note 25 above, 825–826.
[85] For case law relating to the crash, see *Re Colonial Investment and Agency Co (in liq)* (1893) 19 VLR 381; *Re Federal Bank of Australia Ltd* (1894) 20 VLR 199.
[86] Lipton, "A History of Company Law in Colonial Australia", note 25 above, 827.
[87] Kerchner, *An Unruly Child*, note 81 above, p 135, McQueen, *A Social History of Company Law: Great Britain and the Australian Colonies 1854–1920*, note 2 above, pp 297–302.
[88] R. Teele Langford, I Ramsay and M Welsh, "The Origins of Company Directors' Statutory Duty of Care" (2015) 37 *Sydney L Rev* 489.
[89] Lipton, "A History of Company Law in Colonial Australia", note 25 above, 827; J Waugh, "Company Law and the Crash of the 1890s in Victoria" (1992) 15 *UNSWLJ* 356; J Waugh, "The Centenary of the Voluntary Liquidation Act 1891" (1991) 18 *MULR* 170.
[90] Lipton, "A History of Company Law in Colonial Australia", note 25 above, 827; Bathurst, "The Historical Development of Corporations Law", note 3 above, p 16.
[91] McQueen, *A Social History of Company Law: Great Britain and the Australian Colonies 1854–1920*, note 2 above, p 251; Wibisono, "Corporations", note 1 above, p 409.

Separate legal personality and the application of limited liability in closely held companies

I now turn, finally, to the issues raised by the decision of the House of Lords in *Salomon v A Salomon & Co Ltd* [1897] AC 22 ("*Salomon*") **[Document 18]**. Before turning to that decision, it is desirable to return to the position in the case law earlier in the mid-nineteenth century.

It had been recognised in case law in the mid-nineteenth century that a company, including a joint stock company, was distinct from its shareholders. An unincorporated joint stock "company" was treated as a separate entity from its shareholders as early as 1846, in *R v Arnaud* (1846) 9 QB 806; 115 ER 1485, where that company was held to be capable of being registered as the owner of a British ship, although some of its members were foreigners who were prohibited from directly or indirectly owning that ship. The fact that legislation prior to the 1855 and 1862 Acts had endowed companies with a separate personality, although not with "all the attributes of a perfect corporation" had been recognised by the House of Lords in *Oakes v Turquand* (1867) LR 2 HL 325, a decision that arose out of the failure of Overend Gurney and dealt with the position where a shareholder was induced to acquire shares by fraud **[Document 19]**. The recognition of a separate legal personality of a company was therefore not novel when the House of Lords came to decide *Salomon*.

The question whether limited liability should be available to a closely held company was also not entirely novel, since it had been recognised in debates prior to the passage of the 1856 Act. The possibility that a company might be formed by a person and six others, who might be that person's servants to whom a single share was given, and the question whether limited liability should properly be given to such a company, was raised in the House of Commons at the committee stage of debate in respect of the 1856 Act.[92] A commentary on the 1856 Act, published shortly after it was introduced, also pointed to the possibility that incorporation could be available to a small partnership or sole trader by using friends, servants or relations as additional shareholders.[93] Dr McQueen argues that Robert Lowe, who (as I noted above) had promoted the 1856 Act and was committed to freedom of contract and to a permissive approach to corporate law, would have been prepared to leave it to the market to determine whether the corporate form could be used for one person companies.[94]

These questions came together in a controversial form in *Salomon.* The now famous Mr Salomon had formed a limited liability company incorporated under the *Companies Act* 1862. The Company had at least seven shareholders, as required by the 1862 Act, since Mr Salomon, his wife and five of his children each subscribed for one share in the company, capitalising it at £7. Mr Salomon sold his well-established boot making business to the company, valuing that business at about £40,000. The consideration was payable by £1,000 paid to Mr Salomon in cash, the issue of 20,000 £1 shares to Mr Salomon and 100 debentures of £100 each, for a

[92] McQueen, "Life without Salomon", note 61 above, 187.
[93] E Cox, *The New Law and Practice of Joint Stock Companies* (1856), quoted in McQueen, "Life without Salomon, note 61 above, 186.
[94] McQueen, "Life without Salomon, note 61 above, 187.

total of £10,000. Mr Salomon was appointed managing director and two of his sons were appointed as directors of the company and its initial shareholders meeting was held on 2 August 1892.[95] The judgments in *Salomon* proceed on the basis that Mr Salomon played the only significant role in the company and that his wife and his sons had only nominal roles. The fact that Mr Salomon was allocated 20,000 shares and the other shareholders one share each when the company was incorporated tends to support that possibility.[96]

There was a downturn in the English economy in the period after the company's incorporation, and the company suffered labour difficulties and lost several government contracts and suffered a decrease in earnings. Several months after the company was incorporated, in early 1893, Mr Salomon borrowed £5,000 from Mr Broderip, a local merchant, and mortgaged the debentures that had been issued to him to secure that loan and agreed that the company would pay 8% interest on the value of the debentures to Mr Broderip. The company defaulted in making that payment in September 1893, about a year after it was incorporated, and Mr Broderip sought to enforce his security over the debentures. The company was placed in receivership in October 1893 and initially contested Mr Broderip's claim to the amount owing on the debentures, which would have taken up the large part of the company's assets to the prejudice of unsecured creditors. The receiver also brought proceedings against Mr Salomon seeking to hold him personally liable on the debentures. After the failure of the company, the transaction by which the company was formed was portrayed by contemporary commentators, including the boot trade industry press, as artificial and disreputable.

At first instance in the proceedings brought by the receivers against Mr Salomon, Vaughan Williams J relied on the fact that the business was owned and controlled by Mr Salomon to conclude that he had employed the company as his agent and was bound to indemnify the company as agent for actions undertaken at his bidding; that the company's creditors were his creditors; and that the issue of debentures when the company was established was a deliberate attempt to defeat their rights.

On appeal in *Broderip v Salomon* [1895] 2 Ch 323 at 341, Lopes LJ observed that:

> "The [1862] Act contemplated the incorporation of seven independent bona fide members, who had a mind and a will of their own, and were not mere puppets of an individual who, adopting the machinery of the Act, carried on his old business in the same way as before, when he was a sole trader. To legalize such a transaction would be a scandal."

His Lordship (at 340–341) was equally direct in expressing his view that:

> "It would be lamentable if a scheme like this could not be defeated. If we were to permit it to succeed, we should be authorising a perversion of the Joint Stock Companies Acts. We would be giving vitality to that which is a myth and a fiction …

[95] A C Hutchinson and J Langlois, "Salomon Redux: The Moralities of Business" (2012) 35 *Seattle University LR* 1109 at 1114.

[96] That assumption is challenged by P Spender in "Resurrecting Mrs Salomon" (1999) 27 *Fed L Rev* 217, where she emphasises that the six shareholders in the company, other than Mr Salomon, were family members including Mr Salomon's wife and five children, several of whom worked in the business. However, the nominal character of their shareholdings may weaken that challenge.

> It was never intended that the company to be constituted should consist of one substantial person and six mere dummies …".

Kay LJ observed (at 345) in the Court of Appeal that:

> "The statutes were intended to allow seven or more persons bona fide associated for the purpose of trade to limit their liability under certain conditions and to become a corporation. But they were not intended to legalize a pretended association for the purpose of enabling an individual to carry on his own business with limited liability in the name of a joint stock company."

In the Court of Appeal, Lindley LJ accepted that the company had been validly incorporated under the *Companies Act* 1862, but held that the issue of shares to family members of Mr Salomon was an artifice to enable Mr Salomon to obtain limited liability. His Lordship observed (at 338–339) that Mr Salomon's:

> "liability to indemnify the company in this case is, in my view, the legal consequence of the formation of the company in order to attain a result not permitted by law. The liability does not arise simply from the fact that he holds nearly all the shares in the company. A man may do that and yet be under no such liability as Mr Aron Salomon has come under. His liability rests on the purpose for which he formed the company, on the way he formed it, and on the use which he made of it. There are many small companies which will be quite unaffected by this decision. But there may be possibly be some which, like this, are mere devices to enable a man to carry on trade with limited liability, to incur debts in the name of a registered company, and to sweep off the company's assets by means of debentures which he has caused to be issued to himself in order to defeat the claims of those who have been incautious enough to trade with the company without perceiving the trap which he has laid for them."

The approach taken by the Court of Appeal would have required judges to decide, possibly on a case by case basis, whether the incorporation of a proprietary company controlled by a single shareholder should be treated as a fraud on creditors, and that decision would have been vulnerable to hindsight, when it would almost always have had to be made after a company had failed.

Mr Salomon appealed to the House of Lords in forma pauperis, which required that he had assets of less than £5 (and the clothes on his back) at the time of the appeal, such that he would not be liable for the costs if the appeal failed. The House of Lords, of course, reversed the decision of the Court of Appeal.

Lord Halsbury observed (at 33) that, once it was accepted the company had a legal existence, and the law attributed rights and liabilities in its constitution as a company, then it was "impossible to deny the validity of the transactions into which it has entered." His Lordship disapproved the Court of Appeal's reasoning, observing (at 33–34) that:

> "[T]he truth is that the learned judges have never allowed in their own minds the proposition that the company has a real existence. They have been struck by what they considered the inexpediency of permitting one man to be in influence and authority [in] the whole company; and, assuming that such a thing could not have been intended by the Legislature, they have sought various grounds upon which they might insert into the Act some prohibition of such a result."

Lord Macnaghten observed (at 50–51) that:

> "In order to form a company limited by shares, the Act requires that a memorandum of association should be signed by seven persons, who are each to take one share at least. If these conditions are complied with, what can it matter whether the signatories are relations or strangers? There is nothing in the Act requiring that the subscribers to the memorandum should be independent or unconnected, or that they or any one of them should take a substantial interest in the undertaking, or that they should have a mind and will of their own."

His Lordship also rejected the characterisation of the company's role as trustee or agent of its shareholders, observing (at 51) that:

> "The company is at law a different person altogether from the subscribers to the memorandum and, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them."

There is some historical information as to the practical outcome of the proceedings. Mr Broderip was paid out and the debentures were returned to Mr Salomon, who died not long after the House of Lords' decision and left an estate of £503. Mr Salomon's financial woes did not end with his death. The solicitor who acted for him in the proceedings ultimately brought a successful claim against his estate for costs of the successful appeal in the House of Lords. Although the decision in that case (*Re Raphael* (1899) 1 Ch 853 **[Document 20]**) was primarily directed to the costs rules in the House of Lords, Kekewich J there observed that the outcome of the proceedings had been that Mr Salomon:

> "was not thereby made a wealthy man, he was rehabilitated and removed from the list of paupers."[97]

The decision in *Salomon* is, of course, generally treated as confirming the principle that a company is a separate legal entity, distinct from its shareholders, with rights and liabilities distinct from those shareholders. That decision is also treated as confirming that a company may properly be established where it is controlled and owned, as matter of economic reality, by one person.[98] Lipton, in his article, "The Mythology of Salomon's Case", argues that the House of Lords' decision in *Salomon* accorded with prevailing economic, social and political ideas, in that it:

> "reflected the values of the family business community in placing a priority on entrepreneurship and commercial risk-taking over the interests of creditors. This was consistent with the prevailing economic philosophy of laissez-faire capitalism and freedom of contract which underpinned the 1856 Act."

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[97] Hutchinson and Langlois, "Salomon Redux", note 95 above, 1132.

[98] For comment upon *Salomon* in its legal and historical context , see G Rubin, "Aron Salomon and His Circle" in J Adams (ed), *Essays for Clive Schmittoff*, 1983; N James, "Separate Legal Personality: Legal Reality and Metaphor" (1993) 5 *Bond LR* 217; McQueen, "Life without Salomon", note 61 above; S Ville, "Judging Salomon: Corporate Personality and the Growth of British Capitalism in a Comparative Perspective" (1999) 27 *Fed L Rev* 203; Hutchinson and Langlois, "Salomon Redux", note 95 above; Lipton, "The Mythology of Salomon's Case and the Law dealing with the Tort Liabilities of Corporate Groups: An Historical Perspective" (2014) 40 *Monash University LR* 452.

Dr McQueen also notes that, prior to the House of Lords' decision in *Salomon*, the numbers of small private companies registering under the 1862 Act had increased over the 1860s and 1870s and become a "veritable flood" by the 1880s and 1890s.[99] It appears that, at the time the case was being decided, the British government was considering a recommendation to give express statutory recognition to the one person company and the House of Lords' decision avoided the need for such legislation.[100] Dr McQueen argues that the extent of the use of the private company form, by the time *Salomon* was decided, was such that, if the Court of Appeal's decision had been upheld rather than reversed by the House of Lords, legislative intervention was likely to be required to clarify the position of the private companies that then existed.

That House of Lords' decision in *Salomon* has provoked strong responses. A note published in the *Law Quarterly Review*, shortly after the decision, suggested that no-one who knew the earlier history of the Companies Acts would doubt that the House of Lords' decision:

> "would have been impossible thirty or even twenty years [previously]".[101]

The decision was described by Professor Kahn-Freund, in an article written in 1944, as a "calamitous decision" which allowed the corporate form to:

> "become a means of evading liabilities and of concealing the real interests behind the business."[102]

A similarly robust view was taken by Higgins in *The Law of Partnership*, in the 1963 edition, observing that:

> "Seldom has the entire of House of Lords sunk to such a level of jurisprudential ineptitude as to reject the clear intention of the legislature in favour of the application of the so-called literal rule of interpretation. The decision in [*Salomon*] has probably done more to undermine commercial integrity in sixty years than did the Statute of Frauds in nearly three hundred."[103]

Dr McQueen has more recently described the decision in Salomon as a "sad finale for the high liberalism of Victorian England".[104]

Lord Neuberger of Abbotsbury takes a more positive view of the decision in a recent paper[105], where he identified *Salomon* as one of his "top 15 cases" published in the authorised law reports. His Lordship noted that the decision had "stood the test of time" although he also recognised that there had been decisions where courts in the United Kingdom have been prepared to pierce the corporate veil or disregard a company's separate personality. His Lordship referred to the UK Supreme Court's

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[99] McQueen, "Life without Salomon", note 61 above, 196.
[100] Ibid, 183.
[101] Note (1897) 13 LQR 6, cited Lipton, "The Mythology of Salomon's Case", note 98 above, 471.
[102] O Kahn-Freund, "Some Reflections on Company Law Reform" (1944) 7 *Mod LR* 54 at 55.
[103] Quoted in P Halpern et al, "An Economic Analysis of Limited Liability in Corporation Law" (1980) 30 *University of Toronto LJ* 117 at 119.
[104] McQueen, "Life without Salomon", note 61 above, 201.
[105] Lord Neuberger of Abbotsbury, "Reflections on the ICLR Top Fifteen Cases: A Talk to Commemorate the ICLR's 150th Anniversary" (2016) 32(2) *Const LJ* 149.

decision in *Prest v Petrodel Resources Ltd* [2013] UKSC 34; [2013] 2 AC 415, where Lord Sumption (at [35]) observed that the corporate veil could be pierced, but only:

> "[W]hen a person is under an existing legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control." [106]

Lord Neuberger also expressed the view in that paper that the recent decisions indicate that:

> "*Salomon* is good law, and it will require an exceptional case before the Court would even consider piercing the veil."[107]

The implications of *Salomon* for corporate groups and claims against directors

The principle in *Salomon* was in turn applied in *Gramophone and Typewriter Ltd v Stanley* [1906] 2 KB 856 to hold that a subsidiary did not conduct its business as agent for its controlling shareholder or holding company (holding that the profits of a German subsidiary could not be treated as profits of its English holding company, and that the subsidiary could not be treated as agent or trustee for the holding company, merely because the holding company owned all its shares).

The decision in *Salomon* was also applied in Australia in the first half of the twentieth century in dealing with the question whether a company conducted its business as agent for its controlling shareholder.[108] In *Associated Newspapers Ltd v Commissioner of Taxation* [1938] ALR 498 **[Document 21]**, the appellants, Sun Newspapers Ltd ("Sun") and Associated Newspapers Ltd ("Associated Newspapers"), there sought to appeal various income tax assessments, contending that Sun acted as agent for Associated Newspapers, which held 98.5% of Sun's shares, in conducting a newspaper business, and that Associated Newspapers rather than Sun should be taxed on that business. The appellants also argued that the agency relationship had the consequence that dividends paid by Sun to Associated Newspapers should be treated as income of Associated Newspapers derived from personal exertion, and an additional tax of 6% applicable to dividends income should not have been imposed.

Rich J did not accept the contention that Sun, as the subsidiary of Associated Newspapers, was acting as its agent in conducting the business. His Honour cited (at 500) the observations of Lord Russell of Killowen in *E.B.M Co Ltd v Dominion Bank* [1937] 3 All ER 555, which had rejected, by reference to *Salomon*, a suggestion that:

> "notwithstanding that a business is in fact and in law the property of a separate legal entity, a limited company, it could be held, for taxation purposes, that the business was the property of some other person, and that the company was carrying on the business as agent for that other person."

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[106] See also *VTB Capital plc v Nutritek International Corpn* [2013] UKSC 5; [2013] 2 AC 337.
[107] Lord Neuberger of Abbotsbury, "Reflections on the ICLR Top Fifteen Cases", note 105 above, 154.
[108] I have here drawn upon a note prepared by my tipstaff, Daniel Chun, as to the reception of *Salomon* in Australia.

His Honour recognised (at 501) that Associated Newspapers held virtually all the shares in Sun and also recognised that, except for possibly matters of remuneration, no practical distinction was made between the two companies at board level. However, his Honour pointed to other aspects in which Sun carried on a separate business (at 501), observing that:

> "Sun Newspapers Ltd acted in every way as the proprietor of the newspapers and the publishing business, kept separate accounts, made separate returns for taxation purposes, declared dividends on its shares, and was treated in every way as continuing to be, as it originally was, the Company conducting on its own behalf, that is in the interests of its shareholders, its own extensive enterprise."

His Honour held (at 501) that there was no relationship of principal and agent, and the business conducted by Sun was vested in it "and vested in it beneficially, that is for its shareholders whoever they might be."

In *R v Portus* (1949) 79 CLR 428; 23 ALJR 621 **[Document 22]**, reference was again made to the decision in *Salomon* in determining whether Qantas Empire Airways Limited ("Qantas") conducted its business as agent for the Commonwealth Government, which then owned all the shares in Qantas directly or through nominees and appointed all of the directors. That question was relevant to whether Qantas' employees were employed by Qantas "on behalf of" the Crown, which was in turn relevant to whether an award could be made under the *Commonwealth Conciliation and Arbitration Act* 1904-1949 (Cth) in an industrial dispute.

The High Court held that Qantas was not the agent of the Commonwealth, although jurisdiction to make the award was established on the terms of the *Commonwealth Conciliation and Arbitration Act*. Latham CJ applied *Salomon*, observing that:

> "The company, however, is a distinct person from its shareholders. The shareholders are not liable to creditors for the debts of the company. The shareholders do not own the property of the company: see *Aron Salomon v Salomon & Co* (1897) AC 22 and *Macaura v Northern Assurance Co* (1925) AC 619. Persons employed by the company are not therefore employed by all or by any of the shareholders."

Dixon J did not expressly refer to *Salomon*, but also observed (at 437–438) that:

> "As a shareholder, even the sole beneficial shareholder, the Commonwealth has no property legal or equitable in the assets of the company nor is the Commonwealth a principal acting by the company as its agent."

In *Re Southard & Co Ltd* [1979] 3 All ER 556 at 565, Templeman LJ recognised the importance of the principle in *Salomon* in an insolvency context, observing that its effect was to expose a creditor of a subsidiary to the risk of its failure even if the parent company and other subsidiaries remained solvent, and were not treated as liable for the debts of the insolvent subsidiary. That result may seem harsh in respect of voluntary creditors, including tort creditors.[109] The case law recognises the possibility that a shareholder or holding company could be treated as liable for

[109] I M Ramsay & D B Noakes, "Piercing the Corporate Veil in Australia" (2001) 19 C&SLJ 250; Lipton, "The Mythology of Salomon's Case", note 98 above, 481.

the conduct of a company, where the company in fact acted as its agent[110], although we have seen above that agency can be difficult to establish. A holding company may also be held liable in negligence if, in the particular circumstances, it can be established that the holding company breached a duty of care owed to an employee of the subsidiary, so that it can be held directly liable for that breach.[111]

The application of these principles, in their extension to the position as between a holding company and its subsidiaries, has been controversial both internationally and in Australian law, most recently in respect of issues concerning the relationship between James Hardie Industries Limited, its former subsidiaries and claimants in respect of asbestos liability. English and Australian corporate law texts, including *Ford's Principles of Corporations Law* also seek to identify various categories of cases in which courts are more likely to "pierce" the corporate veil.

The principle in *Salomon* also raises questions as to the circumstances in which a claim in negligence should be available against a director who is also the sole shareholder, of a one person company, which would to some extent qualify the principle of limited liability. A director, whether or not he or she is also a sole shareholder of a company, can be held liable where he or she procures conduct that amounts to a tort, a breach of contract, a breach of trust or a breach of fiduciary duty, although the boundaries of such liability remain controversial.

[110] See, for example, *Smith, Stone and Knight Ltd v Lord Mayor, Aldermen and Citizens of the City of Birmingham* [1939] 4 All ER 116 (holding company was successful in establishing that a subsidiary carried on its business as its agent, in that case to its advantage); *Spreag v Paeson Pty Ltd* (1990) 94 ALR 679 (holding company held liable for misleading statements made by its subsidiary).
[111] For example, *CSR Ltd v Wren* (1997) 44 NSWLR 463; *CSR Ltd v Young* [1998] Aust Torts Reports 81–468; *Chandler v Cape plc* [2012] 3 All ER 640; a different result was reached, on the facts, in *James Hardie & Co Pty Ltd v Hall* (1998) 43 NSWLR 554; and see Lipton, "The Mythology of Salomon's Case", note 98 above, 482–485.

The 11 *G.* 1, *c.* 18, *s.* 17, is—"It shall and may be lawful to and for all and every person and persons who shall at any time from and after the 1st day of *June* 1725, be made or become free of the said city, and also to and for all and every person and persons who are already free of the said city, and on the 1st day of *June* 1725, shall be unmarried, and not have issue by any former marriage, to give, devise, will, and dispose of his and their personal estate and estates, to such person and persons, and to such use and uses, as he or they shall think fit."

[441] Between ANDREW VAN SANDAU, *Plaintiff*, *and* PETER MOORE, SAMUEL BARRETT, MOULTON BARRETT, Sir RUFANE SHAW DONKIN, NICHOLAS DENNYS, THOMAS HAMLET, GEORGE MAGNUS, JOHN MENDHAM, WILLIAM NEWMAN, SAMUEL PAGE, CHARLES PALMER, WILLIAM JOHN FREDERICK POWLETT, AUBONE ALTHAM SURTEES, RICHARD WOGAN TALBOT, and JOHN WILKIN, and OTHERS, *Defendants*. *April*, *May* 2, 3, 6–8, *August* 16, 1826.

[S. C. 2 S. & S. 509; 4 L. J. Ch. (O. S.) 177. See *Small* v. *Attwood*, 1832, You. 459.]

A bill being filed by a shareholder in a joint stock company against the directors and other shareholders, in order to have the partnership dissolved, and the proper accounts taken; and fourteen of the directors, who all appeared by the solicitor of the company, having filed fourteen separate answers with long schedules to each, all of which answers and schedules were nearly verbatim the same: Held, that, in that stage of the cause, no inquiry could be directed into the necessity or expediency of filing those separate answers with a view to the defence of the suit. The Plaintiff in such a suit, notwithstanding the adoption of such a mode of defence, will not be permitted to dismiss his bill without costs, on his own application; nor will any reference be directed to the Master, with a view to modify the costs which the Plaintiff shall pay. The Court cannot require several defendants to join in their defence. If a motion is intended to lay the foundation for a subsequent application against the solicitor of some of the parties, the solicitor, in his personal capacity, ought to be made a party to that motion. *Semble*, A shareholder in a joint stock company cannot file a bill on behalf of himself and others of the shareholders for a dissolution of the concern. Observations of the *Lord Chancellor* on the legal history of joint stock companies, and on the provisions which have been introduced into acts of parliament, creating or regulating such companies, in order to give effect to legal proceedings to which they are parties. A bill cannot be dismissed, for want of prosecution, by an order made as of course upon petition at the Rolls.

Early in 1824, a Joint Stock Company was set on foot, called the "British Annuity Company." It was to consist of sixty thousand shares of £50 each, forming a capital of £3,000,000, which was to be employed in making loans by way of annuity. Advertisements were [442] published and prospectuses were circulated, describing the nature of the proposed Company, and the mode in which its business was to be conducted; and by these the Plaintiff, Mr. *Van Sandau*, a solicitor by profession, was, as he represented, induced to apply for some shares. Forty shares were accordingly allotted to him, on each of which he paid a deposit of £2. The Company was established; and, in the same year, an Act of Parliament was obtained, enabling them to sue and be sued in the name of their Chairman or Secretary for the time being. A deed of settlement was also prepared, containing the regulations by which the affairs of the Company were to be managed; and it had been signed by many of the shareholders. Mr. *Van Sandau*, however, refused to sign it, on the ground that it contained provisions inconsistent with the advertisement and prospectuses, on the faith of which he had become a partner in the concern: and, being dissatisfied with the mode in which the affairs of the Company were carried on, he, in *October* 1824, filed a bill against the Chairman and the Secretary; praying that the Company, and the Defendants on behalf of the Company, might be restrained from doing any act to deprive him of his shares, or from acting on the deed of settlement; and that certain directions might be given as to the mode in which the business of the concern was to be conducted.

Peter Moore, the Chairman, and *James Mitchell*, the Secretary, who were the

only Defendants, demurred generally for want of equity; and, upon the argument of the demurrer, they demurred also, *ore tenus*, for want of parties.

The *Lord Chancellor* allowed the demurrer, for want of parties. His Lordship at the same time expressed an opinion, that, as the dissolution of the [443] Company was not prayed, the Court could not grant the particular relief which the Plaintiff asked.

In *May* 1825, Mr. *Van Sandau* filed a second bill, to which all the shareholders of the Company, between two and three hundred in number, were made Defendants.

He stated in it, that the partnership, no term having been prescribed for its duration, was dissoluble by notice, at the pleasure of any of the partners; and that he had, on the 30th of *April* 1825, sent a notice of dissolution to the Secretary and to the Solicitor of the company. This notice was addressed, "To all persons being members, shareholders, proprietors, or partners of or in, or composing the said Company or Partnership using the style or firm of *British Annuity Company*, to the persons calling themselves, acting as, or being directors thereof, and to the chairman, deputy-chairman, and secretary thereof, or whomsoever else it may concern." He further charged various acts of mismanagement, which, even if the Company were not dissoluble by notice, gave him, as he contended, a right to have it dissolved by the interposition of the Court. The prayer was, that the Company might be declared to have been dissolved, or might then be dissolved, that its affairs might be wound up, and that the persons styled directors might be restrained from acting in that capacity; but if the Court should be of opinion, that the Company was not and ought not to be dissolved, then that the deed of settlement might be set aside; that a new deed might be prepared and executed, pursuant to the original advertisement and prospectus; and that the directors, chairman, and deputy-chairman, might be restrained from doing certain acts.

Mr. *John Wilks*, jun., the Solicitor of the Company, and himself a Defendant, entered appearances for fourteen [444] of the directors, and filed for them fourteen separate answers, each of which had long schedules annexed to it.

These answers, besides denying or palliating the acts of misconduct charged in the bill, stated, that the deed of settlement, which was complained of, had been produced before the House of Lords, when the bill was in progress, in order to explain the general outline and scheme of the Company; that the Plaintiff, by refusing to execute the deed, and to pay the calls which had been made, had forfeited his shares, and ceased to have any interest in the concern; that the directors, though they were entitled to have declared his deposits forfeited, had been always willing to repay him his £80 with interest; that the most fair and reasonable proposals had been made to him in order to induce him to desist from harassing the Company, but that all those proposals had been rejected by him.

On the 14th of *March* 1826, the Plaintiff moved, before the *Vice-Chancellor*, that it might be referred to one of the Masters to inquire, if the fourteen answers were substantially, or, in any and what respects, different; and whether there was any and what sufficient reason for such fourteen Defendants, or any and which of them, so answering separately: And if the Master should find that there was a sufficient reason for the said fourteen Defendants, or any of them, answering separately, then he was to inquire whether there was any and what sufficient reason for repeating the schedules annexed to each of the answers; and that, for the purpose of those inquiries, the fourteen Defendants might be directed to furnish the Master with copies of such answers.

The affidavit of the Plaintiff, sworn in support of the motion, stated, that the fourteen answers were sworn in [445] *London*, several of them on the same day, and all of them, except one, in the month of *August*; that the fourteen answers and schedules were all of them alike, and nearly *verbatim* copies of each other, in no respect materially differing from each other, but appearing to have been prepared from one draft only; that the same set of schedules, in effect fourteen times repeated, were annexed to each of the answers; that each of the answers consisted of 627 folios, and the schedules to each answer, of 423 folios; that the charge for office copies of the fourteen answers would amount to £365; and that *Wilks*, as well as many of the fourteen Defendants, had declared, that their sole object in putting in separate answers was to increase the expenses of the suit, so as to deter the Plaintiff from prosecuting it further. As evidence of this intention,

the affidavit stated, that *Wilks*, on the 24th of *May* 1826, in reply to a letter in which the Plaintiff remonstrated against the vexatious conduct pursued on behalf of the Defendants, wrote to the Plaintiff a letter, which contained the following passage :

" As your suit is frivolous, absurd, and vexatious ; as you have no more to do with the Company and its concerns than an inhabitant of Ethiopia, and as the Costs must ultimately ruin you, even to beggary ; and therefore, in the end, some of them at least fall upon the Company, I shall oppose, for myself and for my clients, your ridiculous and contemptible suit, by every legal means."

The affidavit also stated, that *Wilks*, without any sufficient or proper reason, and solely for the purpose of multiplying the costs of the suit, had taken out forty-seven separate orders, for time to answer, for the said fourteen and two other Defendants. Then, as further evidence that the answers had been prepared by *Wilks* for **[446]** an unfair purpose, and not from the instructions of the Defendants themselves, it set forth a correspondence between Mr. *Wilks* and a director, Mr. *Peach*, in which *Wilks* had endeavoured, but without success, to prevail on Mr. *Peach* to swear an answer similar to those which had been filed by fourteen of his co-directors. One of the letters, addressed to Mr. *Peach* by a clerk of Mr. *Wilks*, contained the following postscript : " Of course any expense attending upon the putting in of your answer by the solicitor of the company will be paid by the solicitor of the company."

The order made by the *Vice-Chancellor* upon the motion was (2 *Sim. & Stu.* 509), " That it be referred to the Master in rotation to inquire and state to the Court, whether, with a view to the defence in the cause, it was necessary or expedient, on the part of the said fourteen Defendants, or any and which of them, who have filed their answers through the intervention of Mr. *Wilks* as their solicitor, that separate answers should be filed by each Defendant ; and if the said Master should, as to any of the Defendants, find that it was not necessary or expedient, with a view to their defence, to put in separate answers, then let the Master inquire how it happened that such separate answers were put in : and, for the better discovery of the matters aforesaid, the said Defendants are to produce before the said Master, upon oath, all books, papers, and writings in their custody or power relating thereto, and are to be examined upon interrogatories, as the said Master shall direct ; and the said Master is to be at liberty to state any matters specially at the request of any party."

A motion was now made, before the *Lord Chancellor*, to discharge the order made by the *Vice-Chancellor*.

[447] There was no affidavit in answer to the affidavit sworn by the Plaintiff.

In the course of the argument before the *Lord Chancellor*, it appeared that the fourteen answers were all signed by the same counsel. Two counsel declared, that the course pursued by the Defendants had been adopted with their approbation : and another stated, that he had advised Mr. *Wilks* not to file any affidavit in answer to the Plaintiff's.

The *Solicitor-General* [Wetherell], Mr. *Heald*, Mr. *Shadwell*, and Mr. *Wakefield*, for the motion to discharge the order. We resist this order, on the ground that it interferes with the rights of the suitor. It is the privilege of Defendants to answer separately, if they please ; the Court has no jurisdiction to compel them to answer jointly ; there is no instance of any attempt to exercise such a jurisdiction ; and nothing could be more imprudent than for Defendants, in a suit which may last for many years, to conjoin themselves for better and for worse with a number of strangers. To what can the inquiry tend, whether it was necessary or expedient for these fourteen Defendants to file separate answers ? They are themselves the judges of that necessity or expediency, which must depend upon a multitude of circumstances altogether extrinsic to the case.

The Plaintiff complains of the expense to which he will be put : but has any man a right to complain of the natural consequences of his own act ? He has chosen to file a bill against between two and three hundred Defendants ; he persecutes and harasses a multitude ; and yet he expects to meet with no more annoyance, in his turn, than if he had to do with a single opponent. It would have been much more reasonable to have directed a reference to inquire, whether it was necessary or **[448]** expedient that the Plaintiff should have filed such a bill. Had we applied

for such an inquiry, we should have been told, that it was the right of a subject, who thought himself aggrieved, to bring his case before the Court, and that the signature of counsel was a sufficient warrant that it was brought before the Court in a proper manner. The right of the assailed is still more sacred than that of the assailant. The Defendants admit that this is not the proper time for inquiring into the nature of the bill; but they say, that neither is it the proper time for inquiring into the nature of their defence. They have put in such a defence as the rules of the Court permit; and that defence has the same sanction of the signature of counsel which gave credit to the bill. They think it hard that they should be compelled to answer so absurd and vexatious a bill. They have, however, complied with the obligation which the law imposes on them, and have complied with that obligation in such a form as is according to law.

The *Lord Chancellor* inquired, whether the *Vice-Chancellor* had been informed with what ultimate view the motion was made; and, it being stated to him that nothing had been said on that point, he requested Mr. *Heald* to inform him, with what view the Plaintiff had applied for such an inquiry as had been directed.

Mr. *Heald* stated, that thereby a foundation might be laid for taking some steps against the solicitor of the Defendants for an abuse of the rules and practice of the court.

The *Lord Chancellor* [Eldon]. I hold an abuse of the rules of the court to be a very great offence, especially in an officer of the court. But if it is meant to make a case, or to lay a foundation for [449] a case, against *Wilkes*, ought it not to have been explained to the court, that it was with a view to a subsequent application against the solicitor that the motion was made? and ought not the solicitor to have been a party to the motion? Had Mr. *Wilkes* appeared by his counsel on this motion, he would have been told that he was himself no party to the proceedings, but was merely the solicitor of the parties concerned. If a solicitor misconduct himself in a cause, he may be made a party to any motion, which it may be thought his misconduct makes advisable; and he ought to be made a party to such a motion, if it is made with a view to any visitation upon him by payment of costs or otherwise.

If I am to direct a reference to the Master, I ought to see beforehand that I can do something upon the report when made. Now suppose that the report of the master had been, that it was not necessary or expedient, with a view to the defence of the cause, to file these fourteen separate answers, what could I then have done? I never heard that the court would compel defendants to answer jointly; and indeed dozens of acts of parliament have been passed with a view to provide a remedy in particular cases for the acknowledged impossibility of getting on with a suit framed as this is. Another consideration is this: ought the jurisdiction of the court, which can be administered usefully only between a limited number of persons, to be employed for a purpose which it cannot by possibility accomplish? Here is a bill with nearly three hundred defendants. How can such a cause ever be brought to a hearing? and if the Plaintiff cannot show a probability of getting a decree, with what purpose, except that of oppression, can the proceeding have been instituted? In such a suit the Plaintiff can do nothing, except put himself and others to enormous expense.

[450] The Plaintiff in person stated to the court, that he might amend the record by making it a bill on behalf of himself and the other shareholders.

Mr. *Heald*, Mr. *Pepys*, and Mr. *Knight*, in support of the *Vice-Chancellor's* order. The complaint made against the Defendants is substantially this;—that they have conspired to conduct their defence in such a way as will render the prosecution of the suit impossible. Are Defendants to be permitted to say, "We shall so act as to prevent the cause from ever coming to a decision"? It is in vain to suggest, that the proper time for taking into consideration the conduct of the parties as to the mode of shaping either the suit or the defence is at the hearing. Here our complaint is, "You have done that which will prevent the suit from coming to a hearing; your conduct is so improper as to require to be visited with punishment by the court; the impropriety is of such a nature that it operates to prevent us from reaching that stage of the cause, in which, according to the ordinary course of procedure, it would come under the lash of the court; we therefore call on the court to vindicate its own efficiency, and, for that purpose, to inquire whether you have been guilty of that misconduct of which we give uncontradicted and *prima*

facie evidence; and if the result of that inquiry shall be such as we state, we have a right to expect that the court will enable us, in some way or other, to prosecute our suit, without being subjected to extraordinary disadvantages by reason of the extraordinary mode of defence adopted by these directors."

The Plaintiff has made a strong *prima facie* case of flagrant misconduct, on the part of the fourteen Defendants. [451] When we look at the nature of the bill, which is a record bringing them before the court, not on account of their individual acts, but merely in their capacity of shareholders and executors—when we look further at the perfect similarity of the answers and schedules in substance and in words, and at the enormous immediate expense which such a proceeding will create to all parties, without the least tendency to promote any fair or useful purpose—when we take into consideration the language of the solicitor who filed the answers, and the means he has employed in order to increase the evil, by adding one more to the number of these answers, all fac-similes of each other;—it is impossible to doubt that this line of conduct was followed solely for the purpose of stifling the suit. The honour and dignity of the court require, that it should ascertain whether its rules have been abused for so unworthy a purpose; and if the result of the inquiry should be, that they have been so abused, it will easily find means to indemnify the Plaintiff for the oppression he has already suffered, and to protect him against its effects for the future. Even if no steps should be taken against the solicitor, the court might order the Defendants to make some satisfaction to the Plaintiff for the costs to which he has been put unnecessarily; or it might require the fourteen Defendants to furnish office copies of their answers at their own expense; or it might direct that an office copy of one of the answers should be sufficient, and that the Plaintiff might be at liberty to proceed, as if he had taken office copies of all the answers.

It is true that the suit is in itself of such a nature that the prosecution of it must necessarily be attended with great difficulties. But the greater the difficulties are with which the plaintiff has to struggle, arising out of the nature of the case; the stronger reason is there that the defendants should not be permitted wantonly to throw artificial and unnecessary impediments in his way.

[452] *May* 3, 6. The *Solicitor-General* [Wetherell], in reply. There is nothing extraordinary in this case except what arises from the conduct of the Plaintiff himself. He files a bill against two hundred and fifty defendants; and he complains that fourteen of them have answered separately. What right has he to require or to expect that they should answer conjointly? Even if their object were to throw difficulties in the way of the prosecution of his suit, he has no just ground of complaint; for it is not vexatious in a defendant to protect himself, by all the means which the rules of the court permit, from the prosecution of a vexatious bill; nor is it oppression in him to endeavour to escape from the enormous expense which a plaintiff is trying to heap upon him by involving him in an absurd suit. The bill is filed for the purpose of embarrassing the company, and of extorting money from them; and it is fortunate for justice, if the rules of the court enable a defendant to throw many difficulties in the way of a plaintiff aiming at such an object.

There is no case made against the plaintiffs, except that they have acted according to the practice of the court; and it is new doctrine to say that regularity of procedure is *prima facie* evidence of an improper purpose. As to the expressions in the letter of Mr. *Wilks*, which have been made matter of blame, they are nothing more than an accurate description of the nature and tendency of a suit like this; the utmost that can be said against them is, that they display some irritation; but any angry feeling which may be traced in them, is not more than the occasion called for, and the tenor of the correspondence set forth in the answer well justified. Even if Mr. *Wilks* has not been sufficiently guarded in his words and temperate in his sentiments, it is absurd to make such a circumstance a ground of imputation against the Defendants. The client is not to be answerable for the angry words of the solicitor.

[453] *May* 8. The *Lord Chancellor* [Eldon]. In this case, the papers, which I have before me, are, the second bill, which is the one that brings forward a great number of parties as Defendants: the answer of one of the Defendants, which in substance is the same, and, I believe, in words is so nearly the same, that it may be represented as the same, with the other thirteen answers, and which refers to schedules

(not before me), the same, I understand, with the schedules annexed to those other thirteen answers; and also the affidavit made by the Plaintiff, which, it is contended, establishes such motives on the part of the Defendants, as make the order of the *Vice-Chancellor* a proper order, founded on the necessity of the interference of the Court in matters of intended oppression. That bill, that answer, and that affidavit, I have thought it my duty to read very carefully; because I am clearly of opinion, that, unless the Court had the substance of the bill and answers, as well as of the affidavit, under its view, it had not the means of raising the question, whether such a reference, as has been directed, should or should not be made.

That reference, I have not the slightest doubt, was directed from an anxiety to promote an object to which this Court ought to be very attentive,—namely, the prevention of oppression: but I entertain very considerable doubt, whether that anxiety can be gratified consistently with perfect safety to those principles on which every man in a court of justice is entitled to conduct his defence. The inclination of my understanding to that view of the question may perhaps be deemed a prejudice; and I admit that it is an opinion fixed in my mind by what I recollect to have passed in this Court during the last forty or fifty years. For in that long period of time, though there has been over and over again, when a cause came on to be heard, and all danger of doing **[454]** prejudice to parties was over, a visitation for oppressive pleading, and for causing unnecessary expense (a visitation, which I deem it a great duty of this Court to inflict, as often as occasion for it arises); —I do not recollect a single instance, in which the Court has been called upon, at this early stage of the cause, to say, that the manner in which the Defendants have shaped their defence is such as to demand a special interference. I do not recollect one single instance of an application, like that of the present Plaintiff, made at a time when it cannot be known how the defence is in future to be conducted, or how it may be necessary to conduct it; and when it is impossible to say what prejudice may arise to individuals, if you link them together, whether they choose to be so associated or not.

I was also very anxious to know with what object the motion before the *Vice-Chancellor* was made. I take it to be extremely clear, that, *prima facie*, and subject to what the Court might do at the hearing in matter of costs, these fourteen gentlemen had a right to sever in their defence. Was it then intended, if the master had reported that it was not necessary or expedient that the Defendants, with view to their defence, should put in separate answers, to move that the answers should be taken off the file, and that the Defendants should be ordered to answer jointly? That suggested another question, which was this. If I were to make such an order, and these parties refused to join themselves for better and for worse, throughout the whole cause, could I attach them or any of them for not so joining in putting in their answers and in defending the suit? And my opinion is (if such were the object of the motion), that I could do no such thing.

If that be not the object of the motion which was made before the *Vice-Chancellor*, what is its object? To my inquiry upon this point Mr. *Heald* very candidly stated, **[455]** that the object was to bring before the Court evidence of a conspiracy to ruin the Plaintiff by the expense of the proceedings; for such is the true amount of the case stated by the Plaintiff. With what view is that to be done? Is it that something may be insisted upon as against the Defendants? If so, then the displeasure of the Court must be visited upon the Defendants, by reason of what is proved either against them, or against the person for whose acts they would be answerable,—the common solicitor of them all. But if we are now to look, not only at the object of the application, but at the mode in which that object is to be effected, which, in no way of putting the case, can be otherwise than by making the parties pay the costs (for in a proceeding to which the solicitor is not personally made a party, I cannot make *him* pay the costs nor strike him off the rolls), in what stage of the case is it most advantageous that that should be done? Most anxious am I to express my opinion, that, if there has been vexation, that vexation ought not to be and will not be forgotten. But the question is,—In what stage of the cause is it most wholesome that the interposition of the Court should take place, to punish proceedings which have been improperly conducted?

I have already stated that one object of the Plaintiff may be, to make the Defendants pay the costs; or it may be his object to make their solicitor pay costs, or to

have him struck off the rolls ; and I do not say, that, in some stage of the cause, that may not be a proper application. But, in order to accomplish either of these purposes, what is it that the Court proposes to do now ? It does not merely look at the bill, the answer, and the affidavit ; but, in this early stage of the cause, it directs a production of papers in the custody of the Defendants, and an examination of the Defendants on interrogatories. That production may happen to furnish what is to be the parties' evidence in [456] the cause : those interrogatories may produce from the parties matter which may affect their evidence hereafter. What else is this than by a side-wind to hear the cause upon a collateral motion ?

In that point of view I am satisfied that the application of the Plaintiff ought not to be entertained. When we have the practice of the Court for a long series of years before us, and when we find ourselves getting beyond what that practice has hitherto sanctioned ; we ought not to venture beyond known limits, except with very great caution and with a clear certainty that we are not introducing mischiefs much greater than the non-payment of the costs which the Plaintiff aims at recovering by his present proceeding.

If we look at the answers as well as at the affidavit, we may find a great many reasons, which, on the score of want of temper, may justify much of what has passed between these parties. Neither is it to be forgotten that the suit itself may miscarry ; and then there may be costs due to the Defendants to be set off against the costs of these answers, supposing it right that some of the costs incurred in this stage of the cause should be given to the Plaintiff. It is further manifest, that the demand for the payment of the costs of these answers is to be founded on evidence which may anticipate every species of defence which the Defendants may have to make. Therefore, without saying what may be right to be done hereafter, with respect to the course which the pleadings have taken, further than that, when the cause comes to be heard, it will be the duty of the Court to consider attentively and anxiously what was unnecessary expense, and to visit that unnecessary expense upon those who have created it ; I am of opinion, founding myself on the established practice of the Court, that the order made by the *Vice-Chancellor* is too hazardous a [457] step,—if the object of the application be what I suppose it to be, and which indeed is the only practicable object which the Court could at this moment carry into execution, namely, making some order with respect to the costs of the answers.

I am further of opinion that I ought not, in this stage of the cause, to direct an inquiry which may be attended with great expense to all parties, and on which the Court may, at last, not be able to do any thing ; or, if it can do any thing, may be able to do no more than what I have already stated.

Again, if this were a motion intended to lay a foundation for an order against the solicitor, and not merely against the defendants, Mr. *Wilks* ought to have been made a party to it : and, when I am told, as I have been told from the bar, that Mr. *Wilks* was advised not to make an affidavit against the application, that advice, I do apprehend, must have proceeded on the old established rule—that, when the notice was given to Mr. *Wilks*, only as solicitor for the parties, he had a right to consider himself as not personally implicated in the result of the motion.

When a motion of this unprecedented nature is made, we are fully justified in looking at the case itself. The bill is filed by Mr. *Van Sandau*, who, upon a prospectus being handed about proposing the establishment of this company, was willing to become a member of the intended association. That prospectus represented the company as in the course of being established. Three millions of money were to be raised ; no subscriber was to pay more than £50 per share ; and the first call was to be for only 40*s.* on the share

[458] Now the history of these companies has been such (and I have travelled a good deal among them), that a lawyer, as this Plaintiff is, ought to have been not a little alarmed at parting with his money to a body so formed. It is quite clear, that, in a commercial country like this, there may be many undertakings and enterprises to which individual powers of mind or purse may be quite unequal ; and for such cases the constitution of the country has provided by giving the means of creating corporations. It is within my own memory, that, when an application was made to parliament to incorporate bodies, it was generally met with this short answer : " Why have you not gone to the crown with your request ? Why have

you not obtained a charter?" However that mode of thinking has gone by, and several acts of parliament have been passed, establishing companies similar to this one.

There were not many of those acts passed, before inconveniences were found to follow. If a man had occasion to bring an action against one of the bodies so constituted, he did not know how to proceed, or against whom to bring his suit; and if he brought it, naming the Defendants who were known to him, he was treated with a plea in abatement, which was a check-mate to his action. To meet this inconvenience, it became necessary to introduce into those bills a clause, that the company should sue and be sued by their clerk or secretary.

It was soon found that this provision did not set the matter right. The secretary on behalf of the company sued a man of opulence; and, if he succeeded, he recovered not only judgment but payment of the demand. On the other hand, when the secretary was sued, the person suing found, that, though he had gotten an individual with whom he could go into a court of law or equity in order to enforce a claim against him as [459] defendant, yet, after he had gone thither, he frequently found that it would have been better for him not to have stirred; for though the secretary, when he was Plaintiff, got the money for which he sued, he was often unable, when made Defendant, to pay what the Plaintiff recovered.

That state of things suggested to a learned lord the necessity of making all the members liable, as well as the secretary, for a demand against the company. Thus there arose a third class of acts of parliament establishing companies; acts which made all the members, as well as the secretary, liable to answer demands recovered against the company. Still this was not enough: for, as these acts did not provide the means of letting the world know who the members were, the consequence was, that, though all the members were liable, nobody, who had a claim against them, could tell, who the persons were that were thus liable.

Another improvement was therefore made. A proviso was introduced, requiring, that, before a company was formed, or within a given time afterwards, there should be a register or enrolment of the individuals of whom the company was composed; and it was thought, that thus, at last, the work had been done completely, and that all was safe. Unfortunately, however, it turned out, in consequence of sales and transfers of shares, that a person, who was a member of the company to-day, was not a member of it to-morrow; the constituent members of the body were constantly changing; and a Plaintiff did not know against whom to proceed, whether against the present or against former members.

A further alteration was then made; the effect of which was, that those, who had been members, should continue liable, although they had transferred their in-[460]-terest, and that those, who became members, should also be liable; an enrolment of the names both of the one and of the other being required. This had a very considerable operation; and it was wonderful to observe, how much, after it was adopted, the passion for becoming members of these companies diminished.

One thing was still wanting. If the members of these bodies happened to quarrel among themselves (which, though they came harmoniously together, was very likely to happen), how they were to sue one another? And it was not till the latest stage of improvement, that that difficulty was provided for. I believe it was in the act regulating the new banking establishments in *Ireland*,(1) that provisions were for the first time made to meet all [461] these difficulties; and similar provisions now form part of the regulations, which are likely to take place in the banking establishments in *England* now in contemplation.

[462] There were some (and many too, whose opinions were very well deserving of attention) who declared, –that, if bodies were formed on such principles, that they could not, in the Courts of this country and according to the laws of the country, effectually demand what they had a right to demand, or be effectually sued for that for which they were liable—the very circumstance of the existence of that inability or incapacity, and the inconvenience or impracticability of dealing with them in a court of justice, proved bodies of that kind to be illegal at common law. It was to make them legal, that acts of parliament were passed containing one or more of the series of provisions which I have mentioned.

In the present case the company was established by an act of parliament to this extent,—that an act was passed to enable them to sue and be sued by their secretary

or public officer; and, parliament having given them a capacity to sue and be sued, it is too late to say that they exist illegally as a body. But the capacity of suing and being sued, which the legislature has given them, does not in this case remove the difficulty of suing; I do not mean, of going through the forms of suing, but of suing to any rational purpose or with any good effect.

When application was made for the act of parliament, the jealousy of the legislature, with respect to bodies of this kind being awakened, the committee of the House of [463] Lords inquired, whether it subsisted by any deed; and, if it did, called for proof of its existence and of its nature by the production of that deed. And it was upon the faith of the deed produced being the deed which was to constitute the company, that parliament passed the act. Thus it will come to be one great question, whether any man, calling himself a member of the company, can get himself out of the provisions of the deed. The act was obtained by men who were the agents of those who had become or should become members of the company; and the deed must be taken to have been presented to parliament by those agents, on behalf of all who were or should become members, as the document which shewed the constitution of the body. The Plaintiff contends, that a member may get himself out of the obligations of that deed; and that, if he does not think fit to comply with all its clauses, he may dissolve the company. That is one question; and it is a question which will depend very much on this—whether it is possible to apply the common principles of partnership to such a state of circumstances.

The bill proceeds on two grounds: one, that Mr. *Van Sandau* could by mere notice put an end to the company; the other, that if notice alone was not sufficient for that purpose, yet there has been such conduct on the part of the secretary and other members as to entitle the Plaintiff to call for a dissolution; and, in either case, he prays that an account may be taken of the partnership dealings and transactions. Now, though, according to the law of the country, a company or partnership formed by parties agreeing to become co-partners may be dissolved at any moment by one of the partners, and though his co-partners cannot answer his notice of dissolution by saying, "Here is your money, get out of the concern, and leave us to ourselves" (because he has a right to have all the accounts of the partnership dealings [464] and transactions taken, up to that very moment); yet one difficulty which has often occurred to me as of great weight in cases like the present, with reference to the dissolution of the company by notice, is this:—what avails it that you give notice to *A. B.* of putting an end to the company, if you do not give notice to the three hundred other individuals of whom it is composed? Has not every one of these individuals the same common law right to notice, before the partnership can be so dissolved? If, on the other hand, it is said, that it is not necessary to give notice to all the partners, it must be on the ground that the deed has made some provision declaring that notice not to be necessary, which, but for particular provisions, would be necessary; and that case must be proved from the deed itself. But this Plaintiff asserts that the deed is not binding; and the deed, far from giving any special right to dissolve the company, will, I apprehend, if looked into, be found to withhold any such right.

I have made these observations on the substance of the case. Now look to the form of the proceedings. The bill brings before the Court not only the directors but all the individual members, as far as they are known to the Plaintiff, amounting to between two and three hundred. Now, can the Plaintiff hope ever to bring to a conclusion a cause which is necessarily incumbered with so many defendants? The share-holders, I take it, either by original contract or by what is found in the deed, have or will have the right of selling their shares, subject or not subject, as the case may be, to interposition by the directors; so that the interests may be changed from day to day. With the certainty that individuals, who continue in existence, will thus cease to be members of the company, and that those, who do not by their own acts withdraw from the partnership, will from time to time be removed out of the world by death,—to [465] say nothing of the other contingencies of human life, which will affect the interests of individuals in the shares,—and with the necessity which will thus be created for a constant succession of bills of revivor and bills of supplement:—is it possible to hope, that a suit so framed can ever come to a beneficial end?

I have not forgotten, that, in the course of the argument, Mr. *Van Sandau* stated, that, when he got the answers of some of the defendants, he could amend the bill

by making it a bill on behalf of himself and all others of the partners, except such of them as he should retain as Defendants. But in my judgment that cannot be done.

Now if this suit should happen to appear to the Defendants to be as unmanageable for every useful purpose as to me it appears to be, it is not surprising that they should be out of humour at being visited with a suit, by which they and those who succeed them are to be kept in litigation in this court for an unexampled period of time: and perhaps it is not the necessary conclusion, from any intemperate words which they may use, that they mean to do gross injustice, when they seek to relieve themselves from what they conceive to be great oppression. When we are looking at the motives of the parties, there is a correspondence stated in the answers, which forms a material part of what is to be considered in reference to those expressions disclosed in the affidavit, which have been represented as manifesting a purpose of oppression, but which, in a milder way of stating the case, might be regarded rather as the effect of irritation.

The Plaintiff has undoubtedly a right to come into this court, and may be very properly advised to do so, though his suit may turn out to be such as cannot be maintained. For it would be a great deal too much for [466] counsel to take upon themselves to be judges, and telling the individual who applies to them, that he cannot have relief, to refuse him the option of carrying his case into a court of justice, or to withhold from him their assistance for that purpose. On the other hand, it is to be remembered, that every subject has a right to conduct his defence in such manner and by such agents, so far as the practice of the Court permits, as he may think proper. Whenever the cause comes to be heard, the Court will not discharge its duty, if it does not take care that full compensation, for all that may have been improper and oppressive in the conduct of the defence, be made to the party injured. But I dare not interpose in this stage of the proceedings to punish that on which the imputation of oppression is thrown, at the hazard of all the consequences that may follow in the future conduct of the suit. I dare not go the length of directing inquiries, which call on individuals to lay open the whole materials of their defence. The Court has never hitherto interfered in this stage of a cause by such an order as the *Vice-Chancellor* has made here; and I will not make a precedent, not justified by any example or principle which I know.

On these grounds, having before me fuller information in the cause than was presented to the Court below, I cannot permit this order to stand.

Order discharged.

August 16. After the judgment of the *Lord Chancellor* was pronounced, the Plaintiff dismissed his bill against such of the Defendants as had not appeared. He then gave [467] instructions to file replications to the answers of those fourteen Defendants, which had been the subject of the former motion; but he found that he could not file replications, until he took office copies of the answers. He therefore obtained an order to amend his bill, not requiring any further answer.

On the 22d of *June*, *Peter Moore*, one of the fourteen Defendants, obtained an order, that the order giving liberty to amend might be discharged, unless the amendments were made within ten days. The Plaintiff then moved, "that the order obtained by the Defendant, *Peter Moore*, on the 22d day of *June*, may be discharged, and that all proceedings in this cause may be stayed, and that the Plaintiff's bill may, under the circumstances of the case, be dismissed, as against the above-named Defendants, without costs; and, in the event of the Court being of opinion that the said fourteen Defendants are entitled to any costs on the dismissal of the bill, then that the bill may be dismissed, and that it may be referred to the Master to ascertain and certify, what will be a fit and proper sum to be allowed for those costs, on the dismissal of the bill."

When the motion was brought on, Mr. *Hart* having stated that there were many applications of a more urgent nature, which ought not to be postponed in order to give precedence to a case like this, Mr. *Heald* mentioned, as a reason why it could not be delayed, that the Defendants were in a condition to dismiss the Plaintiff's bill, by an order which might be obtained as of course upon petition at the Rolls.

Mr. *Hart* replied, that such an order could not be obtained by petition at the

Rolls, and that, the last Seal [468] being now over, the Plaintiff had nothing to apprehend till the end of the long vacation.

The *Lord Chancellor* directed an inquiry to be made at the Rolls, whether a bill could be dismissed by an order of course made there upon petition.

The answer to the inquiry was, that a bill could not be so dismissed.

The motion proceeded.

Mr. *Heald* and Mr. *Knight* for the motion. The Court exercises a discretionary jurisdiction in dismissing bills without costs, upon the application of the Plaintiff; *Knox* v. *Brown* (1 *Cox*, 359): and the circumstances of this case are so extraordinary, as to afford a reasonable ground for interference. It is evident that the Plaintiff cannot prosecute this suit, looking at the mode of defence which has been adopted, without incurring a ruinous expense. Would it be reasonable that he should be compelled to go on with it, or that he should get rid of it only on the terms of paying to the Defendants all those enormous and unnecessary costs, which they have wantonly or oppressively created? If the Court is not satisfied, from what it knows of the case already, that there is good reason for saying that the Plaintiff may dismiss his bill without paying any costs to the Defendants who have acted as these fourteen Defendants have, there is at least ground for directing a special inquiry. It is not possible to believe, that fourteen Defendants, sued merely as directors of a company, appearing by the same solicitor, and putting in fourteen [469] answers, copies nearly *verbatim* of each other, with enormous schedules annexed to each, which are all copies of one draft fourteen times repeated, should be entitled to the costs, which, under ordinary circumstances, are given to defendants.

The Court has refused to exercise any control over the unprecedented mode of defence which these Defendants have adopted; and its refusal proceeded on the ground, that such a control was not warranted by the known practice. But costs are entirely within the discretion of the judge; and he will make such order with respect to them, as will save the Plaintiff, though baffled by the conduct of the Defendants, from being burthened with the costs of that mode of proceeding which compels him to abandon his suit.

Mr. *Hart*, contra.

The *Lord Chancellor* [Eldon]. It wanted no authority to satisfy me that this Court has power, in proper cases, to dismiss a bill without costs, on the application of the Plaintiff. If an authority were wanted on the subject, there cannot be a clearer authority than the decision of Lord *Thurlow* in *Knox* v. *Brown*. There the Plaintiff became surety for the Defendant, for the due performance of the covenants of a lease, and he was to have the lease assigned to him for his indemnity. Being afterwards called upon to pay as surety, he filed his bill to have the benefit of the lease; but, to disappoint him, the Defendant surrendered the lease, and went to *Scotland*. The Defendant having thus deprived himself of the power of placing the Plaintiff in the situation in which he had agreed to place him, Lord *Thurlow* did not require the suit to go on, when [470] it could have no possible object; and as it was the act of the Defendant which had prevented the Plaintiff from having the remedy to which he would otherwise have been entitled, he permitted the Plaintiff to dismiss his bill without costs. Nobody can doubt that he was right in doing so.

Now the question is,—whether this is one of the cases, in which the Plaintiff ought to be permitted, upon his own motion, to dismiss his bill without costs? As to the suggestion of directing a reference to the Master, I do not see why the Court should be called upon to make any reference with a view to modify the costs; for the Master cannot know more of the matter than the Court already does.

I can well recollect the period when nobody thought of entering into a partnership with a number of persons acting as a corporate body, unless under the authority of a charter or an Act of Parliament; and it was always thought a very beneficial thing, that, when particular privileges and benefits were given to bodies of men, the rest of the King's subjects should know with whom they had to deal effectually, as often as it became necessary to enforce claims against such bodies, or to resist claims made by them. This Court has departed in a certain degree from the strict application of its principles in some of the cases in which it has permitted a few individuals to sue on behalf of themselves and others; a departure, however, which affords an extremely salutary rule of practice, when a suit can be so carried on with effect. But I may venture to say, that my predecessors were always of opinion,

that, if bodies of men, whether consisting, or not, of a great number of individuals, took upon themselves to act as a corporation, no such form of record would do for them. There are, it is true, in this metropolis, and throughout the country, a great many partnerships, consisting of a [471] vast number of persons : but they do not come into courts of justice ; they act by a mutual understanding and a kind of moral rule ; and I believe that, in that way, they manage their affairs very well.

When these joint stock companies were first thought of, it is wonderful how little attention was paid to their constitution. At first they were formed by a mere deed, though composed of a number of persons too great to be brought into any of his Majesty's courts. Afterwards they were in the habit of applying to the legislature for its sanction ; and Lord *Redesdale*, after some experience of their effects, took care to prevent any acts from being passed, giving a legal existence to such bodies, unless there were contained in them stipluations, that a memorial should be registered of the different individuals who were partners in the concern. This did some good, but not enough ; for though the memorial told who the persons were with whom one had to deal, it gave you such a legion of names that it was to no purpose to attempt to sue them all. Another mischief was, that the name, which was in the memorial to-day, ceased to be in it before six months had expired ; and those, who had claims on the body, had no means of enforcing their remedies as against a person so withdrawing from the association.

Then came the improvement of permitting the secretary or treasurer of these partnerships to sue and be sued on behalf of the body. Unfortunately, however, it turned out, that the secretary, who sued individuals, obtained payment from them ; while, on the other hand, individuals, who sued the secretary, got verdicts and judgments, and nothing more. This led to a further change, which made every individual liable to execution, in consequence of a judgment recovered against the se-[472]-cretary. There was still one thing which had been totally overlooked. Though the secretary could sue and be sued by an individual not a member of the company, there had not been devised any means by which an individual, a member of the body, suing as an individual member, the other members could proceed. It was only in the course of the last year that this defect was removed.

I must here repeat that I have frequently ventured an opinion, in which I may be wrong (but in expressing it I meant to do good), that the impossibility of suing with effect was with me a very strong argument to prove, that such a constitution of a body could not be legal.

In the present case, the company consisting of a great number of persons, the plaintiff, who had subscribed about £80 to the speculation, filed his bill against the directors and the other members. The solicitor of the directors, who, it is said, had previously used desperate threats, put in fourteen answers, different and yet the same, and with the same schedules annexed to each. A motion was then made before the *Vice-Chancellor*, which induced his Honour to direct a certain reference. When the matter came before me, I was of opinion, that, if the master, upon the inquiries directed, had made a report stating the result as the plaintiff would have wished him to state it ; and if I had been asked, what, under those circumstances, I was to do with the defendants ; I should not have been able to have said what I would have done. In fact my opinion was, that I should not have been able to have done any thing upon the report : for the Court had not power to compel the defendants to put in a joint answer ; much less, when fourteen answers had been put in, had it power [473] to take thirteen of them off the file, or to melt them down into one, and to order the thirteen defendants to concur in and to swear to that one answer. On the other hand, if the object of the reference were of a different nature, it was at least expedient, before such inquiries went to the master, that the Court should have settled in its own mind what it was to do, if the answer to the inquiries were such as he who applied for them expected. If it were meant to be aimed against the solicitor, Mr. *Wilks*, that could not be done when he was not brought personally before the court as solicitor ; and I felt the more embarrassed in consequence of receiving information which the *Vice-Chancellor* did not possess. I found that the fourteen answers were signed by the same counsel ; and three or four as respectable counsel as ever came into the court of chancery stood up in their places ; one stating that he had advised the filing of these fourteen answers, and the others that they had approved of it : how then could I visit the solicitor

for what had been done? If that sort of sanction will not do to let a solicitor go free out of this court, I know not what sanction will.

It was said that this mode of conducting the defence had been adopted out of passion and resentment, and that the Solicitor of the Defendant had threatened to have recourse to it, if Mr. *Van Sandau* persisted in filing a bill. There was, however, no small degree of provocation that led to the expressions, which have been so much relied upon as indicating an improper motive.

The point, then, that came to be considered was this: Could Mr. *Van Sandau* ever expect to prosecute the suit with success, regard being had to the object with which the bill was filed? That he had a right to ask the opinion of the Court upon the matter, I most readily [474] admit; but it did appear to me to be a suit which could have no end whatever; for the parties, who must be brought before the Court, were so numerous, as to render it next to an impossibility that it could ever be brought to a conclusion, or made any use of, except as a means of expenditure in the shape of costs on the one side or the other, until the parties were tired of it.

If I am right in this view of the suit, why am I to interfere to dismiss the bill, except on the ordinary terms? If the Plaintiff has a mind to dismiss his bill in the usual way, let him do so; if he does not, no order can be made upon this motion, except that he pay the costs of it.

Subsequently, the parties agreed to refer it to an arbitrator to settle the terms on which the Plaintiff should be permitted to dismiss his bill.

(1) In the 5th *G.* 4, *c.* 73 ("An act to relieve bankers in *Ireland* from divers restraints imposed by the provisions of the twenty-ninth of *George* the Second, and to render all and each of the members of certain copartnership of bankers which may be established liable to the engagements of such copartnerships, and to enable such copartnerships to sue and be sued in the name of their public officer"), the fifth section provided, "that all actions and suits to be commenced or instituted by or on behalf of any such society or copartnership, against any person or persons, bodies politic or corporate, or others, for recovering any debts or enforcing any claims or demands due to such society or copartnership, and all proceedings in law or equity relating to the same, or other the concerns of any such society or copartnership, shall and lawfully may, from and after the passing of this act, be commenced or instituted and prosecuted in the name of such public officer for the time being of such society or copartnership, as the nominal Plaintiff for and on behalf of such society or copartnership; and that all actions or suits and proceedings in law or in equity, to be commenced or instituted against such society or copartnership, shall and lawfully may be commenced, instituted and prosecuted against such public officer for the time being of such society or copartnership, as the nominal Defendant for and on the behalf of such society or copartnership."

By the sixth section, judgment against a public officer of the company was to operate against the property of the company, and of every member of it, in the same way as if recovered against the company itself.

By the 6th *G.* 4, *c.* 42, intituled, "An act for the better regulating of copartnerships of certain bankers in *Ireland*," the former act was repealed, and a new set of regulations were introduced. The tenth section provided, that all proceedings at law or in equity, on behalf of the company, against any person or persons, "whether members of such society or copartnership, or otherwise, for recovering any debts, or enforcing any claims or demands due to such society or copartnership, or for any other matter relating to the concerns of such society or copartnership," should be prosecuted in the name of the public officer of the company; 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 society or copartnership*, or otherwise, against such society or copartnership, shall and lawfully may be commenced, instituted and prosecuted against any one of the public officers nominated as aforesaid for the time being of such society or copartnership, as the nominal Defendant for and on behalf of such society or copartnership."

The judgment against the public officer was to operate against the property of the company and of the partners; and, in addition to this, the eighteenth section

provided, "that, in case any such execution against any member or members for the time being of such society 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 society or copartnership at the time when the contract or contracts, or engagement or engagements on which such judgment may have been obtained was or were entered into: 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 society or copartnership."

Similar clauses are contained in the 7th *G.* 4, *c.* 46, "An act for the better regulating copartnerships of certain bankers in *England*," *s.* 2, 9, 11, 12, 13: and in the 7th *G.* 4, *c.* 67, "An act to regulate the mode in which certain societies or copartnerships for banking in *Scotland* may sue and be sued," *s.* 2, 7, 10. But, by the latter act, the judgment against the public officer is not made to operate against former members.

[475] TOMLINS *v.* PALK. *April* 25, 1826.

Correction of a clerical error in a decree passed and entered.

The bill was filed by a second incumbrancer of certain real and personal property, which had been previously mortgaged to *Palk* to secure a principal sum of £8000 with interest. The first incumbrancer had been in possession, and had received the proceeds of the sale of some valuable pictures and other articles, which were included in the mortgage.

On the 6th of *July* 1824, a decree was made, which, after directing an account of what was due on *Palk's* security for principal and interest, and also an account of what he had received by means of the proceeds of the sale of the pictures, &c., ordered, "that what shall be coming due on the said account, be deducted from the principal due on the said morgage."

The decree had been passed and entered.

Mr. *Hart* now applied to the Court, that the entry of the decree in the registrar's book might be amended by inserting after the word "principal" the words "and interest."

These words, he said, had clearly been dropped out of the decree by a clerical error. It followed as a thing of course, from the preceding direction, that the sum received should be deducted from the sum due on the account first directed; that is to say, from an account composed partly of principal and partly of interest.

The application was not opposed.

[476] The *Lord Chancellor* [Eldon]. The omission of the words "and interest" is so clearly a clerical mistake, and it was so much of course, that the amount received by the mortgagee should be deducted, not merely from the principal of the mortgage debt, but from the principal and interest, that I have no hesitation in directing the entry of the decree to be amended.

The only doubt is, as to the mode in which that ought to be done.

Mr. *Hart* stated, that a similar case had occurred before Lord *Alvanley*. On that occasion, Lord *Alvanley* directed the Register to attend him in Court with the book. The alteration was then made in open court, and Lord *Alvanley* countersigned it with his initials.

The *Lord Chancellor* said, that he would follow the same course.

Ex parte CLAYTON, in the Matter of STARKIE. *April* 19, [1826].

The purchase-money of timber belonging to a lunatic's estate, permitted to be paid to the receiver, in order to be by him paid into court.

In this lunacy, an order had been made for the sale of some timber. The sale took place in the Master's office, and the purchasers, in pursuance of the conditions,

in fraud of the terms of his own express agreement with the original vendee, with whom he had become partner in profit and loss as to these goods, and with whom he had expressly contracted that he would himself pay for them. This case therefore, being a case of express fraud and mala fides, affords no principle to govern the present case, in which the absence of fraud and mala fides is found. The doubt which has been thrown on this subject has arisen principally from the words, "without notice," which are to be found in the case of *Salomons* v. *Nissen* and other cases on the subject. **[516]** But we think that, according to the general scope and meaning of the passages in the opinions of the Judges where this expression occurs, it is not to be understood in the restrained sense contended for; viz. "without notice that the goods had not been paid for;" but, "without notice of such circumstances as rendered the bill of lading not fairly and honestly assignable." The criterion being, according to Mr. Justice Buller in that case (p. 681), Does the purchaser take it fairly and honestly? And so understanding such expression, or at any rate so understanding the rule of law on the subject, we think that in this case no circumstance appears to have existed at the time of the assignment of this bill of lading which should have prevented the plaintiff from taking it, or which should now render it not available in his hands. We are of opinion therefore that the rule for a new trial in this case should be discharged.

THE KING *against* DODD. Monday, May 30th, 1808. Whether or not the particular schemes denounced by the stat. 6 Geo. 1, c. 18, s. 18, as manifestly tending to the common grievance, prejudice, and inconvenience, of great numbers of subjects in their trade and other affairs; such as the raising a great sum by subscription for trading purposes, and making the shares in the joint stock transferrable; be in themselves unlawful and prohibited, without reference to the fact of such tendency in the particular instance in the opinion of a Court and jury; at any rate the inviting of such subscriptions by holding out false and illegal conditions, such as that the subscribers would not be liable beyond the amount of their respective shares, seems to be an offence within the Act. But as the statute had not been acted upon for a great length of time, and was now sought to be enforced by a private relator, who seemed not to have been deluded by the project, but to have subscribed with a view to this application, the Court refused to interfere by granting an information, though they discharged the rule without costs.

The defendant, sometime in the year 1807, published and circulated two different schemes; one of them, intitled, "Prospectus for the London Paper Manufacturing Company;" the other, "A Prospectus of the intended London Distillery Company for Making and Rectifying genuine British Spirits, Cor-**[517]**-dials, and Compounds." By the first of these it was proposed, amongst other things, to raise by subscription 50,000l. by twenty five hundred transferrable shares of 50l. each, payable by instalments not exceeding 10l. 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:" and 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 100,000l. by two thousand transferrable shares at 50l. each, payable by instalments not exceeding 10l. 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 1l. 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 employments in the concern..

[518] The Attorney-General (on the part of a private relator), moved the Court

on a former day for a criminal information against the defendant as the framer and promoter of these schemes, which he contended to be against the express provisions and plain policy of the stat. 6 Geo. 1, c. 18, s. 18, and supported the application by an affidavit verifying the issuing of these printed proposals by the defendant, to whom application was made by the deponent for information respecting the nature of them, and from whom he received a prospectus as to the paper manufactory. That the deponent agreed to subscribe to it, and paid the defendant 5l. as for an instalment of 10l. per cent. on a transferrable share of 50l. And in answer to an inquiry by the deponent what return would be made if the scheme did not succeed, the defendant answered 2½l. per cent. on each share: and at the same time mentioned that the subscriptions to the distillery scheme which he had to offer to the public had been all full three months before, and that the shares bore a premium, but he thought he could get the deponent one for a premium of 10l. or 20l. Facts of a similar nature were also sworn to, with respect to the defendant's taking subscriptions for the distillery scheme in a book kept in an office for that purpose, and for which a clerk in the office delivered receipts purporting to be signed by the defendant as surveyor; and that at the same time the defendant came into the office and conversed with another person present on the nature of the undertaking, who also subscribed.

The stat. 6 Geo. 1, c. 18, s. 18 (*a*), on which this application was founded, reciting that "whereas it is no-[519]-torious that several undertakings or projects of different kinds have at times since June 1718 been publicly contrived and practised, or attempted to be practised, within London and other parts of the kingdom, as also in Ireland, and other dominions of the King, which manifestly tend to the common grievance, prejudice, and inconvenience of great numbers of subjects in their trade or commerce or 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 large proportions thereof, &c.; which dangerous and mischievous projects relate to several fisheries and other affairs wherein the trade, commerce, and welfare of the subjects, or great numbers of them, are interested. And whereas in many cases the said undertakers or subscribers have 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, &c. (Then after stating some instances of illegal acting under obsolete or pretended charters;) and many other unwarrantable practices, too many to enumerate, have been and may hereafter be contrived, set on foot, or proceeded upon, to the ruin of many subjects, &c. And [520] whereas it is absolutely necessary that all public undertakings and attempts, tending to the common grievance, prejudice, and inconvenience of the subjects in general, or great numbers of them, in their trade, commerce, or other lawful affairs, be effectually suppressed," &c. For remedy enacts, "That 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, the raising, or pretending to raise, transferrable stock, the transferring, or pretending to transfer or assign, any share in such stock, without legal authority, &c. shall be deemed illegal and void, &c."

S. 19 enacts that all such unlawful undertakings and attempts so tending to the common grievance, &c. shall be deemed public nusances, and subjects the offenders to the penalties of præmunire, in addition to the fines, penalties and punishments of persons convicted of common and public nusances. And subsequent clauses give other

(*a*) Mr. Justice Blackstone, in B. 4, c. 8, of his Commentaries, says that this statute was enacted in the year after the infamous South Sea project had beggared half the nation. It was observed, however, in the argument, from Anderson's History of Commerce, that the South Sea Bubble, as it was called, burst after the Act was passed, which was in 1718, two years after the failure of Law's project in France.

remedies in respect of these grievances. With a proviso (s. 25) that the Act shall not be construed to prohibit or restrain the carrying on of partnerships in trade in such manner as had been before usually and may legally be done.

[521] Garrow, Park, Jervis, Lawes, and Adolphus, shewed cause against the information, and denied that there was any apparent mischievous tendency or public grievance in these schemes, (the one of which was to supply better and cheaper paper, and the other to supply better and cheaper British spirits to the public than they had at present;) without which they were not within the letter, and still less within the spirit of the law. The relator does not pretend to say that the money was attempted to be raised, without any real intention to apply it to the purposes in view, in fraud of the subscribers; or that the schemes themselves are impracticable and fallacious; but the objects which are openly avowed are such as, if realized, must not only be advantageous to the subscribers, but to the public at large. They are fair objects of trade, meant to be obtained by fair competition with other traders; but as a larger capital was required than it is in general practicable for a few private partners to raise, it was proposed to accomplish it by inviting many subscribers to form a joint stock. Then if the object were legal, and it would have been legal for any number of persons to have met by appointment and entered into partnership for this purpose, as they may for any purpose of trade, (except in the coal trade, and in that of bankers, and of insurance, under different Acts), the mere circumstance of inviting others by advertisement to join them in such an undertaking cannot make it unlawful, nor the defendant's mistake of the law in supposing that each partner would only be accountable for the joint debts incurred to the amount of his subscription. Then the circumstance of this association, if legal in its object and beneficial in its nature and tendency, being to be accomplished by transferrable shares is not in itself made illegal **[522]** by the Act of Parliament, unless the Court see clearly that it has, in the words of the Act, a manifest tendency to the common grievance, prejudice and inconvenience of the public. It is only put by way of example amongst other means which may have that tendency: but still the Court must be satisfied that the scheme itself to be promoted by those means has such mischievous tendency. They also dwelt on the hardship of instituting a prosecution of this sort upon a statute, which, except in the instance of a prosecution against Caywood (*a*) within two years after it passed, does not appear by any case in print to have been acted upon: and he is there represented to have been a projector of an unlawful undertaking to carry on a trade to the North Seas, whereby many of His Majesty's subjects had been defrauded of great sums. And they urged that the Court would not put in force so penal a law at the instance of a private relator, who had himself voluntarily, without solicitation from the defendant, or any one connected with him, become a subscriber, with a view as it seemed, of preferring this complaint; when if the evil were of magnitude sufficient to call for public redress, the Attorney General might file an information ex officio against the offenders.

The Attorney General, Best Serjt. and Abbott, in support of the rule, premised that the only probable reason why this branch of the statute had not been acted upon for so long a time was because it had corrected the evil it was intended to suppress, till now of late when it had shewn itself again, and it was again necessary, in proportion as schemes of this sort multiplied (and the public had heard **[523]** of others on foot besides those in question), to put this wholesome law in force. They then argued from the wording of the statute that the Legislature meant to prohibit altogether projects of this nature, described by certain indicia as tending in their nature to the common grievance, prejudice and inconvenience of the subject. It states that it was notorious that projects of different kinds had been of late practised or attempted to be practised which manifestly tended to the common grievance, &c. that the persons who continued or attempted such dangerous and mischievous projects, under false pretences of public good (and such are blazoned forth in these schemes), presumed to open books for public subscription; that they drew in the subscribers or claimants under them to pay small proportions thereof; some of them, it is said, presumed to act as corporate bodies, and had pretended to make their shares in stocks transferrable, without any legal authority. All these acts, which are to be found in the present case, are declared to be dangerous and mischievous. But then the Legislature go on

(*a*) 1 Stra. 472, and 2 Ld. Ray. 1361.

further to recite more generally, that it is necessary that all public undertakings and attempts tending to the common grievance, &c. of the subjects in their trade or lawful affairs should be suppressed: and then it enacts for remedy that all undertakings and attempts as aforesaid;" (which must mean all those particularly described in the first part of the preamble,) "and all other public undertakings tending to the common grievance, &c. (which evidently points to the general words at the conclusion of the preamble,) "and all other matters and things whatsoever for furthering, countenancing, or proceeding in any such undertaking;" and more particularly (inter alia) the pretending to raise [524] transferrable stocks, or to assign shares in such stocks, &c. without authority of Parliament or of the Crown, are declared to be illegal and void. That the particular acts described are in themselves unlawful, as being assumed to have a mischievous and dangerous tendency, is further evident from the 21st section, which subjects to punishment any broker who shall act as such in contracting for the sale or purchase "of any share or interest in any of the undertakings by the Act declared to be unlawful." But unless the particular acts themselves described are to be taken as expressly prohibited without any reference to what a jury may consider as their tendency, how is a broker to know whether a jury will consider them as tending to the common grievance, so as to govern his conduct in exercising his business of a broker. But if the construction of the Act were otherwise, it cannot be doubted that these schemes come within the spirit of it. They hold out a false lure to the subscribers, that they shall not be answerable for more than the amount of their shares, which is calculated to ensnare the unwary; while extravagant hopes of gain are proclaimed to allure the greedy; and adventurous persons of small property are drawn in by the facility held out of paying their subscriptions by small instalments; which is one of the mischiefs intended to be prevented by the Act. There are also mischiefs of a more general nature affecting others than the subscribers themselves; for when a multitude of persons are engaged in a commercial adventure with transferrable shares, it is next to impossible for those who deal with them to know to whom they are giving credit, or for the members themselves to know the extent of their own responsibility. It is impracticable for 500 persons to sue or be sued with [525] effect. And the individual shareholder does not get rid of the evil by parting with his share; as he still remains liable not only for the partnership debts contracted during the time he held it, but also for those contracted afterwards with one who may have continued to deal with the company on his credit, not knowing that he had ceased to be a partner. One of the special objects of the Act therefore was to prevent numbers of persons clubbing together with transferrable shares for the purpose of carrying on trade. It was considered as a crafty expedient to enable the original projectors, after having possessed themselves of the joint stock and subscription funds, to withdraw themselves from responsibility: but if the shares are not transferrable, then the loss and ruin will fall as it ought upon the original projectors. One object of the Legislature was to secure simple individuals against the ruinous consequences of such projects, where great hopes are holden out to the public on false foundations; a large fund to be collected by numerous subscriptions of small sums, of which the chief projector is to retain a principal share in the management; and the shares to be transferrable in order to facilitate the escape of those who are in the secret, and to make redress more dificult and fruitless. Another object was to secure the public. Legal corporations are known, and can be made responsible by their property, and punished by the forfeiture of their charter; but bodies of this sort, indefinitely numerous and having only individual existence, can with difficulty be traced, and cannot afford the same protection to the public who deal with them.

Lord Ellenborough C.J., at the conclusion of the argument, observed that it was a question of considerable [526] novelty upon the construction of the Act, which, though of some standing, could not be considered as obsolete: yet the long period which had intervened since the passing of the law, and the little use which appeared to have been made of it, might perhaps afford some excuse for this party, and for others who of late may have been engaged in similar projects, if it should appear that they had fallen unawares into the commission of an offence. The Court would therefore take into consideration, first, whether the acts imputed to the defendant were illegal; and next, whether under the circumstances it might be proper to grant the information prayed for. The first question was of very extensive consequence, as it might affect other cases: and the Court would wish their decision to have as much

public benefit with as little private inconvenience as possible. Two days afterwards his Lordship delivered the opinion of the Court to this effect.

The case has been very fully argued, and the application for an information has at least had this good effect, that it has produced a full discussion of the question, and has given a general notoriety to the existence of the Statute of the 6th of Geo. 1, so that no person can hereafter pretend to say that it is an obsolete law, and on that account no longer to be enforced against such as offend against the provisions of it. After a lapse, however, of 87 years since any authenticated proceeding has been had upon this branch of the Act, and when other ways are still open to the party now applying to put this Act in force against offenders, the Court in the exercise of a sound discretion, under all the circumstances of the case, will forbear to interfere in this extraordinary manner. But at the same time we wish it to be understood that it **[527]** is not because we think that the facts brought before us are not within the penalty of the law: but we choose to express ourselves with the greater reserve, because the defendant may still be indicted, and the Court may still be called, upon the removal of the indictment by certiorari, or upon an information filed by the Attorney-General, to give their opinion on this very case. But 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. I forbear to comment on lesser circumstances; such as the smallness of the sum to be subscribed in the first instance, which seems to carry an appearance of holding out a lure to the unwary; and other features in the case. But considering that this is brought forward after a lapse of so many years since any similar prosecution was instituted, and brought forward by a party who does not profess to have been himself deluded by the project; and the statute having been passed principally for the protection of unwary persons from delusions of this kind; the Court think, in the exercise of their discretion, that they should not now enforce the statute **[528]** against this defendant at the relation of a person so circumstanced; leaving the relator to the common law remedy by indictment, or the defendant to be proceeded against by His Majesty's Attorney-General ex officio, if he should deem it adviseable for the protection of the public. But the Court think it is fit that this rule should be discharged without costs. And they recommend it as a matter of prudence to the parties concerned, that they should forbear to carry into execution this mischievous project, or any other speculative project of the like nature, founded on joint stock and transferrable shares: and we hope that this intimation will prevent others from engaging in the like mischievous and illegal projects.

Rule discharged, without costs.

LLOYD *against* MAURICE. Monday, May 30th, 1808. The English notice required by the stat. 5 G. 2, c. 27, s. 4, is to be on the copy of the process and not on the writ itself; and the service of such copy without the notice is irregular and will be set aside; though the Court discharged a rule for quashing the writ itself on this account.

The Attorney-General shewed cause against a rule for quashing a writ of latitat, because the copy of the process served on the defendant had not the English notice on it required by the stat. 5 Geo. 2, c. 27, s. 4: and admitted that the service of the copy was void for want of such notice on the copy of the writ served, as required by the Act; but contended that the writ of latitat itself, which, in fact, had such notice upon it, was good; and the Act only requires the English notice to be on the copy served.

W. E. Taunton said that the Act meant to identify the copy of the writ served with the writ itself in this re-**[529]**-spect. The only use of the English notice was on

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[507] Feb. 1st, 1825.

PARKINS AND ANOTHER *v.* MORAVIA.

See *ante*, p. 376. The questions raised in this cause were, by consent, turned into a special case.

Feb. 1st, 1825.

AUSTIN, ESQ. *v.* WARD.

See *ante*, p. 370. The rule *nisi* for a new trial in this case now came on to be argued. The only point made, was, whether the acts of bankruptcy were or were not concerted? The point ruled by the Lord Chief Justice at the trial, was acquiesced in by both sides.

The Court granted a new trial, on payment of costs.

Feb. 4th, 1825.

JOSEPHS *v.* PEBRER.

(A sale of shares in the Equitable Loan Bank Company is void. Every company assuming to act as a body corporate, without the authority of an Act of Parliament, or the King's charter; or having a great number of shares generally transferable, is an illegal company: and though persons may, before obtaining either the sanction of an Act of Parliament or the King's charter, legally associate themselves for the purpose of endeavouring to obtain such an Act of Parliament, yet, if they issue out a number of such shares, the sale of them is illegal: and if a defendant has directed the plaintiff to buy such shares for him, and he does so, the plaintiff cannot maintain any action to recover the money he has so expended, as he was dealing in shares in an illegal company.)

See *ante*, p. 341: The rule *nisi* in this case for a nonsuit, or a new trial, now came on to be argued.

Marryatt shewed cause. It was objected at the trial, that this was an illegal company within the statute 6 Geo. I. c. 18.

[508] Bayley, J.—Is this a company by Act of Parliament or by charter?

Marryatt. Neither, my Lord. But we are not seeking to set up a contract for shares in it, but merely to recover back money laid out by us in the purchase of shares by order of the defendant. The case of The Birmingham Mill Company shews, that if a company does not tend to the common grievance of the King's subjects, it is not an illegal company.

Bayley, J.—The Court thought, in that case, that the shares were not generally transferable, the holding of them being virtually restricted to persons living in the neighbourhood of Birmingham.

Marryatt. Lord Ellenborough, in the early part of his judgment in that case, says, that only companies which are dangerous and mischievous are meant; and it does not appear, in the present case, that this was a mischievous and illegal company. I submit, that the plaintiff would be entitled to recover, unless the plaintiff had laid out the money in the purchase of something made out to be clearly illegal, because the plaintiff seeks to recover money laid out by him at the defendant's own request; for the defendant directed the plaintiff to buy these shares, such as they were, and now the defendant will not repay him the money he paid for them. Now, even if these were shares in an illegal company, I should submit, that, as the defendant himself directed the purchase of them, he would still be liable to repay the plaintiff the amount he had expended for him. This was the point for a nonsuit. The first point, on which the new trial was applied for, was, that the bought-note sent by the plaintiff to the defendant ought to have been stamped. I contend, that it did not require any stamp; for this action was not brought on the contract; and, further, that this was not a minute [509] or memorandum of a contract within the meaning of the Stamp Act; but was merely an intimation by the agent to his principal of what he had done.

Bayley, J.—This note did not contain the contract between the parties, nor was it to be binding on either party, nor intended to be evidence of the contract.

Marryatt then contended, on the question that the shares had been delivered too late, that, as they were bought "for the coming out" of the loan, the coming out must be taken to consist of many days; as so large a number of shares could not all be issued in one day, the number of shares in this loan being forty thousand.

Abbott, C. J.—Must not all the shares come out on one day? If it were otherwise, one person might sell his shares before another had got his.

Andrews, on the same side. I submit, that the defendant, to succeed in this case, must have given distinct evidence that this company was illegal within the statute 6 Geo. I. Now, that he certainly has not done. This company is called "The Equitable Loan Bank Company," and, from its name, it is to be presumed to be what the law would encourage.

Abbott, C. J.—But the company professes to have a capital of two millions, when, in fact, there was no such capital, and when a one-pound deposit was all it possessed.

Gurney, in support of the rule. At the trial, we were not left in the dark as to what the company was; for it was stated by the plaintiff's Counsel to be the most benevolent company on earth, for the company were to lend money at the moderate rate of eight per cent., whereas the **[510]** pawnbrokers charged twenty. Now, as to the illegality of the company. They profess to have a capital of two millions, whereas they have only forty thousand pounds; and besides this, they have small shares to the number of forty thousand, all transferable to anyone who chooses to buy them. This is quite enough to shew, that this is one of those dreadful speculations which inflicted so great an injury in this country about a century ago, and which, if not checked, would do a similar injury now. If any company ever fell within the purview of the Act of Parliament this is it. Another very important circumstance is, that these shares were at the time non-existent, and therefore the money was laid out in the purchase of what was really nothing. [He was then stopped by the Court, as was Chitty, who was to have argued on the same side.]

Abbott, C. J.—I am clearly of opinion, that in this case a nonsuit must be entered. From the evidence it appears, that a number of persons associated themselves together to form a large company, called "The Equitable Loan Bank Company." On the evidence, the object of this company did not very distinctly appear; but it was admitted, on both sides, to be a company for the lending of money at a rate of interest higher than is allowed by law to be taken by any, except persons subject to the regulations respecting pawnbrokers. There is, in point of law, no objection to a company being formed prospectively, for the purpose of obtaining the authority of an Act of Parliament, or of the King's charter, provided, that before they act as a company, they obtain one of those two sanctions: but if, as in this case, they issue certificates for a great number of small transferable shares, and provide, that the members of the company shall submit themselves to the regulations or by-laws made, or to be made, by certain directors, before any authority has been obtained by Act of Parliament, or a charter from the Crown for that pur-**[511]**-pose, then I am of opinion that they are an illegal company within the meaning of the statute 6 Geo. I. c. 18: first, by pretending and assuming to act as a corporate body without legal authority; and, secondly, by issuing out a great number of small shares, generally transferable, to any person who chooses to buy them. I have, therefore, no doubt that this company is an illegal one; and that, being so, the dealing in these shares is unlawful, and that, therefore, all contracts respecting them are null and void. The traffic in shares of this kind must be highly injurious, as what is gained by one person must be lost by another; whereas, in commerce, every party may be a gainer.

Bayley, J.—It is clear, that this association was within the meaning of the statute 6 Geo. I. c. 18. The wording of that statute is certainly not clear; but after reciting (s. 18) that persons had contrived dangerous and mischievous undertakings or projects, under false pretences of public good, and had presumed to open books for public subscriptions, and drawn in many unwary persons to subscribe therein, towards raising great sums of money; and that the undertakers or subscribers had presumed to act as if they were corporate bodies, and pretended to make their shares in stocks transferable or assignable, without any legal authority, either by Act of Parliament or charter from the Crown; provides, that all such undertakings and attempts, and all other public undertakings or attempts, tending to the common grievance, prejudice, and inconvenience of his Majesty's subjects, or great numbers of them, shall be deemed illegal and void. Now, in this case, it appears, that the individuals forming this company acted as a public company, and that they had small transferable shares; and though Mr. Marryatt appears to consider, that it has

been decided that a company having transferable shares is not illegal, yet I take the distinction to be, whether the shares are generally transferable or not: for if the shares are generally trans-**[512]**-ferable, without restriction, to anyone who is able to purchase them, then the company becomes illegal. And in the case of *Rex* v. *Webb and Others*, 14 East, 406, Lord Ellenborough considers, that if the Birmingham Flour Company had presumed to act as a body corporate, or if their shares had been generally transferable without restriction, that would have been an illegal company. But, in that case, the transfer of shares was much limited. No one person could have more than twenty shares of one pound each; and they could not transfer their shares to any person without the consent of the committee. There is also the case of *Pratt* v. *Hutchinson*, 15 East, 511, which was the case of a subscription for the building of houses near Greenwich, by means of which each of the subscribers was successively to have a house built for him at the society's expense, in an order to be determined by lot; but in that case, the subscribers were, of necessity, restricted to persons who were either living, or about to live in that neighbourhood; and further, the shares could only be transferred to persons who consented to become parties to the original articles, and persons who were approved of at a meeting of the society. Now contrast these cases with the present.—In this case, for some purpose that does not distinctly appear, forty thousand shares are created, and all of them are to be generally transferable to every body. The Legislature, by an Act of Parliament, or the King, by his charter, might make this legal; but in this case, there has been neither Act of Parliament nor charter. I am therefore of opinion, that this is contrary to the Act of Parliament, and that the plaintiff, having lent himself to contravene the Act of Parliament, cannot recover in this case.

Holroyd, J.—I am of the same opinion. As these shares were to be generally transferable, I think the plaintiff cannot recover in this case.

[513] Littledale, J.—In my opinion, this case clearly falls within the statute 6 Geo. I. c. 18. To bring a case within the operation of that statute, it must appear that the pretended company tends to the common grievance of a great number of the King's subjects; and the question is—Does not this company tend to that effect? In my opinion it certainly does; for all undertakings, having small transferable shares, especially if they assume to be by a corporation, are declared by the Legislature to be to the common grievance, and to be illegal. In the present case, this company do pretend to be a body corporate; for, before they obtain the authority of an Act of Parliament, or the King's charter, the shareholders are to be governed by the regulations made by a committee; which is saying, in effect, that the forty thousand shareholders are to be a great corporation, this committee being the select body. In the next place, these shares are generally transferable, without any kind of limit or restriction; and, *prima facie*, this is an undertaking to the grievance of great numbers of the King's subjects. In all the cases, the transfer of shares had been limited in such a way as to make them not generally transferable: perhaps if it had been shewn that the objects of this society were perfectly legal and good, the society might not have been illegal; but so far from that, the object of it, as far as the Court are informed, is to lend money at a rate of interest greater than is allowed by law to be taken by any persons who do not subject themselves to the regulations respecting pawnbrokers: so that this is, in fact, a company to lend money at usurious interest: and without every one of the forty thousand shareholders was to become a pawnbroker, and conform himself to the regulations established concerning persons so trading, this company is most clearly an illegal one. But, even if that were not so, as it is not shewn that this company was established for a legal purpose, the plaintiff is certainly not entitled to recover in this action.

[514] Abbott, C. J.—Though that point has not been argued at the bar, I am of opinion (as at present advised), that at common law the sale of these shares would be illegal and void; as it is, in effect, a wagering whether an Act of Parliament will pass to legalise them or not.

Rule absolute for entering a nonsuit.*

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* The eighteenth section of the statute 6 Geo. I. c. 18, commonly called the Bubble Act, recites, that "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 publickly contrived

that in order to make a good tenant to the præcipe, there should be a legal estate for life, with a legal re-**[812]**-mainder in tail, or an equitable estate for life with an equitable remainder in tail. This is broadly laid down in *Shapland* v. *Smith*. But it has been contended, that although this recovery be void, the plaintiff has sustained no injury, because the estate tail upon which Malin's contingent remainder depended was destroyed, and therefore that the remainder was destroyed. The answer to that is, that the conveyance by the daughter to the tenant to the præcipe, could convey no more than she had; and, therefore, that it did not displace the remainder. Then it was said that the conveyance by Caldecott to her destroyed the contingent remainder. But the recovery could have no previous operation, therefore Caldecott's conveyance to her might make her tenant in tail in possession, but could not have the effect of destroying the remainder. *Doe* v. *Jones* (1 B. & C. 238), is an authority to shew that no act by a remainder man in tail can destroy the estate tail, it can only be done by tenant in tail in possession. The plaintiff, therefore, having sustained damage by reason of this defect of title, the remaining question is, whether the defendant was guilty of negligence? The Court is not bound in this case to say whether there was negligence, but only whether there was evidence to justify the jury in finding that the defendant was guilty of negligence; and we are of opinion that there was. In stating the case laid before Mr. Preston, the defendant assumed that Malin was tenant in fee, instead of setting out the deeds, which would have shewn that Caldecott had an estate for life. Now, although it may not be part of the duty of an attorney to know the legal operation of conveyances, yet it is his duty to take care not to draw wrong conclusions from the deeds laid be-**[813]**-fore him, but to state the deeds to the counsel whom he consults, or he must draw conclusions at his peril. It therefore appears to us, that, in omitting those deeds, and erroneously describing Malin as tenant in fee, there was negligence in the defendant. There is another circumstance from which negligence may be inferred. The defendant received the abstract in February 1818, and that contained no notice of the deeds whereby Caldecott conveyed to Mrs. Wagstaff; but they were supplied to him before any conveyance was made, and he never enquired of Mr. Preston whether those deeds made any difference in his opinion; and they undoubtedly would; for if Malin was seised in fee, how could Caldecott have any thing to convey? For these reasons we are of opinion, first, that the title is defective; and, secondly, that there was evidence before the jury sufficient to justify them in coming to the conclusion that the defendant was guilty of a species of negligence sufficient to make him liable in this action. The judgment of the Court must, therefore, be for the plaintiff.

Judgment for the plaintiff.

[814] NOCKELS *against* CROSBY, MITCHELL, AND ANOTHER. 1825. Where a scheme for establishing a tontine was put forth, stating that the money subscribed was to be laid out at interest, and 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, the directors resolved to abandon the project: Held, that each subscriber might, in an action for money had and received, recover the whole of the money advanced by him, without the deduction of any part towards the payment of the expences incurred. By the scheme it appeared, that the money subscribed was to be laid out at interest, and to enure to the benefit of the survivors; the subscribers were to be governed by regulations made by the directors, and at the end of a year, shares were to be issued and to be transferrable: Held, that this was not an undertaking within the operation of the Bubble Act.

[S. C. 5 D. & R. 751. Followed, *Walstab* v. *Spottiswood*, 1846, 15 Mee. & W. 515.]

Assumpsit for money had and received. Defendant pleaded the general issue, and paid 252l. 11s. into Court. At the trial before Abbott C.J. at the London sittings after Hilary term 1824, a verdict was found for the plaintiff for 47l. 15s., subject to the opinion of the Court upon the following case: The defendants were the directors of a scheme called the "British Metropolitan Tontine." A printed paper was circulated with their authority, stating (amongst other things) that to effect the objects of the scheme it was proposed to receive subscriptions of ten shillings a week from each

member for the period of one year, viz. from the 1st 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 opening their subscriptions, or at any subsequent convenient **[815]** 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 transferrable. The above was the paper referred to in the following agreement, which was signed by the plaintiff and several other persons: "We whose names are hereunder subscribed do hereby consent and agree to, and with the present and any future directors of the British Metropolitan Tontine as follows: First, we do each of us agree to become subscribers thereto, and to take such numbers of shares upon such life or lives as is or are set forth against our respective names; secondly, we do acknowledge the plan or prospectus hereto annexed to contain the nature and intent of the said Tontine, so far as the same is therein expressed, and do ratify the same in every respect, and agree to abide thereby; thirdly, we do agree to ratify and confirm all rules, laws, and regulations passed, or which shall at any time hereafter pass, for the further promotion, direction, management, and carrying into effect the said Tontine, and to sign any deed or deeds to that effect; fourthly, we do agree to pay our subscriptions for one year." An account was opened with Glyn and Co., bankers in London, entitled "British Metropolitan Tontine." The plaintiff paid two sums of money, amounting together, to 308l. 6s., to the aforesaid account at Messrs. Glyn and Co.'s. Various other subscribers to the Tontine paid sums of money to the said account, amounting in the whole, with the plaintiff's payments, to 737l. 10s. 6d. In the books of the Metropolitan Tontine the following resolutions are entered:

[816] "General resolutions of the 19th January 1821.

"First, that the books of the Tontine be opened to receive subscriptions, and that no less than 2l. per share shall be received in the first instance, being for the first monthly subscription.

"Secondly, that the affairs and entire management of the concerns of the Tontine be vested in eight directors, any three of whom to be a sufficient quorum for the purpose of transacting business.

"Thirdly, that James Pope be appointed secretary and solicitor to the directors of the Tontine, and that for such secretaryship he be paid such yearly salary as the present or any future directors may think fit.

"Fourthly, that all monies to be received under or in virtue of the Tontine be paid into the hands of the treasurer or treasurers thereof, and that no monies be drawn for or paid by the treasurer or treasurers unless by draft, to be signed by not less than three of the directors.

"Fifthly, that the directors do, as often as occasion may require, place out at interest, in the names of the trustees, in Government or other securities all sums of money remaining in the hands of the treasurer."

"30th August 1822.

"Resolved by a quorum of the directors present that, there not being a sufficient sum subscribed to warrant the further prosecution of the scheme, the subscribers have returned to them the amount of the subscriptions less the expences attending the same, and that such expences be ascertained at another meeting of the directors to be held at the secretary's house the 6th of September next."

[817] "Old Bethlem, 6th September 1822.

"Resolved by a quorum of the directors present that the expences attending the prosecuting the scheme of the Tontine do amount to the sum of 3l. 19s. 7d. per share, and that each subscriber do have the amount of his subscription returned, less the said 3l. 19s. 7d. per share."

On the 27th of May 1822, the plaintiff wrote to the directors, requesting to have

his money returned immediately, and said, he understood it was to be returned subject to some small charge, and he did not then make any objection to the charge.

On the 25th of July 1822, he again wrote and complained of the delay in returning his money; and that he had "been put off from time to time in consequence of charges attending the concern."

In September 1822 several checques signed by the defendants were drawn on Glyn and Co. for different sums, amounting in the whole to the said sum of 737l. 10s. 6d., which checques were paid by them from the money paid into the aforesaid account. One of such checques for 252l. 11s. was made payable to the plaintiff or bearer, and placed by the defendants in the hands of Mr. Pope, the secretary, with instructions to deliver it to the plaintiff; but the plaintiff refused to accept the same in satisfaction of his claim, and the said Mr. Pope, without the knowledge or authority of the said defendants, paid the said checque into his own private account at the Bank of England, through which the same was presented to and paid by Glyn and Co. Previous to the commencement of the present action the plaintiff had sued G. C. Glyn, one of the partners in the banking-house of Glyn and Co., for the money sought to be recovered in this action, **[818]** but had afterwards discontinued that suit. On the trial, Mr. Pope, the secretary of the Metropolitan Tontine, being called as a witness for the defendants, stated, that the expences of the institution amounted to 3l. 19s. 7d. a share making 47l. 15s. on the plaintiff's twelve shares; that the expences consisted in stationery, printing, advertisements, postages, and 75l. paid to the witness for his trouble; that he explained this to the plaintiff, and offered him the balance, 252l. 11s., which he refused; that none of the money was appropriated to their own use by any of the defendants. He further stated, that the money paid by the subscribers was not laid out at interest, but remained in the hands of the bankers with whom the account was opened, and that the defendant, George Mitchell, and the witness alone caused the prospectus to be put forth, and prosecuted the scheme themselves. That the defendant, Crosby, was not a subscriber, and that he attended one meeting only when the checques were signed.

Campbell, for the plaintiff. The plaintiff is entitled to recover back the whole sum advanced. The consideration upon which it was paid failed; the money was, therefore, in the hands of the defendants money had and received to the plaintiff's use. It will, perhaps, be urged as a defence, that the scheme was within the Bubble Act, 6 G. 1, c. 18: but first it was not so; and even if the Court should think it was, still the scheme was abandoned, and never carried in any degree into effect. The illegality of it, therefore, cannot alter the present plaintiff's rights. This was not within the Bubble Act, it was not to carry on any wild trading speculation, which manifestly tended to the prejudice of the **[819]** subscribers, but was a mere association to contribute money with a benefit of survivorship. But even if this were otherwise, the plaintiff would be entitled to recover. When a person sues to recover back money paid on a consideration that has failed, then it is money had and received to his use, and the nature of the consideration is out of the question: *Farmer* v. *Russell* (1 B. & P. 296). If money paid to a stakeholder on an illegal wager is paid over, it cannot be recovered back; but the rule is otherwise if the money has not been paid over, *Cotton* v. *Thurland* (5 T. R. 405), *Smith* v. *Bickmore* (4 Taunt. 474). Here, the defendants took no steps towards the performance of the contract upon which the money was paid in. It remained wholly unproductive from January 1821 till August 1822, when the scheme was abandoned; the plaintiff is therefore entitled to recover back the whole sum advanced. [Holroyd J. Suppose five persons enter into partnership, and contribute 1000l. each, they afterwards find the concern a losing one, and put an end to it, can any one maintain an action against the others for his share?] Perhaps not; but this is a different case; at most it was only a proposed partnership, and nothing was done towards carrying it into effect; and it is most fit that those persons who proposed the scheme should bear the expences. Besides, the directors had no power to make a resolution to deduct the expences out of the monies contributed; they had power to make resolutions for carrying on the concern, but not for the abandonment of it; the plaintiff, therefore, was not bound by the resolution in question.

[820] E. Lawes contrà. The defendants are clearly entitled to deduct the money in dispute from the amount paid in by the plaintiff. They did not warrant that the concern would answer, but only proposed that it should be tried, and the abandonment

of the scheme was with the plaintiff's assent. That appears from his letters, which were written before the resolution to put an end to the concern was made. They also shew that he agreed to pay his proportion of the expences, for he alludes to the proposed deduction of part of his money to pay those expences, and does not object to it. But it does not appear that the defendants ever received any of the plaintiff's money; they only gave an order to Pope, and he received, and now has the money. If that were not so, still this action could not be maintained. All the shareholders were jointly interested in the funds of the concern, and the defendants have never stated any account, or bound themselves to pay over any sum to the plaintiff. [Bayley J. Crosby was not interested in the money.] Then the action was improperly commenced against him. In the next place, this scheme falls within the 6 G. 1, c. 18, s. 18. That Act is not confined to trading speculations; and here books were opened for public subscriptions; small sums were collected, amounting in the whole to a large sum, the shareholders acted as a corporation, having agreed to be bound by the resolutions and bye-laws of the directors, and the shares were to be transferrable. It is therefore precisely similar to that which was determined to be illegal in *Josephs* v. *Pebrer* (ante, 639). [Bayley J. It might be intended to make the shares transferrable, **[821]** but in fact no shares were ever issued.] The intent to make them so was, together with the other circumstances, in itself illegal, and the whole transaction being illegal, no right of action can arise out of it. [Littledale J. It seems to be nothing more than an agreement by the subscribers to be joint tenants of the money subscribed.]

Bayley J. I am of opinion that the plaintiff is entitled to recover the whole sum which he advanced. There is no difficulty in some of the points urged, viz. that the money was not received by the defendants, or that it was drawn out and applied with the concurrence of the plaintiff. The money was originally paid by the plaintiff into the hands of certain persons, who, for the purposes of this concern, were the bankers of the defendants, and it was paid upon a prospect that it should be in the bankers' hands in furtherance of a continuing scheme. It was afterwards drawn out by the defendants, and it was their duty to see to the proper application of it. If they had paid the whole to the plaintiff, or according to his directions, of course he could not complain; but if they applied a part of it without his assent, and in a mode which the law did not warrant, the plaintiff clearly has a right to recover, unless it can be shewn that he was party to a scheme within the 6 G. 1, c. 18. The scheme was not within that statute, unless it was formed for the purpose of carrying on some mischievous project or undertaking, and unless we can predicate of it that it was 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. The cases of *Rex* v. **[822]** *Webb* (14 East, 406), and *Pratt* v. *Hutchinson* (15 East, 511), were decided on that principle. I think that we cannot assume, as a matter of law, that this scheme was within the description before given. It is true that a large sum, made up of many small payments, was to be collected; but that was not to be invested in any general speculation, but merely to enure to the benefit of the survivors. Primâ facie the principal effect of the scheme would be to encourage the saving of money. But this action might be maintained even if the scheme were within the Act, for it proved abortive, and no transferrable shares were ever created, and the period had not arrived at which it would have been within the operation of the statute. The defendants then having possession of the plaintiff's money, applied it without his express assent. Do they shew any matter of law sufficient to justify that application of it? The scheme was set on foot by Pope and the defendants, and the prospectus was circulated with their assent. On all projects some expence must be incurred before many members join the concern. Upon whom should that fall? Undoubtedly if the scheme proves abortive, it should fall upon the original projectors, and not upon those who advance their money on the faith of its going on. The plaintiff did nothing to render himself liable to the expences, and it was the duty of the defendants within a reasonable time to lay out in securities the money received. They never did so, but kept it for eighteen months in their bankers' hands, and appear to have acted throughout as if they thought the undertaking must fail. For these reasons, I think that the plaintiff is entitled to the whole of the money **[823]** which he advanced; and it is also observable that, by the third resolution of the directors, Pope was to have such annual salary as the defendants should fix; they never fixed any; it is

therefore questionable whether that would not of itself be sufficient to prevent them from deducting that part of the money sought to be retained which was paid to Mr. Pope.

Holroyd J. At the commencement of the argument I entertained great doubts upon this question, but am now satisfied that the plaintiff is entitled to recover. There is not sufficient in the case to warrant the payment of any part of the money detained to Pope; for even supposing the concern to have gone so far as to authorise the appointment of a salary to him, still in point of fact none was appointed. It appeared to me at first that this was very like the case of a partnership, which I put during the argument, but here the concern was never really set agoing; and I think that the expences incurred in setting a scheme on foot are not to be paid out of the concern unless they are adopted when it is actually in operation. In the present case a very small sum was collected, and that was not invested in Government or other securities, which, by the prospectus, were to be the only source of profit. No tontine could exist until the money was laid out. All the steps taken were therefore only preparatory to carrying the project into effect, and as it never was carried into effect, I think that the plaintiff is entitled to have back the whole of the money that he advanced.

Littledale J. I also am of opinion that the plaintiff is entitled to recover upon this general principle, that **[824]** if persons set a scheme afoot, and assume to be the directors or managers, all the expences incurred before the scheme is in actual operation must, in the first instance, be borne by them. When it is in operation, the expences and charge of management should be borne by the concern, and then it may be fair that the preliminary expences should be paid in the same way; for then the subscribers have the benefit of them. The prospectus put forth by these defendants stated that the money subscribed was to be placed out at interest. The plaintiff's sole object in paying the money must have been to have it so placed out, but during eighteen months it remained idle at the bankers. Suppose there had been no subscribers, then the projectors must have paid all the expences. If, then, one person only subscribes, are all those expences to be cast upon him? The hardship and injustice would be monstrous; yet that would be the consequence in such a case were we now to hold that the plaintiff was liable to a proportion of the expences incurred by these defendants. With respect to the supposed partnership, it is plain that there could be none until the money was laid out in execution of the proposed scheme. I am therefore clearly of opinion that the plaintiff was entitled to recover.

Postea to the plaintiff.

[825] THOMAS *against* THOMAS AND OTHERS. 1825. A., by will, charged all his real and personal estate with the payment of his debts, and then, after giving an annuity for life to his brother, payable out of his lands, devised to his wife all his real and personal estate for the term of her life, or as long as she should remain his widow, and immediately after her decease, or in case of her marriage, which ever should first happen, then he directed all his real and personal estate to be divided according to the Statute of Distributions in that case made and provided: Held, that by this will there was not any devise to any person of the real estates of the testator after the death or second marriage of the widow.

The following case was sent by the Vice Chancellor, for the opinion of this Court:

John Thomas made his will, duly executed and attested to pass freehold estates by devise, in the words following: "I, John Thomas, do make and declare this my will and testament in manner and form following. First, I charge all and singular my real and personal estate, with the payment of all my debts; then I give, devise, and bequeath unto my brother Richard Thomas, for and during the term of his natural life, an annuity or clear yearly rent or sum of 25l., free of all taxes and other deductions, Parliamentary or otherwise, to be issuing and payable out of certain lands therein mentioned and described, to be paid and payable by equal half-yearly payments, at the days therein mentioned. Also, I give, devise, and bequeath unto my beloved wife, Maria Letitia Thomas, all my real estates, (and which he enumerated by name,) for and during the term of her natural life, or as long as she shall remain my widow. Also, I give, devise, and bequeath unto my wife the use and benefit of all

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In re AGRICULTURIST CATTLE INSURANCE COMPANY.

BAIRD'S CASE.

L. J. J. 1870 *July* 7, 8, 26.

Company—Deceased Shareholder—Extent of Liability of his Executors.

In a joint stock company the presumption is, that the executors of a deceased shareholder succeed to the full liability, as well as to the rights of their testator. The deed of settlement is to be looked at, not to see whether it imposes such liability on the executors, but whether it takes it away or limits it.

The fact that by the deed of settlement executors are not entitled to the full privileges of shareholders until they or their nominees have been registered as shareholders, is no proof of an intention to limit their liability in their representative character.

Accordingly, in the case of a joint stock company formed in 1845, where, in the opinion of the Court, nothing appeared in the deed of settlement to limit the liability of the executors of a deceased shareholder, it was held, (reversing the decision of the Master of the Rolls) that their liability was not limited to debts incurred before the death of the testator.

THIS was an appeal from a decision of the Master of the Rolls, made in the winding up of the *Agriculturist Cattle Insurance Company.*

The company was formed in 1845, under a deed of settlement which was executed by the shareholders. By this deed, in the 1st clause, the parties thereto covenanted that the several persons parties thereto, all of whom were thereinafter distinguished by the title of shareholders, and the several persons who should become shareholders as thereinafter mentioned, should, while holding any share or shares in the capital of the company, and notwithstanding the death, bankruptcy, insolvency, or retirement of any or either of the shareholders, be and continue a company, by and under the title of the *Agriculturist Cattle Insurance Company*, for the term or period of fifty years, commencing from the day of the date thereof, unless the company should be sooner dissolved in pursuance of the provisions thereinafter contained, and for such further term or terms of years, if any, as might be thereafter resolved upon, under the provisions thereinafter contained, for the purposes and upon the terms and conditions thereinafter expressed and contained in the clauses following.

L. J. J. 1870

BAIRD'S CASE.

The 125th clause provided that, upon the neglect or refusal of any holder of shares to pay any instalment or subscription, or upon the neglect or refusal of any person, after his being approved of as a shareholder by the directors, to execute the deed of settlement, the directors might declare the shares to be forfeited, or might, if they should think fit, enforce the payment of any such instalment or subscription against such shareholder, or his executors, administrators, or assigns, instead of declaring such shares forfeited.

The 173rd clause provided that the husbands of female shareholders, and the executors or administrators of deceased shareholders, and the assignees of bankrupt or insolvent shareholders, should not, in such capacities, be holders of any shares, or be entitled to receive any dividends declared after such marriage, death, bankruptcy, or insolvency; but such dividends should remain in suspense until some purchaser should become a shareholder in respect of such shares; and then such husband, executors, administrators, or assigns should be entitled to receive the dividends or other profits which had been suspended.

By clause 175 the husbands of female shareholders, and the executors or administrators of deceased shareholders, had power to become shareholders themselves; or, by clause 176, they might procure some other persons to become shareholders in respect of any shares held by them, or might sell the same to the board of directors. The 179th clause provided that husbands of female shareholders, and representatives of deceased shareholders, must, previously to their becoming themselves, or procuring any other persons to be shareholders, deposit their certificates of marriage, and probates and letters of administration, at the office of the company.

The 185th clause provided that every person who should have been approved by the directors as a holder of shares should execute a deed of covenant to abide by the regulations of the company.

The 190th clause provided that, when and so often as any person, not a purchaser from the board of directors, should have become a holder of any share or shares in the company, and should have executed a deed of covenant to observe the covenants, agreements, and provisions contained in the deed of settlement, the last holder or owner of such share or shares, and all persons claiming through

or under him other than the new shareholder, should, from the time of such new shareholder becoming such, and on payment of such moneys, if any, as might be owing to the company in respect of such shares, be, as between the company and such last shareholder, for ever acquitted and discharged from all further claims, demands, and liabilities in respect of such shares; and the certificate of the directors, that he had ceased to be a shareholder, would be conclusive evidence of such acquittance and discharge.

The 203rd clause made the existing shareholders, and the executors and administrators of deceased shareholders, liable to contribute to the costs of actions and suits by and against the company in case the moneys of the company should be insufficient for that purpose.

Clause 208 contained a mutual covenant between the parties in proportion to their respective interests for the time being in the company, which interest was to be ascertained by the number of shares which they might respectively hold therein, as shewn by the books of the company, that each shareholder, his or her executors or administrators, should indemnify the other shareholders against all loss beyond their own shares and proportions, and should pay all calls and observe all the covenants contained in the deed.

In April, 1861, the company was ordered to be wound up.

Sir *David Baird* was the holder of ten shares in the company. He died in January, 1852, having appointed his widow, Lady *Baird*, his sole executrix.

In the year 1869 the name of Lady *Baird* was placed upon the list of contributories as executrix, and a summons was subsequently taken out by the official manager for a call of £190 per share upon Lady *Baird* as executrix.

The summons was adjourned into Court, and the Master of the Rolls decided that Lady *Baird's* liability must be confined to obligations incurred before the death of Sir *D. Baird*, and directed inquiries as to such liabilities (1).

(1) 1870. June 6.

LORD ROMILLY, M. R.:—

The first question is, what is the general law upon the subject; and in the absence of any special contract I think there is no doubt upon that point. In the case of an ordinary partnership, which this is, no partner is liable for debts incurred after he ceases to be a partner; about that there can be no question, and there are abundant

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BAIRD'S CASE.

From this decision the official manager appealed.

Mr. *Southgate*, Q.C., and Mr. *C. T. Simpson*, for the Appellant:—This is not the case of an ordinary partnership, in which the partnership is ended by the death of any of the partners. The

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authorities upon the subject. Accordingly, the executor of a deceased partner cannot complain of his testator's name being used by the partnership firm, because it entails no liability on him. Of course, for all debts incurred up to the time of his death he is liable.

In this company, as far as I can see, there has been no attempt, in cases of transfer or forfeiture, to make the person who has transferred or forfeited the shares liable for debts incurred subsequently to the transfer or subsequently to the forfeiture. The result is that, if the liability in the present case rests upon anything, it must rest upon the construction of the deed. Upon that point I have looked very carefully into the deed. [His Lordship then referred to several clauses of the deed, particularly the 1st, 125th, 173rd, 176th, 179th, and 185th, and continued:—]

In my opinion this deed lays down with great distinctness all the exact steps and preliminaries which must be adopted for the purpose of obtaining a transfer of the shares. It appears to me impossible to consider that the meaning of it was that a shareholder's estate should be liable for those shares, notwithstanding his death. Of course it is not pretended that a man may not enter into a covenant of that description so as to make himself a partner for fifty years certain, if he thinks fit, and the only question is whether he has done so.

In my opinion, he has entered into no such covenant in this case; and I have now to consider whether the cases cited establish the proposition that what has been done here amounts to a contract. I find, in the cases which have been cited a distinct contract to be liable. The first is *In re Northern Coal Mining Company. Blakeley's Case* (13 Beav. 133; 3 Mac. & G. 726). There the company was to continue for forty years, unless previously dissolved; and the 5th article was to this effect: That all the estate, property, and effects of the company should be deemed personal estate, and the shares therein of deceased proprietors should belong to their personal representatives, and there should not be any benefit of survivorship amongst the proprietors. There there is a distinct covenant and agreement that a man, by death, shall not lose the rights he would have got by remaining alive; if profits are made he is entitled to them. Then the amount of each share was to be paid by the proprietor for the time being, or his heirs, executors, and administrators; and the registered holder of the shares was to be deemed the absolute, sole, and beneficial owner, and the company was not bound to be affected by any trust unless it had been duly admitted as such. Then the 16th article was to this effect: That the executors, administrators, and legatees of deceased proprietors, and the husbands of female proprietors, should never be deemed or considered as proprietors in respect of shares in the said copartnership held by them in any of these capacities until they should be duly admitted as proprietors, in pursuance of the provisions of the deed; and before they were to be admitted they were to give notice of their desire to be

deed of settlement expressly stipulates that the partnership is to continue for fifty years, notwithstanding the death or bankruptcy of any of the partners. That being so, it is for the other side to shew, from the deed, that the liability does not continue after the

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admitted, and to produce a probate copy of the will under which they claimed, and were executors and legatees; and when admitted to be proprietors, they were to execute the deed of settlement, and then, but not before, they were to become proprietors. Then when that was done, and the transfer took place, the shares became vested in the new proprietor, and he executed the deed, and then, but not till then, all future liabilities of the previous proprietor were to cease. It is to be observed that this applies to executors, and therefore it is expressly stated that, until the transfer took place in respect of executors, the liability of the previous proprietor was not to cease. Lord *Langdale* held in that case that, upon the death of the proprietor, his estate continued liable until a new liability had been created, pursuant to the deed; and the clauses to which I have referred clearly laid down that principle.

This went by appeal before Lord *Truro*, who was a very careful Judge. Lord *Truro*, after referring to all the articles, and going through them very elaborately, says: "Although this principle, by reason of the great number of partners, and of the power of each partner to transfer, with the consent of the directors, his interest in the partnership, varies from the case of an ordinary partnership, still the partners and their representatives, as in all other partnerships, must be regulated and governed by the contract into which they have entered." Then he refers to all the clauses, which I do not think it necessary to go through, and decides it upon the principle of the contract which had been entered into. He refers to a passage in Lord *Langdale's* judgment, which he approves of entirely: "Although it is provided that no one has a right to receive profits until a transfer of the shares has been made, and a new personal liability has been thereby created, yet I consider it to be clear that if the profits do accrue during the interval between the testator's death and the creation of such liability, such accrued profits must on the transfer become payable by the company to the transferor or transferee, as may be agreed between them. The shares do not survive as in ordinary cases, and because they do not survive, but are expressly declared to belong to the personal estate of the deceased proprietor, they must, I think, belong to it, or form part of it, subject to the incidents affecting the possession of a portion of the capital or estates of the partnership under the management of the directors, as provided for by the deed, and if profits or losses arise, I think that a right to a share of the profits, and with that a liability to contribute a share of the losses, are necessarily incident to the shares themselves, or to the right to the shares." Then Lord *Truro* says: "There appears to have been no authority applicable to the present case, but upon principle I agree with the Master of the Rolls." In that case, therefore, it was expressly directed that the shares should continue part of the estate of the person deceased. After referring to that, Lord *Truro* affirms the decision of the Master of the Rolls.

The other case that was cited before me is the case of *Ex parte Gouthwaite*

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death of the shareholder. On the contrary, every part of the deed shows that the executors of deceased shareholders were intended to be liable in their representative capacity. They are entitled to have the shares registered in their names, or in the names of their nominees, and they are entitled to the accumulations of dividends as soon as this is done. If they have the benefit of the shares, they must also be subject to the liability. They are, moreover, expressly named in the covenant for mutual indemnity, and in the other clauses for contribution among the shareholders; and there is no mention of any limitation to such liability.

The case is concluded by *Blakeley's Case* (1), which is precisely in

(3 Mac. & G. 187). There was a covenant to exactly the same purport in this case as there was in *Blakeley's Case*. It was there held, in the winding up of the company, that in the absence of any proof that the executrix had done any acts constituting her a member of the company, the estate of the deceased partner was liable to contribute, and that the name of the executrix ought to be placed on the list of contributories in her representative character. It was upon that ground alone that she was held to be liable upon the construction of the deed. The Lord Chancellor did not go at length into the question further than to decide that she was to be put on the list of contributories in the character of a contributory as the executrix of the testator. Accordingly, when the Lord Chancellor held that the decision of Vice-Chancellor *Knight Bruce* was right, Mr. *Rolt* said: "Your Lordship does not intend to determine anything as to the period to which Mrs. *Gouthwaite's* liability continued, or whether it continued subsequent to the period of her husband's death?" The Lord Chancellor replied: "No; I only say that her name ought to be put on the list of contributories." If His Lordship had said the opposite, I do not think it would affect this case, because there was an express covenant that the estate was to remain liable until the contract was at an end, and I do not find that in this case. It is, I am satisfied, a mere question upon the construction of the articles themselves. I have read through the deed as carefully as I can. It is a very carefully prepared deed, and I cannot find any clauses which bear on the subject, except those I have mentioned. They all appear to me to go upon this principle, that the liability only lasts as long as a person is a shareholder, that he ceases to be a shareholder in case of forfeiture, in case of transfer, or in case of death, and that thereupon all his subsequent liability ceases, and he cannot be called upon in respect of future liability.

I am of opinion, therefore, that Lady *Baird's* contention is a right one in this case, and I think the proper order to make will not be to dismiss the summons, but to order it to stand over and direct an inquiry what liability or debts there were of this company which existed previously to the death of Sir *David Baird*. The parties will know what they have to meet, as some questions may arise possibly about marshalling.

(1) 13 Beav. 133; 3 Mac. & G. 726.

point; but there are many other cases which support the same view: *Ex parte Gouthwaite* (1); *Houldsworth* v. *Evans* (2); *Hamer's Devisees Case* (3); *Heward* v. *Wheatley* (4); *Keene's Executors' Case* (5); *Turquand* v. *Kirby* (6); *Wills* v. *Murray* (7); *Straffon's Executors' Case* (8).

Mr. *Jessel*, Q.C., and Mr. *B. B. Rogers* for Lady *Baird*:—

The present partnership does not differ from an ordinary partnership, except so far as it is modified by the express provisions of the deed. Therefore, unless there is an express covenant that the liability of estates of deceased shareholders shall extend to dealings after their death, the ordinary rule prevails. The mere fact of the partnership being for a term certain does not make the representatives of a deceased member partners: *Gillespie* v. *Hamilton* (9); *Pearce* v. *Chamberlain* (10); *Ex parte Williams* (11). In the present case the meaning of the 1st clause is that, on the death of a partner, the partnership between the other partners should continue. The value of the share of the deceased partner belongs to his executors, but the share itself lapses to the other shareholders, in the same way as in an ordinary partnership the executors of a deceased partner have a share in the assets, but not in the partnership; although the share could be taken up by the executors if they chose to become registered members. There is a distinction throughout the deed between "holders of shares" who are not necessarily members of the company, and "shareholders" who are. This case is distinguishable from *Blakeley's Case* (12) and *Ex parte Gouthwaite*; for in the deeds in those cases there was an express covenant that the liability should continue till a new shareholder was substituted.

This case also differs from those which arose in going concerns. Assuming that we should be liable to a call by the directors, which would be a specialty debt, it does not follow that we are liable to a balance order in a winding-up to pay the ordinary

(1) 3 Mac. & G. 187.
(2) Law Rep. 3 H. L. 263, 282.
(3) 2 D. M. & G. 366.
(4) 3 Ibid. 628.
(5) Ibid. 272, 278.
(6) Law Rep. 4 Eq. 123.
(7) 4 Ex. 843.
(8) 1 D. M. & G. 576.
(9) 3 Madd. 251.
(10) 2 Ves. Sen. 33.
(11) 11 Ves. 3.
(12) 3 Mac. & G. 726.

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simple contract debts of the partnership, contracted after the testator's death: *Robinson's Executor's Case* (1).

July 26. SIR W. M. JAMES, L.J.:—

In this case the Master of the Rolls, in placing the executrix of a deceased shareholder on the list of contributories, has placed her with a qualification limiting her liability to the death of her testator, and giving consequential directions for ascertaining such liability.

This is the first instance in which any such qualification has been annexed to the liability of a representative contributory, although there must have been very many cases of executors made contributories in such character; and it would be difficult to exaggerate the inconvenience, the complication, and the confusion which would arise in the liquidation of joint stock companies if separate accounts had to be taken at the time of the death, or of the bankruptcy, of each shareholder in respect of whose shares there are only representative contributories.

But, of course, if the law compels the Court to embarrass itself with such difficulties, it must encounter them as it best may.

Does the law so compel the Court? The conclusion to which the Master of the Rolls has come, and the argument addressed to me in support of that conclusion, are mainly based on the general law of partnership, that a man ceases to be a partner by his death, and that he is therefore a stranger to all subsequent proceedings, dealings, and transactions of the surviving partners after his death, and cannot therefore be under any liability in respect of them; that therefore, in construing the deed of partnership, this, the ordinary law, the natural and ordinary incident and consequence which flows out of the contract of partnership, must always be kept in mind; that the burden of proof is thrown on those who contend that such ordinary law is superseded by the express contract of the parties, and that such burden can only be discharged by shewing in the contract express words or plain implication.

(1) 6 D. M. & G. 572.

I am bound to state, at the very outset of the case, my entire dissent from this. I hold that no such principle is applicable to the case of a joint stock company.

Ordinary partnerships are essentially in kind, and not merely in the magnitude of the partnership or the number of the partners, different from joint stock companies.

Ordinary partnerships are by the law assumed and presumed to be based on the mutual trust and confidence of each partner in the skill, knowledge, and integrity of every other partner. As between the partners and the outside world (whatever may be their private arrangements between themselves), each partner is the unlimited agent of every other in every matter connected with the partnership business, or which he represents as partnership business, and not being in its nature beyond the scope of the partnership. A partner who may not have a farthing of capital left may take moneys or assets of this partnership to the value of millions, may bind the partnership by contracts to any amount, may give the partnership acceptances for any amount, and may even—as has been shewn in many painful instances in this Court—involve his innocent partners in unlimited amounts for frauds which he has craftily concealed from them.

That being the relation between partners, of course, when the Court had to consider whether a partner could substitute or let in some other person for or with him, or whether a partner's executor could claim to succeed to him, there could be no difficulty in saying that this could not be done without the consent of all the partners. The death of a partner, therefore, necessarily put an end to the partnership, so far as he was concerned; and as, in the absence of express stipulation, the right of the representative was to have all the assets realized and divided, it necessarily put an end to the whole subject matter of the partnership; as indeed, independently of that right, a contract between *A.*, *B.*, and *C.* to be partners, is essentially a different thing from a contract that they, or the survivors of them, should be partners.

Therefore, when the simple case was presented to the Court of an agreement between *A.*, *B.*, and *C.* to be partners for a long term of years, and nothing more, it was of course held that, in the absence of express stipulation, the mere length of the term afforded

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no sufficient presumption to prevent the application of the ordinary law, and therefore it was held that the death of one was the dissolution of the society as to all. But it was because these were the ordinary law and consequences of an ordinary partnership—it was to escape from these, that joint stock companies were invented. That was the very cause and reason of their existence.

At first they existed under the favour of the Crown, which gave them charters of incorporation, and nobody ever supposed that the holders of stock in the *Bank of England* or the *East India Company* had anything to do with the law of partnership, or were partners.

But there were large societies on which the sun of royal or legislative favour did not shine, and as to whom the whole desire of the associates, and the whole aim of the ablest legal assistants they could obtain, was to make them as nearly a corporation as possible, with continuous existence, with transmissible and transferable stock, but without any individual right in any associate to bind the other associates, or to deal with the assets of the association.

A joint stock company is not an agreement between a great many persons that they will be co-partners, but is an agreement between the owners of shares, or the owners of stock, that they or their duly recognized assigns, the owners of the shares for the time being, whoever they may be, shall be and continue an association together, sharing profits and bearing losses. No shareholder in a joint stock company is, in the legal sense of the word, any more a partner than the owner of bank stock is; he may not have the same limit of liability, but in every other respect he is the same; he has the same right to take part in public meetings of the body, he has the same right to elect or remove directors, he has the same right to vote for or against the resolutions of the body, he has the same right to such dividends as may be declared, and he has the same right to dispose of his share as a separate and distinct piece of property, and no other rights in or over the association, its assets, or its transactions; and if he is liable under any contracts or obligation, or in respect of any act of the body, it is not because they are the contracts, obligations, or acts of his partners or partner, but because they are the contracts, obligations, and acts of the *quasi* body corporate (under present legislation the

actual body corporate), by its properly constituted agents. It may be, and generally is, no doubt, that the agents, the directors, are shareholders, and in that sense partners, but it is certain that there may be a board of directors perfectly competent to bind the whole body, although every one of them may have disqualified himself by parting with every share.

Starting then, with this view of the relation which exists between the associates in a joint stock adventure, the presumption is that the death of a shareholder makes not the slightest difference, either in right or liability; that the executor of a deceased shareholder, who succeeds in point of property to the share, takes it (of course in his executorial character) on exactly the same terms and conditions as every other owner of a share—equal benefit, equal liability; and the deed has therefore to be scrutinized, not to see whether it gives or creates such equal benefit and liability, but whether it takes away the one or releases the other.

Now when we come to examine the deed, which is substantially like all other joint stock deeds, it seems to me clear that, so far from excluding, it does in every clause, from beginning to the end, attach the same liability to executors as to others:—[His Lordship then referred to the 1st, 190th, 203rd, and 208th clauses, and continued:—]

The only difference made with respect to executors is that, although they are talked of throughout as "holders of shares," they are talked of as only having a right to become "shareholders," and they are not actually to receive dividends, or to exercise any right in respect of their shares until they shall have either got themselves or procured other persons to become formally registered as shareholders, having duly bound themselves by covenant to the articles of association.

The object of these provisions is so plain, so reasonable, so natural, that it is impossible to draw from them any implication adverse to the conclusions to be drawn from the nature of the association or the rest of the deed. The dead shareholder remains—that is, his estate remains—a member, but the association would of course like something more than a dead man or an estate; they would like a living member, actually bound by personal covenant like all the others, and so they put this pressure on the executors: "You

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cannot actually draw out the property, you cannot vote, you cannot exercise any other right;" but they do not forfeit the shares, they do not absorb them, they do not even suspend the dividends; the share remains untouched, all dividends declared are declared upon the executor's share like all others; whenever he chooses to deal with the shares the dividends are there for him, and if the company were to be wound up and to wind up prosperously and not disastrously, those dividends would have to be paid to the executor before any distribution of capital, and in the final distribution of capital the executor's share would be credited with the same quota as every other holder's share. It appears to me, therefore, that on every principle of equity, as well as on the plain construction of the deed, it is impossible to draw any distinction between the dead shareholder's estate and the living shareholders', as to the extent and measure of liability.

I have so far expressed my opinion without reference to authorities, but it appears to me that the case is abundantly concluded by authorities. I am unable to draw any substantial distinction between this case and *Blakeley's Case* (1): the only verbal distinction is, that in specifying the circumstances under which a shareholder is to be discharged, the clauses in that company's deed contained those negative words "and not till then;" words which, in my judgment, add nothing to the real meaning of the provision.

It has, indeed, been pressed upon me that the authorities only conclude that which comes within the very terms of the covenant: that a man's executors are liable to that which he has covenanted for; but that the liability to a winding-up call is not a liability under the covenant, but a liability arising out of the partnership relation. That, in truth, is repeating in another form the main assumption which I have dealt with. The winding-up call is for the purpose of obtaining the proper contributions from all the owners of shares, whoever they are, to provide for the losses and expenses which have fallen upon the association at large; and there is no ground, in my judgment, for making a distinction between a representative owner and any other owner. This, too, is concluded by authority, and by the authority of the Master of the Rolls himself: *Turquand* v. *Kirby* (2). In that case the claim

(1) 3 Mac. & G. 726. (2) Law Rep. 4 Eq. 123.

was for the entire call, and there was no suggestion that the estate was to be released from everything since the death, which would probably have reduced the demand to something very small, if not to nothing.

I have taken some considerable time to consider this question. I have felt that I might be misled by knowing what I, as the draftsman in my early professional life of more than one of these deeds, knew to be the intention of the draftsman—at least my intention as draftsman; but, on the fullest consideration, I cannot bring myself in the result to entertain any doubt that that intention is sufficiently and clearly expressed, and that it is in accordance with the truth and honesty of the case. I am obliged therefore, to discharge the Master of the Rolls' order so far as it imposes any limit or condition on the liability of the executrix, and to declare that she ought to be put on the list *simpliciter* as a contributory, of course in her character of executrix, and so as to make her liable in respect of assets.

Solicitors for the Company: Messrs. *Horn & Murray.*
Solicitors for Lady *Baird:* Messrs. *Miller & Smith.*

In re ENGLISH AND SCOTTISH MARINE INSURANCE COMPANY. *Ex parte* MACLURE.

Winding-up—Insurance Company—Proof by Agent for prospective Commission.

A person entered into an agreement with an insurance company to act as their agent for five years, and to transact no business except for the company, in consideration of which he was to receive a fixed salary and also a commission of 10 per cent. on all business transacted. Before the five years were expired the company was wound up voluntarily:—

Held (affirming the decision of the Master of the Rolls), that the agent was not entitled to prove against the company for the loss of his commission during the remainder of the term of five years.

THIS was an appeal from an order of the Master of the Rolls made in the winding up of the *English and Scottish Marine Insurance Company, Limited.*

On the 16th of May, 1867, Mr. *J. W. Maclure* entered into a

No. XXI.

BANKERS' CONTRACTS CONFIRMATION.

An Act to make good certain Contracts which have been or may be entered into by certain Banking and other Copartnerships. [22*nd October*, 1839.]

Preamble.

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 have been and are members or shareholders of or otherwise interested in divers of such Associations and Copartnerships And whereas doubts have arisen as to whether the holding of such shares or interests by such spiritual persons was contrary to law And whereas it is expedient to quiet such doubts and to render legal and valid all Contracts entered into by such Associations or Copartnerships or which 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 declared and enacted by His Excellency the Governor of New South Wales with the advice of the Legislative Council thereof and by the authority of the same That no such Association or Copartnership already formed or which may be formed at any future time 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 hereafter 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 spiritual person or persons whatever 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 already formed or which may be formed at any future time nor any Contract either as between the members of such Associations or Copartnerships for the purposes thereof or as between such Associations or Copartnerships and other persons shall be illegal or void by reason only of any spiritual person being a member &c. of the same.

No. II.

BANKING AND OTHER COMPANIES.

An Act for further facilitating proceedings by and against all Banking and other Companies in the Colony entitled to sue and be sued in the name of their Chairman Secretary or other Officer. [*7th July*, 1842.]

Preamble.

WHEREAS by certain Acts of the Governor and Council of New South Wales divers Banking and other Companies in the said Colony are respectively enabled to sue and be sued in the name of their Chairman Secretary or some other officer for that purpose particularly named but in such Acts no provision is made to compel the said Companies to fill up within a reasonable time any vacancy which may be caused by the death resignation or removal of such officer as aforesaid and it is expedient that such vacancy should be filled up with as little delay as possible in order to facilitate all subsequent proceedings against any of the said Companies Be it therefore enacted by His Excellency the Governor of New South Wales with the advice of the Legislative Council thereof That from and after the passing of this Act all Banking Trading and other Companies in the said Colony which are now or hereafter may be by any Act of the said Governor and Council empowered to sue or be liable to be sued in the name of their Chairman Secretary Treasurer Managing Director or in the name of any other person or officer for that purpose particularly named shall upon the death resignation removal or retirement of any such Chairman Secretary Treasurer Managing Director or such other person or officer as aforesaid proceed with as little delay as possible to elect some other person in his stead and unless such election shall take place within one calendar month from the date of such death resignation or removal then all the privileges of the said Company whose officer as aforesaid shall so have died resigned retired or been removed as aforesaid conferred upon them by any Act of the said Governor and Council shall utterly cease and determine and thenceforth it shall and may be lawful for any person or persons to commence and sustain an action against any individual shareholder or against any number of shareholders in or belonging to any of the said Companies so losing its privileges as aforesaid.

Recites that no provision has been made for certain officers in the event of death resignation or removal.

In the event of death resignation or removal of Chairman Secretary or other officer for like purposes substitute to be appointed within one calendar month.

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No. LVI.

An Act to enable any Joint Stock Company to sue any of its own Members and to enable any Member of any such Joint Stock Company to sue any such Company and for other purposes. [17*th June*, 1848.]

COMPANIES AND THEIR MEMBERS MUTUAL RIGHT TO SUE.

Preamble.

WHEREAS Acts have been passed by the Governor and Legislative Council of the Colony of New South Wales to enable the proprietors of joint stock banking and other companies carrying on business in the said Colony to sue and be sued in the name of the President Chairman Manager Managing Director Inspector Local Director Treasurer Secretary Clerk or other officer in such Acts respectively named or appointed for that purpose And whereas it is expedient to extend the provisions of the said Acts Be it enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof That any person now being or having been or who may hereafter be a member shareholder or proprietor of shares in any joint stock company now established and carrying on business or which may hereafter be established and carry on business in the said Colony may at any time hereafter in respect of any claim or demand which such person may have either solely or jointly with any other person against such company or the funds or property thereof commence or 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 or in Insolvency against the officer appointed or to be appointed under the provisions of the Act which enables such company to sue and be sued in the name of an officer of the said company and that such officer may in his own name commence and prosecute any suit or other action proceeding at Law or in Equity or in Insolvency in the Supreme Court of New South Wales in any of its jurisdictions or in any other Court of the said Colony against any person being or having been a member of such company either alone or jointly with any other person against whom such company has or may have any demand whatsoever and that every person being or having been a member shareholder or proprietor of shares in such company shall either solely or jointly with any other person (as the case may require) be capable of proceeding against such company in the name of the appointed officer thereof and be liable to be proceeded against by or for the benefit of the said company by such officer as aforesaid by such proceedings and with the same legal consequences as if such person had not been a member shareholder or proprietor of

A member of any company having a claim against the same may sue the officer of the said company appointed to sue and be sued on its behalf

and such officer of any company may sue any member thereof against whom such company may have a claim.

the

the said company 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 any such action being or having been a member shareholder or proprietor of such company and that all such actions suits and proceedings shall be conducted and have effect as if the same had been between strangers.

Claims or demands against a company on account of shares shall not be set off against claims on account of other matters which such company may have against any of its members.

2. And be it enacted That no claim or demand which any member shareholder or proprietor of shares in such company 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 or in Insolvency against any demand which such company may have against such member shareholder or proprietor 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 interests profits or bonus payable or apportionable in respect thereof.

A member of any company or corporation stealing or embezzling any of its property may be prosecuted in the name of the officer appointed to sue and be sued on its behalf.

3. And be it enacted That if any person or persons being a member or members of any such company or of any corporation shall steal or embezzle any money goods effects bills notes securities or other property of or belonging to such company or corporation or shall commit any larceny embezzlement fraud forgery crime or offence against or with intent to injure or defraud such company or corporation such member or members shall be liable to indictment information prosecution or other necessary proceedings for any stealing embezzlement fraud forgery crime or offence and in all such indictments informations prosecutions or other proceedings it shall be lawful to state the money and goods effects bills notes securities or other property of such company or corporation to be the money goods effects bills notes securities or other property of the officer of such company appointed to sue and be sued on its behalf or in the name of such corporation as the case may be and any such person or persons may thereupon be lawfully convicted as if such person or persons had not been or was or were not a member or members shareholder or shareholders proprietor or proprietors of any such company or corporation any law usage or custom to the contrary notwithstanding.

Merits of any demand by or against any company determined in an action may be pleaded in bar of any other action for the same demand.

4. And be it enacted That in case the merits of any demand by or against any such company shall have been determined in any action or suit by or against the officer of the said company appointed as aforesaid the proceedings in such action or suit may be pleaded in bar of any other action or suit by or against the said officer for the same demand.

All provisions of Acts enabling companies to sue and be sued in the name of an officer thereof to be applicable to suits under this Act.

5. And be it enacted That all the provisions of any Act enabling any such company as aforesaid to sue and be sued in the name of an officer thereof relative to actions suits and proceedings commenced or prosecuted under the authority thereof shall be applicable to actions suits and proceedings to be commenced or prosecuted under the authority of this Act.

Chairmen and officers of companies and shareholders competent witnesses.

6. Provided always and be it enacted That in all actions suits petitions or other proceedings in the Supreme Court of New South Wales in any of its jurisdictions or in any other Court of the said Colony in which such officer shall be on behalf of any such company and under and by virtue of the said Acts and of this Act or either of them plaintiff or complainant petitioner or defendant it shall and may be lawful for any President Chairman Manager Managing Director Inspector Local Director Director Auditor Treasurer Secretary Clerk or any other officer engaged in the executive duties of such company

or

or for any member shareholder or proprietor of such company to give evidence in such action suit petition or other proceeding notwithstanding the name of any such officer shall be used as plaintiff complainant petitioner or defendant and notwithstanding that any such President Chairman Manager Managing Director Inspector Local Director Director Auditor Treasurer Secretary Clerk or other officer member proprietor or shareholder as aforesaid shall or may be interested in the result of such action suit petition or other proceeding as a shareholder or copartner of any such company.

Memorials to be recorded in the office of the Registrar General instead of in the office of the Registrar of the Supreme Court.

7. And be it enacted That every memorial of the name of the President Chairman Manager Managing Director Inspector Local Director Treasurer Secretary Clerk or other officer required by any of the Acts hereinbefore mentioned or referred to to be recorded or registered in the Supreme Court of New South Wales shall from and after the passing of this Act be recorded or registered in the office of the Registrar General of the Colony of New South Wales and that such memorial so registered in pursuance of the provisions of any of the said Acts or of this Act upon proof made that such memorial has been signed with the handwriting of the person or persons whose signatures appear thereto shall in all proceedings civil or criminal and in all cases whatever be received in evidence as proof of the appointment and authority of such President Chairman Manager Managing Director Inspector Local Director Treasurer Secretary Clerk or other officer in such memorial named and that in any action to be brought by any such President Chairman Manager Managing Director Inspector Local Director Treasurer Secretary Clerk or other officer by virtue of the Acts hereinbefore mentioned or referred to the plaintiff therein shall not be nonsuited nor shall a verdict be given against the plaintiff for want of proof of the record or registration of such memorial or memorials as hereinbefore is mentioned but in case the defendant in any such action shall make it appear on such trial that no such memorial or memorials hath or have been recorded then a nonsuit shall be entered in such action.

Effect of such registration.

8

[152] ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

THE BANK OF AUSTRALASIA,—*Appellants;* THOMAS CHAPLIN BREILLAT, Chairman of the Bank of Australia,—*Respondent* * [Dec. 10, 11, 13, and 14, 1847].

If an instrument contains distinct engagements, by which a party binds himself to do certain acts, some of which are legal, and some illegal at common law; the performance of those which are legal may be enforced, though those which are illegal cannot [6 Moo. P.C. 201].

By a Deed of Settlement, a Joint Stock Banking Company, called "The Bank of Australia," was established as a Bank of issue and deposit, at Sydney, in New South Wales. The deed contained clauses conferring powers upon the Directors, "For the better management of the concerns of the said Company, etc.," whereby it was declared that they shall have, and be expressly invested with, "full power and authority to superintend, order, conduct, regulate, and manage all and singular the affairs and business of the said Company, to the best of their discretion and judgment, under and subject to the provisions thereinafter contained." Such Board of Directors were further empowered to "devise and make such provisions, rules, orders and regulations, touching the government, carrying on, and management of the affairs of the said Company, the same not being repugnant to the general rules and regulations therein contained, as they should think expedient." In the year 1843, the Bank of Australia became involved in pecuniary difficulties, whereupon the Directors at Sydney applied to the Bank of Australasia for a loan, and borrowed from that Bank, at various times, the sum of £154,000, for which the Directors gave their promissory note. Upon the negotiation of this loan, the Directors of the Bank of Australia entered into an agreement with the Bank of Australasia, whereby they stipulated that the Bank of Australia should cease to be a Bank of issue, deposit and discount, and should become a Loan Company; and that no transfer of shares or stock should be made without the consent of the Bank of Australasia; they also agreed to wind up and get in their capital as a Loan Company. Payment of the note for £154,000 was refused by the shareholders of the Bank of Australia, on the ground that the stipulations contained in the agreement were *ultra vires* the Directors. On an action brought by the Bank of Australasia on the promissory note against the Chairman of the Bank of Australia, the Supreme Court at New South Wales, at a trial at bar, found for the Defendant. Upon appeal,—Held by the Judicial Committee (reversing the verdict and judgment of the Supreme Court),—

1st. That the Directors of the Bank of Australia had the powers of managing partners in an ordinary banking partnership, and that, amongst these, was the power of borrowing money for the purpose of discharging the existing liabilities of the Bank till the assets should be realised, and of discontinuing the Bank if they thought such conduct essential to the interests of the shareholders [6 Moo. P.C. 195].

2ndly. That the circumstances of the engagements of the Directors to repay the loan being accompanied by other stipulations, some of which were *ultra vires*, did not discharge the Bank from liability to repay the loan, as the only effect of those stipulations was, that they could not be enforced [6 Moo. P.C. 201].

Held also, that the proceeding before the Judicial Committee from the verdict of the Supreme Court was in the nature of an appeal and not a writ of error, and that this Court has power, under its common-law jurisdiction, to give subsequent interest upon the judgment debt [6 Moo. P.C. 206].

Although no power is given by the Charter of Justice, or the Act of Parliament

* Present: Lord Brougham, Lord Langdale, Lord Campbell, the Right Hon. Dr. Lushington, and the Right Hon. T. Pemberton Leigh.

creating the Supreme Court at New South Wales, to allow an appeal to the Queen in Council from that Court; yet, to prevent a failure of justice, this Court will, upon a special Petition for that purpose, grant leave to appeal from a judgment of that Court [6 Moo. P.C. 169].

This was an Appeal from a judgment of the Supreme Court at New South Wales, in an action of assumpsit on three promissory notes, and on the com-**[153]**-mon money counts, on a trial at bar in that Court, in which the Appellants were Plaintiffs, and the Respondent, the Chairman of the Bank of Australia, was sued as a nominal Defendant under the provisions of an Act of the Local Legislature (Col. Act, 4th Will. IV., 28th Aug., 1833).

The Appellants were partners, carrying on the business of bankers, at Sydney, in New South Wales, under the title of " The Bank of Australasia." The Respondent was the Chairman and partner of a joint stock company, who also carried on business as bankers at Sydney, by the name of " The Bank of Australia," under the provisions of a deed of settlement, dated the 1st of May, 1833.

This deed, after reciting a previous deed of settlement, of the 22nd of May, 1826, recited, among other things, that it had been deemed expedient for pro-**[154]**-moting the agriculture, trade and commerce of the colony of New South Wales, that a Bank should be established and founded in Sydney, as well for the purposes of discount and issuing of notes and bills, and lending monies on securities, and cash accounts for the safe custody of monies and securities for monies, for the general public accommodation and benefit, as also for transacting and negotiating all such other matters and things as are usually done and performed, relating to, or connected with, the ordinary business of banking; and that the several persons, parties thereto, had agreed to establish such Bank, and to raise up a joint stock or capital of £120,000, in shares of £100 each, and to carry on the same in copartnership together, under the name of " The Bank of Australia," for the term of seven years. The Deed of Settlement further recite that the parties to the Deed were the holders of the whole capital stock of the Bank, and that it had been agreed to carry on the business for the further term of 100 years, with a capital of £200,000. It was then witnessed that the parties to the Deed mutually covenanted and agreed with each other that they and the persons who should thereafter be or become parties thereto should and would be, remain and continue, copartners and joint stock proprietors of and in the said capital stock of £200,000, or so much thereof as should, from time to time, be paid in or actually form the capital of the said Company, in proportion to the number of shares set against their respective names and seals, for the purpose of carrying on the business of the said Company, under the title, denomination or firm of " The Bank of Australia," for the term of 100 years, determinable, nevertheless, as thereinafter-mentioned, and **[155]** subject to, and under the rules and regulations, and covenants, conditions, clauses and agreements thereinafter or thereafter to be agreed upon and established in the manner and form thereinafter provided in that behalf.

The Deed contained seventy-three distinct clauses; but it is only material to the present case to notice the following:—

Clause 2. That the business and concerns of the said Company should continue to be carried on and conducted at Sydney, where the same was then carried on, and such other places as the Proprietors should thereafter agree upon.—C. 3 and 4. That the capital should be £200,000, in shares of £100 each.—C. 10. That the capital might be increased beyond £200,000, if the major part of the Proprietors, for the time being, should think fit, and be raised by the issue of new or additional shares to the then Members, or in such other form and manner as the Proprietors at a General Meeting should deem expedient.—C. 17. That every shareholder should have a distinct interest in his share of the stock, so as to be assignable and transferable, under the restrictions and in manner therein mentioned.—C. 38. That for the better management of the concerns of the said Company, under and in conformity to the provisions thereinafter contained, or to be thereafter provided for, and for securing the observance thereof, the same should be confided to the care, superintendence, and management of eleven Directors, to be so qualified, elected and appointed, and with such authorities and powers as are thereinafter declared, which

said Members should be and act as Directors of the concerns of the said Company.—C. 48. That not less than four Directors should form a Board for the management and direction of the affairs **[156]** and business of the said Company.—C. 51. That such Board of Directors should have, and they were thereby expressly invested with, full power and authority to superintend, order, conduct, regulate, and manage, all and singular the affairs and business of the said Company, to the best of their discretion and judgment, under and subject to the provisions thereinafter contained.—C. 53. That such Board of Directors might make provisions, rules, orders, and regulations touching the government, carrying on, and management of the affairs of the Company, the same not being repugnant to the general rules and regulations therein contained, as they shall think expedient.—C. 54. That such Board of Directors should have the entire management and control of the lending of money on bills, notes, bonds, mortgages, and other securities, and of the purchase and sale of bullion, gold and silver, and such coins and monies as they might consider necessary for carrying on the business of the said Company, or as they should think advisable and advantageous for the general interests thereof, and should have the uncontrolled right of calling in, receiving, and enforcing payment of all monies due to the Company however secured.—C. 55. That such Board of Directors should, from time to time, settle and determine in whose name or names all securities that should be required to be entered into, by and on behalf of the said Company, or by or on behalf of any person or persons transacting or negociating any matter or business whatsoever therewith, should be taken and given, and by whom and in what manner and form, and for what amount, the several cash notes of the said Company should be drawn, signed, given and issued, and from time to time **[157]** alter and vary the same as they should think proper.—C. 56. That the Board of Directors might call Special General Meetings of the Proprietors to consider the propriety of making further calls.—C. 64. That a General Meeting of the Members of the Company should be convened, and held at the house where the business of the Bank should be carried on and managed for the purpose of transacting and considering the general business and concerns of the said Company, on a day to be appointed by the Board within three weeks after the first of January and first of July in each year.—C. 67. That the Directors might call Special General Meetings by a newspaper advertisement or by circular in case of emergency.—C. 68. That any eleven Members entitled to vote might at any time when they should see occasion or deem the same expedient, by writing addressed to the Directors, and stating the reason of such occasion or expediency, require a Special General Meeting to be convoked upon the concerns of the Company, and that the Directors should within ten days or as soon thereafter as circumstances would permit, convoke such meeting for considering the subject mentioned in such notice.—C. 69. That fourteen days notice of all General and Special General Meetings (except in emergencies) should be given in one or more newspapers.—C. 73. That the term of 100 years thereby agreed upon, might be determined by a General Meeting of the Members of the Company, not being less than eleven, at the expiration of the first ten years, and every succeeding ten years of the said term.

The business of the Bank was managed by Directors, chosen from time to time, in pursuance of the deed, and acting by Boards of not less than four.

[158] In the beginning of the year 1843, the Bank of Australia having become involved in difficulties, the Directors resolved on applying to the Appellants for assistance in the way of a loan, to enable them to meet the engagements of the Bank, and to give them time for the realization of their assets without sacrifice; and accordingly, on the 21st of February in that year, a deputation from the Board, consisting of the Chairman and two other Directors, accompanied by the Secretary and Cashier, waited upon the Superintendent and Sydney Manager of the Bank of Australasia, for the purpose of negociating such loan on behalf of the Bank of Australia, on which occasion they submitted a statement of their affairs to the Appellants.

After some negociation, it was ultimately agreed by the Appellants' Bank to lend to the Respondents' Bank, for the purpose of meeting its engagements, the sum of £150,000 upon the direct engagements of the borrowing Bank; and by the managing officers of the Union Bank of Australia, to lend for the same purpose the

sum of £60,000, upon the endorsement by the Bank of Australia of bills in their hands. A resolution agreeing to the loan by the Appellants was passed by the Respondents' Board of Directors; and on the 27th of February, the Bank of Australia, by their Secretary and Cashier, addressed to the Appellants' Superintendent the following letter:—

"Bank of Australia, Sydney.—Sir, In reference to the communications which have taken place between the Directors and Cashier of this Institution and the Bank of Australasia, relative to the intended alteration in the business of this Bank, and the assistance it will require, for the purpose of meeting its immediate liabilities, I am directed by the Board **[159]** to communicate to you their resolution of calling a meeting of the Proprietors for the 16th of March next, for the purpose of making the necessary arrangements for terminating the business of this Bank, and converting it into a Loan Company, with a view to the security of its outstanding debts, and to enable the Bank, in the meantime, to liquidate its engagements without inconvenience to the public. I am desired by the Directors to acknowledge and thank you for your tender of assistance, and to accept of the advance of the Bank of Australasia of the sum not exceeding £150,000, in such sums as may from time to time be required on the security of the acceptances of this Bank, at three months date, at an interest of ten per cent. per annum, and subject to the following conditions:—1st. That, on or before the 31st March, this Bank shall cease to be a Bank of issue, and in winding up its affairs all future payments shall be made through the Bank of Australasia. 2nd. That no bills shall be discounted by the Bank after that date, except such as may be required to renew bills now held by the Bank. 3rd. That no transfer of shares or stock shall be made without the consent of the Bank of Australasia. 4th. That the liabilities incurred by this Bank for Messrs. Hughes and Hosking, and for Mr. J. T. Hughes, be covered by the execution by them of such trusts to the Bank of Australia, as may be necessary to place the control of the affairs of the firm and of Mr. J. T. Hughes under this Bank, to meet their existing obligations, and to prevent them from contracting new ones without the consent of this Bank, and that the whole of their future business during the continuance of the trusts be transacted through the Bank of Australasia. 5th. That the Bank of Australia shall not incur new liabilities without the consent of the Bank of Austra-**[160]**-lasia. I have the honour to be, Sir, your most obedient servant, W. H. Mackenzie, Cashier. To the Superintendent of the Bank of Australasia, Sydney."

On the 2nd of March, 1843, the Appellants' Superintendent addressed to the Respondents' Cashier and Secretary, the following answer:—

"Bank of Australasia, Superintendent's Office, Sydney, 2nd March, 1843.—Sir, I beg to acknowledge the receipt this morning of your letter of the 27th ult., communicating the resolution of your Board to call a Meeting of Proprietors for the 16th instant, for the purpose of making arrangements to terminate the transaction of business by your establishment as a Bank, and to convert it into a Loan Company, and intimating the intention of your Directors to avail themselves of the assistance of the Bank of Australasia in liquidating their current engagements, to an extent not exceeding £150,000, in such sums as may, from time to time, be required, on the security of the acceptances of the Bank of Australia, at three months date, at an interest of ten per cent, per annum, and subject to the conditions therein detailed. And, in reply, I beg to state that this establishment is prepared to meet the requisitions of the Bank of Australia, to the extent and on the conditions which you have specified. I am, Sir, your most obedient servant, William Hamilton Hart, Superintendent. W. H. Mackenzie, Esq., Cashier of the Bank of Australia, Sydney."

In furtherance of the arrangements agreed to by these resolutions, notes were accepted and discounted by the Bank of Australasia, in favour of the Respondents' Bank, between the 29th of March, 1843, and the 30th of October in the same year, on which day, pursuant to a resolution, the then existing securities **[161]** were cancelled, and in lieu of them the following promissory note, signed by the Chairman, Mr. Norton, on behalf of the Bank of Australia, was delivered by their Cashier and Secretary to the Appellants' manager:—"Sydney, 30th October, 1843, £154,000 sterling. On demand, I promise to pay to the Bank of Australia, or order, the sum

of £154,000 sterling, with interest from this date, for value received, for and on behalf of the Bank of Australia. J. Norton, Chairman. Payable at the Bank of Australia."

The amount due for principal and interest on the existing notes, was calculated by the Cashier and Secretary, with the Manager, and found to be £154,480 19s. 11d.; and upon the delivery of the last mentioned promissory note, the balance of £480 19s. 11d. was settled between the two Banks in account, the Bank of Australia being credited with the full sum of £154,000, upon the new note.

In all the communications which took place between the Directors and officers of the Bank of Australia and the officers of the Bank of Australasia, up to the month of August, 1844, the latter was treated as an acknowledged creditor of the former to the amount of the notes and acceptances of the Cashier or Chairman, for the time being, in its favour.

At a Special general meeting of the Proprietors of the Bank of Australia, held on the 6th of August, 1844, it was resolved, by a majority of the Proprietors there present, as follows: "That the loan negociated between the Bank of Australasia, the former Directors of this Bank, and Messrs. Hughes and Hosking, is not binding on the proprietary of this Bank, and that the Board of Directors be hereby **[162]** instructed to defend any action that the Bank of Australasia may bring for the recovery of the same."

Upon the expiration of the twelve months from the 24th October, 1843, payment of the amount due for principal and interest on the promissory note for £154,000 was demanded at the Bank of Australia, on behalf of the Appellants, and refused.

About this time Mr. Norton resigned the office of Chairman of the Bank of Australia, and was succeeded by the Respondent, Thomas Chaplin Breillat, who was duly appointed and registered as such Chairman.

On the 26th of November, 1844, the Appellants commenced their action in the Supreme Court of New South Wales, against Thomas Chaplin Breillat, as the nominal Defendant, for and on behalf of the Company of the Bank of Australia, to recover the amount of the promissory note for £154,000 and interest, and also the amount of two other promissory notes for the respective sums of £3480 12s. and £2854 0s. 10d., which had been endorsed and delivered by the Respondent's cashier to the Appellants, and had been discounted by the Appellants for the Bank of Australia in the usual course of business.

The declaration contained seven counts: By the first and second counts, the Appellants claimed, upon the endorsements of the cashier of the promissory notes for £3480 12s., and £2854 0s. 10d., as upon the endorsements of the Bank of Australia; by the third count, the Appellants charged the Bank of Australia as makers of the promissory note for £154,000 and interest; and by the fourth, fifth, sixth, and seventh counts, the Appellants charged the Bank of Australia in the nominal amount of **[163]** £350,000, as for money lent, money paid, interest, and on an account stated, in the usual form.

The Defendant pleaded to the first two counts of the declaration, in the whole six pleas, denying the material allegations contained in those counts. To the third count, he pleaded, seventhly, that the Bank of Australia did not make the note mentioned in that count. And to the last four counts he pleaded, eighthly, that the Bank did not promise *modo et forma;* and ninthly and tenthly, pleas of payment and of set-off.

The Appellants joined issue upon the first eight pleas, and traversed the ninth and tenth pleas. The Defendant joined issue on the replication to the ninth and tenth pleas.

The cause was set down for trial, and came on to be heard before John Nodes Dickinson, Esquire, one of the Judges of the Supreme Court, and a special jury, on the 27th, 28th, 29th, 30th, and 31st days of March, and the 1st, 2nd, 3rd, 4th, 5th, and 8th days of April, 1845. The jury being unable to agree to a verdict unanimously, within six hours after the close of the Judge's charge, or by a majority of nine to three, within twelve hours after such charge, were at the end of twelve hours discharged by the learned Judge from giving any verdict, under the authority of an Act of the Colonial Legislature.

The cause was again set down for trial, and was ordered to be tried at the bar of the Supreme Court, on the 23rd of June, in the same year, and so from day to day until it should have been fully disposed of. It was accordingly heard on th- 23rd of June, and on various other days, ending on the 4th of August fol-**[164]** lowing, before the Chief Justice, Alfred Stephen, and their Honors, John Nodes Dickinson and William A'Beckett, Esquires, Puisne Judges of the Supreme Court.

The Plaintiffs at the trial abandoned the first and second counts, and the evidence on both sides was confined to the issues on the seventh and eighth pleas. The effect of the evidence on the trial, and the purport of the documents produced, so far as they affected the point under consideration in the present appeal, are particularly stated in the judgment of their Lordships.

The Defendants resisted the claim, on the ground that the sum demanded, was for money borrowed by the Directors, without authority, and he contended that the power of the Directors to bind the Company by borrowing money must depend entirely upon the Deed of Settlement, and could only be supported by an express authority to that effect, and that the Deed of Settlement of the Bank of Australia gave the Directors no power to contract for the Company, as they had done in this case, although he admitted that a borrowing by re-discount would have been legitimate. And he further contended that, even if such power existed, the contract was so vitiated by the conditions stated in the letter of the 27th February, 1843, as to disentitle the Plaintiffs to recover the money advanced. The Defendant also attempted to show by evidence that the loan had been contracted for the purpose of supporting the firm of Hughes and Hosking, and the individual members of that firm, by the unfair procurement, and for the real benefit of the Plaintiffs, and he contended that on this ground also the Plaintiffs could not recover.

[165] Upon the evidence given at the trial at bar, the two Puisne Judges were of opinion that the Defendant was entitled to a verdict. The Chief Justice was of a contrary opinion.

The Chief Justice, in his charge, informed the jury, in substance, that the Judges were all clearly satisfied by the evidence, that the loan made by the Plaintiffs was so made in order to enable the Bank of Australia to meet liabilities previously incurred, and with the contracting of which it did not appear that the Plaintiffs had anything to do; that the entire amount had been advanced for such purposes, that no part of it had been applied in payment of engagements of Hughes and Hosking, or J. T. Hughes, with the Plaintiffs, except such as the Bank of Australia were previously liable for; that the assets of the Bank, at the time of the loan, were supposed on all hands to be ample, and that there was no ground for imputing to the Plaintiffs or their officers an attempt to take an undue advantage of the necessities of the Bank of Australia. The Jury were then informed that it was open to them either to find a general verdict for either party, or completely to separate the facts from the law by returning a special verdict. He proceeded to state that, assuming the facts to be all found in favour of the Plaintiffs, the other Judges were of opinion, that they were not entitled to recover, by reason both that the Deed of Settlement conferred no authority, in their opinion, on the Directors to borrow money on behalf of the Company, even for the above purposes, in the manner in which the loan was effected in this case, and that, even if such authority existed, the conditions in the letter of the 27th February, 1843, so vitiated the contract, that the Plaintiffs could **[166]** not recover the money advanced under it; but that he was himself of a contrary opinion, both as to the existence of authority and the effect of the conditions. Upon the question of acquiescence by the proprietary, the learned Judge informed the jury that, in the opinion of the Court, the evidence to fix the proprietary with liability on the ground of having acquiesced in the loan was so loose, scanty, and uncertain, as to be almost intangible. The jury were then directed that the law of the case must be taken by them to be according to the opinion of the majority of the Judges, and they were accordingly advised to find for the Defendant, if they returned a general verdict.

At the close of his address, the Chief Justice told the jury that if they elected to return a special verdict, he would, with the assistance of the other Judges (and of the Counsel if they thought fit to assist), prepare the form and heads of such a verdict, and put such questions to the jury for them to find on the facts in dispute

as it would be necessary for them to notice in their verdict. The jury, after some time, intimated that they would comply with the suggestion of the Court, and find a special verdict, whereupon the Chief Justice prepared a sheet of paper with the formal commencement and conclusion of a special verdict, and with the body of it containing several blanks preceded by these words, "And we find that"—"And also that"—and he explained to the jury that the blank spaces were to be filled up with the leading facts of the case.

The jury retired, and shortly afterwards found the following verdict,—"We find a special verdict for the Plaintiffs, on the seventh and eighth issues, for the Note £154,000, interest 8 per cent. £21,703 18s. 7d., **[167]** subject to the opinion of the Court on the points of law. And a verdict for the Defendant on all the other issues."

Some discussion having taken place as to the effect of this verdict, in respect of the seventh and eighth issues, and it being admitted to be erroneous as to the ninth and tenth issues, it was then proposed by the Chief Justice, with a view of putting the whole case in train for an appeal to the Privy Council, that a form of verdict which would leave the questions at law directly open to the Court should be taken by consent, and that the Judgment of the Court should be given *instanter* and without argument; and his Honor proposed for adoption by the Counsel on both sides, the following form of consent, at the same time stating, in reference to the proposal for an immediate decision in the Colony without argument, that he thought few things more improbable than that any further discussion or consideration of the legal questions than had been already given to them, would alter the views taken either by his learned brethren or himself. The proposed consent was given on both sides. It was in these words,—"The jury find for the Plaintiffs on the seventh and eighth issues with £175,703 18s. 7d. damages, subject to the opinion of the Court, whether upon the facts proved, the Plaintiffs be entitled to recover. If the Court be of a contrary opinion, the verdict to be entered for the Defendant. The jury find for the Plaintiffs, on the ninth and tenth issues, with one shilling damages, and for the Defendant, on all the first six issues. This is assented to by the Counsel on both sides. The Judgment of the Court to be delivered immediately. The whole to be without prejudice to either party's right of appeal."

[168] The verdict of the jury was then returned accordingly, and a motion being made by the Defendants' Counsel for the entry of a verdict for them on the seventh and eighth issues, and opposed, *pro forma*, by the Counsel for the Plaintiffs, without argument on either side, the majority of the Court decided in favour of the motion, and a verdict was accordingly directed by the Court to be entered for the Defendant, on the seventh and eighth issues. On the 8th of September, 1845, final judgment was entered up by the Defendant on the several issues found for him, and for the Plaintiffs on the issues found for them, with one shilling damages.

The Plaintiffs, without applying to the Court below, presented a petition to Her Majesty in Council, praying for leave to appeal from the above-mentioned Judgment of the Supreme Court.

Sir T. Wilde, in support of the Petition.—This Court is the only jurisdiction which can entertain the present application. The Charter of Justice of New South Wales, of 1823, made in pursuance of the Act of Parliament, 4 Geo. IV., c. 96, gave a right of appeal to the King in Council, from the judgment or decree of the Court of Appeals in New South Wales. That Statute has expired, and the 9th of Geo. IV., c. 83, which was subsequently passed, contains no provisions for an appeal from the Supreme Court, to the Queen in Council. So that at present no right of appeal exists, *Flint* v. *Walker* (5 Moore's P.C. Cases, 179); and it can only be granted **[169]** by this Court under its general jurisdiction, or by the powers conferred by the Statute, 7th and 8th Vict., c. 69.—[Lord Brougham: The petitioners should have applied, in the first instance, to the Court below for leave to appeal, and if that was refused, to have applied here for indulgence.]—In *Flint* v. *Walker* [5 Moo. P.C. 179], application was made to the Supreme Court, but they held that they had no power to grant leave to appeal. It cannot be required to apply to the Court below *toties quoties*.

* Present: The Lord President (the Duke of Buccleuch), Lord Brougham, the Right Hon. Dr. Lushington, and the Right Hon. T. Pemberton Leigh.

The Solicitor-General (Sir F. Kelly) opposed the Petition.

Lord Brougham:—We think the prayer of this Petition ought to be granted, and the appeal admitted upon giving the usual securities. The admission of the appeal will, of course, stay the proceedings in the Court below.

By an Order in Council, leave was given for the Corporation of the Bank of Australasia to enter and prosecute their appeal from the Judgment of the Supreme Court of New South Wales, and that the petitioners or their agents ought to be permitted to take from the proper officers of the Supreme Court, copies properly authenticated, of the records and proceedings which they may be advised are necessary to be laid before Her Majesty in Council, in support of the appeal, upon payment of the usual fees for the same.

In pursuance of this Order, documents were transmitted, comprising the record, the Chief Justice's notes of the evidence taken on the trial at bar, and the reasons of the Chief and Puisne Judges, in compliance with the general rule of the Judicial Committee of the Privy Council of the 12th of February, 1845 (see Rule, 4 Moore's P.C. Cases, App. p. xxv.).

[170] Upon these documents, the appeal now came on for hearing.

Mr. Bethell, Q.C., and Mr. Serj. Channell, (Mr. Serj. Gazelee, and Mr. H. Hill, with them,) for the Appellants.

The question lies in a very narrow compass: the sole inquiry is, had the Directors of the Bank of Australia power, under the provisions of the Deed of Settlement of 1st of May, 1833, to borrow, so as to bind the shareholders of the Company? The authority of the Directors is two-fold; first, under the Deed of Settlement; secondly, as incident, by law, to the nature of their partnership. The first question turns upon the true construction of the various clauses in the Deed of Settlement, which either limit or define their power, or from which their authority is to be inferred: these are principally the 38th, 48th, and 51st; by the latter clause, the Directors are to order, conduct, regulate, and manage the affairs of the Company "to the best of their discretion and judgment," restrained only by such provisions as are thereinafter contained. Then come the 53rd, 54th, and 55th; the 54th provides, that the Directors shall have the entire management and control of the lending of money on bills, notes, etc., while the 55th, after stating that the Directors are to settle and determine in whose name all securities required by the Company shall be taken and given, goes on, "and by whom and in what manner, and from and for what amount, the several cash notes of the said Company—shall be drawn, signed, given and issued." Surely, these provisions are amply sufficient to warrant the act in question. But let us look a little further into the matter. This is a Banking Company; the object is stated at the very outset of the Deed of Settlement; it recites that **[171]** it is deemed expedient for promoting the agriculture, trade and commerce of the colony of New South Wales, that a Bank should be established, as well for the purpose of discount and issuing of notes and bills, etc., as also for transacting and negotiating all such other matters and things, as are usually done and performed relating to, or connected with, the ordinary business of banking. By the 54th clause the powers belonging to the partners are vested in the Directors. Now, being a banking establishment, what are the duties of such a partnership, except they be, the borrowing and lending of money? That is the very object of the partnership, and, therefore, whether the Deed of Settlement conferred the power of borrowing and lending money specifically and in terms (as we have shown it does here), or not, yet we contend, that such power exists from the nature of the partnership, and is essential to it. *Kirk* v. *Blurton* (9 Mee. and Wels. 288). *Bramah* v. *Roberts* (3 Bing. N.C. 963). Then as to the circumstances of this transaction; that the money was borrowed by the Directors of the Bank of Australia is not disputed: the Respondent, who represents the proprietary, resists the claim, on the ground that the money was borrowed without the privity or authority of the shareholders. He relies upon the Deed of Settlement, which, we have already shown, conferred sufficient authority, even if such authority was not incident to the partnership as a banking concern. But he further rested his defence in the Court below, and he relies here, on the conditions contained in the letter of the 27th of February, 1843, which, he says, vitiated the contract in this instance, even if the Directors had power to enter into any **[172]** such; but the

proposals in that letter were not terms or conditions of the loan, nor did they form any part of the contract; they were independent of the contract altogether, and would not, even had they formed part of it, have vitiated it altogether. The Appellants' right to recover the money lent by them, would not be affected by the Directors having, in part, exceeded their authority, if they were entitled to raise funds in the way resorted to. *Glascott* v. *Lang* (2 Phil. 310). *Dobson* v. *Lyall* (2 Phil. 323, note). But the acting of the Directors and their Cashier, and the appointment of new Directors by the proprietary, are all confirmations by the proprietary of the acts of the Directors, and would, without other circumstances, we submit, amount to a recognition and adoption of their acts.

Sir F. Kelly, Q.C., and Mr. M. D. Hill, Q.C., (Sir John Bayley and Mr. Bovill with them,) for Respondent.

The real question has not been presented to your Lordships; it is simply this, whether each shareholder of the Bank of Australia is bound by the contract entered into by the Directors. The Respondent represents, and is, in fact, the whole body of shareholders; many of them reside in this country, and other places very distant from Australia: they neither knew, or could know, any of the transactions in question; having embarked their capital upon the faith of the Deed of Settlement. The Appellants had full notice of the nature of the Company, and the contents of the Deed of Settlement, at the time the transaction in question took place. The rights and liabilities of the shareholders **[173]** must, therefore, be governed by the terms of this Settlement. Now, the Court will not fix absent parties with a contract entered into by other persons on their behalf, unless it be satisfied that the parties entering into such contract had full legal authority to do so.—[Lord Brougham: The question is, not only whether they have conferred the authority, but whether the law does not necessarily confer or imply authority from the nature of the transaction.]—It is a question of agency or authority. The powers conferred by the Deed of Settlement are to be exercised in strict conformity with the Deed. The Deed contains, in express terms, every power that is necessary to carry on the concern; and each of these powers are expressly declared to be subject to the provisions of the Deed. If money was required it should have been raised by calls. We submit, that neither under the express powers, or under any implied powers, had the Directors authority to bind the whole body of shareholders by such a contract as that in question, nor had they power to borrow money at all, except in the sense as provided for, namely, by receiving deposits or issuing notes. Bankers have no power to borrow, strictly speaking, for the purpose of increasing their capital, as distinguished from contracting debts. They cannot contract a loan under ordinary circumstances, even for the purpose of carrying on their business: but here the borrowing was, not for that purpose, but for the very reverse, namely, stopping the business. This was the first stipulation of the agreement.—[Lord Campbell: The nature of the business of Bankers is a part of the law merchant, and is to be judicially noticed by the Court. *Brandas* v. *Barnett* (12 Clk. and Fin. 787).]—It cannot be **[174]** contended that to borrow money for the purpose of stopping a Bank, is part of the business of a Bank. The next stipulation was, the taking the liabilities of Messrs. Hughes and Hosking. The Court below could not reject all these considerations, and treat the case as a simple borrowing.—[Lord Campbell: Suppose money, though borrowed for improper purposes, was applied with the consent of the lender to proper purposes, what would be the effect of that?]—The application would not affect the original terms of the contract. *Gallway* v. *Mathew* (10 East. 263). Here the Appellants had notice of the Deed of Settlement. The question then will narrow itself to this, whether the shareholders have given an express or implied authority. The case of *Kirk* v. *Blurton* (9 Mee. and Wels. 288) expressly decides, that there is no implied authority in a partnership to borrow money, except in the name and on behalf of the firm, for the purpose of carrying on business. *Hawtayne* v. *Bourne* (7 Mee. and Wels. 595) shows that even where there is urgency, as a distress being levied against the partnership property, the Directors could not act beyond the authority conferred on them. In *Brown* v. *Byers* (16 Mee. and Wels. 252) it was held, that the Managing Director of a mining association had not authority to draw or accept bills of exchange, even for the necessary purpose of the mine, without the express authority of the Directors. It was incumbent upon the Appellants to prove that the Directors had power to bind

the shareholders: *Dickenson* v. *Valpy* (10 Bar. and C. 128), between whom and the Appellants there was no privity of contract express or implied. *Emily* v. *Lye* (15 East. 6). If this loan [175] was for the purpose of increasing the capital of the partnership, then the Directors had no implied authority to bind the shareholders. *Fisher* v. *Taylor* (2 Hare, 218). The purposes of the loan were expressed in the articles of agreement, and, among others, it was to meet the liabilities of Messrs. Hughes and Hoskings. Even if the banking business was to cease, the Directors had no authority to borrow for the purpose of paying debts; they had no powers except to wind up the concern, and this loan was not necessary for winding up the business. It is well settled, that where parties subscribe capital for one particular purpose, whatever the degree of responsibility that is marked out in the Deed may be, that liability cannot be carried out one bit further; you cannot bind a subscriber, except for the purposes of the joint undertaking. *Colman* v. *The Eastern Counties Railway Company* (16 Law Journ. N.S.C. 73; S.C. 10 Bea. 1). We admit, that, in a Court of Equity, in taking the accounts, the Directors would be given credit for part of the sums paid in satisfaction of Messrs. Hughes and Hoskings' liabilities, namely, those parts which have been guaranteed by the Company; but here we are on an action upon a promissory note, and the terms of the loan were, that some of Messrs. Hughes and Hoskings' liabilities, which the Company had not guaranteed, were to be paid thereout; it was not binding on the proprietary. The remaining stipulation in the agreement, that shareholders should not be at liberty to transfer their shares, was an evident interference with the rights of the shareholders. Suppose that before the agreement a shareholder contracted to sell his shares, it is clear, that in consequence of this stipula-[176]-tion, the Directors would have refused to allow the transfer; and if this action is maintainable, the Appellants may recover the whole demand against that individual shareholder, who, according to the Deed of Settlement, had a right to have his shares transferred to the purchaser. It is utterly impossible to say what portion of the loan of £150,000 was to be considered as the consideration for the Bank of Australia ceasing to act as a Bank of issue and deposit, and taking the business of a Loan Company. In *Palmer* v. *Gooch* (2 Stark. 428), it was held, that only for so much money as was proved to have been advanced to a captain of a ship for the purposes of the ship, would a bottomry-bond bind the ship. So here, though the Shareholders of the Company might be liable to their own Directors, as a matter of account for so much of the loan as they have applied to partnership purposes, they are not liable on this promissory note. *Thacker* v. *Moates* (1 Moo. and Rob. 79). It is immaterial whether the contract is a void contract or not; the question is, whether it is a contract between the Appellants and the Company. It may be a valid contract between the Appellants and the four Directors who authorised it, and such of the shareholders as may ratify it, and at the same time invalid as against the other shareholders: *Ex parte, Emly* (1 Rose, 61). In *Card* v. *Hope* (2 Bar. and C. 661), the Court held, that although one covenant in a Deed was lawful, yet as the entire Deed was formed on an illegal stipulation, the whole was illegal and void. To the same effect as to the indivisibility of contracts are the cases of *Symonds* v. *Carr* (1 Campb. 361), *Hol*-[177]-*land* v. *Hall* (1 Barn. and Ald. 53), and *Wilkinson* v. *Loudonsack* (3 Mau. and Sel. 117). If the application of the money was a necessary ingredient in the cause, that fact ought to have been submitted to the Jury. There is no satisfactory evidence as to that fact.

Mr. Bethell, in reply.—The grounds of the Respondents' arguments in support of the judgment of the Court below, are reduced to these several heads. First, they say that there was no power in the Directors, either express or implied, to contract this loan. As to the implied power, they attempt to negative it by reason, because the Deed of Partnership enumerates and confers upon the Directors various powers of an inferior order; therefore, the inference is, that this greater power would have been given expressly, if it had been the meaning of the Company that the Directors should have such a power; because the borrowing of the money was in effect an increase of the capital, and that that ought to have been done in the mode pointed out in the Deed; because the Directors were agents, and that it was well settled in law, that whatever might have been the powers of the principals, yet the

committal of their concerns to an agent did not confer on such agent the power of borrowing money; and because of its consequences, the character of the Deed being, that the Shareholders should only be liable to the amount of their shares. The second main head of their argument is, that admitting the Directors' authority to borrow, yet the conditions upon which the loan was granted, vitiated the contract. And thirdly, they say that no contract resulted **[178]** from the mere application of the money to the purposes of the Bank, and that there was no ratification, because no person was capable of binding the parties. To the first ground, then, I submit that there is express power given as an appendant power. It is given by the Deed. What construction can be put upon the word "securities," in the 55th clause? The only explanation of the word is, that it means securities for money borrowed by the Company. The very purposes of the Bank required that such a power should exist somewhere. If a party be invested in an office, he becomes clothed with the powers which belong to that office. Every power, therefore, that was conferred on the partnership, from their mutual relationship as partners, was vested in the Directors; they were, in effect, the sole partners of the concern. The very existence of the Company depended on the possession by the Directors of various implied powers, besides those expressly given. It was absolutely necessary that the Directors should have power to borrow money in a partnership of this description, particularly as the shareholders were scattered all over the world. It is admitted that the money was advanced, but the Respondent contends that the conditions on which it was advanced being illegal, the transaction is void. I submit, that if those conditions were *ultra vires*, they are innocuous. Secondly, if the Respondent could make out that any part of the loan was advanced for the purpose of paying off the debts of Messrs. Hughes and Co., to which the Company was in nowise liable. it would taint the contract to that extent, but not vitiate the entire contract. It has been held, that if part of a condition be illegal, the contract is so far bad *ab initio*, but the **[179]** other parts are good. Pigott's case (6 Co. Rep. 26), *Mosdel* v. *Middleton* (1 Ventr. 237), *Norton* v. *Simmes* (Hob. 12). Lastly, I submit that if a contract is made by one partner, and the terms on which it is made are contrary to his engagement with the other partner, yet if he adopt it he is bound by such contract. *Sandilands* v. *Marsh* (2 Barn. and Ald. 673).

The Right Hon. T. Pemberton Leigh (Feb. 15, 1848).—This case comes before us on appeal from a judgment of the Supreme Court of New South Wales, in an action brought by the Appellants against the Respondent. The Appellants are a corporation carrying on the business of bankers, at Sydney, under the title of "The Bank of Australasia." The Respondent is Chairman of a joint-stock company, carrying on the same business, at the same place, under the title of "The Bank of Australia."

The Company (a term which we use as designating the Respondent's Bank) was established, and the management of its concerns regulated by a Deed, which we shall have occasion particularly to examine. For the present, it is sufficient to state, that the general management was vested in a number of shareholders termed "Directors."

In the beginning of the year 1843, the Company was in great difficulties,—a large portion of its liabilities had arisen from transactions with the firm of Messrs. Hughes and Hosking. In February, 1843, the Directors thought it necessary to borrow a large sum of money, and they applied to the other Banks at Sydney, among the rest to the Appellants, for assistance. Upon this occasion, they prepared a statement of their **[180]** affairs, dated the 21st February, and submitted it to the Appellants. The effect of this statement is, that the Company would require, to meet their circulation and deposits, £113,648; for their acceptances on the account of Hughes and Hosking, and J. T. Hughes, £80,185; for Hughes and Hosking's own acceptances, for the due payment of a large portion of which the Company had granted letters of guarantee, viz., £72,387, making a total of £266,220. In reduction of this sum, it was estimated there would be recovered from bills in the Bank £75,000 in six months, and on Hughes and Hosking's estate £70,000 in twelve months—in all £145,000. Besides providing for these liabilities, the Directors were desirous of continuing to pay a dividend of £8 per cent. on their capital to the shareholders of

the Company. Upon this statement it appears to have been considered that an advance of £200,000 or £250,000 would be necessary, and as this was a larger sum than the Appellants were willing to supply, it was agreed that the superintendent of the Appellants' Bank should apply to the Union Bank to join them in the transaction.

With a view to this application, a memorandum of the terms on which the proposed loan was to be made was drawn out by the superintendent of the Appellants' Bank, and read over to the Directors of the Company. This memorandum is dated the 1st of March, and is in these terms:—" Memorandum. 1. Bank of Australia, to carry on their own concerns and those of Hughes and Hosking, J. T. Hughes and J. Hosking, which they will now incorporate with their own, will require assistance to the extent of, say £250,000, of which £120,000 will be called for immediately, and the remainder will be spread over the five or six ensuing **[181]** months. 2. These sums they propose to borrow on the security of their own acceptances, at the rate of £10 per cent. per annum, and consent to the following conditions:—' 1. To cease to be a Bank of issue, deposit, and discount, (except for the reduction of bills now held by themselves,) and their future payments to be made on cheques on, or the notes of, the Banks which may enter into the proposed arrangement with them. 2. To furnish a copy of their share list, and to permit no transfers without the consent of the said Banks. 3. Hughes and Hosking, and the individual partners, to execute a deed of trust to the Bank of Australia, assigning all their property, and restricting themselves from incurring further liabilities of any description. 4. Bank of Australia to incur no further liabilities without consent of said Banks, but to wind up and get in their capital as a loan company.' 3. The assets of the Bank of Australia consist of—coin, £4860; bills receivable, £346,082; and from these bills and the estate of Hughes and Hosking, they anticipate that they will recover before the end of the year £140,000. 4. All sums which may be recovered from these and other sources, the Bank of Australia engages to pay over to the Banks affording assistance, in reduction of their debt, less a sufficient amount to pay dividends not exceeding £8 per cent. per annum on their paid-up capital of £220,000, for which they will pass their cheques on the said Banks." We take these facts from a letter of the Appellants, put in evidence by the Respondent, and to which they referred us as evidencing the real nature of the transaction.

Now, it was contended by the Appellants, that this memorandum could not be looked at, inasmuch as it was a mere treaty which resulted in a certain agreement. We quite agree it cannot be looked at for the **[182]** purpose of construing the agreement; but it may be looked at as part of the *res gestæ*, for the purpose of judging the circumstances under which, and the objects for which, the loan was required, and of seeing whether there is any ground to believe that the real agreement of the parties was purposely concealed or misrepresented in the written contract. We feel bound, however, to say, that neither in the documents so referred to, nor in any other part of the evidence, do we discover any trace of misrepresentation or concealment of facts, or any ground for suspicion, that either the Appellants or the Directors of the Company acted otherwise than with perfect good faith towards the shareholders. The Directors may have exceeded their authority; they may have entered into stipulations contrary to the deed under which they acted, but we see no reason to doubt that they did what they considered best for the Company.

The agreement that was finally made between the Appellants and Respondent's Bank is contained in two letters, dated the 27th February, 1843, and the 2nd March, 1843. The first of these letters is addressed by Mr. M'Kenzie, the Cashier of the Bank of the Company, to Mr. Hart, the Superintendent of the Appellants' Bank, and is as follows:—" Sir, In reference to the communications which have taken place between the Directors and Cashier of this institution and the Bank of Australasia, relative to the intended alteration in the business of this Bank, and the assistance it will require for the purpose of meeting its immediate liabilities, I am directed by the Board to communicate to you their resolution of calling a meeting of the Proprietors for the 16th of March next, for the purpose of making the necessary arrangements for terminating the business of this Bank, and converting it into a loan company, **[183]** with a view to the security of its outstanding debts, and to enable the Bank in the meantime to liquidate its engagements without inconvenience to the public. I

am desired by the Directors to acknowledge and thank you for your tender of assistance, and to accept of the advance of the Bank of Australasia of a sum not exceeding £150,000, in such sums as may from time to time be required, on the security of the acceptances of this Bank, at three months' date, at an interest of £10 per cent. per annum, and subject to the following conditions:—First, that, on or before the 31st of March next, this Bank shall cease to be a Bank of issue, and, in winding up its affairs, all future payments shall be made through the Bank of Australasia. Secondly, that no bills shall be discounted by the Bank after that date, except such as may be required to renew bills now held by the Bank. Thirdly, that no transfer of shares or stock shall be made without the consent of the Bank of Australasia. Fourthly, that the liabilities incurred by this Bank for Messrs. Hughes and Hosking, and for Mr. J. T. Hughes, be covered by the execution by them of such trusts to the Bank of Australia as may be necessary to place the control of the affairs of the firm and of Mr. J. T. Hughes under this Bank to meet their existing obligations, and to prevent them from contracting new ones, without the consent of this Bank, and that the whole of their future business during the continuance of the trusts be transacted through the Bank of Australasia. Fifthly, that the Bank of Australia shall not incur new liabilities without the consent of the Bank of Australasia." Then there is the answer of the 2nd March, 1843, in these terms:—"Sir,—I beg to acknowledge the receipt this morning of your letter of the 27th ult., communicating the resolution of your Board to call a meeting of proprietors for the **[184]** 16th instant, for the purpose of making arrangements to terminate the transaction of business by your establishment as a Bank, and to convert it into a loan company, and intimating the intention of your Directors to avail themselves of the assistance of the Bank of Australasia, in liquidating their current engagements to an extent not exceeding £150,000, in such sums as may from time to time be required, on the security of the acceptances of the Bank of Australia, at three months' date, at an interest of £10 per cent. per annum, and subject to the conditions therein detailed; and in reply I beg to state, that this establishment is prepared to meet the requisitions of the Bank of Australia to the extent and on the conditions which you have specified." The effect of these letters we shall have presently to consider.

The £150,000 were advanced by the Appellants, on the footing of these letters; and according to the orders of the Directors of the Company, in the months of March and April, 1843, bills or notes, payable at three months, appear to have been given for the amount. The Appellants were dissatisfied with the mode in which the Company acted with respect to that part of the arrangement which related to the affairs of Hughes and Hosking, and some correspondence took place between the parties on the subject. Into the details of this correspondence it is unnecessary to enter, though some passages of the letters are material, and will be afterwards referred to. It may, however, be observed upon this correspondence, that while it contains suggestions on the part of the Company, that, by means of the arrangement, the Appellants had obtained a great advantage, by securing the payment of their debts from Hughes and Hosking, we find no suggestion of any unfairness or even harshness on the part of the **[185]** Appellants, or reference to the stoppage of the banking business of the Company. When the securities originally given for the advances made by the Appellants became due, they were renewed for another period of three months.

In October, 1843, a change having taken place in the direction of the Company, and a new Chairman (Mr. Norton) having been appointed, it was thought necessary to apply to the Banks which had rendered the required assistance, and amongst the rest to the Appellants, for the further advance of £10,000, and an additional indulgence of twelve months for the payment of the advances already made. On the 9th of October, 1843, the cashier of the Company addressed the following letter to Mr. Falconer, at that time the manager of the Appellants' Bank:—"Dear Sir,—Referring to my conversation with you this day, I am instructed to lay before you the following statement and proposition:—You are aware that the Board have, agreeably to the recommendation of a public meeting, adopted such arrangements as are most likely to lead to a satisfactory result in winding up the affairs of the Bank. The management have carefully gone over the assets and liabilities, and taken the general position of the Bank under review; and they are convinced that

it is a duty they owe to your institution as well as to their own Proprietors, to request from other institutions such temporary assistance as will enable them to devote the whole of their energies to the realisation of the varied and valuable assets under their management, and, at the same time, to accumulate an accession of capital by means of calls upon the Proprietors. The sum which they conceive will be necessary for this purpose they trust will be considerably less than, or at all events will not exceed, [186] £10,000, and for this amount they are desirous of opening credit with your institution and the Union Bank of Australia in equal portions. If this can be obtained, it is intended to obtain the consent of the other Banks to hold over the obligations in their hands for the period of one year, and the realisations in the interim will be applied, in the first instance, to the repayment of the sums to be drawn from the accounts now to be opened. I have most seriously to urge your favourable consideration of the proposition. That there are assets belonging to this institution of the most valuable description is indisputable, and if time is allowed for their realisation, the most favourable results may be anticipated; but if its affairs are to be thrown into that chaos which must result from inability to meet present pressure, the consequence will be, not only to this institution and its creditors, but to the colony, and more especially to the monied interests of the colony, fearful to contemplate."

After some negociation, the Appellants consented to allow a further term of twelve months for the payment of their debt.

On the 30th of October, 1843, the existing securities held by the Appellants were cancelled, and in lieu of them a promissory note was given for £154,000, payable on demand, signed by Mr. Norton, the Chairman, on behalf of the Company.

It is upon this note that the action, in this case, is brought.

It appears that in the interval between the commencement of these transactions in February, 1843, and the month of October, 1844, the period at which the last-mentioned promissory note was to be paid, several meetings were held of the shareholders of the Company who thought fit to attend. We have no very distinct [187] evidence of what took place at some of these meetings, but in a letter from Mr. M'Arthur, the then Chairman of the Company, dated the 18th of May, 1843, which was written on the subject of the complaint against the Company, as to Hughes and Hosking's affairs, we find the following passage:—"Could these objects be effected, this Board does not apprehend that a further advance to an amount worthy of much consideration would be required; but, after the investigations which have taken place at two meetings of the Proprietors of this Bank, held in pursuance of the pledge contained in our letter to you, of the 27th of February last, and the resolutions of the Proprietors thereon, they feel they are too much fettered to undertake the execution of the trust. The interest of this Bank is, however, too deeply concerned in the stability of Messrs. Hughes and Hosking not to ensure their earnest co-operation in its management and execution." We think the necessary inference is, that at these meetings, the arrangements intended to be made with the Appellants were communicated to the shareholders, and no step to prevent their completion appears to have been taken either by any single shareholder, either by any legal proceeding, or by any notice or communication either to the Directors, or to the Appellants.

We have evidence of what passed at two subsequent meetings, one in the month of September, 1843, and the other in the month of January, 1844. In the accounts submitted to the shareholders at the first of these meetings, a full statement appears to have been made of the debts and assets of the Company, including among the debts, the acceptances on account of the Appellants' Bank for £153,357 16s. 6d. At the latter of these meetings, a statement was laid [188] before the parties present, of the arrangement with the Bank in the preceding October, and among the other liabilities of the Company the promissory note for £154,000 in favour of the Appellants is mentioned.

At each of those meetings the Directors proposed calls to meet the existing liabilities of the Company, which included the debt of the Appellants, and at both, the reports of the Directors were adopted.

A further meeting seems to have been held in June, 1844, though it does not appear what was the result. But on the 6th of August, 1844, a resolution was passed by the shareholders repudiating the debt. This resolution was communi-

cated to the Appellants, and was in these terms:—"That the loan negotiated between the Bank of Australasia, the former Directors of this Bank, and Messrs. Hughes and Hosking, is not binding on the proprietary of this Bank; and that the Board of Directors be hereby instructed to defend any action that the Bank of Australasia may bring for the recovery of the same."

Payment of the note was demanded in October, 1844, and was refused; and on the 26th of November, 1844, the present action was commenced. It came on for trial on the 27th of March, 1845; and the jury, being unable to agree, were discharged, according to the provisions of a Colonial Act. It was afterwards tried at bar, the trial beginning on the 23rd of June, and terminating on the 4th of August, when, after much discussion, the verdict was found for the Plaintiffs, subject to the opinion of the Court, whether upon the facts proved the Plaintiffs were entitled to recover, and the whole to be without prejudice to either party's right to appeal. Of the three Judges present, one, the Chief Justice, was of opinion in favour of the Plaintiffs; the two other [189] Judges were of a different opinion, and the verdict and judgment were accordingly entered for the Defendant (the Respondent) with costs of the action, which appear to have been recovered from the Appellants. From this judgment the present appeal is brought.

We intimated, during the argument of the appeal, a strong opinion that the effect of the arrangement made at the trial was to leave the whole matter to the consideration of the Judges, who were to draw what they considered the proper inference from the evidence, and apply the law to the facts so proved; that the whole matter was, in like manner, open to this Court, on the appeal, and that we had sufficient materials to enable us to deal with it. To that opinion we still adhere. The question, therefore, is, whether, applying the law to the evidence in the cause, the Court below has, or has not, come to a right conclusion.

The Appellants have a clear *prima facie* case: the note is signed on behalf of the Company, by an officer who had authority to sign bills and notes on their behalf, and the amount of the promissory note was advanced to persons professing to borrow and receive it for the benefit of the Company.

The defence is, that the persons borrowing had no authority to borrow money on behalf of the Company, under any circumstances, but, at all events, not under the circumstances, and for the purposes appearing in this case, and that the lenders had notice of such want of authority when they made their advances.

Much discussion took place at the bar, and many cases were cited with reference to the power of the Directors of Joint Stock Companies to bind the Com-[190]-pany, by borrowing money or other acts; and as to the distinction alleged to exist between the powers of such Directors and the authority of partners in ordinary trading partnerships.

It does not appear to us to be necessary, in this case, to enter into any consideration of the general doctrine, and we think it better to abstain from making any observations upon it. Here the shareholders of the Company had executed a Deed defining the purposes of the partnership, and the mode in which it was to be carried on. The corporation had notice of this Deed; and, indeed, had a copy of it in their possession at the time of the transaction in question; and we must, therefore, look to this Deed, in order to collect the extent of the authority intended to be conferred on the Directors, and we must construe it with reference to the nature of the business which was to be transacted, and the purposes which it contemplated, in order to judge what powers and authorities the law would imply from the nature of the office conferred on the Directors, and how far those powers and authorities are enlarged or restricted by any of the provisions of this instrument.

The Deed is dated the 1st of May, 1833. It recites a previous Deed dated in 1826, by which a Company had been established for a term of seven years, which it was now intended to continue, with increased capital, for a term of 100 years, "as well for the purpose of discount and issuing notes and bills, and lending monies on securities, and cash accounts, for the receiving monies on deposit accounts, for the safe custody of monies, and securities for monies, for the general public accommodation and benefit, as also for [191] transacting and negotiating all such other matters and things as are usually done and performed, relating to or connected with the ordinary business of banking."

It is impossible to use language more general than this; the new or continuing Company was to carry on the same business, and the Deed proceeds to declare the rules by which the Company is, in future, to be governed. The capital is to consist of 2000 shares, a number which seems to have been afterwards increased, of £100 each, and £20 are to be paid on each share at the time of signing the deed, and no further call is to be made unless the same should be deemed requisite by a majority of the members present at a general meeting of the Proprietors, to be convened for that purpose under the provisions hereinafter contained. Provisions are then made as to calls, which are not to exceed 5 per cent. at any one time upon each share, nor to be payable at less distant periods than one month, at the least, from the time at which every such call shall have been notified in one or more of the public newspapers. Power is given to the majority of the Proprietors to increase the capital either by the issue of new shares, or in such other manner as the Proprietors may deem most expedient; and no Proprietor is to hold above 100 shares, unless under certain particular circumstances.

The effect of these provisions is, that the paid-up capital at the commencement of the partnership, supposing all the shares were taken, and all the monies paid, would be £40,000; that no further sum could be called in, except by the consent of the majority of the members present at a general meeting, to be convened for the purpose; that several weeks must elapse before any money could be raised by any calls, **[192]** after a necessity for it should arise; that the shareholders must consist of a great number of persons who might be scattered over different parts of the world; that great difficulty, therefore, would probably exist in enforcing payment of calls, and that £10,000 would be the utmost sum that could be raised at one time by these means, supposing every shareholder to pay his *quota*.

Then follows the important clauses appointing and conferring powers on the Directors. The 38th clause is as follows: "That for the better management of the concerns of the said Company, under and in conformity to the provisions hereinbefore contained, or to be hereinafter provided for, and for securing the observance thereof, the same shall be confided to the care, superintendence, and management of eleven members, to be so qualified, elected, and appointed, and with such authority and powers as are hereinafter declared, which said members shall be and act as Directors of the concerns of the said Company." The 51st clause declares, "that such Board of Directors shall have, and they are hereby expressly invested with, full power and authority to superintend, order, conduct, regulate and manage all and singular the affairs and business of the said Company, to the best of their discretion and judgment, under and subject to the provisions hereinafter contained." The 53rd clause declares, "that such Board of Directors shall, or lawfully may, from time to time, devise and make such provisions, rules, orders, and regulations, touching the government, carrying on, and management of the affairs of the said Company, the same not being repugnant to the general rules and regulations herein contained, as they shall think expedient."

[193] It would be difficult to devise a form of words conveying more extensive powers of management, and a larger discretion in the Directors in the conduct of any business, than is found in these clauses; the only restriction is, they are to be subject to the provisions after contained. The effect, we think, is, to confer on these Directors all the powers of managing partners in ordinary partnerships of a similar character, unless there is something in the subsequent clauses of the Deed restricting those powers.

First, then, is the power of borrowing money for the purposes of the partnership, one of the powers which belong to a partner in ordinary Banks? and, Secondly, if so, is there any restriction expressed, or to be inferred, from the Deed?

The general power of partners in ordinary trading partnerships, and the restrictions upon such powers, appear to us to be stated with great accuracy by Mr. Justice Story, in his Treatises on Partnership, and on Agency, and we willingly adopt his language. In the latter of these works, chap. vi. sections 124 and 125, the law is thus stated: S. 124. "Every partner is, in contemplation of law, the general and accredited agent of the partnership; or, as it is sometimes expressed, each partner is *praepositus negotiis societatis;* and may, consequently, bind all the other partners by his acts, in all matters which are within the scope and objects

of the partnership. Hence, if the partnership be of a general commercial nature, he may pledge or sell the partnership property; he may buy goods on account of the partnership; he may borrow money, contract debts, and pay debts on account of the partnership; he may draw, make, sign, indorse, accept, transfer, negotiate, and procure to be discounted, promissory notes, bills **[194]** of exchange, checks, and other negotiable paper, in the name and on account of the partnership." S. 125. "The restrictions of this implied authority of partners to bind the partnership are apparent from what has been already stated. Each partner is an agent only in and for the business of the firm; and, therefore, his acts beyond that business will not bind the firm. Neither will his acts done in violation of his duty to the firm, bind it, when the other party to the transaction is cognizant of, or co-operates in such breach of duty."

That, in ordinary trading partnerships, the power of borrowing money for partnership purposes exists, and that bills or notes given by one of the partners in the partnership firm, for money so borrowed, will bind the firm, is too clear to require any authority. It is treated as clear law from the case of *Lane* v. *Williams* (2 Vern. 277) to that of *Thicknesse* v. *Bromilow* (2 Cromp. and Jer. 425).

Then, is the nature of a Banker's business such as to exclude the power, from want of occasion for its exercise? Quite the contrary. The nature of a Banker's business, especially if the Bank be one both of issue and deposit, necessarily exposes him to sudden and immediate demands, which may be to the extent of a large proportion of his debts, while his profits are to be made in employing his own monies and those entrusted to him in discounting bills, in loans, and other modes of investment. It is impossible that he should always have his assets in such a state as to be applicable immediately to the payment of all demands which may be made upon him; and if a partner has no power, under such circumstances, to borrow money for the partnership, either the assent of each individual member must be obtained, which **[195]** may often be impracticable, or the concern must be ruined.

We have no doubt at all, therefore, that, in ordinary banking partnerships, such power exists, and that the Directors, by the terms of their appointment, had all the general powers, and among the rest, the power of borrowing, unless such power is excluded by other provisions of the Deed. Is there, then, anything in this Deed which excludes it? We find nothing having such a tendency, but much to a contrary effect. The Directors have the power of contracting debts and binding the Company to any amount, by issuing notes, receiving deposits, drawing, accepting, and endorsing bills; and they might, therefore, in these modes, subject the Company to liabilities to any extent.

On the other hand, if, according to the Respondents' argument, no monies could be borrowed to meet those liabilities, the money must be raised by calls; and yet if they are to be raised by calls, it is obvious, from the provisions before referred to, that the Company might be ruined long before sufficient funds could be raised, although it might have assets not immediately capable of being realised or converted, to a much larger amount than all its liabilities.

The 54th clause provides, "that such Board of Directors shall have, amongst other things, the entire management and control of the lending of monies on bills, notes, bonds, mortgages, and other securities." The 55th declares, "that such Board of Directors shall, from time to time, settle and determine, in whose name or names, all securities that shall be entered into, by or on behalf of the Company, or by or on behalf of any person or persons transacting or negotiating any matter or **[196]** business whatever therewith, shall be taken and given."

Now, this applies to transactions in which the Company either receive or give securities; the securities which they are to receive clearly extend to monies lent by them; and the securities which they are to give, may, we think, with equal reason, be held to extend to monies borrowed by them. Upon this part of the case, we can entertain no doubt. The real question is, whether there is anything in the circumstances under which the loan was made, which shows that it was not borrowed for partnership purposes, or was borrowed by the Directors in violation of their duty to the shareholders. It is contended by the Respondent, that this loan was made on the condition of the Bank terminating its business, and for the purpose of enabling the Directors to terminate and convert the Company into a partnership for a

different purpose; that the Directors had no authority to terminate the concern, or to form such Company; that the money was advanced to pay debts of Hughes and Hosking, to which the Company were not liable, and that there were conditions attached to the loan, to which the Directors had no authority to assent, viz., restraint of the transfer of shares contrary to the terms of the deed, and the assumption of the affairs of Hughes and Hosking. It is said that the Appellants imposed these conditions, and are affected with notice of these purposes, and are, therefore, not entitled (whatever may have been their rights against individuals) to recover from the Company the amount of the monies which they have advanced. It is perfectly true, that if a person lends money to a partner, for purposes for which he has no authority to borrow it on behalf of the partnership, [197] the lender having notice of that want of authority, cannot sue the firm; and this is, in truth, the whole effect of a decision, much relied upon at the bar, of *Fisher* v. *Taylor* (2 Hare, 218). On the other hand, if money be lent to a partner for purposes for which he has authority to borrow, it is a very different question, whether it is a bar to the recovery of the money which has been applied to the use of the partnership, that the borrower has entered into additional engagements on behalf of his partners, beyond his authority, and by which, therefore, they are not bound.

The question here, then, is, what is the real nature of the transaction which has taken place? It may be admitted that the Directors, without, or even with, the consent of the majority of the shareholders, had no authority to convert the Banking Company into a Company for totally different purposes, and that money borrowed for the purpose of such conversion, with notice on the part of the lender, would not form a debt of the Company. It may be further admitted, that no restraint on the transfer of shares in the Company could be lawfully imposed by the Directors without the assent of the majority of the shareholders. But it by no means follows, that the Directors had no authority at their discretion to discontinue the business of the Bank, or to restrict it to certain portions of the business originally contemplated, if they thought such conduct essential to the interests of the shareholders. Such a power seems necessarily implied in the exclusive power of management, in the power of determining what transactions should be entered into, what notes issued, what deposits received, what bills discounted, or loans made. A contrary construction would be attended with the most serious [198] consequences. It is said that the business could only be discontinued by the vote of the majority of the Proprietors under the 73rd clause; so that, unless a majority of the Proprietors could be brought together in person, or by their attornies, the business was to continue for 100 years, and never could be concluded but by bankruptcy or insolvency. But even if the majority should be got together, it is only at intervals of ten years that the power of dissolution exists; so that, except at the decennial periods, the business could not be discontinued so long as one individual shareholder refused his assent, or was incapable of consenting, or could not be found. The business must go on till each individual shareholder might be ruined. For it is to be observed, that it by no means follows, that the creditors would have recourse to a Commission of Bankruptcy; they have a right to recover their debts from each individual shareholder.

We think, therefore, that the discontinuance of the business of the Bank, if the Directors thought it necessary or expedient, was within their authority; and that they had authority to borrow money for the purpose of discharging the existing engagements, and prolonging the business till the assets could be realized, and the concern wound up with the least injury to the Company.

If they had this authority, it is quite unnecessary to consider whether they exercised it discreetly or otherwise, whether the loan which they contracted was on hard terms or otherwise.

The Appellants had a right to annex such terms as they thought proper to their advance. If any of those terms were *ultra vires* of the Directors, they could not be enforced, and so far the lenders might lose the ad-[199]-vantage for which they had stipulated. The Corporation stood in no relation of trust or confidence to the shareholders of the Company. It had a right to make the best bargain which it could; and the only question is, was the purpose for which the money was lent, a legitimate purpose of the partnership? It appears to us, that the purposes for

which the money was borrowed, was not to increase the permanent capital of the Company, not to enable the Directors to engage it in new concerns beyond the provisions of the Deed, and contract new liabilities, but to enable it to discharge liabilities already contracted, and to afford it time for the realization of its assets.

In a letter of the Appellants, of the 15th of May, 1843, to the Respondents' Bank, put in evidence by the Defendant, the transaction is stated to have commenced in a representation by the Directors of the Company, "of the evils which would result to the community generally, and to an institution having so large a stake in its prosperity, as the Bank of Australasia in particular, from a suspension of the payment, either by the Bank of Australia," or by the firm of Hughes and Hosking. In the statement on the 21st of February, already referred to, the advance is stated as asked to the extent of £113,648, in order to meet the circulation and deposits of the Bank of Australia; for its acceptances on behalf of Messrs. Hughes and Hosking, £80,145; for acceptances of Hughes and Hosking, for a great part of which the Bank had given guarantee, £72,387,—in all £266,000. The letter of the 27th February, 1843, refers to the communications which had taken place between the Directors and Cashier of the institution and the Bank of Australasia, "relative to the intended alteration in the business of the Bank, and the assistance it will [200] require for the purpose of meeting its immediate liabilities." The answer of the 2nd of March, speaks of this letter as "intimating the intention of your Directors to avail themselves of the assistance of the Bank of Australasia in liquidating their current engagements to an extent not exceeding £150,000." These letters show, very distinctly, for what purpose this money was borrowed, and they are confirmed by all the other documents in the case.

It appears that this advance was not sufficient for the purpose, and it is stated in Mr. Macarthur's letter of the 18th of May, 1843, that a committee of the Directors waited on Mr. Falconer, and "explained to him the state of their affairs, and also the difficulty this Bank laboured under in obtaining sufficient funds to meet its deposits and notes in circulation, and requesting a further advance." This view of the case is strongly confirmed by the statement submitted to the shareholders in September, 1843, and January, 1844, and it is not opposed by any evidence whatever.

But then it is said, that if the money was advanced to discharge existing liabilities, a part of those liabilities consisted of obligations contracted for Hughes and Hosking, a part of which the Company was not liable to pay, and other part of which consisted of debts to the Appellants, who by means of this transaction obtained payment of demands which otherwise would have remained unsatisfied.

The Judges of the Court below appear to have been unanimous in the opinion, that there was nothing whatever in these objections; that there was no proof of any unfair dealing by the Appellants, or of improper advances being obtained by them in respect of the debts of Hughes and Hosking; and we are entirely of the same opinion. It is said, that a part of the debts of [201] Hughes and Hosking were guaranteed by the Directors on behalf of the Company, and that the Directors had no power to give such guarantees; whether they had or not, might depend on the circumstances under which they were given; but it would be extravagant to hold, that the Appellants, lending their money to enable the Company to meet its engagements, were bound by this circumstance to see to the nature of those engagements.

Then, if the money was borrowed *bona fide* by the Directors, for the purposes of the partnership and within the limits of their authority, and was advanced *bona fide* by the Appellants for those purposes, and applied to the legitimate purposes of the partnership, all of which facts, for the reasons already alleged, we consider as proved; can the liability to repay the money be discharged, because to the engagement to repay, are adjected other engagements by the Directors, some of which we will assume to have been *ultra vires?* From Pigot's case (6 Coke's Rep. 26,) to the latest authorities, it has always been held that, when there are contained in the same instrument distinct engagements by which a party binds himself to do certain acts, some of which are legal, and some illegal, at common-law, the performance of those which are legal may be enforced, though the performance of those which are illegal cannot. Here, in our opinion, the Directors had power to borrow the money for the Company, and of course power to bind the Company for the engagement. They did so bind them, and they engaged that the Company should do, in addition, certain

other acts, and which we assume that, without their consent, the Company could not be compelled to do. The engagements are entirely distinct. Can the shareholders say, because we cannot be compelled to [202] perform those engagements to which the Directors had no authority to bind us, therefore, we will not perform those engagements to which they had authority to bind us? The Company cannot have all the benefit for which they agreed to advance the £150,000, therefore they shall not even have their money? We think not: the only consequence would be, that those stipulations which are *ultra vires* of the Directors could not be enforced; and if the object of the present action were to enforce them, or to recover damages for a breach of them, it would be necessary to examine them more particularly than the view which we take of the case requires.

Upon the whole, therefore, we are of opinion, without reference to the questions of acquiescence by the Company, that the Plaintiffs in the action, the present Appellants, are entitled to recover, and that the verdict ought to be entered in their favour. If we had come to a different conclusion, on this part of the case, as did the majority of the Court below, we should have found it necessary to examine very closely the evidence in the cause with respect to communications made to the shareholders, both during the transaction and after its completion, and to consider very carefully what might be the effect of the conduct of the shareholders, of what they did and what they omitted to do, having regard to all the provisions of this Deed and the rules of law which may be applicable to Companies of this description. While we cannot express too strongly our sense of the care, industry, and the learning which the Judges of the Court below have applied to the case generally, we think it right to say, that they appear to have passed over this part of the case more lightly than its importance perhaps deserved.

[203] Our report to Her Majesty will be, that the verdict of the Court below ought to be reversed, and that the judgment ought to be entered in the Court below for the Plaintiffs. The Appellants will of course have the costs of the action below, and there will be no costs given of the appeal here.

The minute of the report of their Lordships having been drawn up, it was proposed to "reverse the Judgment of the Court below, and order that Judgment to be entered up, as of the date of the original Judgment, for the amount found due by the verdict and costs, and that the amount of subsequent interest, at the same rate at which it is calculated by the verdict, be paid by the Respondent to the Appellants." The Respondent objected to the proposed order, as to the allowance of interest, and their Lordships directed (13th April 1848 *) the case to be argued upon that point, by one counsel on each side.

Mr. M. D. Hill, Q.C., for the Respondent.—There is no mention of subsequent interest being allowed, in the judgment of your Lordships. The proposed Order involves two grounds for consideration. First, I contend that this Court has no power to give interest, as proposed: and, Secondly, if it has a discretion to allow interest, according to the course and practice of the Court, it ought not to be exercised. In the first place, this Court, as a Court of appeal, has no greater original power than the Supreme Court at Sydney had, [204] and that Court could not order the Judgment to bear interest. By the 1st and 2nd Vict., c. 110, judgment-debts in England carry interest; but that Statute has not been extended to or adopted in New South Wales, and, therefore, cannot operate, as it forms no part of the law of the Colony. There are three Imperial Statutes, by which the power of making laws, in New South Wales, are regulated. First, by the 4th Geo. IV., c. 96, a Legislative Council is established, with power of making laws for the government of the Colony; secondly, by the Statute, 9 Geo. IV., c. 83, all the laws of England, which were then applicable, are imported into the Colony; and thirdly, the 5th and 6th Vict., c. 76, shows what subsequent Acts of the Imperial Parliament are to be adopted by the Legislature of New South Wales.—[Lord Campbell.—The proposed Order respecting interest is not founded upon the notion, that the 1st and 2nd Vict., c. 110, has been introduced into the Colony. Is it not founded upon that Statute at all? The question is, whether this Court, as a Court of appellate jurisdiction, has not power, under what may be called its common-law jurisdiction, to grant

* Present: Lord Brougham, Lord Campbell, Lord Langdale, the Right Hon. Dr. Lushington, and the Right Hon. T. Pemberton Leigh.

interest in the form made by this Order.]—The submission upon which the appeal comes before the Privy Council does not extend to anything beyond an affirmance or reversal. If this Court was to give interest, it would not be sitting as a Court of appeal, but it would be exercising original jurisdiction.—[Mr. Pemberton Leigh. —We have had a note from Mr. Currey, the clerk of the House of Lords, and he gives us a statement of several precedents before the Statute, 1st and 2nd Vict., c. 110. The House of Lords used to get at justice by giving the interest, and adding it to the costs. These were upon Writs of Error.]—No case can be found in **[205]** which interest has been given by any Court in England, except under the peculiar powers conferred by Statutes. It will be found, from the Statute, 3 Hen. VII., c. 10, down to the 3 and 4 Will., c. 42, that interest is confined to cases in which the judgment is affirmed, and for the Plaintiff, and that is allowed for the delay which the Writ of Error interposes, by preventing the Plaintiff from obtaining the fruits of the Judgment. *Baring* v. *Christie* (5 East. 545). Lord Mansfield, in *Boddily* v. *Bellamy* (2 Burr. 1095), illustrates the practice of the various Courts, with allowance of costs.—[Mr. Pemberton Leigh.—Our decision will depend very much upon this, whether this case is to be considered in the strict sense of a Writ of Error, or whether it is not an Appeal. This Court, by the Charter of Justice, of the 13th of October, 1843, is to make such order which, at the time of the judgment, ought to have been pronounced.]—Strictly speaking, there are no Writs of Error in this Court, they are appeals.—[Lord Campbell.—Suppose a bill filed in the Court of Chancery against a trustee, to make him pay a sum of trust-money, and the Court dismiss the bill, and there is an appeal to the House of Lords, who reverse the judgment of the Lord Chancellor, and say that the money ought to be decreed to be paid, would not the House of Lords order interest to be paid, down to the time of the reversal?]—This is a common-law case, and the principles which regulate Courts of Equity do not apply. The present case is in the nature of a Writ of Error. Accordingly, if interest is a necessary incident, the parties ought to be left to proceed in the Court in the Colony, and **[206]** justice in the matter would be equally attainable by that course, and it is the regular one. This is the practice which has hitherto been acted upon. *Kirkman* v. *Modee Pestonjee Khoorsedjee* (3 Moore's Ind. Cases, 220).

Mr. Bethell, Q.C., for the Appellants, *contra*.

The Right Hon. T. Pemberton Leigh.—We do not think this case can be compared to a Writ of Error; we think it must be considered as an appeal, and that the power of giving interest is within the common-law jurisdiction of the Court, the Order, therefore, as to interest, must stand.

The report of their Lordships was, by an Order in Council, bearing date the 15th of April, 1848, confirmed. This Order was as follows:—

"Her Majesty having taken the said report into consideration, was pleased, by and with the advice of Her Privy Council, to approve thereof, and to order, and it is hereby ordered, that the said Judgment of the said Supreme Court of Sydney be, and the same is, hereby reversed; and that the Judgment be entered up, as of the date of the original Judgment, for the amount found due by the verdict and costs; and that the amount of subsequent interest, at the same rate at which it is calculated by the verdict, be paid by the Respondent to the Appellants, together with the costs paid by the Appellants to the Respondent, in the Court below; and that this Order be duly obeyed, complied with, and carried into execution, by the Judges of the said Supreme Court of Sydney."

[Mews' Dig. tit. BANKER, II. 2. DIRECTORS, a. *Powers;* tit. COLONY, III. APPEALS TO PRIVY COUNCIL, 6. *Practice,* o. *Other matters;* tit. COMPANY, V. DEBENTURES AND MORTGAGES, 1. *Borrowing Powers of Company,* a. *Generally;* tit. CONTRACT, C. 5. ILLEGAL CONTRACTS, a. *General Rules;* tit. SPECIFIC PERFORMANCE, II. DEFENCES, B. 2. *Illegality.* S.C. *sub nom. Bank of Australasia* v. *Bank of Australia,* 12 Jur. 189. On point (i.) as to appeals (6 Moo. P.C. 169), see note to *Flint* v. *Walker,* 1845-47, 5 Moo. P.C. at p. 201: (ii.) as to implied power of borrowing (6 Moo. P.C. 195), see *Maclae* v. *Sutherland,* 1854, 3 E. and B. 1; *Galloway's Case,* 1854, 18 Jur. 885; *Royal British Bank* v.

'such Persons distributing by Lot or otherwise certain Pictures, Engravings, or other Works of Art 'among the Subscribers last aforesaid: And whereas such Distributions of Works of Art, and the Pro- 'ceedings taken to carry the same into effect, may be deemed and taken to come within the Provisions of 'the several Acts of Parliament passed for the Prevention of Lotteries, Littlegoes, and unlawful Games, 'whereby the Members of such Art Unions as aforesaid, or other Persons acting as Distributors of 'Works of Art as aforesaid, may be liable or subjected to certain Pains and Penalties imposed by Law 'on Persons concerned in Lotteries, Littlegoes, and unlawful Games: And whereas it is expedient that 'all Members, Subscribers, Contributors, Distributors, and other Persons belonging to such voluntary 'Associations or Art Unions as aforesaid, or acting under their Authority or Direction, or on their 'Behalf, and all other Persons acting as Distributors of Works of Art as aforesaid, or Persons acting 'under their Authority or on their Behalf, shall be discharged and protected from any Pains and Penalties 'to which they may have rendered themselves liable, or to which they may become liable, by reason of 'any such their Proceedings as aforesaid:' 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 all such Art Unions, and all Members, Contributors, Subscribers, Distributors, or Officers thereof, and Persons acting for them or on their Behalf, and all other Persons acting as Distributors of Works of Art as aforesaid, or Persons acting under their Authority or on their Behalf, shall, so far as relates to Persons other than Members of the said Art Unions, or Persons acting on their Behalf, be discharged and freed from all Suits, Prosecutions, Liabilities, Pains, and Penalties to which by Law they may be liable as being concerned in Lotteries, Littlegoes, or unlawful Games, for any thing done or which may be done by them or any of them herebefore or before the First Day of *October* next ensuing the passing of this Act; and as to all other Persons, being Members of the said Art Unions as aforesaid, they shall be discharged and freed from all Suits and Prosecutions, Liabilities, Pains, and Penalties to which by Law they might be liable as being concerned in Lotteries, Littlegoes, or unlawful Games, for any thing done or which may be done by them or any of them herebefore or before the Thirty-first Day of *July* next, touching the Purchase of any such Pictures or other Works of Art, or the Sale or Distribution thereof by Chance or Lot.

Art Unions, and the Members thereof, and other Persons, discharged from all Suits, &c. to which they might be liable touching the Purchase or Distribution of Works of Art by Chance previous to the Periods herein mentioned.

II. And be it enacted, That this Act may be amended or repealed by any Act passed in the present Session of Parliament.

Act may be amended, &c.

CAP. CX.

An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies.

[5th *September* 1844.]

'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 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.

General Provisions.

Operation of Act as to Time.

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 transferable 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:

Future Companies.

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.

Companies for executing Parliamentary Works.

Incorporated 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:

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.

Registration of Companies.

Provisional Registration:

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

Companies (and herein-after called the Registry Office) Returns of the following Particulars according to the Schedule (C.) hereunto annexed; that is to say, Returns by Promoters of Companies.

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;

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,
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:

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. Certificate of provisional 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. Penalty as to delaying Registration.

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. Relief from Penalties to Promoters by the Appointment of a Solicitor to make Returns. Return of Appointment and Acceptance. Penalty on Solicitor failing to make Returns.

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 herein-after 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 herein-after mentioned, the following Particulars; that is to say, Complete Registration: Constitution of Companies. Provisions of Deeds of Settlements.

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,

Registration of Companies.

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:

Covenant to pay Instalments on Shares, &c.

Provision in Deed for Purposes in Schedule (A.)

Execution of Deed of Settlement.

Authentication of Deed.

Registration of Deed.

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 Provisions 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.

Supplementary Deed.

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.

Certificate of complete Registration.

IX. Provided always, and be it enacted, That if 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 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.

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,

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. 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 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. Restriction of Rights of Shareholders by Non-registration of Shares transferred. Continuance of Liability of Shareholders transferring.

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. Periodical Registration of Companies. Penalty.

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. Returns generally: Evidence of Registration. Certificates of Registration. Effect of Certificate as Evidence.

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 Authentication of Returns.

Registration of Companies.

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.

Regulations as to Returns.

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 thereupon 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 to apply to all Companies.

Inspection of Returns at Registry Office.

Certified Copies or Extracts.

Legal Effect thereof.

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.

Office for Registration: Appointment of Registrar, &c. of Joint Stock Companies.

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 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.

Assistant Registrar.

Leave of Absence.

Registrar's Office Attendance.

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.

Fees of Registration.

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:

Commissioners of Treasury may fix other Fees.

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 Expences of the said Office and the Salaries or other Remuneration of the said Registrar and of any other Persons 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

Balance to go to Consolidated Fund.

Regulation of Fees.

Return of Three Fourths of the

pany 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.

Fee on Capital to Companies obtaining Acts. Repayment by Treasury.

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.

Extortion a Misdemeanor.

Powers and Privileges of Companies.

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 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.

Proceedings of Companies before Registration and being provisionally registered.

25*l.* Penalty against Persons offending.

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,

On complete Registration: Powers and Privileges obtained thereby. Incorporation.

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

Powers and Privileges of Companies.

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 Licence, 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 Hereditaments 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 exercised 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.

Restriction of Powers of Companies for executing Parliamentary Works before obtaining an Act.

Power to obtain Act of Parliament.

Regulation of Company under such Act.

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;

Subject

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.

Restriction on Disposal of Shares.

10*l.* Penalty.

Contents of Certificates of Shares.

Penalty as to false Certificate.

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,—

Regulation of Companies.

Directors: 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.

Pecuniary Qualification of Directors, Patrons, &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 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.

Disqualification of Directors.

As to Contracts.

Approval of General Meeting.

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 or wilful Omission by Directors or Officers 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.

Inspection of Books of Registry.

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.

Account Books.

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.

Balancing of 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 herein-after 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 herein-after 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.

Examination of Balance Sheet.

Production of Balance Sheet.

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.

Inspection of Accounts by Shareholders.

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.

Occasional Inspection

Auditors:

Appointment of Auditors by Company.

By Board of Trade.

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 the 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 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.

Salary of such Auditor

Delivery of Accounts to Auditors for Examination.

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.

Assistance to 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.

XLI. And

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.

Report to Secretary.

Liability.

Requisites of Bills and Notes by Company:

Signatures of Two Directors.

Countersign of Secretary.

Endorsation.

Report and Entry thereof.

Liability.

Directors and Officers not personally liable.

Liability of Company and Members.

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 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 by Two Directors.

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: Form of Bye Laws.

Registration and Publication thereof.

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 herein-before 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

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.

Fee for Certificate

Form of Certificate.

Legal Effect of Certificate as Evidence.

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 *primâ 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.

Renewal of Certificate.

Substituted Certificate.

Entry thereof.

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.

Transfer of Shares.

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.

Deed to be registered.

Endorsement of Transfer

Nondelivery of Transfer.

No Transfer if Shares not paid up.

Proceedings to recover Instalments of Capital.

Form of Declaration for Instalments.

Evidence.

Recovery of Instalments and Interest.

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 Company 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

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.

Deeds of Settlement: Publication thereof.

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.

Inspection thereof on Demand.

Penalty.

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,

Registration of existing Companies.

Returns of Matters for Registration.

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:

Certificate of Registration gratis.

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.

Penalty.

Privileges of future Companies under this Act extended to existing Companies fully constituted; or existing Companies fully complying.

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 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

Effect of Certificate of complete Registration.

Incorporation.

Alteration of Deeds of Settlement in compliance with this Act.

Regulation of Companies.

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 t '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 for Certificates of complete Registration for existing Companies.

Registration of Companies begun or formed after the passing of this Act.

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, &c.

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 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 Applications.

Board of Trade to receive and decide Applications.

Return to Parliament by Board of Trade.

Act not to extend to certain Partnerships in Mines, &c.; nor to Irish Anonymous Partnerships. 21 & 22 G. 3. c. 46. (I.)

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.

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.*

Prevention of fraudulent Companies.

Punishment for Pretences as to Patronage, &c.

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.

Legal Proceedings.

Effect of Judgments against a Company and Shareholders.

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 Shareholder, 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

Former Shareholders.

No Execution after ceasing to

of

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. be Shareholders Three Years.

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 Copartnership. Reimbursement of Shareholders against whom Execution issued. Contribution by other Shareholders.

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 Expences 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 of 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. Proceedings in Execution against the Person or Property of a Shareholder. Alteration of Orders by the Court. Notice.

LXIX. And be it enacted, That all Penalties and Forfeitures inflicted or authorized to be imposed by this Act, and all Costs and Expences 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 Expences shall reside, or where the Offence shall be committed. Recovery of Penalties: Proceedings before Two Justices.

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, intituled *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. 3 G. 4. c. 46.

LXXI. And be it enacted, That in all Cases in which any Penalty or Forfeiture or any Costs or Expences 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. Summons in the Recovery of Penalties. Proceedings.

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, 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 Compulsory Attendance of of Witnesses.

Manner and by such Means as are herein-before directed as to other Penalties recoverable before Justices under this Act.

Limitation of Proceedings for 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.

Proceedings.

Informalities. No 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 by Action.

Specification of Amount.

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 to be in the Name and with the Consent of the Attorney General; otherwise void.

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 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.

Miscellaneous.

Authentication of Acts by Committee of Privy Council for Trade.

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.

Annual Report to Parliament

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,—

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.

Act may be amended, &c.

LXXX. And be it enacted, That this Act may be amended or repealed by any Act to be passed in this present Session of Parliament.

SCHE-

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 Company, to hold unto the said his Executors, Administrators, and Assigns, [*or* Successors and Assigns,] subject to the several Conditions on which I hold 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, 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.*]

CAP. CXI.

An Act for facilitating the winding up the Affairs of Joint Stock Companies 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 herein-after 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, 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 herein-after made.

If any incorporated commercial or trading Company, or any other Body of Persons associated together for commercial or trading Purposes, as herein described, shall commit any Act which is hereby deemed an Act of Bankruptcy on the Part of such Company, a Fiat in Bankruptcy may issue against the same, and be prosecuted in like Manner as against other Bankrupts, &c.

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.

Bankruptcy of Company not to be Bankruptcy of any Member.

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.

Service of Adjudication of Bankruptcy on Company, and Surrender, how to be 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 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

Declaration of Insolvency in pursuance of a Resolution of the Board of Directors under the Common Seal of the Company, or signed by the

Chairman, and attested by the Solicitor of the Company, and filed in the Office of the Secretary of Bankrupts, to be an Act of Bankruptcy.

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, securing, or compounding for a Judgment Debt, upon which the Plaintiff might sue out Execution, within 14 Days after Notice requiring Payment, 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 after Service of Order for Payment on a peremptory Day fixed, 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.

Creditor filing an Affidavit of Debt in one of the Superior Courts, and issuing a Writ of Summons thereon, if the Company do not, within a Month, pay or compound for Debt, or satisfy a Judge of their Intention to defend on the Merits and enter an Appearance, an Act of Bankruptcy.

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.

Assignees of the Estate of a Company may maintain Action to recover a Debt, &c.

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.

No Claim of any Member in respect of his

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,

dends. 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.

Share to be set off against any Demand of the Assignees of a bankrupt Company against such Member.

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 herein-after mentioned, without Leave of the High Court of Chancery.

No Action, &c. by a Creditor of a Company, so far as concerns his Recourse against any individual Member, to affect his Right against the Company for any unsatisfied Debt; and a Fiat, or a Proof or Proceeding thereon, not to affect Creditors Recourse against any Member.

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.

Law, &c. in Bankruptcy to extend to Fiats under this Act.

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 subscribe 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.

The Court may order the Directors of a Company adjudged bankrupt, &c., to prepare and file a Balance Sheet and Accounts; and may make Allowance out of the Estate for the Preparation thereof.

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 be under the like Obligation to surrender at the last Examination, &c. and to incur such Danger or Penalty for not conforming, &c., as is now provided against a Bankrupt;

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.

and to have 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

The Court, before Adjudication, may summon any Person, whether a Member of the Company or not, to give Evidence as to the Trading

and any Act of Bankruptcy; and, after Adjudication, the Court may summon and examine any Person who is suspected to have Property of the Company in his Possession, or to be indebted to the Company, &c., and compel him to produce Books, &c.

necessary to establish such Dealings, Trading, or Act 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 when a Person summoned under a Fiat against a Company is a Member thereof.

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 Members, &c. concealing the Estate of the Company, 100*l*., and Double the Value of the Estate concealed.

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* thereupon, 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.

Court may order Treasurer, Solicitor, &c. of Bankrupt to deliver to Official Assignee, &c. all Monies, &c. in his Power, which he is not entitled to retain as against the Bankrupt.

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.

Persons disobeying Rule or Order of Court to be committed to Prison.

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.

The Court may direct the Assignees of the Estate of a Company adjudged bankrupt to petition the Court of Chancery for Directions for winding up the

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

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 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.

Affairs of the Company, upon which Petition an Order of Reference may be made, and Accounts taken, and upon the Confirmation of the Master's Report a Receiver may be appointed.

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 Court of Chancery may make Order in individual Claims in respect of the Transactions of the 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, Expence, 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.

The Lord Chancellor, with the Advice and Consent of the Master of the Rolls and Vice Chancellors, to make Rules and Orders as to the Form and Mode of Proceeding for settling and enforcing Contribution to be made by Members of Company, and the Practice to be observed by the Court of Chancery and the Masters in such Proceeding.

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.

41 G.3. (U.K.) c. 90. to extend to Decrees, &c. in Chancery in Suits under 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, &c. in Chancery under this Act may be registered in Scotland, and Execution may be had as upon a Decree interponed upon a Bond, &c.

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

Previous to passing the last Examination the Court shall inquire into the

Cause of the Failure of a Company, and after the last Examination shall cause a Copy of the Balance Sheet to be transmitted to Board of Trade, &c

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, 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 certified to Board of Trade the Cause of Failure of Company, the Queen, upon Recommendation of the Board, may revoke Privileges granted to Company, &c.

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 certified to the Board of Trade the Cause of the Failure, the Board may institute Prosecutions in certain Cases.

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 for the original Purposes, &c.

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.

Company to be considered as subsisting so long as any Matters remain unsettled.

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.

Any Member of a Company adjudged bankrupt, with Knowledge of or in contemplation of a Bankruptcy, destroying Books, &c. guilty of a Misdemeanor

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.

Construction of the Act.

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.

Commencement of Act.

XXXII. And be it enacted, That this Act shall commence and take effect on the First Day of *November* next.

Act may be amended, &c.

XXXIII. And be it enacted, That this Act may be amended or repealed by any Act to be passed in this present Session of Parliament.

SCHE-

SCHEDULE.

Articles of Association of the *Company.*

1. The Name of the Company shall be the Company.
2. The Capital of the Company shall be Pounds divided into Shares of Pounds each. Sect. 6.
3. The First Ordinary Meeting of the Company shall be held Days after the Date of the Incorporation of the Company. Sect. 66.
4. The Number of Directors shall be ; but the Company may reduce such Number to any Number not less than and may increase it to any Number not exceeding Sect. 82.
5. The First Directors of the Company shall be the following Persons ; that is to say*, Sect. 83.

N.B.—The References in the Margin refer to the Sections of the Companies Clauses Consolidation Act, 1845.

*Insert Names of Directors.

CAP. CXXXIII.

An Act for limiting the Liability of Members of certain Joint Stock Companies.

[14th *August* 1855.]

'WHEREAS it is expedient to enable Members of Joint Stock Companies to limit the Liability for the Debts and Engagements of such Companies to which they are now subject:' 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, as follows:

Mode of obtaining Limited Liability by future Companies under 8 Vict. c. 110.

I. Any Joint Stock Company to be formed under the Act of the Eighth Year of Her Majesty, Chapter One hundred and ten, (other than an Assurance Company,) with a Capital to be divided into Shares of a nominal Value not less than Ten Pounds each, may obtain a Certificate of Complete Registration with Limited Liability upon complying with the Conditions following, in addition to doing all other Matters and Things now required in order to obtain a Certificate of Complete Registration; that is to say,

(1.) The Promoters shall state on their Returns to the Office for Provisional Registration that such Company is proposed to be formed with Limited Liability:

(2.) The Word "Limited" shall be the last Word of the Name of the Company:

(3.) The Deed of Settlement shall contain a Statement to the Effect that the Company is formed with Limited Liability:

(4.) The Deed of Settlement shall be executed by Shareholders, not less than Twenty-five in Number, holding Shares to the Amount in the aggregate of at least Three Fourths of the nominal Capital of the Company, and there shall have been paid up by each of such Shareholders on account of his Shares not less than Twenty Pounds *per Centum:*

(5.) The Payment of the above Per-centage shall be acknowledged in or endorsed on the Deed of Settlement, and the Fact of the same having been *bonâ fide* so paid shall be verified by a Declaration of the Promoters, or any Two of them, made in pursuance of the Act made in the Sixth Year of the Reign of His late Majesty King *William* the Fourth, Chapter Sixty-two: 6 W. 4. c. 62.

And upon such Conditions being complied with, and such other Matters and Things done, the Registrar of Joint Stock Companies shall grant a Certificate of Complete Registration with Limited Liability to such Company.

Mode of obtaining Limited Liability by Companies now or hereafter registered.

II. Any Joint Stock Company, except as aforesaid, now or hereafter completely registered under the said Act of the Eighth Year of Her Majesty, may obtain a Certificate of Complete Registration with Limited Liability, in manner and subject to the Condition following; that is to say,

The Directors of such Company may, with the Consent of at least Three Fourths in Number and Value of its Shareholders who may be present, personally or by Proxy, at any General Meeting summoned for that Purpose, make such Alteration in the Name, nominal Value of Shares, and Deed of Settlement of the Company as may be necessary for enabling it to comply with the Conditions herein-before mentioned with respect to Joint Stock Companies seeking to obtain Certificates of Complete Registration with Limited Liability; and upon Compliance with such Conditions, the Registrar, after the Affairs of the Company shall at the Expense of the Company have been audited by some Person appointed by the Board of Trade, and on Certificate from the said Board that the complete Solvency thereof has been established on such Audit to its Satisfaction, shall grant to such Company, by its new Name, a Certificate of Complete Registration with Limited Liability, and thereupon all Privileges and Obligations hereby attached to Companies with Limited Liability, their Shareholders, Directors, and Officers, shall attach to the Company named in such Certificate, its Shareholders, Directors, and Officers.

Mode of obtaining Limited Liability by existing Companies constituted under Private Acts of Parliament.

III. Any Joint Stock Company, except as aforesaid, constituted under any Private Act of Parliament, whereof it shall be proved to the Satisfaction of the Board of Trade, after the Affairs of the Company shall, at the Expense of the Company, have been audited by some Person appointed by the Board of Trade, that the said Company is perfectly solvent, and that not less than Twenty *per Centum* of Three Fourths of the nominal Capital of such Company has been paid up, may obtain a Certificate of Complete Registration with Limited Liability, in manner and subject to the Condition following; that is to say,

The Directors of such Company may, with the Consent of at least Three Fourths in Number and Value of its Shareholders who may be present, personally or by Proxy, at any General Meeting summoned for that Purpose, make such Alteration in the Name and nominal Value of Shares as may be necessary for enabling it to comply with the Condition in that Behalf herein-before mentioned with respect to Joint Stock Companies seeking to obtain Certificates of Complete Registration with Limited Liability; and upon Compliance with such Condition the Registrar, on Receipt of a Certificate of the Solvency of the Company, and of the Payment of Capital as before mentioned, shall grant to such Company, by its new Name, a Certificate of Complete Registration with Limited Liability; and thereupon all Privileges and Obligations hereby attached to Companies with Limited Liability, their Shareholders, Directors, and Officers, shall attach to the Company named in such Certificate, its Shareholders, Directors, and Officers.

Regulations to be observed on Complete Registration with Limited Liability.

IV. Every Company that has obtained a Certificate of Complete Registration with Limited Liability shall paint or affix, and shall keep painted or affixed, its Name on the Outside of every Office or Place in which the Business of the Company is carried on, in a conspicuous Position, in Letters easily legible, and shall have its Name engraven in legible Characters on its Seal, and shall have its Name mentioned in legible Characters in all Notices, Advertisements, and other official Publications of such Company, and in all Bills of Exchange, Promissory Notes, Cheques, Orders for Money, Bills of Parcels, Invoices, Receipts, Letters, and other Writings used in the Transaction of the Business of the Company.

Penalties to be inflicted for Non-observance of such Regulations.

V. If such Company do not paint or affix, and keep painted or affixed, its Name, in the Manner aforesaid, each of the Directors thereof shall be liable to a Penalty not exceeding Five Pounds for not so painting or affixing its Name, and for every Day during which such Name is not so kept painted or affixed; and if any Director or other Officer of the Company, or any Person on its Behalf, use any Seal purporting to be a Seal of the Company whereon its Name is not so engraven as aforesaid, or issue or authorize the Issue of any Notice, Advertisement, or other official Publication of such Company, or of any Bill of Exchange, Promissory Note, Cheque, Order for Money, Bill of Parcels, Invoice, Receipt, Letter, and other Writing used in the Transaction of the Business of the Company, wherein its Name is not mentioned in the Manner aforesaid, he shall be liable to a Penalty of Fifty Pounds, and shall further be personally liable to the Holder of any such Bill of Exchange, Promissory Note, Cheque, or Order for Money, for the Amount thereof, unless the same shall be duly paid by the Company.

Every Increase in the nominal Capital to be registered under a Penalty.

VI. No Increase to be made in the nominal Capital of any Company that has obtained a Certificate of Complete Registration with Limited Liability shall be advertised or otherwise treated as Part of the Capital of such Company, until it has been registered with the Registrar of Joint Stock Companies; and no such Registration shall be made unless a Deed is produced to the Registrar, executed by Shareholders holding Shares of the nominal Value of not less than Ten Pounds to the Amount in the aggregate of at least Three Fourths of the proposed increased Capital of the Company, nor unless it is proved to the Registrar, by such Acknowledgment and Declaration as herein-after mentioned, that upon each of such Shares there has been paid up by the Holder thereof an Amount of not less than Twenty Pounds *per Centum;* and if any such Increase of Capital as aforesaid be advertised or otherwise treated as Part of the Capital of the Company before the same has been so registered, every Director of such Company shall incur a Penalty of Fifty Pounds; and the Payment of the above Per-centage shall be acknowledged in or endorsed on the Deed so produced, and the Fact of the same having been *bonâ fide* so paid shall be verified by a Declaration of the Directors, or any Two of them, made in pursuance of the said Act made in the Sixth Year of the Reign of His late Majesty King *William* the Fourth, Chapter Sixty-two.

Certificated Companies to be free from Liability notwithstanding 8 Vict. c. 110.

VII. The Members of a Joint Stock Company which has so obtained a Certificate of Complete Registration with Limited Liability, after such Certificate is granted, notwithstanding the Provisions contained in the said Act of the Eighth Year of Her present Majesty, shall not be liable, under any Judgment, Decree, or Order which shall be obtained against such Company, or for any Debt or Engagement of such Company, further or otherwise than is herein-after provided.

Effect of Execution against Company.

VIII. If any Execution, Sequestration, or other Process in the Nature of 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 or enforce such Execution, Sequestration, or other Process, then such Execution, Sequestration, or other Process may be issued against any of the Shareholders to the Extent of the Portions of their Shares respectively in the Capital of the Company not then paid up, but no Shareholder shall be liable to pay in satisfaction of any One or more such Execution, Sequestration, or other Process a greater Sum than shall be equal to the Portion of his Shares not paid up: Provided always, that no such Execution shall issue against any Shareholder except upon an Order of the Court, or of a Judge of the Court, in which the Action, Suit, or other Proceeding shall have been brought or instituted; and such Court or Judge may order Execution to issue accordingly, with the reasonable Costs of such Application,

Application, and Execution to be taxed by a Master of the said Court; 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.

If Dividends be made and Corporation insolvent, each Director consenting thereto liable.

IX. If the Directors of any such Company shall declare and pay any Dividend when the Company is known by them to be insolvent, or any Dividend the Payment of which would to their Knowledge render it insolvent, they shall be jointly and severally liable for all the Debts of the Company then existing, and for all that shall be thereafter contracted, so long as they shall respectively continue in Office; provided that the Amount for which they shall all be so liable shall not exceed the Amount of such Dividend, and that if any of the Directors shall be absent at the Time of making the Dividend, or shall object thereto, and shall file their Objection in Writing with the Clerk of the Company, they shall be exempted from the said Liability.

Notes of Shareholders not receivable in Payment of Calls; Liability of each Officer consenting to a Loan to Shareholders.

X. No Note or Obligation given by any Shareholder to the Company whereof he is a Shareholder, whether secured by any Pledge or otherwise, shall be considered as Payment of any Money due from him on any Share held by him, and no Loan of Money shall be made by any such Company to any Shareholder therein; and if any such Loan shall be made to a Shareholder, the Directors who shall make it, or who shall assent thereto, shall be jointly and severally liable to the Extent of such Loan, and Interest for all the Debts of the Company contracted before the Repayment of the Sum so lent.

Rights of Creditors of existing Companies preserved.

XI. Where any Company completely registered under the said Act of the Eighth Year of Her present Majesty, or any Company constituted under any Act of Parliament, shall obtain a Certificate of Complete Registration with Limited Liability, the Grant of such Certificate shall not prejudice or affect any Right which previously to the Grant of such Certificate has accrued to any Creditor or other Person against the Company in its Corporate Capacity, or against any Person then being or having been a Member of such Company, but every such Creditor or other Person shall be entitled to all such Remedies against the Company in its Corporate Capacity, and against every Person then being or having been a Member of such Company, as he would have been entitled to in case such Certificate had not been obtained.

Change in the Name of a Company under the Act not to affect the Rights of the Company or other Parties.

XII. No Alteration made by virtue of this Act in the Name of any Company shall prejudice or affect any Right which previously to such Alteration has accrued to such Company as against any other Company or Person, or which has accrued to any other Company or Person as against such Company, but every such Company as against any other Company or Person, and every other Company or Person as against such Company and the Members thereof, shall be entitled to all such Remedies as they or he would have been entitled to if no such Alteration had been made; and no such Alteration shall abate or render defective any legal Proceeding pending at the Time when such Alteration is made.

Companies to be dissolved and wound up when Three Fourths of the Capital lost.

XIII. In the Case of any Company which has obtained a Certificate of Limited Liability, whenever, on taking the yearly Accounts of such Company, or by any Report of the Auditors thereof, it appears that Three Fourths of the subscribed Capital Stock of the Company has been lost, or has become unavailable in the Course of Trade, from the Insolvency of Shareholders, or from any other Cause, the Trading and Business of such Company shall forthwith cease, or shall be carried on for the sole Purpose of winding up its Affairs; and the Directors of such Company shall forthwith take proper Steps for the Dissolution of such Company, and for the winding up of its Affairs, either by Petition to the Court of Chancery, or by Exercise of the Powers of the Deed of Settlement, or by such other lawful Course as they may think most fit.

8 Vict. c. 110. s. 38. Auditors to be appointed, subject to Approval of Board of Trade.

XIV. In Cases where a Certificate of Registration with Limited Liability has been obtained, when One Auditor only shall have been appointed under the Thirty-eighth Section of the Act of the Eighth of *Victoria*, Chapter One hundred and ten, that single Auditor, and when Two or more such Auditors shall have been so appointed, then One of such Auditors, shall be subject to the Approval of the Board of Trade; and such Board in case the Auditor submitted to them for Approval shall for any Reason appear unfit or objectionable, shall appoint another in his Place.

Recovery of Penalties.

XV. Every pecuniary Penalty imposed in pursuance of this Act shall be deemed a Debt due to the Crown, and shall be recoverable accordingly.

Act to be taken as Part of 7 & 8 Vict. c. 110. and 11 & 12 Vict. c. 78.

XVI. This Act shall, so far as is consistent with the Contents and Subject Matter thereof, be taken as Part of and construed with the said Act of the Eighth Year of Her present Majesty, Chapter One hundred and ten, and the Act of the Eleventh Year of Her Majesty, Chapter Seventy-eight; and all the Provisions of the said Acts, save in so far as they are varied by this Act, shall apply to Persons and Companies applying for or obtaining a Certificate of Complete Registration with Limited Liability.

Provisions of 7 & 8 Vict. c. 111., 11 & 12 Vict. c. 45., and 12 & 13 Vict. c. 108. to apply to this Act.

XVII. The Provisions of the Act of the Eighth Year of Her present Majesty, Chapter One hundred and eleven, and of the Joint Stock Companies Winding-up Act, 1848, and of the Joint Stock Companies Winding-up Amendment Act, 1849, shall apply to Persons and Companies obtaining a Certificate of Complete Registration with Limited Liability, subject only to such Variations as may be occasioned by the Provisions of this Act.

Act not to apply to Scotland.

XVIII. This Act shall not apply to *Scotland*.

Short Title.

XIX. This Act may be cited for all Purposes as "The Limited Liability Act, 1855."

CAP.

the wants of the locality, and of the means by which the improvement and benefit of such patients may be most effectually advanced, and shall submit such rules for approval to the said Commissioners, and the same rules, so far as they may be approved by the said Commissioners, shall be established and thenceforth binding on all parties to whom they shall be applicable, but may from time to time be altered, extended, or annulled by the like means and authority as occasion may require.

Power to accelerate the foundation of the Charity in case of any sufficient means being obtained, or to unite it to any similar Charity.

27. The trustees, also with the sanction of the said Commissioners, may bring the said Charity into active operation before accumulating the prescribed sum of 5,000*l.* stock, and in the same manner, and subject to the same regulations, as if such accumulation had been made, in case by the aid of benefactions to the Charity, or by the improved management of the estates thereof, or by commuting any leases of such estates now subsisting for terms of life into leases for terms of years at larger present rates, or by the yearly or other subscriptions of benevolent persons, or any other means, the income for the time being of the Charity shall be rendered sooner sufficient for that purpose, or they may, with such sanction as aforesaid, agree to and effect the union of the Charity with any other Charity established for the like purposes, and within the distance of ten miles from the Abbey Church in the City of Bath, in order to render both Charities more effective, so, nevertheless, that the income of the Magdalen Charity shall be applicable only to such purposes as are hereby prescribed, and according to the regulations herein contained, with such modifications only, if any, required upon such union thereof, as shall have been submitted to and approved by one of the Judges of the Court of Chancery, or the said Commissioners.

Scheme to be printed.

28. This scheme shall be printed, and any person interested in the Charity shall have access thereto, under any reasonable regulations to be prescribed for that purpose by the trustees.

CAP. XLVI.

An Act to exempt Imprisonments under the Act 5 Geo. 4. c. 96. from the Operation of the Act abolishing in *Scotland* Imprisonment for Civil Debts of small Amount. [14th *July* 1856.]

5 G. 4. c. 96.

'WHEREAS by an Act passed in the Fifth Year of the Reign of His late Majesty King *George* the Fourth, intituled *An Act to consolidate and amend the Laws relative to the Arbitration of Disputes between Masters and Workmen*, Justices of the Peace are empowered to commit Persons to Prison in certain Cases therein mentioned: And whereas an Act was passed in the Sixth Year of the Reign of His late Majesty King *William* the Fourth, intituled *An Act for abolishing in* Scotland *Imprisonment for Civil Debts of small Amount:* And whereas it is expedient to encourage the Settlement of all Disputes between Masters and Workmen by Arbitration:' 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.

5 & 6 W. 4. c. 70.

Nothing in 5 & 6 W. 4. c. 70. to apply to Imprisonment under 5 G. 4. c. 96.

I. That nothing in the last-recited Act contained shall apply to Imprisonment under the first-recited Act.

CAP. XLVII.

An Act for the Incorporation and Regulation of Joint Stock Companies and other Associations. [14th *July* 1856.]

'WHEREAS it is expedient that the Law relating to the Incorporation and Regulation of Joint Stock Companies and other Associations should be consolidated 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, as follows:

Short Title.

I. This Act may be cited for all Purposes as "The Joint Stock Companies Act, 1856."

Act not to apply to Banking and Insurance Companies.

II. This Act shall not apply to Persons associated together for the Purpose of Banking or Insurance.

PART I

CONSTITUTION AND INCORPORATION OF COMPANIES AND ASSOCIATIONS.

Registry.

Formation of an Incorporated Company.

III. Seven or more Persons, associated for any lawful Purpose, may, by subscribing their Names to a Memorandum of Association, and otherwise complying with the Requisitions of this Act in respect of Registration, form themselves into an Incorporated Company, with or without Limited Liability.

Penalty on Partnerships exceeding a certain Number.

IV. Not more than Twenty Persons shall, after the Third Day of *November* One thousand eight hundred and fifty-six, carry on in Partnership any Trade or Business having Gain for its Object, unless they are registered as a Company under this Act, or are authorized so to carry on Business by some Private Act of Parliament or by Royal Charter or Letters Patent, or are engaged in working Mines within and subject to the Jurisdiction of the Stannaries; and if any Persons carry on Business in Partnership contrary to this Provision, every Person so acting shall be severally liable for the Payment of the whole Debts of the Partnership, and may be sued for the same without the Joinder in the Action or Suit of any other Members of the Partnership.

V. The

V. The Memorandum of Association shall contain the following Things; (that is to say,) Matters required to be prescribed by Memorandum of Association.

1. The Name of the proposed Company;
2. The Part of the United Kingdom, whether *England*, *Scotland*, or *Ireland*, in which the registered Office of the Company is to be established;
3. The Objects for which the proposed Company is to be established;
4. The Liability of the Shareholders, whether it is to be limited or unlimited;
5. The Amount of the nominal Capital of the proposed Company;
6. The Number of Shares into which such Capital is to be divided, and the Amount of each Share; subject to the following Restriction:

That in the Case of a Company formed with Limited Liability, and herein-after called a Limited Company, the Word "Limited" shall be the last Word in the Name of the Company.

VI. No Company shall be registered under a Name identical with that by which a subsisting Company is already registered, or so nearly resembling the same as to be calculated to deceive; and if any Company, through Inadvertence or otherwise, is registered by a Name identical with that by which a subsisting Company is registered, or so nearly resembling the same as to be calculated to deceive, such first-mentioned Company may, with the Sanction of the Registrar, change its Name, and upon such Change being made the Registrar shall enter the new Name on the Register in the Place of the former Name, but no such Alteration of Name shall affect any Rights or Obligations of the Company, or render defective any legal Proceedings instituted or to be instituted by or against the Company, and any legal Proceedings may be continued or commenced against the Company by its new Name that might have been continued or commenced against the Company by its former Name. Prohibition against Identity of Names in registered Companies.

VII. The Memorandum of Association shall be in the Form marked A. in the Schedule hereto, or as near thereto as Circumstances admit, and it shall, when registered, bind the Company and the Shareholders therein to the same Extent as if each Shareholder had subscribed his Name and affixed his Seal thereto or otherwise duly executed the same, and there were in such Memorandum contained, on the Part of himself, his Heirs, Executors, and Administrators, a Covenant to conform to all the Regulations of such Memorandum, subject to the Provisions of this Act. Form of Memorandum of Association.

VIII. Every Subscriber of the Memorandum of Association shall take One Share at the least in the Company: The Number of Shares taken by each Subscriber shall be set opposite his Name in such Memorandum of Association, and upon the Incorporation of the Company he shall be entered in the Register of Shareholders herein-after mentioned as a Shareholder to the Extent of the Shares he has taken. Shares to be taken by Subscribers of Memorandum of Association.

IX. The Memorandum of Association may be accompanied by or have annexed thereto or endorsed thereon Articles of Association, signed by the Subscribers to the Memorandum of Association, and prescribing Regulations for the Company; but if no such Regulations are prescribed, or so far as the same do not extend to modify the Regulations contained in the Table marked B. in the Schedule hereto, such last-mentioned Regulations shall, so far as the same are applicable, be deemed to be the Regulations of the Company, and shall bind the Company and the Shareholders therein to the same Extent as if they had been inserted in Articles of Association, and such Articles had been registered. Special Regulations may be prescribed by Articles of Association.

X. The Articles of Association shall be in the Form marked C. in the Schedule hereto, or as near thereto as Circumstances admit: They shall, when registered, bind the Company and the Shareholders therein to the same Extent as if each Shareholder had subscribed his Name and affixed his Seal thereto or otherwise duly executed the same, and there were in such Articles contained, on the Part of himself, his Heirs, Executors, and Administrators, a Covenant to conform to all the Regulations of such Articles, subject to the Provisions of this Act. Form and Effect of Articles of Association.

XI. The Memorandum of Association and the Articles of Association shall respectively bear the same Stamps as if they were Deeds: Any Person signing a printed Copy of the Memorandum of Association or Articles of Association shall be deemed to have signed such Memorandum and Articles respectively, and where the proper Stamp has been duly fixed on such Memorandum of Association or Articles of Association it shall not be necessary to stamp any printed Copy so signed: The Execution by any Person of the Memorandum of Association or Articles of Association shall be attested by One Witness at the least; and Attestation by One Witness shall be sufficient Attestation in *Scotland* as well as in *England* and *Ireland*. Stamp on Memorandum of Association and Articles of Association, and Use of printed Copies.

XII. The Memorandum of Association and Articles of Association shall be delivered to the Registrar of Joint Stock Companies, who shall retain and register the same: There shall be paid to the Registrar of Joint Stock Companies, in respect of the several Matters mentioned in the Table marked D. in the Schedule hereto, the several Fees therein specified, or such smaller Fees as the Board of Trade may from Time to Time direct; and all Fees so paid shall be paid into the Receipt of Her Majesty's Exchequer, and be carried to the Account of the Consolidated Fund of the United Kingdom of *Great Britain* and *Ireland*. Registration of Memorandum of Association and Articles of Association.

XIII. Upon any such Memorandum of Association, either with or without Articles of Association as aforesaid, being registered, the Registrar shall certify under his Hand that the Company is incorporated, and in the Case of a Limited Company that the Company is limited: The Subscribers of the Memorandum of Association, together with such other Persons as may from Time to Time become Shareholders Effect of Registration.

in the Company, shall thereupon be a Body Corporate by the Name prescribed in the Memorandum of Association, having a perpetual Succession and a Common Seal, with Power to hold Lands; but with such pecuniary Liability on the Part of the Shareholders as is herein-after mentioned: The Certificate of Incorporation given by the Registrar shall be conclusive Evidence that all the Requisitions of this Act in respect of Registration have been complied with; and the Date of such Certificate shall be deemed to be the Date of the Incorporation of the Company.

Directors to be liable for Debts if Dividend be paid when the Company is known by them to be insolvent.

XIV. If the Directors of any such Company shall declare and pay any Dividend when the Company is known by them to be insolvent, or any Dividend the Payment of which would to their Knowledge render it insolvent, they shall be jointly and severally liable for all the Debts of the Company then existing, and for all that shall be thereafter contracted, so long as they shall respectively continue in Office: Provided always, that the Amount for which they shall all be so liable shall not exceed the Amount of such Dividend; and that if any of the Directors shall be absent at the Time of making the Dividend or Dividends so declared or paid, or shall object thereto, and shall file their Objection in Writing with the Clerk of the Company, they shall be exempted from the said Liability.

Issue of Shares by Company.

XV. As soon as a Certificate of Incorporation has been granted by the Registrar of Joint Stock Companies, the Company may issue Certificates of Shares to the Subscribers to the Memorandum of Association, and to all other Persons to whom Shares may be allotted, of such Number and Amount as may be prescribed by the Memorandum of the Association, but not of any greater Number or Amount: The Shares so issued shall be Personal Estate, and shall not be of the Nature of Real Estate: And each Share shall be distinguished by its appropriate Number.

Register of Shareholders.

Register of Shareholders.

XVI. Every Company registered under this Act, herein-after referred to as "the Company," shall cause to be kept in One or more Books a Register of Shareholders, and there shall be entered therein the following Particulars:

(1.) The Names, Addresses, and Occupations, if any, of the Shareholders in the Company, and the Shares held by each of them, distinguishing each Share by its Number:
(2.) The Amount paid on the Shares of each Shareholder:
(3.) The Date at which the Name of any Person was entered in the Register as a Shareholder:
(4.) The Date at which any Person ceased to be a Shareholder in respect of any Share.

Annual List of Shareholders on Register.

XVII. Once at the least in every Year a List shall be made of all Persons who on the Fourteenth Day succeeding the Day on which the Ordinary General Meeting of the Company, or, if there is more than One Ordinary Meeting in each Year, the First of such Ordinary General Meetings is held, are Holders of Shares in the Company; and such List shall state the Names, Addresses, and Occupations of all the Persons therein mentioned, and the Number of Shares held by each of them, and shall contain a Summary specifying the following Particulars:

(1.) The Amount of the nominal Capital of the Company, and the Number of Shares into which it is divided:
(2.) The Number of Shares taken from the Commencement of the Company up to the Date of the Summary:
(3.) The Amount of Calls made on each Sare:
(4.) The total Amount of Calls that have been received:
(5.) The total Amount of Calls unpaid:
(6.) The total Amount of Shares forfeited:

The above List and Summary shall be contained in a separate Part of the Register, and shall be in the Form marked E. in the Schedule hereto, or as near thereto as Circumstances admit; such List and Summary shall be completed within Seven Days after such Fourteenth Day as is mentioned in this Section, and a Copy thereof authenticated by the Seal of the Company shall forthwith be forwarded to the Registrar, and any Person may inspect and take Copies of the same, subject to the Regulations under which a Person is herein-after declared to be entitled to inspect and take Copies of any Documents kept by the Registrar.

Penalty on Company not keeping a proper Register.

XVIII. If any Company registered under this Act makes default in keeping a Register of Shareholders, or in sending a Copy of such List and Summary as aforesaid to the Registrar, in compliance with the foregoing Rules, such Company shall incur a Penalty not exceeding Five Pounds for every Day during which such Default continues.

Restrictive Definition of Shareholder.

XIX. No Notice of any Trust, express or implied or constructive, shall be entered on the Register or receivable by the Company; and every Person who has accepted any Share in a Company registered under this Act, and whose Name is entered in the Register of Shareholders, and no other Person (except a Subscriber to the Memorandum of Association in respect of the Shares subscribed for by him) shall for the Purposes of this Act be deemed to be a Shareholder.

Transfer of Shares.

XX. The Transfer of any Share in the Company shall be in the Form marked F. in the Schedule hereto, or to the like Effect, and shall be executed both by the Transferror and Transferree: The Transferror shall be deemed to remain a Holder of such Share until the Name of the Transferree is entered in the Register Book in respect thereof.

Certificate of Shares.

XXI. A Certificate, under the Common Seal of the Company, specifying any Share or Shares held by any Shareholder, shall be *primâ facie* Evidence of the Title of the Shareholder to the Share or Shares therein specified.

Calls a Debt to Company.

XXII. The Amount of Calls for the Time being unpaid on any Share shall be deemed to be a Debt due from the Holder of such Share to the Company.

Inspection of Register.

XXIII. The Register of Shareholders commencing from the Incorporation of the Company shall be kept at the registered Office of the Company herein-after mentioned; except when closed as herein-after mentioned, it shall during Business Hours, but subject to such reasonable Restrictions as the Company in General Meeting may impose, so that not less than Two Hours in each Day be appointed for Inspection, be open to the Inspection of any Shareholder *gratis*, and to the Inspection of any other Person on the Payment of One Shilling, or such less Sum as the Company may prescribe for each Inspection; and every such Shareholder or other Person may require a Copy of such Register, or of any Part thereof, on Payment of Sixpence for every One hundred Words required to be copied; if such Inspection or Copy is refused, the Company shall incur for each Refusal a Penalty not exceeding Two Pounds, and a further Penalty not exceeding Two Pounds for every Day during which such Refusal continues.

Power to close Register.

XXIV. The Company may, upon giving Notice by Advertisement in some Newspaper circulating in the District in which the registered Office of the Company is situated, close the Register of Shareholders for any Time or Times not exceeding on the whole Twenty-one Days in each Year, and the Period during which the Books are closed shall not be reckoned as Part of the Time within which a Transfer is to be registered.

Remedy for improper Entry or Omission of Entry in Register.

XXV. If the Name of any Person is without sufficient Cause entered or omitted to be entered in the Register of Shareholders of any Company, such Person, or any Shareholder of the Company, may, as respects Companies registered in *England* or *Ireland*, by Motion in any of Her Majesty's Superior Courts of Law or Equity, and as respects Companies registered in *Scotland* by summary Petition to the Court of Session, apply to such Court for an Order that the Register may be rectified, and the Court may either refuse such Application, with or without Costs, to be paid by the Applicant, or it may, if satisfied of the Justice of the Case, make an Order for the Rectification of the Register, and may direct the Company to pay all the Costs of such Motion or Petition, and any Damages the Party aggrieved may have sustained; and if the Company makes default or is guilty of unnecessary Delay in registering any Transfer of Shares, they shall be responsible to any Person injured by such Default or Delay for the Amount of Damage he may thereby have sustained.

Register to be Evidence.

XXVI. The Register of Shareholders shall be Evidence of any Matters by this Act directed or authorized to be inserted therein.

Copies of Memorandum and Articles of Association to be given to Shareholders.

XXVII. Copies of the Memorandum of Association and Articles of Association shall be forwarded to every Shareholder, at his Request, on Payment of the Sum of One Shilling for each Copy, or such less Sum as may be prescribed by the Company.

PART II.

Management and Administration of Companies.

General.

Registered Office of Company.

XXVIII. The Company shall have a registered Office to which all Communications and Notices may be addressed: If any Company registered under this Act carries on Business without having such an Office, it shall incur a Penalty not exceeding Five Pounds for every Day during which Business is so carried on.

Notice of Situation of registered Office.

XXIX. Notice of the Situation of such registered Office, and of any Change therein, shall be given to the Registrar of Joint Stock Companies, and recorded by him: Until such Notice is given the Company shall not be deemed to have complied with the Provisions of this Act with respect to having a registered Office.

Publication of Name by a Limited Company.

XXX. Every Limited Company registered under this Act shall paint or affix, and shall keep painted or affixed, its Name on the Outside of every Office or Place in which the Business of the Company is carried on, in a conspicuous Position, in Letters easily legible, and shall have its Name engraven in legible Characters on its Seal, and shall have its Name mentioned in legible Characters in all Notices, Advertisements, and other official Publications of such Company, and in all Bills of Exchange, Promissory Notes, Endorsements, Cheques, and Orders for Money or Goods purporting to be signed by or on behalf of such Company, and in all Bills of Parcels, Invoices, Receipts, and Letters of Credit of the Company.

Penalties on Non-publication of Name.

XXXI. If any Limited Company registered under this Act does not paint or affix, and keep painted or affixed, its Name in manner aforesaid, it shall be liable to a Penalty not exceeding Five Pounds for not so painting or affixing its Name, and for every Day during which such Name is not so kept painted or affixed; and if any Officer of such Company, or any Person on its Behalf, uses any Seal purporting to be a Seal of the Company whereon its Name is not so engraven as aforesaid, or issues or authorizes the Issue of any Notice, Advertisement, or other official Publication of such Company, or signs or authorizes to be signed on behalf of such Company any Bill of Exchange, Promissory Note, Endorsement, Cheque, Order for Money or Goods, or issues or authorizes to be issued any Bill of Parcels, Invoice, Receipt

Receipt or Letter of Credit of the Company, wherein its Name is not mentioned in manner aforesaid, he shall be liable to a Penalty of Fifty Pounds, and shall further be personally liable to the Holder of any such Bill of Exchange, Promissory Note, Cheque, or Order for Money or Goods, for the Amount thereof, unless the same is duly paid by the Company.

General Meetings.

XXXII. A General Meeting of the Company shall be held once at the least in every Year.

Company may alter Regulations by Special Resolution.

XXXIII. Any Company registered under this Act may in General Meeting, from Time to Time, by such Special Resolution as is herein-after mentioned, alter and make new Provisions in lieu of or in addition to any Regulations of the Company contained in the Articles of Association or the Table marked B. in the Schedule.

Definition of Special Resolution.

XXXIV. A Resolution shall be deemed to be a Special Resolution of the Company whenever the same has been passed by Three Fourths in Number and Value of such Shareholders of the Company for the Time being entitled to vote as may be present in Person or by Proxy (in Cases where, by the Regulations of the Company, Proxies are allowed) at any Meeting of which Notice specifying the Intention to propose such Resolution has been duly given, and such Resolution has been confirmed by a Majority of such Shareholders for the Time being entitled to vote as may be present in Person or by Proxy at a subsequent Meeting, of which Notice has been duly given, and held at an Interval of not less than One Month, nor more than Three Months, from the Date of the Meeting at which such Special Resolution was first passed: Unless a Poll is demanded by at least Five Shareholders a Declaration of the Chairman of any such Meeting as is mentioned in this Section, that a Special Resolution has been carried, shall be deemed conclusive Evidence of the Fact, without Proof of the Number or Proportion of the Votes recorded in favour of or against the same: Notice of any Meeting shall, for the Purposes of this Section, be deemed to be duly given, and the Meeting to be duly held, whenever such Notice is given and Meeting held in manner prescribed by the Regulations of the Company.

Registry of Special Resolutions.

XXXV. A Copy of any Special Resolution that is passed by any Company registered under this Act shall be forwarded to the Registrar of Joint Stock Companies, and recorded by him: If such Copy is not so forwarded within Fifteen Days from the Date of the passing of the Resolution, the Company shall incur a Penalty not exceeding Two Pounds for every Day after the Expiration of such Fifteen Days during which such Copy is omitted to be forwarded.

Copies of Special Resolutions.

XXXVI. A Copy of any Special Resolution shall be given to any Shareholder on Payment of One Shilling, or of such less Sum as the Company may direct.

Notice to Registrar of Increase of Capital.

XXXVII. The Company, if authorized so to do by its Regulations, may increase its nominal Capital in manner directed by such Regulations, but Notice of any Increase so made shall be given to the Registrar of Joint Stock Companies within Fifteen Days from the Date of the passing of the Resolution by which such Increase has been authorized, and the Registrar shall forthwith record the Amount of such Increase: If such Notice is not given within the Period aforesaid the Company shall incur a Penalty not exceeding Five Pounds for every Day during which such Neglect to give Notice continues.

Prohibition against holding Land.

XXXVIII. No Company that is not for the Time being carrying on a Trade or Business having Gain for its Object shall be entitled, without the Sanction of the Board of Trade, to hold more than Two Acres of Land, but the Board of Trade may empower any such Company to hold Lands in such Quantity and subject to such Conditions as they think fit, and may for that Purpose grant a Licence in the Form marked G. in the Schedule hereto, or to the like Effect.

Prohibition against carrying on Business with less than Seven Shareholders.

XXXIX. If any Company registered under this Act carries on Business when the Number of its Shareholders is less than Seven, for a Period of Six Months after the Number has been so reduced, then every Person who is a Shareholder in such Company during the Time that it so carries on Business after such Period of Six Months shall be severally liable for the Payment of the whole Debts of the Company contracted during such Time, and may be sued for the same without the Joinder in the Action or Suit of any other Shareholder.

Evidence of Proceedings at Meetings.

XL. The Company shall cause Minutes of all Resolutions and Proceedings of General Meetings of the Company to be duly entered in Books to be from Time to Time provided for the Purpose, and any such Minute as aforesaid, if signed by any Person purporting to be the Chairman of such Meeting, shall be receivable in Evidence in all legal Proceedings, and until the contrary is proved every General Meeting in respect of the Proceedings of which Minutes have been so made shall be deemed to have been duly held and convened.

Legal Instruments of Company.

Contracts how made.

XLI. Contracts on behalf of any Company registered under this Act may be made as follows; (that is to say,)

(1.) Any Contract which if made between private Persons would be by Law required to be in Writing, and if made according to *English* Law to be under Seal, may be made on behalf of the Company in Writing under the Common Seal of the Company, and such Contract may be in the same Manner varied or discharged:

(2.) 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, may be made on behalf of the Company in Writing signed by any Person acting under the express or implied Authority of the Company, and such Contract may in the same Manner be varied or discharged:

(3.) Any

(3.) Any Contract which if made between private Persons would by Law be valid although made by Parol only, and not reduced into Writing, may be made by Parol on behalf of the Company by any Person acting under the express or implied Authority of the Company, and such Contract may in the same Way be varied or discharged:

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.

Deeds.

Execution of Deeds abroad.

XLII. Any Company registered under this Act may, by Instrument or Writing under their Common Seal, empower any Person either generally or in respect of any specified Matters, as their Attorney, to execute Deeds on their Behalf in any Place not situate in the United Kingdom; and every Deed signed by such Attorney, on behalf of the Company, and under his Seal, shall be binding on the Company to the same Extent as if it were under the Common Seal of the Company.

Promissory Notes and Bills of Exchange.

XLIII. A Promissory Note or Bill of Exchange shall be deemed to have been made, accepted, or endorsed on behalf of any Company registered under this Act, if made, accepted, or endorsed in the Name of the Company by any Person acting under the express or implied Authority of the Company.

Mortgages according to English Law.

XLIV. In any Mortgage made according to *English* Law by any Company registered under this Act there shall be implied the following Covenants (unless Words expressly negativing such Implication are contained therein); that is to say, a Covenant on the Part of the Company to pay the Money thereby secured, and Interest thereon, at the Time and Rate therein mentioned; a Covenant that they have Power to convey or assure the Property declared to be conveyed or assured to the Mortgagee free from Incumbrances; and a Covenant for further Assurance of such Property, at the Expense of the Company, to the Mortgagee or any Person claiming through, under, or in trust for him; and if a Power of Sale is thereby given such Power shall imply an Authority to sell by Public Auction or Private Contract, altogether or in Parcels, and to make, rescind, or vary Contracts for Sale or Resale without being liable for Loss, and also an Authority to give effectual Receipts for Purchase Monies, and such Mortgage may be in the Form marked H. in the Schedule hereto, or as near thereto as Circumstances admit.

Bond and Disposition in Security according to Scotch Law.

XLV. In any Bond and Disposition in Security made according to *Scotch* Law by any Company registered under this Act there shall be implied the following Obligations and Undertakings (unless Words expressly negativing such Implication are contained therein); that is to say, an Obligation on the Part of the Company to pay the Money thereby secured, and Interest thereon, at the Time and Rate therein mentioned; an Undertaking that they have Power to convey the Property declared to be conveyed to the Heritable Creditor free from Incumbrances; and an Obligation to make and execute, at the Expense of the Company, in favour of the Heritable Creditor, or any Person claiming through, under, or in trust for him, any further Deed necessary to give Effect and Validity to the Security; and if a Power of Sale is thereby given, such Power shall imply an Authority to sell by Public Auction or Private Contract, altogether or in Parcels, and to make, rescind, or vary Contracts of Sale or Resale, without being liable for Loss, and also an Authority to give effectual Receipts for Purchase Monies; and such Bond and Disposition in Security may be in the Form marked I. in the Schedule hereto, or as near thereto as Circumstances admit, and shall be registered in the General or Particular or Burgh Register of Sasines, as the Case may be, and being so registered shall be equivalent to a Bond and Disposition in Security in ordinary Form, containing Power of Sale, with Sasine thereon, duly recorded in the Register of Sasines.

Conveyances according to English Law.

XLVI. In any Conveyance or Assurance made according to *English* Law by any Company registered under this Act there shall be implied (unless Words expressly negativing such Implication are contained therein) the following Covenants on the Part of the Company; (that is to say,)

A Covenant that, notwithstanding any Act or Default done by the Company, they were at the Time of the Execution of such Conveyance or Assurance seised or possessed of the Lands or Premises thereby conveyed or assured for an indefeasible Estate of Inheritance in Fee Simple, free from Incumbrances occasioned by them, or otherwise for such Estate or Interest as therein expressed to be assured, free from Incumbrances occasioned by them:

A Covenant that the Person to whom such Lands or Premises are conveyed or assured, his Heirs, Successors, Executors, Administrators, and Assigns, (as the Case may be,) shall quietly enjoy the same against the Company and their Successors, and all other Persons claiming under them, and be indemnified and saved harmless by the Company and their Successors from all Incumbrances occasioned by the Company:

A Covenant for further Assurance of such Lands or Premises at the Expense of the Person to whom the same are conveyed or assured, his Heirs, Successors, Executors, Administrators, or Assigns, (as the Case may be,) by the Company or their Successors, and all other Persons claiming under them.

Disposition in Security according to Scotch Law.

XLVII. In any Disposition of Heritable Property granted according to *Scotch* Law by any Company registered under this Act there shall be implied, unless Words expressly excluding such Implication are contained therein, an Obligation of absolute Warrandice, and an Obligation to complete the Company's Title at its own Expense so far as necessary to validate or give full Effect to such Disposition, and an Obligation

Obligation to grant also at its own Expense any further Deeds which may be necessary to render such Disposition effectual.

Examination of Affairs of Company.

Inspection of Affairs of Company by Board of Trade.

XLVIII. Upon the Application of One Fifth in Number and Value of the Shareholders of any Company registered under this Act, the Board of Trade may appoint One or more competent Inspectors to examine into the Affairs of the Company, and to report thereon in such Manner as the Board of Trade directs.

Power of Inspectors.

XLIX. It shall be the Duty of all Officers and Agents of the Company to produce for the Examination of the Inspectors all Books and Documents in their Custody or Power: Any Inspector may examine upon Oath the Officers and Agents of the Company in relation to its Business, and may administer such Oath accordingly: If any Officer or Agent refuses to produce any such Book or Document, or to answer any Question relating to the Affairs of the Company, he shall incur a Penalty not exceeding Five Pounds in respect of each Offence.

Result of Examination how dealt with.

L. Upon the Conclusion of the Examination the Inspectors shall report their Opinion to the Board of Trade: Such Report shall be written or printed, as the Board of Trade directs: A Copy shall be forwarded by the Board of Trade to the registered Office of the Company, and a further Copy shall, at the Request of the Shareholders upon whose Application the Inspection was made, be delivered to them or to any One or more of them: All Expenses of and incidental to any such Examination as aforesaid shall be defrayed by the Shareholders upon whose Application the Inspectors were appointed.

Power of Company to appoint Inspectors.

LI. Any Company registered under this Act may in General Meeting appoint Inspectors for the Purpose of examining into the Affairs of the Company: The Inspectors so appointed shall have the same Powers and perform the same Duties as Inspectors appointed by the Board of Trade, with this Exception, that, instead of making their Report to the Board of Trade, they shall make the same in such Manner and to such Persons as the Company in General Meeting directs, and the Officers and Agents of the Company shall incur the same Penalties, in case of any Refusal to produce any Book or Document to such Inspectors, or to answer any Question, as they would have incurred if such Inspectors had been appointed by the Board of Trade.

Report of Inspectors to be Evidence.

LII. A Copy of the Report of any Inspectors appointed under this Act, authenticated by the Seal of the Company into whose Affairs they have made Inspection, shall be admissible as Evidence in any legal Proceeding.

Notices.

Services of Notices on Company.

LIII. Any Summons or Notice requiring to be served upon the Company may, except in Cases where a particular Mode of Service is directed, be served by leaving the same, or sending it through the Post addressed to the Company, at their registered Office, or by giving it to any Director, Secretary, or other principal Officer of the Company.

Rule as to Notices by Letter.

LIV. Notices by Letter shall be posted in such Time as to admit of the Letter 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 put into the Post Office at such Time as aforesaid.

Authentication of Notices of Company.

LV. Any Summons, Notice, Writ, or Proceeding requiring Authentication by the Company may be signed by any Director, Secretary, or other authorized Officer 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.

Legal Proceedings.

Recovery of Penalties.

LVI. All Offences under this Act made punishable by any Penalty may be prosecuted summarily before Two or more Justices, as to *England* in manner directed by an Act passed in the Session holden in the Eleventh and Twelfth Years of the Reign of Her Majesty Queen *Victoria*, Chapter Forty-three, intituled *An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within* England *and* Wales *with respect to Summary Convictions and Orders*; and as to *Scotland*, before Two or more Justices or the Sheriff of the County, in the Manner directed by the Act passed in the Session of Parliament holden in the Seventeenth and Eighteenth Years of the Reign of Her Majesty Queen *Victoria*, Chapter One hundred and four, intituled *An Act to amend and consolidate the Acts relating to Merchant Shipping*, as regards Offences in *Scotland* against that Act, not being Offences by that Act described as Felonies or Misdemeanors; and as to *Ireland*, in the Manner directed by the Act passed in the Session holden in the Fourteenth and Fifteenth Years of the Reign of Her Majesty Queen *Victoria*, Chapter Ninety-three, intituled *An Act to consolidate and amend the Acts regulating the Proceedings of Petty Sessions, and the Duties of Justices of the Peace out of Quarter Sessions in* Ireland, or any Act passed for the Amendment of the above-mentioned Acts.

Application of Penalties.

LVII. The Justices or Sheriff imposing any Penalty under this Act may direct the whole or any Part thereof to be applied in or towards Payment of the Costs of the Proceedings, or in or towards the rewarding the Person upon whose Information or at whose Suit such Penalty has been recovered; and, subject

subject to such Direction, all Penalties shall be paid into the Receipt of Her Majesty's Exchequer, in such Manner as the Treasury may direct, and shall be carried to and form Part of the Consolidated Fund of the United Kingdom.

Alteration of Forms.

LVIII. The Board of Trade may from Time to Time make such Alterations in the Forms and Tables contained in the Schedule hereto as they deem requisite: They shall publish any Form or Table when altered in the *London Gazette*, and upon such Publication being made, it shall have the same Force as if it were included in the Schedule to this Act. Board of Trade may alter Forms in Schedule.

PART III.

WINDING-UP.

Preliminary.

LIX. The Provisions of this Act relating to the Winding-up of Companies shall apply to all Companies registered under this Act, and to all Companies registered under the Act passed in the Eighth Year of the Reign of Her present Majesty, Chapter One hundred and ten, and intituled *An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies* from and after the Date at which they have obtained Registration under this Act in manner herein-after mentioned, but not any other Companies. Application of Part III. of Act.

LX. The Expression "the Court," as used in the Third Part of this Act, shall mean the following Authorities; (that is to say,) Definition of "the Court."

In the Case of a Company engaged in working any Mine within and subject to the Jurisdiction of the Stannaries, the Court of the Vice-Warden of the Stannaries:

In the Case of a Limited Company registered in *England* that is not engaged in working any such Mine as aforesaid, the Court of Bankruptcy having Jurisdiction in the Place in which the registered Office of the Company is situate:

In the Case of a Limited Company registered in *Ireland*, whose registered nominal Capital does not exceed Five thousand Pounds, the Commissioners of Bankrupt in *Ireland:*

In all Cases not herein-before provided for, the Court shall mean, as respects Companies registered in *England* the High Court of Chancery of *England*, as respects Companies registered in *Scotland* the Court of Session in either Division thereof, and as respects Companies registered in *Ireland* the Court of Chancery of *Ireland.*

And any Court to which Jurisdiction is given by the Third Part of this Act, not being the Court of Chancery or the Court of Session, shall, in addition to its ordinary Powers, have the same Power of enforcing any Orders made by it in pursuance of this Act, if in *England*, as the Court of Chancery has, if in *Ireland*, as the Court of Chancery in *Ireland* has, in relation to Matters within the Jurisdiction of such Courts respectively.

LXI. In the event of any Company being wound-up by the Court or voluntarily, the existing Shareholders shall be liable to contribute to the Assets of the Company to an Amount sufficient to pay the Debts of the Company, and the Costs, Charges, and Expenses of winding-up the same, with this Qualification, that if the Company is limited no Contribution shall be required from any Shareholder exceeding the Amount, if any, unpaid on the Shares held by him. Liability of present Shareholders in respect of Debts.

LXII. In the event of any Company other than a Limited Company being wound-up by the Court or voluntarily, any Person who has ceased to be a Shareholder within the Period of Three Years prior to the Commencement of the Winding-up shall be deemed, for the Purposes of Contribution towards Payment of the Debts of the Company, and the Costs, Charges, and Expenses of winding-up the same, to be an existing Shareholder, and shall have in all respects the same Rights, and be subject to the same Liabilities to Creditors, as if he had not so ceased to be a Shareholder, with this Exception, that he shall not be liable in respect of any Debt of the Company contracted after the Time at which he ceased to be a Shareholder. Liability of former Shareholders in a Company other than a Limited Company with respect to Debts.

LXIII. In the event of any Limited Company being wound-up by the Court or voluntarily, any Person who has ceased to be a Holder of any Share or Shares within the Period of One Year prior to the Commencement of the Winding-up shall be deemed, for the Purposes of Contribution towards Payment of the Debts of the Company, and the Costs, Charges, and Expenses of winding-up the same, to be an existing Holder of such Share or Shares, and shall have in all respects the same Rights and be subject to the same Liabilities to Creditors as if he had not so ceased to be a Shareholder. Liability of former Shareholders in a Limited Company with respect to Debts.

LXIV. The Winding-up shall, if the Company is wound-up by the Court, be deemed to commence at the Time of the Presentation of such Petition as is herein-after required to be presented to the Court, and if the Company is wound-up voluntarily, be deemed to commence at the Time of the passing of the Resolution authorizing such Winding-up. Commencement of Winding-up of Company defined.

LXV. Any existing or former Shareholder upon whom Calls are authorized to be made by the Third Part of this Act is herein-after called "a Contributory," and the Representatives of any deceased Contributory shall be liable in a due Course of Administration to the same Extent as such Contributory would be liable under the Third Part of this Act, if alive. Definition of "Contributory," and legal Character of his Liability.

Rights of Contributories between themselves.

LXVI. For the Purpose of ascertaining the Liability of existing and former Shareholders as between themselves, the following Rule shall be adopted; (that is to say,)

(1.) In the Case of a Company other than a Limited Company every Transferree of Shares shall, in a Degree proportioned to the Shares transferred, indemnify the Transferror against all existing and future Debts of the Company:

(2.) In the Case of a Limited Company every Transferree shall indemnify the Transferror against all Calls made or accrued due on the Shares transferred subsequently to the Transfer.

Winding-up by Court.

Circumstances under which Company may be wound-up by Court.

LXVII. A Company may be wound-up by the Court under the following Circumstances; (that is to say,)

(1.) Whenever the Company in General Meeting has passed a Special Resolution requiring the Company to be wound-up by the Court:

(2.) Whenever the Company does not commence its Business within a Year from its Incorporation, or suspends its Business for the Space of a whole Year:

(3.) Whenever the Shareholders are reduced in Number to less than Seven:

(4.) Whenever the Company is unable to pay its Debts:

(5.) Whenever Three Fourths of the Capital of the Company have been lost or become unavailable.

Company when deemed unable to pay its Debts.

LXVIII. A Company shall be deemed to be unable to pay its Debts,

(1.) Whenever a Creditor to whom the Company is indebted in a Sum exceeding Fifty Pounds then due has served on the Company, by leaving the same at their registered Office, a Demand under his Hand requiring the Company to pay the Sum so due, and the Company have for the Space of Three Weeks succeeding the Service of such Demand neglected to pay such Sum, or to secure or compound for the same to the Satisfaction of the Creditor:

(2.) Whenever, in *England* and *Ireland*, Execution issued on a Judgment, Decree, or Order obtained in any Court in favour of any Creditor in any Suit or other legal Proceeding instituted by such Creditor against the Company is returned unsatisfied, in whole or in part, by the Sheriff of the County in which the registered Office of the Company is situate:

(3.) Whenever, in *Scotland*, the Inducie of a Charge for Payment on an Extract Decree, or an Extract registered Bond, or an Extract registered Protest, have expired without Payment being made.

Application for winding-up to be by Petition.

LXIX. Any Application for the winding-up of a Company shall be by Petition, and there shall be filed or lodged at the Time when such Petition is presented an Affidavit verifying the same: Such Petition may, in Cases where the Company is unable to pay its Debts, be presented either by a Creditor or a Contributory, but where any other Ground is alleged for winding-up the Company a Contributory alone is entitled to present the Petition.

Course to be pursued by Court on Petition of a Creditor.

LXX. Upon the Hearing of any Petition presented by a Creditor, the Court may dismiss such Petition, with or without Costs, to be paid by the Petitioner, or it may make an Order or pronounce an Interlocutor directing the Company, by a Day to be named in the Order or Interlocutor, to pay or secure Payment to the Creditor of all Monies that may be proved due to him, together with such Costs as the Court may direct; or the Court may, if it so thinks fit, on the Hearing of such Petition, make an Order or Decree for winding-up the Company in the first instance, or such other Order as it deems just.

Order for winding-up Company.

LXXI. If at the Expiration of the Time named in such Order or Interlocutor such Payment is not made, or Security given, the Court may thereupon make an Order or Decree for winding-up the Company.

Course to be pursued by Court on Petition, &c.

LXXII. Upon the Hearing of a Petition presented by a Contributory, the Court may dismiss such Petition, with or without Costs, to be paid by the Petitioner, or it may make an Order or Decree directing the Company to be wound-up, or such other Order or Decree as it deems just.

Effect of the Order for winding-up Company.

LXXIII. After the Date of such Order or Decree for winding-up the Company, all Suits and Actions against the Company shall, if the Court so orders, be stayed: No Director or other Officer of the Company shall, without the Sanction of the Court, dispose of any of the Property, Effects, or Things in Action of the Company, and no Transfer of any Shares shall be valid without the Sanction of the Court: A Copy of such Order or Decree shall forthwith be reported by the Company to the Registrar of Joint Stock Companies, who shall make a Minute thereof in his Books relating to the Company.

Power of Court of Chancery to remit Winding-up to Court of Bankruptcy.

LXXIV. In Cases where the Court of Chancery in *England* or *Ireland* makes an Order for winding-up a Company, it may, if it thinks fit, direct all or any subsequent Proceedings for winding-up the same to be had in the Court of Bankruptcy having Jurisdiction in the Place in which the registered Office of the Company is situate, or if the Company is formed for the Purpose of working any such Mine as is within and subject to the Jurisdiction of the Stannaries, in the Court of the Vice-Warden of the Stannaries; and upon such Order being made the Court therein named shall have the same Jurisdiction and exercise the same Powers with respect to winding-up such Company as it would have and exercise in a Case by this Act declared to be within its Jurisdiction.

Collection and Application of Assets.

LXXV. As soon as may be after making an Order or Decree for winding-up the Company the Court shall cause the Assets of the Company to be collected, and applied in discharge of its Liabilities in a due Course of Administration.

LXXVI. Any

Fraudulent Preference.

LXXVI. Any such Conveyance, Mortgage, Delivery of Goods, Payment, Execution, or other Act relating to Property, as would, if made or done by or against any individual Trader, be deemed in the event of his Bankruptcy to have been made or done by way of undue or fraudulent Preference of any Creditor of such Trader, shall, if made or done by or against any Company registered under this Act, be deemed, in the event of an Order being made for winding-up such Company, to have been made or done by way of undue or fraudulent Preference of such Creditor of such Company, and shall be invalid accordingly; and for the Purposes of this Section the Presentation of a Petition for winding-up a Company shall be deemed to correspond with the filing of a Petition for Adjudication of Bankruptcy in the Case of an individual Trader; and any Conveyance or Assignment made by any Company registered under this Act of all its Estate and Effects to Trustees for the Benefit of all its Creditors shall be void to all Intents.

Power of Court to summon Persons suspected of having Property of Company.

LXXVII. The Court may, after it has made an Order or Decree for winding-up the Company, summon before it any Person known or suspected to have in his Possession any of the Estate or Effects of the Company, or supposed to be indebted to the Company, or any Person whom the Court may deem capable of giving Information concerning the Trade, Dealings, Estate, or Effects of the Company; and the Court may require any such Person to produce any Books, Papers, Deeds, Writings, or other Documents in his Custody or Power which may appear to the Court requisite to the full Disclosure of any of the Matters which the Court thinks necessary to be inquired into for the Purpose of winding-up the Company; and if any Person so summoned refuses to come before the Court at the Time appointed, having no lawful Impediment (made known to the Court at the Time of its sitting, and allowed by it), the Court may by Warrant authorize and direct the Persons therein named for that Purpose to apprehend such Person, and bring him before the Court for Examination.

Examination of Parties by Court.

LXXVIII. The Court may examine upon Oath, either by Word of Mouth or upon written Interrogatories, any Person appearing or brought before them in manner aforesaid, concerning the Trade, Dealings, Estate, or Effects of the Company, and may reduce into Writing the Answers of every such Person, and require him to sign and subscribe the same.

Penalty on Falsification of Books.

LXXIX. If any Director, Officer, or Contributory of any Company for the winding-up of which an Order or Decree has been made under this Act destroys, mutilates, alters, or falsifies any Books, Papers, Writings, or Securities, or makes or is privy to the making of any false or fraudulent Entry in any Register, Book of Account, or other Document belonging to the Company, with Intent to defraud the Creditors or Contributories of such Company or any of them, every Person so offending shall be deemed to be guilty of a Misdemeanor, and upon being convicted shall be liable to Imprisonment for any Term not exceeding Two Years, with or without Hard Labour.

Attachments, Sequestrations, and Executions within Three Months of Petition to be void.

LXXX. If any Attachment, Sequestration, or Execution is issued against any Company, by virtue whereof the Estate and Effects of the Company, or any of them, may be attached, sequestered, or taken in Execution at any Time within Three Months next before the filing or Presentation of the Petition for winding-up the Company, such Attachment, Sequestration, or taking in Execution shall be void in favour of the Liquidators of the Company, as against the attaching, sequestrating, or Execution Creditor, whether the same has been completely executed or not, except that such Creditor shall, if the Attachment, Sequestration, or Execution would have been valid but for this Provision, be entitled to retain out of any Money already realized, his Costs of Suit, and of the Attachment, Sequestration, or Execution, or to proceed with the Attachment, Sequestration, or Execution for the Purpose of realizing such Costs; but on Satisfaction of such Costs, or on Tender of the Amount thereof by the Liquidators to the Creditor, it shall be lawful for the Liquidators to recover from such Creditor the Property so attached, sequestrated, and taken in Execution, and the Proceeds of such Property, or the Residue thereof, as the Case may be.

Books of Company to be Evidence.

LXXXI. All Books, Accounts, and Documents of the Company, and of the Liquidators herein-after mentioned, shall, as between the Contributories of the Company, be *primâ facie* Evidence of the Truth of all Matters therein contained, and purporting to be therein recorded.

Power of Court to make Calls.

LXXXII. The Court may, at any Time after making an Order or Decree for winding-up a Company, and before it has ascertained the Sufficiency of the Assets of the Company, or the Debts in respect of which the several Classes of Contributories are liable, make Calls on all or any of the Contributories, to the Extent of their Liability, for Payment of all or any Sums it deems necessary to satisfy the Debts of the Company and the Costs of winding it up, and it may, in making a Call, take into consideration the Probability that some of the Contributories upon whom the same is made may partly or wholly fail to pay their respective Portions of the same.

Payment of Money into the Bank.

LXXXIII. All Monies received under the Direction of the Court on account of the Sale or Conversion of any of the Assets of the Company, or in respect of Calls made on any Contributories, or of any other Matter, with the Exception of such Balance, if any, as the Official Liquidators may, with the Sanction of the Court, retain in their Hands for the Payment of current Expenses, shall in *England* be paid into the Bank of *England* or some Branch thereof, and in *Ireland* into the Bank of *Ireland* or some Branch thereof, and in *Scotland* into One of the incorporated or chartered Banks in *Scotland*, to the Credit of such Account as the Court may direct; and no Money standing to such Account shall be paid out by the Bank except upon Cheques signed in such Manner as the Court directs.

Power of Court to grant Injunction or Interdict.

LXXXIV. The Court may, at any Time after the Presentation of a Petition for winding-up a Company, and either before or after making an Order for winding-up the same, upon the Application by Motion of any Creditor or Contributory of such Company, restrain further Proceedings in any Action or Suit against the Company, or appoint a Receiver of the Estate and Effects of the Company; it may also, by Notice or Advertisement, require all Creditors to present and prove their Claims within a certain Time, or be precluded from the Benefit of any Distribution which may be made before such Claim is proved.

Power of Court to stay Proceedings.

LXXXV. The Court may, at any Time after an Order or Decree has been made for winding-up a Company, upon the Application by Motion of any Creditor or Contributory of the Company, and upon Proof to the Satisfaction of the Court that all Proceedings in relation to such Winding-up ought to be stayed, make an Order staying the same, either altogether or for a limited Time, on such Terms and subject to such Conditions as it deems fit.

Power of Court to adjust Rights of Contributories.

LXXXVI. As soon as the Creditors are satisfied, the Court shall proceed to adjust the Rights of the Contributories amongst themselves; and to distribute any Surplus that may remain amongst the Parties entitled thereto, and for the Purposes of such Adjustment it may make Calls on the Contributories to the Extent of their Liability for Payment of such Sums as it deems necessary; and it may, in making a Call, take into consideration the Probability that some of the Contributories upon whom the same is made may partly or wholly fail to pay their respective Portions of the same.

Power of Court to order Costs.

LXXXVII. The Court may make such Order as to the Priority and Payment out of the Estate of the Company of the Costs, Charges, and Expenses incurred in winding-up any Company as it thinks just.

Official Liquidators.

Appointment of Official Liquidators.

LXXXVIII. For the Purpose of conducting the Proceedings in winding-up a Company, and assisting the Court therein, there shall be appointed a Person or Persons to be called an Official Liquidator or Official Liquidators; and such Appointment shall be made as follows; that is to say,

In Cases within the Jurisdiction of the Court of Chancery in *England* or *Ireland*, or of the Court of Session in *Scotland*, or of the Court of the Stannaries, the Court having Jurisdiction may, after requiring due Security, appoint such Persons or Person, either provisionally or otherwise, as it thinks fit, to the Office of Official Liquidators; it may from Time to Time remove any Person or Persons so appointed, and fill up any Vacancy occasioned by such Removal or by the Death or Resignation of any such Appointee or Appointees; if One Person only is appointed, he shall have all the Powers hereby given to several Liquidators; if more Persons than One are appointed, the Court shall declare whether any Act hereby required or authorized to be done by the Official Liquidators may be done by all or any One or more of such Persons:

In Cases within the Jurisdiction of any Court of Bankruptcy, the Official Assignee to be named by the Court shall be the Official Liquidator; but it shall be lawful, in Cases where the Winding-up takes place at the Suit of a Creditor, for the major Part in Value of the Creditors assembled at a Meeting to be held for the Purpose, and in Cases where the Winding-up takes place at the Suit of a Contributory, for the major Part in Value of the Contributories assembled at a Meeting to be held for the Purpose, to appoint an Official Liquidator to act concurrently with the Official Liquidator so named by the Court.

Style and Duties of Official Liquidators.

LXXXIX. The Official Liquidators or Liquidator shall be described by the Style of the Official Liquidators or Official Liquidator of the particular Company in respect of which they or he are or is appointed, and not by their or his individual Names or Name; they or he shall take into their or his Custody all the Property, Effects, and Things in Actions of the Company, and shall perform such Duties in reference to the winding-up of the Company as may be imposed by the Court.

Powers of Official Liquidators.

XC. The Official Liquidators shall have Power, with the Sanction of the Court, to do the following Things:—

To bring or defend any Action, Suit, or Prosecution, or other legal Proceeding, Civil or Criminal, in the Name and on behalf of the Company:

To carry on the Business of the Company, so far as may be necessary for the beneficial Winding-up of the same:

To sell the Real and Personal and Heritable and Moveable Property, Effects, and Things in Action of the Company by Public Auction or Private Contract, with Power, if they think fit, to transfer the whole thereof to any Person or Company, or to sell the same in Parcels:

To execute, in the Name and on behalf of the Company, all Deeds, Receipts, and other Documents they may think necessary, and for that Purpose to use, when necessary, the Company's Seal:

To refer Disputes to Arbitration, and compromise any Debts or Claims:

To prove, claim, rank, and draw a Dividend, in the Matter of the Bankruptcy or Insolvency or Sequestration of any Contributory, for any Balance against the Estate of such Contributory, and to take and receive Dividends in respect of such Balance, in the Matter of Bankruptcy or Insolvency or Sequestration, as a separate Debt due from such Bankrupt or Insolvent, and rateably with the other separate Creditors:

To draw, accept, make, and endorse any Bill of Exchange or Promissory Note, and also to raise upon the Security of the Assets of the Company from Time to Time any requisite Sum or Sums of Money; and the drawing, accepting, making, or endorsing of every such Bill of Exchange or Promissory Note as aforesaid on behalf of the Company shall have the same Effect with respect to the Liability of such Company as if such Bill or Note had been drawn, accepted, made, or endorsed by such Company in the course of carrying on the Business thereof:

To do and execute all such other Things as may be necessary for winding-up the Affairs of the Company and distributing its Assets.

Appointment of Solicitor to Official Liquidators.

XCI. The Official Liquidators may, with the Approval of the Court, appoint a Solicitor or Law Agent, and such Clerks or Officers as may be necessary to assist them in the Performance of their Duties: There shall be paid to such Solicitor or Law Agent, Clerks and Officers, such Remuneration by way of Fees or otherwise as may be allowed by the Court.

Remuneration of Official Liquidators.

XCII. There shall be paid to the Official Liquidators such Salary or Remuneration, by way of Per-centage or otherwise, as the Court directs.

Dissolution of Company.

XCIII. When the Affairs of the Company have been completely wound-up, the Court shall make an Order or Decree declaring the Company to be dissolved from the Date of such Order or Decree, and the Company shall be dissolved accordingly.

Minute of Dissolution of Company.

XCIV. Any Order or Decree so made shall be reported by the Official Liquidators to the Registrar of Joint Stock Companies, who shall make a Minute accordingly in his Books of the Dissolution of such Company.

Power of Lord Chancellor of Great Britain to make Rules.

XCV. In *England*, the Lord Chancellor of *Great Britain*, with the Advice and Consent of the Master of the Rolls and any One of the Vice-Chancellors for the Time being, or with the Advice and Consent of any Two of the Vice-Chancellors, may, as often as Circumstances require, make such Rules concerning the Mode of proceeding to be had for winding-up a Company in the Court of Chancery as may from Time to Time seem necessary; but, until such Rules are made, the general Practice of the Court of Chancery, including the Practice hitherto in use in winding-up Companies, shall, so far as the same is applicable, and not inconsistent with this Act, apply to all Proceedings for winding-up a Company, and Official Liquidators shall be considered as occupying in all respects the Place of an Official Manager.

Power of Lord Chancellor of Ireland to make Rules.

XCVI. In *Ireland*, the Lord Chancellor of *Ireland* may, as respects the winding-up of Companies in *Ireland*, with the Advice and Consent of the Master of the Rolls in *Ireland*, exercise the same Power of making Rules as is by this Act herein-before given to the Lord Chancellor of *Great Britain*; but, until such Rules are made, the general Practice of the Court of Chancery in *Ireland*, including the Practice hitherto in use in *Ireland* in winding-up Companies, shall, so far as the same is applicable, and not inconsistent with this Act, apply to all Proceedings for winding-up a Company, and Official Liquidators shall in all respects be considered as occupying the Place of an Official Manager.

Power of Court of Session in Scotland to make Rules.

XCVII. In *Scotland*, the Court of Session may, by Act of Sederunt, exercise the same Power of making Rules of Practice as is herein-before given to the Lord Chancellor of *Great Britain* as regards *England*, but, until such Rules are made, the general Practice of the Court of Session in Suits pending in such Court shall, so far as the same is applicable, and not inconsistent with this Act, apply to all Proceedings for winding-up a Company, and Official Liquidators shall in all respects be considered as possessing the same Powers as any Trustee on a Bankrupt Estate.

Power of Vice-Warden of Stannaries to make Rules.

XCVIII. The Vice-Warden of the Stannaries may from Time to Time, with the Approval of the Lord Chancellor of *Great Britain*, make such General Rules as may be necessary or expedient for the Purpose of carrying into execution the Powers conferred by this Act upon the Court of the said Vice-Warden; but, subject to such Rules, the general Practice of the said Court in Cases within the Jurisdiction thereof shall, so far as the same is applicable, and not inconsistent with this Act, apply to all Proceedings under this Act, and any Order made by the Vice-Warden of the Stannaries may be enforced in the same Manner in which Orders made in Proceedings within the ordinary Jurisdiction of such Court are enforced; and for the Purpose of Jurisdiction any Company registered under this Act engaged in working any Mine within and subject to the Jurisdiction of the Stannaries shall be deemed to be resident within the Stannaries, and at the Place where such Mine is situate: It shall be competent for the Vice-Warden in any Suit instituted against any Shareholder or Contributory of a Company so registered to authorize the Service of Process on such Shareholder or Contributory in any Part of *England* or *Wales*; provided, that it shall be lawful for the Lord Warden to remit at once any Cause or Matter pending before him on Appeal against any Decree or Order of the Court made in pursuance of the Power conferred upon it by this Act for the winding-up of such a Company to the Court of Appeal in Chancery, which shall thereupon have Power to hear and determine such Appeal, and to make such Order or Orders therein as may seem fit.

Court of Stannaries.

Service of Process.

Appeal in Cases of Winding-up.

Power of Commissioners of Bankruptcy to make Rules.

XCIX. Any Two Commissioners of Bankruptcy appointed by the Lord Chancellor of *Great Britain* may, as respects the Courts of Bankruptcy in *England*, and the Commissioners of Bankrupt in *Ireland* may, as respects the Courts of Bankruptcy in *Ireland*, make Rules as they respectively from Time to Time, but subject to the Approval of the Lord Chancellors of *Great Britain* and *Ireland* respectively, think fit, for the Purpose of regulating the Proceedings in such Courts for winding-up Companies, but, subject

subject to such Rules, the general Practice of the Courts of Bankruptcy in *England* and *Ireland* respectively, in Cases within the ordinary Jurisdiction of such Courts, shall, so far as the same is applicable, and not inconsistent with this Act, apply to all Proceedings under this Act; and any Order made by any Commissioner of Bankruptcy in such Proceedings may be enforced in the same Manner in which Orders made in Proceedings within the ordinary Jurisdiction of such Court are enforced.

Rules with respect to Fees.

C. The Lord Chancellor of *Great Britain* as respects the Courts of Chancery and Bankruptcy in *England*, the Lord Chancellor of *Ireland* as respects the Courts of Chancery and Bankruptcy in *Ireland*, the Court of Session in *Scotland* by Act of Sederunt as respects Proceedings in such Court, may make Rules specifying the Fees to be paid in respect of Proceedings taken under the Third Part of this Act for winding-up a Company in such Courts respectively, and the Fees so paid in any Court of Chancery or Bankruptcy shall be applied in the Manner in which Fees taken in such Courts in ordinary Proceedings are applied; and as respects Fees to be paid in like Proceedings in the Court of the Vice-Warden of the Stannaries, it shall be lawful for the Vice-Warden to authorize Fees to be taken not exceeding in Number or Amount the Fees so authorized from Time to Time by the Lord Chancellor of *Great Britain* to be paid in Courts of Bankruptcy, and the Council of the Prince of *Wales*, or the Special Commissioners for managing the Affairs of the Duchy of *Cornwall*, as the Case may be, may direct in what Manner the Monies arising from such Fees are to be applied towards the annual Expenses of the Court of the Stannaries, or towards the Payment or in augmentation of the present official Salaries.

Special Commissioners for receiving Evidence.

CI. The District Commissioners of the Court of Bankruptcy and the Judges of the County Courts in *England* who sit at Places more than Twenty Miles from the General Post Office, and the Commissioners of Bankrupt and the Assistant Barristers and Recorders in *Ireland*, and the Sheriffs of Counties in *Scotland*, shall be Commissioners for the Purpose of taking Evidence under the Third Part of this Act in Cases where any Company is wound-up by the Courts of Chancery in *England* or *Ireland* or by the Court of Session in *Scotland*; and it shall be lawful for such Court to refer the whole or any Part of the Examination of any Witnesses under the Third Part of this Act to any such Commissioner, although such Commissioner is out of the Jurisdiction of the Court by which the Order or Decree for winding-up the Company was made; and every such Commissioner shall, in addition to any Power of summoning and examining Witnesses, and requiring the Production or Delivery of Documents, and certifying or punishing Defaults by Witnesses, which he might lawfully exercise as a District Commissioner of the Court of Bankruptcy, Judge of a County Court, Commissioner of Bankrupt, Assistant Barrister, or Recorder, or as a Sheriff of a County, have in the Matter so referred to him all the same Powers of summoning and examining Witnesses, and requiring the Production or Delivery of Documents, and punishing Defaults by Witnesses, and allowing Costs and Charges and Expenses to Witnesses, as the Court which made the Order for winding-up the Company has; and the Examination so taken shall be returned or reported to such last-mentioned Court in such Manner as it directs.

Voluntary Winding-up of Company.

Circumstances under which Company may be wound-up voluntarily.

CII. A Company may be wound up voluntarily,

(1.) Whenever the Period, if any, fixed for the Duration of the Company by the Articles of Association expires, or whenever the Event, if any, occurs, upon the Occurrence of which it is provided by the Articles of Association that the Company is to be dissolved:

(2.) Whenever the Company in General Meeting has passed a Special Resolution requiring the Company to be wound-up voluntarily.

Whenever a Company is wound-up voluntarily the Company shall, from the Date of the Commencement of such Winding-up, cease to carry on its Business, except in so far as may be required for the beneficial Winding-up thereof, but its Corporate State and all its Corporate Powers shall, notwithstanding any Provision to the contrary in its Articles of Association, continue until the Affairs of the Company are wound-up.

Notice of Resolution to wind-up voluntarily.

CIII. Notice of any Special Resolution to wind-up a Company voluntarily shall be given, as respects Companies registered in *England* in the *London Gazette*, as respects Companies registered in *Scotland* in the *Edinburgh Gazette*, and as respects Companies registered in *Ireland* in the *Dublin Gazette*.

Consequences of voluntary Winding-up.

CIV. The following Consequences shall ensue upon the voluntary Winding-up of a Company:

(1.) The Property of the Company shall be applied in satisfaction of its Liabilities, and, subject thereto, shall, unless it be otherwise provided by the Articles of Association, be distributed amongst the Shareholders in proportion to their Shares:

(2.) Liquidators shall be appointed for the Purpose of winding-up the Affairs of the Company and distributing the Property:

(3.) The Company in General Meeting may appoint such Person or Persons as it thinks fit to be a Liquidator or Liquidators, and may fix the Remuneration to be paid to them:

(4.) If One Person only is appointed, all the Provisions herein contained in reference to several Liquidators shall apply to him:

(5.) When several Liquidators are appointed, every Power hereby given may be exercised by any Two of them:

(6.) The

(6.) The Liquidators may at any Time after the passing of the Resolution for winding-up the Company, and before they have ascertained the Sufficiency of the Assets of the Company, or the Debts in respect of which the several Classes of Contributories are liable, call on all or any of the Contributories to the Extent of their Liability to pay all or any Sums they deem necessary to satisfy the Debts of the Company and the Costs of winding it up, and they may in making a Call take into consideration the Probability that some of the Contributories upon whom the same is made may partly or wholly fail to pay their respective Portions of the same:

(7.) The Liquidators shall have all Powers herein-before vested in Official Liquidators, and may exercise the same without the Intervention of the Court:

(8.) All Books, Papers, and Documents in the Hands of the Liquidators shall at all reasonable Times be open to the Inspection of the Shareholders:

(9.) When the Creditors are satisfied, the Liquidators shall proceed to adjust the Rights of the Contributories amongst themselves, and for the Purposes of such Adjustment they may make Calls on all the Contributories to the Extent of their Liability for any Sums they may deem necessary, and they may in making a Call take into consideration the Probability that some of the Contributories upon whom the same is made may partly or wholly fail to pay their respective Portions of the same:

(10.) As soon as the Affairs of the Company are fully wound-up, the Liquidators shall make up an Account showing the Manner in which such Winding-up has been conducted, and the Property of the Company disposed of; and such Account, with the Vouchers thereof, shall be laid before such Person or Persons as may be appointed by the Company to inspect the same; and upon such Inspection being concluded the Liquidators shall proceed to call a General Meeting of the Shareholders for the Purpose of considering such Account; but no such Meeting shall be deemed to be duly held unless One Month's previous Notice, specifying the Time, Place, and Object of such Meeting, has been published, as respects Companies registered in *England* in the *London Gazette*, and as respects Companies registered in *Scotland* in the *Edinburgh Gazette*, and as respects Companies registered in *Ireland* in the *Dublin Gazette*:

(11.) Such General Meeting shall not enter upon any Business except the Consideration of the Account; but the Meeting may proceed to the Consideration thereof, notwithstanding the Quorum required by any Regulation of the Company to be present at General Meetings is not present thereat; and if, on Consideration, the Meeting is of opinion that the Affairs of the Company have been fairly wound-up, they shall pass a Resolution to that Effect, and thereupon the Liquidators shall publish a Notice of such Resolution, as respects Companies registered in *England* in the *London Gazette*, and as respects Companies registered in *Scotland* in the *Edinburgh Gazette*, and as respects Companies registered in *Ireland* in the *Dublin Gazette*, and shall also make a Return to the Registrar of Joint Stock Companies of such Resolution, and on the Expiration of One Month from the Date of the Registration of such Return the Company shall be deemed to be dissolved:

(12.) If within One Year after the passing of a Resolution for a Winding-up the Affairs of the Company such Affairs are not wound up, the Liquidators shall immediately thereafter make up an Account showing the State of the Affairs and the Progress which has been made in winding-up down to that Date, and they shall add thereto a Report stating the Reason why the Winding-up has not been completed, and a General Meeting shall be called to consider the same, and so on from Year to Year until the Winding-up of the Affairs of the Company is completed:

All Costs, Charges, and Expenses properly incurred in the voluntary Winding-up of a Company, including the Remuneration of the Liquidators, shall be payable out of the Assets of the Company in priority to all other Claims.

CV. The voluntary Winding-up of a Company shall not prejudice the Right of any Creditor of such Company to institute Proceedings for the Purpose of having the same wound-up by the Court. **Saving of Rights of Creditors.**

PART IV.

Registration Office.

CVI. The Registration of Companies shall be conducted as follows; (that is to say,) **Constitution of Registration Office.**

(1.) The Board of Trade may from Time to Time appoint such Registrars, Assistant Registrars, Clerks, and Servants as they may think necessary for the Registration of Companies under this Act, and remove them at pleasure:

(2.) The Board of Trade may make such Regulations as they think fit with respect to the Duties to be performed by any such Registrars, Assistant Registrars, Clerks, and Servants as aforesaid:

(3.) The Board of Trade may from Time to Time determine the Place or Places at which Offices for the Registration of Companies are to be established: Provided always, that there shall be at all Times maintained in each of the Three Parts of the United Kingdom at least One such Office, and that no Company shall be registered except at an Office within that Part of the United Kingdom in which by the Memorandum of Association the registered Office of the Company is declared to be established:

(4.) The

(4.) The Board of Trade may from Time to Time direct a Seal or Seals to be prepared for the Authentication of any Documents required for or connected with the Registration of Companies:

(5.) Every Person may inspect the Documents kept by the Registrar of Joint Stock Companies; and there shall be paid for such Inspection such Fees as may be appointed by the Board of Trade, not exceeding One Shilling for each Inspection; and any Person may require a Copy or Extract of any Document or any Part of any Document, to be certified by the Registrar; and there shall be paid for such certified Copy or Extract such Fee as the Board of Trade may appoint, not exceeding Sixpence for each Folio of such Copy or Extract, or in *Scotland* for each Sheet of Two hundred Words; and such certified Copy shall be *primâ facie* Evidence of the Matters therein contained in all legal Proceedings whatever:

(6.) The existing Registrar, Assistant Registrars, Clerks, and other Officers and Servants in the Office for the Registration of Joint Stock Companies, shall, during the Pleasure of the Board of Trade, hold the Offices and receive the Salaries hitherto held and received by them, but they shall in the Execution of their Duties conform to any Regulations that may be issued by the Board of Trade:

(7.) There shall be paid to any Registrar, Assistant Registrar, Clerk, or Servant that may hereafter be employed in the Registration of Joint Stock Companies such Salary as the Board of Trade may, with the Sanction of the Commissioners of the Treasury, direct:

(8.) Whenever any Act is herein directed to be done to or by the Registrar of Joint Stock Companies, such Act shall, until the Board of Trade otherwise directs, be done in *England* to or by the existing Registrar of Joint Stock Companies or in his Absence by the Assistant Registrar, in *Scotland* to or by such Officer as the Board of Trade may appoint, and in *Ireland* to or by the existing Assistant Registrar of Joint Stock Companies for *Ireland*; but in the event of the Board of Trade altering the Constitution of the existing Registry Office, such Act shall be done to or by such Officer or Officers and at such Place or Places with reference to the local Situation of the registered Offices of the Companies to be registered as the Board of Trade may appoint.

PART V.

Repeal of Former Acts, and Temporary Provisions.

Repeal.

Repeal of 7 & 8 Vict. c. 110., 10 & 11 Vict. c. 78., and 18 & 19 Vict. c. 133.

CVII. There shall be repealed,—

(1.) The Act passed in the Eighth Year of the Reign of Her present Majesty, Chapter One hundred and ten:

(2.) An Act passed in the Eleventh Year of the Reign of Her present Majesty, Chapter Seventy-eight, intituled *An Act to amend an Act for the Registration, Incorporation, and Regulation of Joint Stock Companies:*

(3.) The Limited Liability Act, 1855:

But such Repeal shall not take effect with respect to any Company completely registered under the said Act of the Eighth Year of Her present Majesty until such Company has obtained Registration under this Act, as herein-after mentioned.

Provisions of 11 Vict. c. 45. 12 & 13 Vict. c. 108. 7 & 8 Vict. c. 111., and 8 & 9 Vict. c. 98. not to apply to Companies registered under this Act, &c.

CVIII. The following Acts, that is to say,

(1.) An Act passed in the Eleventh Year of the Reign of Her present Majesty, Chapter Forty-five, and intituled *An Act to amend the Acts for facilitating the Winding-up of the Affairs of Joint Stock Companies unable to meet their pecuniary Engagements, and also to facilitate the Dissolution and Winding-up of Joint Stock Companies and other Partnerships:*

(2.) An Act passed in the Thirteenth Year of the Reign of Her present Majesty, Chapter One hundred and eight, and intituled *An Act to amend the Joint Stock Companies Winding-up Act*, 1848:

(3.) An Act passed in the Eighth Year of the Reign of Her present Majesty, Chapter One hundred and eleven, and intituled *An Act for facilitating the winding-up the Affairs of Joint Stock Companies unable to meet their pecuniary Engagements:*

(4.) An Act passed in the Ninth Year of the Reign of Her present Majesty, Chapter Ninety-eight, and intituled *An Act for facilitating the winding-up the Affairs of Joint Stock Companies in* Ireland *unable to meet their pecuniary Engagements:*

shall not apply to Companies registered under this Act, nor to Companies registered under the said Act of the Eighth Year of the Reign of Her present Majesty, Chapter One hundred and ten, from and after the Date at which they have obtained Registration under this Act, as herein-after mentioned.

Saving Clause as to Repeal.

CIX. No Repeal hereby enacted shall affect—

(1.) Anything duly done under any Acts hereby repealed before such Repeal comes into operation:

(2.) Any Right acquired or Liability incurred under any such Acts before such Repeal comes into operation:

(3.) Any Penalty, Forfeiture, or other Punishment incurred or to be incurred in respect of any Offence against any such Acts committed before such Repeal comes into operation:

(4.) Any Proceeding to be taken in the Prosecution of any Order for winding-up a Company made before such Repeal comes into operation.

Temporary

Temporary Provisions.

CX. Every Company completely registered under the said Act of the Eighth Year of the Reign of Her present Majesty, Chapter One hundred and ten, shall on or before the Third Day of *November* One thousand eight hundred and fifty-six, and any other Company duly constituted by Law previously to the passing of this Act, and consisting of Seven or more Shareholders, may at any Time hereafter register itself as a Company under this Act, with or without Limited Liability, subject to this Proviso, that no Company shall be registered under this Act as a Limited Company unless either a Certificate of Complete Registration with Limited Liability under the "Limited Liability Act, 1855," has been obtained by it, or an Assent to its being so registered has been given by Three Fourths in Number and Value of such of its Shareholders as may have been present, personally or by Proxy, in Cases where Proxies are allowed by the Regulations of the Company, at some General Meeting summoned for that Purpose. **Registration of existing Companies.**

CXI. Previously to the Registration under this Act of any existing Company, there shall be delivered to the Registrar of Joint Stock Companies the following Documents; that is to say, **Requisitions for Registration by existing Companies.**

(1.) In the Case of a Company completely registered under the said Act of the Eighth Year of Her present Majesty, Chapter One hundred and ten, if such Company is not intended to be registered as a Limited Company, a List showing the Names, Addresses, and Occupations of all Persons who on the Day of Registration are Holders of Shares in the Company, with the Addition of the Shares held by such Persons respectively, distinguishing each Share by its Number:

(2.) If such Company as last aforesaid has obtained a Certificate of Complete Registration with Limited Liability under the Limited Liability Act, 1855, or if it has not obtained such a Certificate, but is intended to be registered as a Limited Company under the Provisions of this Act, the above List shall be accompanied with a Statement specifying the following Particulars;

The nominal Capital of the Company, and the Number of Shares into which it is divided;

The Number of Shares taken and the Amount paid on each Share;

Such Statement shall also contain, in case the Company has not previously obtained a Certificate of Limited Liability, but is intended to be registered as a Limited Company under this Act,

The Name of such Company, with the Addition of the Word "Limited" as the last Word thereof:

(3.) In the Case of any other Company duly constituted by Law previously to the passing of this Act, and consisting of Seven or more Shareholders, if it is not intended to be registered as a Limited Company, there shall be delivered to the Registrar of Joint Stock Companies such List of Shareholders as is herein-before mentioned, and also a Copy of any Act of Parliament, Royal Charter, Letters Patent, Deed of Settlement, or other Instrument constituting or regulating the Company:

(4.) If any such Company as last aforesaid is intended to be registered as a Limited Company, the above List and Copy shall be accompanied by a Statement specifying the following Particulars; that is to say,

The nominal Capital of the Company, and the Number of Shares into which it is divided;

The Number of Shares taken, and the Amount paid on each Share;

The Name of the Company, with the Addition of the Word "Limited" as the last Word thereof.

CXII. The List of Shareholders and any other Particulars relating to the Company hereby required to be delivered to the Registrar shall be verified by a Declaration of the Directors of the Company delivering the same, or any Two of them, or of any Two other principal Officers of the Company, made in pursuance of the Act passed in the Sixth Year of the Reign of His late Majesty King *William* the Fourth, Chapter Sixty-two; but no Fees shall be charged in respect of the Registration under this Act of any Company completely registered under the said Act of the Eighth Year of the Reign of Her present Majesty, Chapter One hundred and ten, in Cases where the Liability of the Shareholders is not intended to be limited, or where such Company has already obtained a Certificate of Complete Registration with Limited Liability. **Authentication of Statements of existing Companies.**

CXIII. Upon Compliance with the foregoing Requisitions, the Registrar of Joint Stock Companies shall certify under his Hand that the Company so applying for Registration is incorporated as a Company under this Act, and in the Case of a Limited Company, that it is limited, and thereupon such Company shall be incorporated accordingly, and all Provisions contained in any Deed of Settlement, Act of Parliament, Royal Charter, or Letters Patent, or other Instrument constituting or regulating the Company, shall be deemed to be Regulations of the Company within the Meaning of this Act, and all the Provisions of this Act shall apply to such Company in the same Manner in all respects as if it had been originally incorporated under this Act; subject, nevertheless, to the Reservations herein-after contained with respect to the existing Rights of Creditors and other Persons; and subject to this Proviso, that, except in so far as is herein-after permitted, no Company constituted by Act of Parliament shall have Power to alter any of the Provisions contained in such Act of Parliament, and no Company constituted by Royal Charter or Letters Patent shall have Power, by Special Resolution or otherwise, to alter any of the Provisions contained in such Charter or Letters Patent, without the Sanction of the Board of Trade. **Certificate of Registration of existing Companies.**

Chattel or Article in, upon, under, or with any Cask, Bottle, Stopper, Vessel, Case, Cover, Wrapper, Band, Reel, Ticket, Label, or other Thing to which any Trade Mark shall have been falsely applied, or to which any forged or counterfeit Trade Mark shall have been applied; or shall apply or attach to any Chattel or Article any Case, Cover, Reel, Wrapper, Band, Ticket, Label, or other Thing to which any Trade Mark shall have been falsely applied, or to which any forged or counterfeit Trade Mark shall have been applied; or shall inclose, place, or attach any Chattel or Article in, upon, under, with, or to any Cask, Bottle, Stopper, Vessel, Case, Cover, Reel, Wrapper, Band, Ticket, Label, or other Thing having thereon any Trade Mark of any other Person; every Person aggrieved by any such wrongful Act shall be entitled to maintain an Action or Suit for Damages in respect thereof against the Person who shall be guilty of having done such Act or causing or procuring the same to be done, and for preventing the Repetition or Continuance of the wrongful Act, and the Committal of any similar Act.

Defendant obtaining a Verdict to have full Indemnity for Costs.

23. In every Action which any Person shall under the Provisions of this Act commence as Plaintiff for or on behalf of Her Majesty for recovering any Penalty or Sum of Money, if the Defendant shall obtain Judgment, he shall be entitled to recover his Costs of Suit, which shall include a full Indemnity for all the Costs, Charges, and Expenses by him expended or incurred in, about, or for the Purposes of the Action, unless the Court or a Judge thereof shall direct that Costs of the ordinary Amount only shall be allowed.

A Plaintiff suing for a Penalty may be compelled to give Security for Costs.

24. In any Action which any Person shall, under the Provisions of this Act, commence as Plaintiff for or on behalf of Her Majesty for recovering any Penalty or Sum of Money, if it shall be shown to the Satisfaction of the Court or a Judge thereof that the Person suing as Plaintiff for or on behalf of Her Majesty has no Ground for alleging that he has been aggrieved by the committing of the alleged Offence in respect of which the Penalty or Sum of Money is alleged to have become payable, and also that the Person so suing as Plaintiff is not resident within the Jurisdiction of the Court, or not a Person of sufficient Property to be able to pay any Costs which the Defendant may recover in the Action, the Court or Judge shall or may order that the Plaintiff shall give Security by the Bond or Recognizance of himself and a Surety, or by the Deposit of a Sum of Money, or otherwise, as the Court or Judge shall think fit, for the Payment to the Defendant of any Costs which he may be entitled to recover in the Action.

Act not to affect the Cutlers of Hallamshire, nor to repeal 59 G. 3. c. 7.

25. Nothing in this Act contained shall be construed to affect the Rights and Privileges of the Corporation of Cutlers of the Liberty of *Hallamshire* in the County of *York*, nor shall anything in this Act contained be construed in any way to repeal or make void any of the Provisions contained in the Fifty-ninth *George* Third, Chapter Seven, intituled *An Act to regulate the Cutlery Trade in* England.

Short Title.

26. The Expression "The Merchandise Marks Act, 1862," shall be a sufficient Description of this Act.

CAP. LXXXIX.

An Act for the Incorporation, Regulation, and Winding-up of Trading Companies and other Associations. [7th *August* 1862.]

'WHEREAS it is expedient that the Laws relating to the Incorporation, Regulation, and Winding-up of Trading Companies and other Associations should be consolidated 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, as follows:

Preliminary.

Short Title.

1. This Act may be cited for all Purposes as "The Companies Act, 1862."

Commencement of Act.

2. This Act, with the Exception of such temporary Enactment as is herein-after declared to come into operation immediately, shall not come into operation until the Second Day of *November* One thousand eight hundred and sixty-two, and the Time at which it so comes into operation is herein-after referred to as the Commencement of this Act.

Definition of Insurance Company.

3. For the Purposes of this Act a Company that carries on the Business of Insurance in common with any other Business or Businesses shall be deemed to be an Insurance Company.

Prohibition of Partnerships exceeding certain Number.

4. No Company, Association, or Partnership consisting of more than Ten Persons shall be formed, after the Commencement of this Act, for the Purpose of carrying on the Business of Banking, unless it is registered as a Company under this Act, or is formed in pursuance of some other Act of Parliament, or of Letters Patent; and no Company, Association, or Partnership consisting of more than Twenty Persons shall be formed, after the Commencement of this Act, for the Purpose of carrying on any other Business that has for its Object the Acquisition of Gain by the Company, Association, or Partnership, or by the individual Members thereof, unless it is registered as a Company under this Act, or is formed in pursuance of some other Act of Parliament, or of Letters Patent, or is a Company engaged in working Mines within and subject to the Jurisdiction of the Stannaries.

5. This

Division of Act.

5. This Act is divided into Nine Parts, relating to the following Subject Matters:
The First Part,—to the Constitution and Incorporation of Companies and Associations under this Act:
The Second Part,—to the Distribution of the Capital and Liability of Members of Companies and Associations under this Act:
The Third Part,—to the Management and Administration of Companies and Associations under this Act:
The Fourth Part,—to the winding up of Companies and Associations under this Act:
The Fifth Part,—to the Registration Office:
The Sixth Part,—to Application of this Act to Companies registered under the Joint Stock Companies Acts:
The Seventh Part,—to Companies authorized to register under this Act:
The Eighth Part,—to Application of this Act to unregistered Companies:
The Ninth Part,—to Repeal of Acts, and temporary Provisions.

PART I.

Constitution and Incorporation of Companies and Associations under this Act.

Memorandum of Association.

Mode of forming Company.

6. Any Seven or more Persons associated for any lawful Purpose may, by subscribing their Names to a Memorandum of Association, and otherwise complying with the Requisitions of this Act in respect of Registration, form an incorporated Company, with or without limited Liability.

Mode of limiting Liability of Members.

7. The Liability of the Members of a Company formed under this Act may, according to the Memorandum of Association, be limited either to the Amount, if any, unpaid on the Shares respectively held by them, or to such Amount as the Members may respectively undertake by the Memorandum of Association to contribute to the Assets of the Company in the event of its being wound up.

Memorandum of Association of a Company limited by Shares.

8. Where a Company is formed on the Principle of having the Liability of its Members limited to the Amount unpaid on their Shares, herein-after referred to as a Company limited by Shares, the Memorandum of Association shall contain the following Things; (that is to say,)
(1.) The Name of the proposed Company, with the Addition of the Word "Limited" as the last Word in such Name:
(2.) The Part of the United Kingdom, whether *England*, *Scotland*, or *Ireland*, in which the registered Office of the Company is proposed to be situate:
(3.) The Objects for which the proposed Company is to be established:
(4.) A Declaration that the Liability of the Members is limited:
(5.) The Amount of Capital with which the Company proposes to be registered divided into Shares of a certain fixed Amount:
Subject to the following Regulations:
(1.) That no Subscriber shall take less than One Share:
(2.) That each Subscriber of the Memorandum of Association shall write opposite to his Name the Number of Shares he takes.

Memorandum of Association of a Company limited by Guarantee.

9. Where a Company is formed on the Principle of having the Liability of its Members limited to such Amount as the Members respectively undertake to contribute to the Assets of the Company in the event of the same being wound up, herein-after referred to as a Company limited by Guarantee, the Memorandum of Association shall contain the following Things; (that is to say,)
(1.) The Name of the proposed Company, with the Addition of the Word "Limited" as the last Word in such Name:
(2.) The Part of the United Kingdom, whether *England*, *Scotland*, or *Ireland*, in which the registered Office of the Company is proposed to be situate:
(3.) The Objects for which the proposed Company is to be established:
(4.) A Declaration that each Member undertakes to contribute to the Assets of the Company, in the event of the same being wound up, during the Time that he is a Member, or within One Year afterwards, for Payment of the Debts and Liabilities of the Company contracted before the Time at which he ceases to be a Member, and of the Costs, Charges, and Expenses of winding up the Company, and for the Adjustment of the Rights of the Contributories amongst themselves, such Amount as may be required, not exceeding a specified Amount.

Memorandum of Association of an Unlimited Company.

10. Where a Company is formed on the Principle of having no Limit placed on the Liability of its Members, herein-after referred to as an Unlimited Company, the Memorandum of Association shall contain the following Things; (that is to say,)
(1.) The Name of the proposed Company:
(2.) The Part of the United Kingdom, whether *England*, *Scotland*, or *Ireland*, in which the registered Office of the Company is proposed to be situate:
(3.) The Objects for which the proposed Company is to be established.

 11. The

Stamp, Signature, and Effect of Memorandum of Association.

11. The Memorandum of Association shall bear the same Stamp as if it were a Deed, and shall be signed by each Subscriber in the Presence of, and be attested by, One Witness at the least, and that Attestation shall be a sufficient Attestation in *Scotland* as well as in *England* and *Ireland:* It shall, when registered, bind the Company and the Members thereof to the same Extent as if each Member had subscribed his Name and affixed his Seal thereto, and there were in the Memorandum contained, on the Part of himself, his Heirs, Executors, and Administrators, a Covenant to observe all the Conditions of such Memorandum, subject to the Provisions of this Act.

Power of certain Companies to alter Memorandum of Association.

12. Any Company limited by Shares may so far modify the Conditions contained in its Memorandum of Association, if authorized to do so by its Regulations as originally framed, or as altered by special Resolution in manner herein-after mentioned, as to increase its Capital, by the Issue of new Shares of such Amount as it thinks expedient, or to consolidate and divide its Capital into Shares of larger Amount than its existing Shares, or to convert its paid-up Shares into Stock, but, save as aforesaid, and save as is herein-after provided in the Case of a Change of Name, no Alteration shall be made by any Company in the Conditions contained in its Memorandum of Association.

Power of Companies to change Name.

13. Any Company under this Act, with the Sanction of a special Resolution of the Company passed in manner herein-after mentioned, and with the Approval of the Board of Trade testified in Writing under the Hand of One of its Secretaries or Assistant Secretaries, may change its Name, and upon such Change being made the Registrar shall enter the new Name on the Register in the Place of the former Name, and shall issue a Certificate of Incorporation altered to meet the Circumstances of the Case; but no such Alteration of Name shall affect any Rights or Obligations of the Company, or render defective any legal Proceedings instituted or to be instituted by or against the Company, and any legal Proceedings may be continued or commenced against the Company by its new Name that might have been continued or commenced against the Company by its former Name.

Articles of Association.

Regulations to be prescribed by Articles of Association.

14. The Memorandum of Association may, in the Case of a Company limited by Shares, and shall, in the Case of a Company limited by Guarantee or unlimited, be accompanied, when registered, by Articles of Association signed by the Subscribers to the Memorandum of Association, and prescribing such Regulations for the Company as the Subscribers to the Memorandum of Association deem expedient: The Articles shall be expressed in separate Paragraphs, numbered arithmetically: They may adopt all or any of the Provisions contained in the Table marked A. in the First Schedule hereto: They shall, in the Case of a Company, whether limited by Guarantee or unlimited, that has a Capital divided into Shares, state the Amount of Capital with which the Company proposes to be registered; and in the Case of a Company, whether limited by Guarantee or unlimited, that has not a Capital divided into Shares, state the Number of Members with which the Company proposes to be registered, for the Purpose of enabling the Registrar to determine the Fees payable on Registration: In a Company limited by Guarantee or unlimited, and having a Capital divided into Shares, each Subscriber shall take One Share at the least, and shall write opposite to his Name in the Memorandum of Association the Number of Shares he takes.

Application of Table A.

15. In the Case of a Company limited by Shares, if the Memorandum of Association is not accompanied by Articles of Association, or in so far as the Articles do not exclude or modify the Regulations contained in the Table marked A. in the First Schedule hereto, the last-mentioned Regulations shall, so far as the same are applicable, be deemed to be the Regulations of the Company in the same Manner and to the same Extent as if they had been inserted in Articles of Association, and the Articles had been duly registered.

Stamp, Signature, and Effect of Articles of Association.

16. The Articles of Association shall be printed, they shall bear the same Stamp as if they were contained in a Deed, and shall be signed by each Subscriber in the Presence of, and be attested by, One Witness at the least, and such Attestation shall be a sufficient Attestation in *Scotland* as well as in *England* and *Ireland:* When registered, they shall bind the Company and the Members thereof to the same Extent as if each Member had subscribed his Name and affixed his Seal thereto, and there were in such Articles contained a Covenant on the Part of himself, his Heirs, Executors, and Administrators, to conform to all the Regulations contained in such Articles, subject to the Provisions of this Act; and all Monies payable by any Member to the Company, in pursuance of the Conditions and Regulations of the Company, or any of such Conditions or Regulations, shall be deemed to be a Debt due from such Member to the Company, and in *England* and *Ireland* to be in the Nature of a Specialty Debt.

General Provisions.

Registration of Memorandum of Association and Articles of Association, with Fees as in Table B.

17. The Memorandum of Association and the Articles of Association, if any, shall be delivered to the Registrar of Joint Stock Companies herein-after mentioned, who shall retain and register the same: There shall be paid to the Registrar by a Company having a Capital divided into Shares, in respect of the several Matters mentioned in the Table marked B. in the First Schedule hereto, the several Fees therein specified, or such smaller Fees as the Board of Trade may from Time to Time direct; and by a Company not having a Capital divided into Shares, in respect of the several Matters mentioned in the Table

Table marked C. in the First Schedule hereto, the several Fees therein specified, or such smaller Fees as the Board of Trade may from Time to Time direct: All Fees paid to the said Registrar in pursuance of this Act shall be paid into the Receipt of Her Majesty's Exchequer, and be carried to the Account of the Consolidated Fund of the United Kingdom of *Great Britain* and *Ireland*.

Effect of Registration.

18. Upon the Registration of the Memorandum of Association, and of the Articles of Association in Cases where Articles of Association are required by this Act or by the Desire of the Parties to be registered, the Registrar shall certify under his Hand that the Company is incorporated, and in the Case of a Limited Company that the Company is limited: The Subscribers of the Memorandum of Association, together with such other Persons as may from Time to Time become Members of the Company, shall thereupon be a Body Corporate by the Name contained in the Memorandum of Association, capable forthwith of exercising all the Functions of an incorporated Company, and having perpetual Succession and a Common Seal, with Power to hold Lands, but with such Liability on the Part of the Members to contribute to the Assets of the Company in the event of the same being wound up as is herein-after mentioned: A Certificate of the Incorporation of any Company given by the Registrar shall be conclusive Evidence that all the Requisitions of this Act in respect of Registration have been complied with.

Copies of Memorandum and Articles to be given to Members.

19. A Copy of the Memorandum of Association, having annexed thereto the Articles of Association, if any, shall be forwarded to every Member at his Request, on Payment of the Sum of One Shilling or such less Sum as may be prescribed by the Company for each Copy; and if any Company makes default in forwarding a Copy of the Memorandum of Association and Articles of Association, if any, to a Member, in pursuance of this Section, the Company so making default shall for each Offence incur a Penalty not exceeding One Pound.

Prohibition against Identity of Names in Companies.

20. No Company shall be registered under a Name identical with that by which a subsisting Company is already registered, or so nearly resembling the same as to be calculated to deceive, except in a Case where such subsisting Company is in the course of being dissolved and testifies its Consent in such Manner as the Registrar requires; and if any Company, through Inadvertence or otherwise, is, without such Consent as aforesaid, registered by a Name identical with that by which a subsisting Company is registered, or so nearly resembling the same as to be calculated to deceive, such first-mentioned Company may, with the Sanction of the Registrar, change its Name, and upon such Change being made the Registrar shall enter the new Name on the Register in the Place of the former Name, and shall issue a Certificate of Incorporation altered to meet the Circumstances of the Case; but no such Alteration of Name shall affect any Rights or Obligations of the Company, or render defective any legal Proceedings instituted or to be instituted by or against the Company, and any legal Proceedings may be continued or commenced against the Company by its new Name that might have been continued or commenced against the Company by its former Name.

Prohibition against certain Companies holding Land.

21. No Company formed for the Purpose of promoting Art, Science, Religion, Charity, or any other like Object, not involving the Acquisition of Gain by the Company or by the individual Members thereof, shall, without the Sanction of the Board of Trade, hold more than Two Acres of Land; but the Board of Trade may, by Licence under the Hand of One of their Principal Secretaries or Assistant Secretaries, empower any such Company to hold Lands in such Quantity and subject to such Conditions as they think fit.

PART II.

Distribution of Capital and Liability of Members of Companies and Associations under this Act.

Distribution of Capital.

Nature of Interest in Company.

22. The Shares or other Interest of any Member in a Company under this Act shall be Personal Estate, capable of being transferred in manner provided by the Regulations of the Company, and shall not be of the Nature of Real Estate, and each Share shall, in the Case of a Company having a Capital divided into Shares, be distinguished by its appropriate Number.

Definition of "Member."

23. The Subscribers of the Memorandum of Association of any Company under this Act shall be deemed to have agreed to become Members of the Company whose Memorandum they have subscribed, and upon the Registration of the Company shall be entered as Members on the Register of Members herein-after mentioned; and every other Person who has agreed to become a Member of a Company under this Act, and whose Name is entered on the Register of Members, shall be deemed to be a Member of the Company.

Transfer by Personal Representative.

24. Any Transfer of the Share or other Interest of a deceased Member of a Company under this Act, made by his Personal Representative, shall, notwithstanding such Personal Representative may not himself be a Member, be of the same Validity as if he had been a Member at the Time of the Execution of the Instrument of Transfer.

Register of Members.

25. Every Company under this Act shall cause to be kept in One or more Books a Register of its Members, and there shall be entered therein the following Particulars:

(1.) The Names and Addresses, and the Occupations, if any, of the Members of the Company, with the Addition, in the Case of a Company having a Capital divided into Shares, of a Statement of the Shares held by each Member, distinguishing each Share by its Number: And of the Amount paid or agreed to be considered as paid on the Shares of each Member:

(2.) The Date at which the Name of any Person was entered in the Register as a Member:

(3.) The Date at which any Person ceased to be a Member:

And any Company acting in contravention of this Section shall incur a Penalty not exceeding Five Pounds for every Day during which its Default in complying with the Provisions of this Section continues, and every Director or Manager of the Company who shall knowingly and wilfully authorize or permit such Contravention shall incur the like Penalty.

Annual List of Members.

26. Every Company under this Act, and having a Capital divided into Shares, shall make, once at least in every Year, a List of all Persons who, on the Fourteenth Day succeeding the Day on which the Ordinary General Meeting, or if there is more than One Ordinary Meeting in each Year, the First of such Ordinary General Meetings is held, are Members of the Company; and such List shall state the Names, Addresses, and Occupations of all the Members therein mentioned, and the Number of Shares held by each of them, and shall contain a Summary specifying the following Particulars:

(1.) The Amount of the Capital of the Company, and the Number of Shares into which it is divided:

(2.) The Number of Shares taken from the Commencement of the Company up to the Date of the Summary:

(3.) The Amount of Calls made on each Share:

(4.) The total Amount of Calls received:

(5.) The total Amount of Calls unpaid:

(6.) The total Amount of Shares forfeited:

(7.) The Names, Addresses, and Occupations of the Persons who have ceased to be Members since the last List was made, and the Number of Shares held by each of them.

The above List and Summary shall be contained in a separate Part of the Register, and shall be completed within Seven Days after such Fourteenth Day as is mentioned in this Section, and a Copy shall forthwith be forwarded to the Registrar of Joint Stock Companies.

Penalty on Company, &c. not keeping a proper Register.

27. If any Company under this Act, and having a Capital divided into Shares, makes default in complying with the Provisions of this Act with respect to forwarding such List of Members or Summary as is herein-before mentioned to the Registrar, such Company shall incur a Penalty not exceeding Five Pounds for every Day during which such Default continues, and every Director and Manager of the Company who shall knowingly and wilfully authorize or permit such Default shall incur the like Penalty.

Company to give Notice of Consolidation or of Conversion of Capital into Stock.

28. Every Company under this Act, having a Capital divided into Shares, that has consolidated and divided its Capital into Shares of larger Amount than its existing Shares, or converted any Portion of its Capital into Stock, shall give Notice to the Registrar of Joint Stock Companies of such Consolidation, Division, or Conversion, specifying the Shares so consolidated, divided, or converted.

Effect of Conversion of Shares into Stock.

29. Where any Company under this Act, and having a Capital divided into Shares, has converted any Portion of its Capital into Stock, and given Notice of such Conversion to the Registrar, all the Provisions of this Act which are applicable to Shares only shall cease as to so much of the Capital as is converted into Stock; and the Register of Members hereby required to be kept by the Company, and the List of Members to be forwarded to the Registrar, shall show the Amount of Stock held by each Member in the List instead of the Amount of Shares and the Particulars relating to Shares herein-before required.

Entry of Trusts on Register.

30. No Notice of any Trust, expressed, implied, or constructive, shall be entered on the Register, or be receivable by the Registrar, in the Case of Companies under this Act and registered in *England* or *Ireland*.

Certificate of Shares or Stock.

31. A Certificate, under the Common Seal of the Company, specifying any Share or Shares or Stock held by any Member of a Company, shall be *primâ facie* Evidence of the Title of the Member to the Share or Shares or Stock therein specified.

Inspection of Register.

32. The Register of Members, commencing from the Date of the Registration of the Company, shall be kept at the registered Office of the Company herein-after mentioned: Except when closed as herein-after mentioned, it shall during Business Hours, but subject to such reasonable Restrictions as the Company in General Meeting may impose, so that not less than Two Hours in each Day be appointed for Inspection, be open to the Inspection of any Member gratis, and to the Inspection of any other Person on the Payment of One Shilling, or such less Sum as the Company may prescribe, for each Inspection; and every such Member or other Person may require a Copy of such Register, or of any Part thereof, or of such List or Summary of Members as is herein-before mentioned, on Payment of Sixpence for every Hundred Words required to be copied: If such Inspection or Copy is refused, the Company shall incur for each Refusal a Penalty not exceeding Two Pounds, and a further Penalty not exceeding Two Pounds for every Day during which such Refusal continues, and every Director and Manager of the Company who shall knowingly authorize or permit such Refusal shall incur the like Penalty; and in addition to the above Penalty, as respects Companies registered in *England*

England and *Ireland*, any Judge sitting in Chambers, or the Vice Warden of the Stannaries, in the Case of Companies subject to his Jurisdiction, may by Order compel an immediate Inspection of the Register.

Power to close Register.

33. Any Company under this Act may, upon giving Notice by Advertisement in some Newspaper circulating in the District in which the registered Office of the Company is situated, close the Register of Members for any Time or Times not exceeding in the whole Thirty Days in each Year.

Notice of Increase of Capital and of Members to be given to Registrar.

34. Where a Company has a Capital divided into Shares, whether such Shares may or may not have been converted into Stock, Notice of any Increase in such Capital beyond the registered Capital, and where a Company has not a Capital divided into Shares, Notice of any Increase in the Number of Members beyond the registered Number, shall be given to the Registrar in the Case of an Increase of Capital, within Fifteen Days from the Date of the passing of the Resolution by which such Increase has been authorized, and in the Case of an Increase of Members within Fifteen Days from the Time at which such Increase of Members has been resolved on or has taken place, and the Registrar shall forthwith record the Amount of such Increase of Capital or Members: If such Notice is not given within the Period aforesaid the Company in default shall incur a Penalty not exceeding Five Pounds for every Day during which such Neglect to give Notice continues, and every Director and Manager of the Company who shall knowingly and wilfully authorize or permit such Default shall incur the like Penalty.

Remedy for improper Entry or Omission of Entry in Register.

35. If the Name of any Person is, without sufficient Cause, entered in or omitted from the Register of Members of any Company under this Act, or if Default is made or unnecessary Delay takes place in entering on the Register the Fact of any Person having ceased to be a Member of the Company, the Person or Member aggrieved, or any Member of the Company, or the Company itself, may as respects Companies registered in *England* or *Ireland*, by Motion in any of Her Majesty's Superior Courts of Law or Equity, or by Application to a Judge sitting in Chambers, or to the Vice Warden of the Stannaries in the Case of Companies subject to his Jurisdiction, and as respects Companies registered in *Scotland* by summary Petition to the Court of Session, or in such other Manner as the said Courts may direct, apply for an Order of the Court that the Register may be rectified; and the Court may either refuse such Application, with or without Costs, to be paid by the Applicant, or it may, if satisfied of the Justice of the Case, make an Order for the Rectification of the Register, and may direct the Company to pay all the Costs of such Motion, Application, or Petition, and any Damages the Party aggrieved may have sustained: The Court may in any Proceeding under this Section decide on any Question relating to the Title of any Person who is a Party to such Proceeding to have his Name entered in or omitted from the Register, whether such Question arises between Two or more Members or alleged Members, or between any Members or alleged Members and the Company, and generally the Court may in any such Proceeding decide any Question that it may be necessary or expedient to decide for the Rectification of the Register; provided that the Court, if a Court of Common Law, may direct an Issue to be tried, in which any Question of Law may be raised, and a Writ of Error or Appeal, in the Manner directed by "The Common Law Procedure Act, 1854," shall lie.

Notice to Registrar of Rectification of Register.

36. Whenever any Order has been make rectifying the Register, in the Case of a Company hereby required to send a List of its Members to the Registrar, the Court shall, by its Order, direct that due Notice of such Rectification be given to the Registrar.

Register to be Evidence.

37. The Register of Members shall be *primâ facie* Evidence of any Matters by this Act directed or authorized to be inserted therein.

Liability of Members.

Liability of present and past Members of Company.

38. In the event of a Company formed under this Act being wound up, every present and past Member of such Company shall be liable to contribute to the Assets of the Company to an Amount sufficient for Payment of the Debts and Liabilities of the Company, and the Costs, Charges, and Expenses of the Winding-up, and for the Payment of such Sums as may be required for the Adjustment of the Rights of the Contributories amongst themselves, with the Qualifications following; (that is to say,)

(1.) No past Member shall be liable to contribute to the Assets of the Company if he has ceased to be a Member for a Period of One Year or upwards prior to the Commencement of the Winding-up:

(2.) No past Member shall be liable to contribute in respect of any Debt or Liability of the Company contracted after the Time at which he ceased to be a Member:

(3.) No past Member shall be liable to contribute to the Assets of the Company unless it appears to the Court that the existing Members are unable to satisfy the Contributions required to be made by them in pursuance of this Act:

(4.) In the Case of a Company limited by Shares, no Contributions shall be required from any Member exceeding the Amount, if any, unpaid on the Shares in respect of which he is liable as a present or past Member:

(5.) In

(5.) In the Case of a Company limited by Guarantee, no Contribution shall be required from any Member exceeding the Amount of the Undertaking entered into on his Behalf by the Memorandum of Association:

(6.) Nothing in this Act contained shall invalidate any Provision contained in any Policy of Insurance or other Contract whereby the Liability of individual Members upon any such Policy or Contract is restricted, or whereby the Funds of the Company are alone made liable in respect of such Policy or Contract:

(7.) No Sum due to any Member of a Company, in his Character of a Member, by way of Dividends, Profits, or otherwise, shall be deemed to be a Debt of the Company, payable to such Member in a Case of Competition between himself and any other Creditor not being a Member of the Company; but any such Sum may be taken into account, for the Purposes of the final Adjustment of the Rights of the Contributories amongst themselves.

PART III.

Management and Administration of Companies and Associations under this Act.

Provisions for Protection of Creditors.

Registered Office of Company.

39. Every Company under this Act shall have a registered Office to which all Communications and Notices may be addressed: If any Company under this Act carries on Business without having such an Office, it shall incur a Penalty not exceeding Five Pounds for every Day during which Business is so carried on.

Notice of Situation of registered Office.

40. Notice of the Situation of such registered Office, and of any Change therein, shall be given to the Registrar, and recorded by him: Until such Notice is given the Company shall not be deemed to have complied with the Provisions of this Act with respect to having a registered Office.

Publication of Name by a Limited Company.

41. Every Limited Company under this Act, whether limited by Shares or by Guarantee, shall paint or affix, and shall keep painted or affixed, its Name on the Outside of every Office or Place in which the Business of the Company is carried on, in a conspicuous Position, in Letters easily legible, and shall have its Name engraven in legible Characters on its Seal, and shall have its Name mentioned in legible Characters in all Notices, Advertisements, and other official Publications of such Company, and in all Bills of Exchange, Promissory Notes, Endorsements, Cheques, and Orders for Money or Goods purporting to be signed by or on behalf of such Company, and in all Bills of Parcels, Invoices, Receipts, and Letters of Credit of the Company.

Penalties on Non-publication of Name.

42. If any Limited Company under this Act does not paint or affix, and keep painted or affixed, its Name in manner directed by this Act, it shall be liable to a Penalty not exceeding Five Pounds for not so painting or affixing its Name, and for every Day during which such Name is not so kept painted or affixed, and every Director and Manager of the Company who shall knowingly and wilfully authorize or permit such Default shall be liable to the like Penalty; and if any Director, Manager, or Officer of such Company, or any Person on its Behalf, uses or authorizes the Use of any Seal purporting to be a Seal of the Company whereon its Name is not so engraven as aforesaid, or issues or authorizes the Issue of any Notice, Advertisement, or other official Publication of such Company, or signs or authorizes to be signed on behalf of such Company any Bill of Exchange, Promissory Note, Endorsement, Cheque, Order for Money or Goods, or issues or authorizes to be issued any Bill of Parcels, Invoice, Receipt, or Letter of Credit of the Company, wherein its Name is not mentioned in manner aforesaid, he shall be liable to a Penalty of Fifty Pounds, and shall further be personally liable to the Holder of any such Bill of Exchange, Promissory Note, Cheque, or Order for Money or Goods, for the Amount thereof, unless the same is duly paid by the Company.

Register of Mortgages.

43. Every Limited Company under this Act shall keep a Register of all Mortgages and Charges specifically affecting Property of the Company, and shall enter in such Register in respect of each Mortgage or Charge a short Description of the Property mortgaged or charged, the Amount of Charge created, and the Names of the Mortgagees or Persons entitled to such Charge: If any Property of the Company is mortgaged or charged without such Entry as aforesaid being made, every Director, Manager, or other Officer of the Company who knowingly and wilfully authorizes or permits the Omission of such Entry shall incur a Penalty not exceeding Fifty Pounds: The Register of Mortgages required by this Section shall be open to Inspection by any Creditor or Member of the Company at all reasonable Times; and if such Inspection is refused, any Officer of the Company refusing the same, and every Director and Manager of the Company authorizing or knowingly and wilfully permitting such Refusal, shall incur a Penalty not exceeding Five Pounds, and a further Penalty not exceeding Two Pounds for every Day during which such Refusal continues; and in addition to the above Penalty, as respects Companies registered in *England* and *Ireland*, any Judge sitting in Chambers, or the Vice Warden of the Stannaries in the Case of Companies subject to his Jurisdiction, may by Order compel an immediate Inspection of the Register.

Certain Companies to pub-

44. Every Limited Banking Company and every Insurance Company, and Deposit, Provident, or Benefit Society under this Act shall, before it commences Business, and also on the First *Monday* in *February*

February and the First *Monday* in *August* in every Year during which it carries on Business, make a Statement in the Form marked D. in the First Schedule hereto, or as near thereto as Circumstances will admit, and a Copy of such Statement shall be put up in a conspicuous Place in the registered Office of the Company, and in every Branch Office or Place where the Business of the Company is carried on, and if Default is made in compliance with the Provisions of this Section the Company shall be liable to a Penalty not exceeding Five Pounds for every Day during which such Default continues, and every Director and Manager of the Company who shall knowingly and wilfully authorize or permit such Default shall incur the like Penalty. lish Statement entered in Schedule.

Every Member and every Creditor of any Company mentioned in this Section shall be entitled to a Copy of the above-mentioned Statement on Payment of a Sum not exceeding Sixpence.

45. Every Company under this Act, and not having a Capital divided into Shares, shall keep at its registered Office a Register containing the Names and Addresses and the Occupations of its Directors or Managers, and shall send to the Registrar of Joint Stock Companies a Copy of such Register, and shall from Time to Time notify to the Registrar any Change that takes place in such Directors or Managers. List of Directors to be sent to Registrar.

46. If any Company under this Act, and not having a Capital divided into Shares, makes default in keeping a Register of its Directors or Managers, or in sending a Copy of such Register to the Registrar in compliance with the foregoing Rules, or in notifying to the Registrar any Change that takes place in such Directors or Managers, such delinquent Company shall incur a Penalty not exceeding Five Pounds for every Day during which such Default continues, and every Director and Manager of the Company who shall knowingly and wilfully authorize or permit such Default shall incur the like Penalty. Penalty on Company not keeping Register of Directors.

47. A Promissory Note or Bill of Exchange shall be deemed to have been made, accepted, or endorsed on behalf of any Company under this Act, if made, accepted, or endorsed in the Name of the Company by any Person acting under the Authority of the Company, or if made, accepted, or endorsed by or on behalf or on account of the Company, by any Person acting under the Authority of the Company. Promissory Notes and Bills of Exchange.

48. If any Company under this Act carries on Business when the Number of its Members is less than Seven for a Period of Six Months after the Number has been so reduced, every Person who is a Member of such Company during the Time that it so carries on Business after such Period of Six Months, and is cognizant of the Fact that it is so carrying on Business with fewer than Seven Members, shall be severally liable for the Payment of the whole Debts of the Company contracted during such Time, and may be sued for the same, without the Joinder in the Action or Suit of any other Member. Prohibition against carrying on Business with less than Seven Members.

Provisions for Protection of Members.

49. A General Meeting of every Company under this Act shall be held once at the least in every Year. General Meeting of Company.

50. Subject to the Provisions of this Act, and to the Conditions contained in the Memorandum of Association, any Company formed under this Act may, in General Meeting, from Time to Time, by passing a Special Resolution in manner herein-after mentioned, alter all or any of the Regulations of the Company contained in the Articles of Association or in the Table marked A. in the First Schedule, where such Table is applicable to the Company, or make new Regulations to the Exclusion of or in addition to all or any of the Regulations of the Company; and any Regulations so made by Special Resolution shall be deemed to be Regulations of the Company of the same Validity as if they had been originally contained in the Articles of Association, and shall be subject in like Manner to be altered or modified by any subsequent Special Resolution. Power to alter Regulations by Special Resolution.

51. A Resolution passed by a Company under this Act shall be deemed to be special whenever a Resolution has been passed by a Majority of not less than Three Fourths of such Members of the Company for the Time being entitled, according to the Regulations of the Company, to vote as may be present, in Person or by Proxy (in Cases where by the Regulations of the Company Proxies are allowed), at any General Meeting of which Notice specifying the Intention to propose such Resolution has been duly given, and such Resolution has been confirmed by a Majority of such Members for the Time being entitled, according to the Regulations of the Company, to vote as may be present, in Person or by Proxy, at a subsequent General Meeting, of which Notice has been duly given, and held at an Interval of not less than Fourteen Days, nor more than One Month from the Date of the Meeting at which such Resolution was first passed: At any Meeting mentioned in this Section, unless a Poll is demanded by at least Five Members, a Declaration of the Chairman that the Resolution has been carried shall be deemed conclusive Evidence of the Fact, without Proof of the Number or Proportion of the Votes recorded in favour of or against the same: Notice of any Meeting shall, for the Purposes of this Section, be deemed to be duly given and the Meeting to be duly held, whenever such Notice is given and Meeting held in manner prescribed by the Regulations of the Company: In computing the Majority under this Section, when a Poll is demanded, Reference shall be had to the Number of Votes to which each Member is entitled by the Regulations of the Company. Definition of Special Resolution.

52. In default of any Regulations as to voting every Member shall have One Vote, and in default of any Regulations as to summoning General Meetings a Meeting shall be held to be duly summoned of which Seven Days Notice in Writing has been served on every Member in manner in which Notices are required Provision where no Regulations as to Meetings.

required to be served by the Table marked A. in the First Schedule hereto, and in default of any Regulations as to the Persons to summon Meetings Five Members shall be competent to summon the same, and in default of any Regulations as to who is to be Chairman of such Meeting, it shall be competent for any Person elected by the Members present to preside.

Registry of Special Resolutions.

53. A Copy of any Special Resolution that is passed by any Company under this Act shall be printed and forwarded to the Registrar of Joint Stock Companies, and be recorded by him: If such Copy is not so forwarded within Fifteen Days from the Date of the Confirmation of the Resolution, the Company shall incur a Penalty not exceeding Two Pounds for every Day after the Expiration of such Fifteen Days during which such Copy is omitted to be forwarded, and every Director and Manager of the Company who shall knowingly and wilfully authorize or permit such Default shall incur the like Penalty.

Copies of Special Resolutions.

54. Where Articles of Association have been registered, a Copy of every Special Resolution for the Time being in force shall be annexed to or embodied in every Copy of the Articles of Association that may be issued after the passing of such Resolution: Where no Articles of Association have been registered, a Copy of any Special Resolution shall be forwarded in Print to any Member requesting the same on Payment of One Shilling, or such less Sum as the Company may direct: And if any Company makes default in complying with the Provisions of this Section it shall incur a Penalty not exceeding One Pound for each Copy in respect of which such Default is made; and every Director and Manager of the Company who shall knowingly and wilfully authorize or permit such Default shall incur the like Penalty.

Execution of Deeds abroad.

55. Any Company under this Act may, by Instrument in Writing under its Common Seal, empower any Person, either generally or in respect of any specified Matters, as its Attorney, to execute Deeds on its Behalf in any Place not situate in the United Kingdom; and every Deed signed by such Attorney, on behalf of the Company, and under his Seal, shall be binding on the Company, and have the same Effect as if it were under the Common Seal of the Company.

Examination of Affairs of Company by Inspectors.

56. The Board of Trade may appoint One or more competent Inspectors to examine into the Affairs of any Company under this Act, and to report thereon, in such Manner as the Board may direct, upon the Applications following; (that is to say,)

(1.) In the Case of a Banking Company that has a Capital divided into Shares, upon the Application of Members holding not less than One Third Part of the whole Shares of the Company for the Time being issued:

(2.) In the Case of any other Company that has a Capital divided into Shares, upon the Application of Members holding not less than One Fifth Part of the whole Shares of the Company for the Time being issued:

(3.) In the Case of any Company not having a Capital divided into Shares, upon the Application of Members being in Number not less than One Fifth of the whole Number of Persons for the Time being entered on the Register of the Company as Members.

Application for Inspection to be supported by Evidence.

57. The Application shall be supported by such Evidence as the Board of Trade may require for the Purpose of showing that the Applicants have good Reason for requiring such Investigation to be made, and that they are not actuated by malicious Motives in instituting the same; the Board of Trade may also require the Applicants to give Security for Payment of the Costs of the Inquiry before appointing any Inspector or Inspectors.

Inspection of Books.

58. It shall be the Duty of all Officers and Agents of the Company to produce for the Examination of the Inspectors all Books and Documents in their Custody or Power: Any Inspector may examine upon Oath the Officers and Agents of the Company in relation to its Business, and may administer such Oath accordingly: If any Officer or Agent refuses to produce any Book or Document hereby directed to be produced, or to answer any Question relating to the Affairs of the Company, he shall incur a Penalty not exceeding Five Pounds in respect of each Offence.

Result of Examination how dealt with.

59. Upon the Conclusion of the Examination the Inspectors shall report their Opinion to the Board of Trade: Such Report shall be written or printed, as the Board of Trade directs: A Copy shall be forwarded by the Board of Trade to the registered Office of the Company, and a further Copy shall, at the Request of the Members upon whose Application the Inspection was made, be delivered to them or to any One or more of them: All Expenses of and incidental to any such Examination as aforesaid shall be defrayed by the Members upon whose Application the Inspectors were appointed, unless the Board of Trade shall direct the same to be paid out of the Assets of the Company, which it is hereby authorized to do.

Power of Company to appoint Inspectors.

60. Any Company under this Act may by Special Resolution appoint Inspectors for the Purpose of examining into the Affairs of the Company: The Inspectors so appointed shall have the same Powers and perform the same Duties as Inspectors appointed by the Board of Trade, with this Exception, that, instead of making their Report to the Board of Trade, they shall make the same in such Manner and to such Persons as the Company in General Meeting directs; and the Officers and Agents of the Company shall incur the same Penalties, in case of any Refusal to produce any Book or Document hereby required to be produced to such Inspectors, or to answer any Question, as they would have incurred if such Inspector had been appointed by the Board of Trade.

Report of Inspectors to be Evidence.

61. A Copy of the Report of any Inspectors appointed under this Act, authenticated by the Seal of the Company into whose Affairs they have made Inspection, shall be admissible in any legal Proceeding, as Evidence of the Opinion of the Inspectors in relation to any Matter contained in such Report.

Notices.

Service of Notices on Company.

62. Any Summons, Notice, Order, or other Document required to be served upon the Company may be served by leaving the same, or sending it through the Post in a prepaid Letter addressed to the Company, at their registered Office.

Rules as to Notices by Letter.

63. Any Document to be served by Post on the Company shall be posted in such Time as to admit of its being delivered in the due Course of Delivery within the Period (if any) prescribed for the Service thereof; and in proving Service of such Document it shall be sufficient to prove that such Document was properly directed, and that it was put as a prepaid Letter into the Post Office.

Authentication of Notices of Company.

64. Any Summons, Notice, Order, or Proceeding requiring Authentication by the Company, may be signed by any Director, Secretary, or other authorized Officer 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.

Legal Proceedings.

Recovery of Penalties.

65. All Offences under this Act made punishable by any Penalty may be prosecuted summarily before Two or more Justices, as to *England*, in manner directed by an Act passed in the Session holden in the Eleventh and Twelfth Years of the Reign of Her Majesty Queen *Victoria*, Chapter Forty-three, intituled *An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within* England *and* Wales *with respect to summary Convictions and Orders*, or any Act amending the same; and as to *Scotland*, before Two or more Justices or the Sheriff of the County, in manner directed by the Act passed in the Session of Parliament holden in the Seventeenth and Eighteenth Years of the Reign of Her Majesty Queen *Victoria*, Chapter One hundred and four, intituled *An Act to amend and consolidate the Acts relating to Merchant Shipping*, or any Act amending the same, as regards Offences in *Scotland* against that Act, not being Offences by that Act described as Felonies or Misdemeanors; and as to *Ireland*, in manner directed by the Act passed in the Session holden in the Fourteenth and Fifteenth Years of the Reign of Her Majesty Queen *Victoria*, Chapter Ninety-three, intituled *An Act to consolidate and amend the Acts regulating the Proceedings of Petty Sessions and the Duties of Justices of the Peace out of Quarter Sessions in* Ireland, or any Act amending the same.

Application of Penalties.

66. The Justices or Sheriff imposing any Penalty under this Act may direct the whole or any Part thereof to be applied in or towards Payment of the Costs of the Proceedings, or in or towards the rewarding the Person upon whose Information or at whose Suit such Penalty has been recovered; and, subject to such Direction, all Penalties shall be paid into the Receipt of Her Majesty's Exchequer, in such Manner as the Treasury may direct, and shall be carried to and form Part of the Consolidated Fund of the United Kingdom.

Evidence of Proceedings at Meetings.

67. Every Company under this Act shall cause Minutes of all Resolutions and Proceedings of General Meetings of the Company, and of the Directors or Managers of the Company in Cases where there are Directors or Managers, to be duly entered in Books to be from Time to Time provided for the Purpose; and any such Minute as aforesaid, if purporting to be signed by the Chairman of the Meeting at which such Resolutions were passed or Proceedings had, or by the Chairman of the next succeeding Meeting, shall be received as Evidence in all legal Proceedings; and until the contrary is proved, every General Meeting of the Company or Meeting of Directors or Managers in respect of the Proceedings of which Minutes have been so made shall be deemed to have been duly held and convened, and all Resolutions passed thereat or Proceedings had, to have been duly passed and had, and all Appointments of Directors, Managers, or Liquidators shall be deemed to be valid, and all Acts done by such Directors, Managers, or Liquidators shall be valid, notwithstanding any Defect that may afterwards be discovered in their Appointments or Qualifications.

Jurisdiction of Vice Warden of Stannaries.

68. In the Case of Companies under this Act, and engaged in working Mines within and subject to the Jurisdiction of the Stannaries, the Court of the Vice Warden of the Stannaries shall have and exercise the like Jurisdiction and Powers, as well on the Common Law as on the Equity Side thereof, which it now possesses by Custom, Usage, or Statute in the Case of unincorporated Companies, but only so far as such Jurisdiction or Powers are consistent with the Provisions of this Act and with the Constitution of Companies as prescribed or required by this Act; and for the Purpose of giving fuller Effect to such Jurisdiction in all Actions, Suits, or legal Proceedings instituted in the said Court, in Causes or Matters whereof the Court has Cognizance, all Process issuing out of the same, and all Orders, Rules, Demands, Notices, Warrants, and Summonses required or authorized by the Practice of the Court to be served on any Company, whether registered or not registered, or any Member or Contributory thereof, or any Officer, Agent, Director, Manager, or Servant thereof, may be served in any Part of *England* without any Special Order of the Vice Warden for that Purpose, or by such Special Order may be served in any Part of the United Kingdom of *Great Britain* and *Ireland*, or in the adjacent Islands, Parcel of the Dominions of the Crown, on such Terms and Conditions as the Court shall think fit; and all Decrees,

Orders, and Judgments of the said Court made or pronounced in such Causes or Matters may be enforced in the same Manner in which Decrees, Orders, and Judgments of the Court may now by Law be enforced, whether within or beyond the local Limits of the Stannaries; and the Seal of the said Court, and the Signature of the Registrar thereof, shall be judicially noticed by all other Courts and Judges in *England*, and shall require no other Proof than the Production thereof: The Registrar of the said Court, or the Assistant Registrar, in making Sales under any Decree or Order of the Court shall be entitled to the same Privilege of selling by Auction or Competition without a Licence, and without being liable to Duty, as a Judge of the Court of Chancery is entitled to in pursuance of the Acts in that Behalf.

Provision as to Costs in Actions brought by certain Limited Companies.

69. Where a Limited Company is Plaintiff or Pursuer in any Action, Suit, or other legal Proceeding, any Judge having Jurisdiction in the Matter may, if it appears by any credible Testimony that there is Reason to believe that if the Defendant be successful in his Defence the Assets of the Company will be insufficient to pay his Costs, require sufficient Security to be given for such Costs, and may stay all Proceedings until such Security is given.

Declaration in Action against Members.

70. In any Action or Suit brought by the Company against any Member to recover any Call or other Monies due from such Member in his Character of Member, it shall not be necessary to set forth the special Matter, but it shall be sufficient to allege that the Defendant is a Member of the Company, and is indebted to the Company in respect of a Call made or other Monies due whereby an Action or Suit hath accrued to the Company.

Alteration of Forms.

Board of Trade may alter Forms in Schedule.

71. The Forms set forth in the Second Schedule hereto, or Forms as near thereto as Circumstances admit, shall be used in all Matters to which such Forms refer; the Board of Trade may from Time to Time make such Alterations in the Tables and Forms contained in the First Schedule hereto, so that it does not increase the Amount of Fees payable to the Registrar in the said Schedule mentioned, and in the Forms in the Second Schedule, or make such Additions to the last-mentioned Forms, as it deems requisite: Any such Table or Form, when altered, shall be published in the *London Gazette*, and upon such Publication being made such Table or Form shall have the same Force as if it were included in the Schedule to this Act, but no Alteration made by the Board of Trade in the Table marked A. contained in the First Schedule shall affect any Company registered prior to the Date of such Alteration, or repeal, as respects such Company, any Portion of such Table.

Arbitrations.

Power for Companies to refer Matters to Arbitration.

72. Any Company under this Act may from Time to Time, by Writing under its Common Seal, agree to refer and may refer to Arbitration, in accordance with "The Railway Companies Arbitration Act, 1859," any existing or future Difference, Question, or other Matter whatsoever in dispute between itself and any other Company or Person, and the Companies Parties to the Arbitration may delegate to the Person or Persons to whom the Reference is made Power to settle any Terms or to determine any Matter capable of being lawfully settled or determined by the Companies themselves, or by the Directors or other managing Body of such Companies.

Provisions of 22 & 23 Vict. c. 59. to apply.

73. All the Provisions of "The Railway Companies Arbitration Act, 1859," shall be deemed to apply to Arbitrations between Companies and Persons in pursuance of this Act; and in the Construction of such Provisions "the Companies" shall be deemed to include Companies authorized by this Act to refer Disputes to Arbitration.

PART IV.

Winding up of Companies and Associations under this Act.

Preliminary.

Meaning of Contributory.

74. The Term "Contributory" shall mean every Person liable to contribute to the Assets of a Company under this Act, in the event of the same being wound up: It shall also, in all Proceedings for determining the Persons who are to be deemed Contributories, and in all Proceedings prior to the final Determination of such Persons, include any Person alleged to be a Contributory.

Nature of Liability of Contributory.

75. The Liability of any Person to contribute to the Assets of a Company under this Act in the event of the same being wound up, shall be deemed to create a Debt (in *England* and *Ireland* of the Nature of a Specialty) accruing due from such Person at the Time when his Liability commenced, but payable at the Time or respective Times when Calls are made as herein-after mentioned for enforcing such Liability; and it shall be lawful in the Case of the Bankruptcy of any Contributory to prove against his Estate the estimated Value of his Liability to future Calls, as well as Calls already made.

Contributories in case of Death.

76. If any Contributory dies either before or after he has been placed on the List of Contributories herein-after mentioned, his Personal Representatives, Heirs, and Devisees shall be liable in a due Course of Administration to contribute to the Assets of the Company in discharge of the Liability of such deceased Contributory, and such Personal Representatives, Heirs, and Devisees shall be deemed to be Contributories accordingly.

Contributories in case of Bankruptcy.

77. If any Contributory becomes bankrupt, either before or after he has been placed on the List of Contributories, his Assignees shall be deemed to represent such Bankrupt for all the Purposes of the Winding-

Winding-up, and shall be deemed to be Contributories accordingly, and may be called upon to admit to Proof against the Estate of such Bankrupt, or otherwise to allow to be paid out of his Assets in due Course of Law, any Monies due from such Bankrupt in respect of his Liability to contribute to the Assets of the Company being wound up; and for the Purposes of this Section any Person who may have taken the Benefit of any Act for the Relief of Insolvent Debtors before the Eleventh Day of *October* One thousand eight hundred and sixty-one shall be deemed to have become bankrupt.

Contributories in case of Marriage.

78. If any Female Contributory marries, either before or after she has been placed on the List of Contributories, her Husband shall during the Continuance of the Marriage be liable to contribute to the Assets of the Company the same Sum as she would have been liable to contribute if she had not married, and he shall be deemed to be a Contributory accordingly.

Winding up by Court.

Circumstances under which Company may be wound up by Court.

79. A Company under this Act may be wound up by the Court as herein-after defined, under the following Circumstances; (that is to say,)

(1.) Whenever the Company has passed a Special Resolution requiring the Company to be wound up by the Court:

(2.) Whenever the Company does not commence its Business within a Year from its Incorporation, or suspends its Business for the Space of a whole Year:

(3.) Whenever the Members are reduced in Number to less than Seven:

(4.) Whenever the Company is unable to pay its Debts:

(5.) Whenever the Court is of opinion that it is just and equitable that the Company should be wound up.

Company when deemed unable to pay its Debts.

80. A Company under this Act shall be deemed to be unable to pay its Debts,

(1.) Whenever a Creditor, by Assignment or otherwise, to whom the Company is indebted, at Law or in Equity, in a Sum exceeding Fifty Pounds then due, has served on the Company, by leaving the same at their registered Office, a Demand under his Hand requiring the Company to pay the Sum so due, and the Company has for the Space of Three Weeks succeeding the Service of such Demand neglected to pay such Sum, or to secure or compound for the same to the reasonable Satisfaction of the Creditor:

(2.) Whenever, in *England* and *Ireland*, Execution or other Process issued on a Judgment, Decree, or Order obtained in any Court in favour of any Creditor, at Law or in Equity, in any Proceeding instituted by such Creditor against the Company, is returned unsatisfied in whole or in part:

(3.) Whenever, in *Scotland*, the Induciæ of a Charge for Payment on an Extract Decree, or an Extract registered Bond, or an Extract registered Protest have expired without Payment being made:

(4.) Whenever it is proved to the Satisfaction of the Court that the Company is unable to pay its Debts.

Definition of "the Court."

81. The Expression "the Court," as used in this Part of this Act, shall mean the following Authorities; (that is to say,)

In the Case of a Company engaged in working any Mine within and subject to the Jurisdiction of the Stannaries,—the Court of the Vice Warden of the Stannaries, unless the Vice Warden certifies that in his Opinion the Company would be more advantageously wound up in the High Court of Chancery, in which Case "the Court" shall mean the High Court of Chancery:

In the Case of a Company registered in *England* that is not engaged in working any such Mine as aforesaid,—the High Court of Chancery:

In the Case of a Company registered in *Ireland*, the Court of Chancery in *Ireland*:

In all Cases of Companies registered in *Scotland*, the Court of Session in either Division thereof:

Provided that where the Court of Chancery in *England* or *Ireland* makes an Order for winding up a Company under this Act, it may, if it thinks fit, direct all subsequent Proceedings for winding up the same to be had in the Court of Bankruptcy having Jurisdiction in the Place in which the registered Office of the Company is situate; and thereupon such last-mentioned Court of Bankruptcy shall, for the Purposes of winding up the Company, be deemed to be "the Court" within the Meaning of the Act, and shall have for the Purposes of such Winding-up all the Powers of the High Court of Chancery, or of the Court of Chancery in *Ireland*, as the Case may require.

Application for winding up to be made by Petition.

82. Any Application to the Court for the winding up of a Company under this Act shall be by Petition; it may be presented by the Company, or by any One or more Creditor or Creditors, Contributory or Contributories of the Company, or by all or any of the above Parties, together or separately; and every Order which may be made on any such Petition shall operate in favour of all the Creditors and all the Contributories of the Company in the same Manner as if it had been made upon the joint Petition of a Creditor and a Contributory.

Power of Court.

83. Any Judge of the High Court of Chancery may do in Chambers any Act which the Court is hereby authorized to do; and the Vice Warden of the Stannaries may direct that a Petition for winding up a Company be heard by him at such Time and at such Place within the Jurisdiction of the

Stannaries, or within or near to the Place where the registered Office of the Company is situated, as he may deem to be convenient to the Parties concerned, or (with the Consent of the Parties concerned) at any Place in *England*; and all Orders made thereupon shall have the same Force and Effect as if they had been made by the Vice Warden sitting at *Truro* or elsewhere within the Jurisdiction of the Court, and all Parties and Persons summoned to attend at the Hearing of any such Petition shall be compellable to give their Attendance before the Vice Warden by like Process and in like Manner as at the Hearing of any Cause or Matter at the usual Sitting of the said Court; and the Registrar of the Court may, subject to Exception or Appeal to the Vice Warden as heretofore used, do and exercise such and the like Acts and Powers in the Matter of winding up as he is now used to do and exercise in a Suit on the Equity Side of the said Court.

Commencement of winding up.

84. A Winding-up of a Company by the Court shall be deemed to commence at the Time of the Presentation of the Petition for the Winding-up.

Court may grant Injunction.

85. The Court may, at any Time after the Presentation of a Petition for winding up a Company under this Act, and before making an Order for winding up the Company, upon the Application of the Company, or of any Creditor or Contributory of the Company, restrain further Proceedings in any Action, Suit, or Proceeding against the Company, upon such Terms as the Court thinks fit; the Court may also at any Time after the Presentation of such Petition, and before the First Appointment of Liquidators, appoint provisionally an Official Liquidator of the Estate and Effects of the Company.

Course to be pursued by Court on hearing Petition.

86. Upon hearing the Petition the Court may dismiss the same with or without Costs, may adjourn the Hearing conditionally or unconditionally, and may make any Interim Order, or any other Order that it deems just.

Actions, &c. to be stayed after Order for winding up.

87. When an Order has been made for winding up a Company under this Act no Suit, Action, or other Proceeding shall be proceeded with or commenced against the Company except with the Leave of the Court, and subject to such Terms as the Court may impose.

Copy of Order to be forwarded to Registrar.

88. When an Order has been made for winding up a Company under this Act, a Copy of such Order shall forthwith be forwarded by the Company to the Registrar of Joint Stock Companies, who shall make a Minute thereof in his Books relating to the Company.

Power of Court to stay Proceedings.

89. The Court may at any Time after an Order has been made for winding up a Company, upon the Application by Motion of any Creditor or Contributory of the Company, and upon Proof to the Satisfaction of the Court that all Proceedings in relation to such Winding-up ought to be stayed, make an Order staying the same, either altogether or for a limited Time, on such Terms and subject to such Conditions as it deems fit.

Effect of Order on Share Capital of Company limited by Guarantee.

90. When an Order has been made for winding up a Company limited by Guarantee and having a Capital divided into Shares, any Share Capital that may not have been called up shall be deemed to be Assets of the Company, and to be a Debt (in *England* and *Ireland* of the Nature of a Specialty) due to the Company from each Member to the Extent of any Sums that may be unpaid on any Shares held by him, and payable at such Time as may be appointed by the Court.

Court may have regard to Wishes of Creditors or Contributories.

91. The Court may, as to all Matters relating to the Winding-up, have regard to the Wishes of the Creditors or Contributories, as proved to it by any sufficient Evidence, and may, if it thinks it expedient, direct Meetings of the Creditors or Contributories to be summoned, held, and conducted in such Manner as the Court directs, for the Purpose of ascertaining their Wishes, and may appoint a Person to act as Chairman of any such Meeting, and to report the Result of such Meeting to the Court: In the Case of Creditors, regard is to be had to the Value of the Debts due to each Creditor, and in the Case of Contributories to the Number of Votes conferred on each Contributory by the Regulations of the Company.

Official Liquidators.

Appointment of Official Liquidator.

92. For the Purpose of conducting the Proceedings in winding up a Company, and assisting the Court therein, there may be appointed a Person or Persons to be called an Official Liquidator or Official Liquidators; and the Court having Jurisdiction may appoint such Person or Persons, either provisionally or otherwise, as it thinks fit, to the Office of Official Liquidator or Official Liquidators; in all Cases if more Persons than One are appointed to the Office of Official Liquidator, the Court shall declare whether any Act hereby required or authorized to be done by the Official Liquidator is to be done by all or any One or more of such Persons. The Court may also determine whether any and what Security is to be given by any Official Liquidator on his Appointment; if no Official Liquidator is appointed, or during any Vacancy in such Appointment, all the Property of the Company shall be deemed to be in the Custody of the Court.

Resignations, Removals, filling up Vacancies, and Compensation.

93. Any Official Liquidator may resign or be removed by the Court on due Cause shown: And any Vacancy in the Office of an Official Liquidator appointed by the Court shall be filled by the Court: There shall be paid to the Official Liquidator such Salary or Remuneration, by way of Per-centage or otherwise, as the Court may direct; and if more Liquidators than One are appointed such Remuneration shall be distributed amongst them in such Proportions as the Court directs.

Style and Duties of Official Liquidator.

94. The Official Liquidator or Liquidators shall be described by the Style of the Official Liquidator or Official Liquidators of the particular Company in respect of which he is or they are appointed, and not

not by his or their individual Name or Names; he or they shall take into his or their Custody, or under his or their Control, all the Property, Effects, and Things in Actions to which the Company is or appears to be entitled, and shall perform such Duties in reference to the Winding-up of the Company as may be imposed by the Court.

Powers of Official Liquidator.

95. The Official Liquidator shall have Power, with the Sanction of the Court, to do the following Things:

To bring or defend any Action, Suit, or Prosecution, or other legal Proceeding, Civil or Criminal, in the Name and on behalf of the Company:

To carry on the Business of the Company, so far as may be necessary for the beneficial winding up of the same:

To sell the Real and Personal and Heritable and Moveable Property, Effects, and Things in Action of the Company by Public Auction or Private Contract, with Power to transfer the whole thereof to any Person or Company, or to sell the same in Parcels:

To do all Acts and to execute, in the Name and on behalf of the Company, all Deeds, Receipts, and other Documents, and for that Purpose to use, when necessary, the Company's Seal:

To prove, rank, claim, and draw a Dividend, in the Matter of the Bankruptcy or Insolvency or Sequestration of any Contributory, for any Balance against the Estate of such Contributory, and to take and receive Dividends in respect of such Balance, in the Matter of Bankruptcy or Insolvency or Sequestration, as a separate Debt due from such Bankrupt or Insolvent, and rateably with the other separate Creditors:

To draw, accept, make, and endorse any Bill of Exchange or Promissory Note in the Name and on behalf of the Company, also to raise upon the Security of the Assets of the Company from Time to Time any requisite Sum or Sums of Money; and the drawing, accepting, making, or endorsing of every such Bill of Exchange or Promissory Note as aforesaid on behalf of the Company shall have the same Effect with respect to the Liability of such Company as if such Bill or Note had been drawn, accepted, made, or endorsed by or on behalf of such Company in the course of carrying on the Business thereof:

To take out, if necessary, in his official Name, Letters of Administration to any deceased Contributory, and to do in his official Name any other Act that may be necessary for obtaining Payment of any Monies due from a Contributory or from his Estate, and which Act cannot be conveniently done in the Name of the Company; and in all Cases where he takes out Letters of Administration, or otherwise uses his official Name for obtaining Payment of any Monies due from a Contributory, such Monies shall for the Purpose of enabling him to take out such Letters or recover such Monies, be deemed to be due to the Official Liquidator himself:

To do and execute all such other Things as may be necessary for winding up the Affairs of the Company and distributing its Assets.

Discretion of Official Liquidator.

96. The Court may provide by any Order that the Official Liquidator may exercise any of the above Powers without the Sanction or Intervention of the Court, and where an Official Liquidator is provisionally appointed may limit and restrict his Powers by the Order appointing him.

Appointment of Solicitor to Official Liquidator.

97. The Official Liquidator may, with the Sanction of the Court, appoint a Solicitor or Law Agent to assist him in the Performance of his Duties.

Ordinary Powers of Court.

Collection and Application of Assets.

98. As soon as may be after making an Order for winding up the Company, the Court shall settle a List of Contributories, with Power to rectify the Register of Members in all Cases where such Rectification is required in pursuance of this Act, and shall cause the Assets of the Company to be collected, and applied in discharge of its Liabilities.

Provision as to representative Contributories.

99. In settling the List of Contributories the Court shall distinguish between Persons who are Contributories in their own Right and Persons who are Contributories as being Representatives of or being liable to the Debts of others; it shall not be necessary, where the Personal Representative of any deceased Contributory is placed on the List, to add the Heirs or Devisees of such Contributory, nevertheless such Heirs or Devisees may be added as and when the Court thinks fit.

Power of Court to require Delivery of Property.

100. The Court may, at any Time after making an Order for winding up a Company, require any Contributory for the Time being settled on the List of Contributories, Trustee, Receiver, Banker, or Agent, or Officer of the Company to pay, deliver, convey, surrender, or transfer forthwith, or within such Time as the Court directs, to or into the Hands of the Official Liquidator, any Sum or Balance, Books, Papers, Estate, or Effects which happen to be in his Hands for the Time being, and to which the Company is *primâ facie* entitled.

Power of Court to order Payment of Debts by Contributory.

101. The Court may, at any Time after making an Order for winding up the Company, make an Order on any Contributory for the Time being settled on the List of Contributories, directing Payment to be made, in manner in the said Order mentioned, of any Monies due from him or from the Estate of the Person whom he represents to the Company, exclusive of any Monies which he or the Estate of the Person whom he represents may be liable to contribute by virtue of any Call made or to be made by the Court in pursuance of this Part of this Act: and it may, in making such Order, when the Company is not

not limited, allow to such Contributory by way of Set-off any Monies due to him or the Estate which he represents from the Company on any independent Dealing or Contract with the Company, but not any Monies due to him as a Member of the Company in respect of any Dividend or Profit:

Provided that when all the Creditors of any Company whether limited or unlimited are paid in full, any Monies due on any Account whatever to any Contributory from the Company may be allowed to him by way of Set-off against any subsequent Call or Calls.

Power of Court to make Calls.

102. The Court may, at any Time after making an Order for winding up a Company, and either before or after it has ascertained the Sufficiency of the Assets of the Company, make Calls on and order Payment thereof by all or any of the Contributories for the Time being settled on the List of Contributories, to the Extent of their Liability, for Payment of all or any Sums it deems necessary to satisfy the Debts and Liabilities of the Company, and the Costs, Charges, and Expenses of winding it up, and for the Adjustment of the Rights of the Contributories amongst themselves, and it may, in making a Call, take into consideration the Probability that some of the Contributories upon whom the same is made may partly or wholly fail to pay their respective Portions of the same.

Power of Court to order Payment into Bank.

103. The Court may order any Contributory, Purchaser, or other Person from whom Money is due to the Company to pay the same into the Bank of *England* or any Branch thereof to the Account of the Official Liquidator instead of to the Official Liquidator, and such Order may be enforced in the same Manner as if it had directed Payment to the Official Liquidator.

Regulation of Account with Court.

104. All Monies, Bills, Notes, and other Securities paid and delivered into the Bank of *England* or any Branch thereof in the event of a Company being wound up by the Court, shall be subject to such Order and Regulation for the keeping of the Account of such Monies and other Effects, and for the Payment and Delivery in, or Investment and Payment and Delivery out of the same as the Court may direct.

In case of representative Contributory not paying Monies ordered.

105. If any Person made a Contributory as Personal Representative of a deceased Contributory makes default in paying any Sum ordered to be paid by him, Proceedings may be taken for administering the Personal and Real Estates of such deceased Contributory, or either of such Estates, and of compelling Payment thereout of the Monies due.

Order conclusive Evidence.

106. Any Order made by the Court in pursuance of this Act upon any Contributory shall, subject to the Provisions herein contained for appealing against such Order, be conclusive Evidence that the Monies, if any, thereby appearing to be due or ordered to be paid are due, and all other pertinent Matters stated in such Order are to be taken to be truly stated as against all Persons, and in all Proceedings whatsoever, with the Exception of Proceedings taken against the Real Estate of any deceased Contributory, in which Case such Order shall only be *primâ facie* Evidence for the Purpose of charging his Real Estate, unless his Heirs or Devisees were on the List of Contributories at the Time of the Order being made.

Court may exclude Creditors not proving in certain Time.

107. The Court may fix a certain Day or certain Days on or within which Creditors of the Company are to prove their Debts or Claims, or to be excluded from the Benefit of any Distribution made before such Debts are proved.

Proceedings in the Court of the Vice Warden of the Stannaries on Proof of Debts.

108. If in the course of proving the Debts and Claims of Creditors in the Court of the Vice Warden of the Stannaries any Debt or Claim is disputed by the Official Liquidator or by any Creditor or Contributory, or appears to the Court to be open to Question, the Court shall have Power, subject to Appeal as herein-after provided, to adjudicate upon it, and for that Purpose the said Court shall have and exercise all needful Powers of Inquiry touching the same by Affidavit or by oral Examination of Witnesses or of Parties, whether voluntarily offering themselves for Examination or summoned to attend by compulsory Process of the Court, or to produce Documents before the Court; and the Court shall also have Power, incidentally, to decide on the Validity and Extent of any Lien or Charge claimed by any Creditor on any Property of the Company in respect of such Debt, and to make Declarations of Right, binding on all Persons interested; and for the more satisfactory Determination of any Question of Fact, or mixed Question of Law and Fact arising on such Inquiry, the Vice Warden shall have Power, if he thinks fit, to direct and settle any Action or Issue to be tried either on the Common Law Side of his Court, or by a Common or Special Jury, before the Justices of Assize in and for the Counties of *Cornwall* or *Devon*, or at any Sitting of One of the Superior Courts in *London* or *Middlesex*, which Action or Issue shall accordingly be tried in due Course of Law, and without other or further Consent of Parties; and the Finding of the Jury in such Action or Issue shall be conclusive of the Facts found, unless the Judge who tried it makes known to the Vice Warden that he was not satisfied with the Finding, or unless it appears to the Vice Warden that, in consequence of Miscarriage, Accident, or the subsequent Discovery of fresh material Evidence, such Finding ought not to be conclusive.

Court to adjust Rights of Contributories.

109. The Court shall adjust the Rights of the Contributories amongst themselves, and distribute any Surplus that may remain amongst the Parties entitled thereto.

Court to order Costs.

110. The Court may, in the event of the Assets being insufficient to satisfy the Liabilities, make an Order as to the Payment out of the Estate of the Company of the Costs, Charges, and Expenses incurred in winding up any Company in such Order of Priority as the Court thinks just.

111. When

Dissolution of Company.

111. When the Affairs of the Company have been completely wound up, the Court shall make an Order that the Company be dissolved from the Date of such Order, and the Company shall be dissolved accordingly.

Registrar to make Minute of Dissolution.

112. Any Order so made shall be reported by the Official Liquidator to the Registrar, who shall make a Minute accordingly in his Books of the Dissolution of such Company.

Penalty on not reporting Dissolution.

113. If the Official Liquidator makes default in reporting to the Registrar, in the Case of a Company being wound up by the Court, the Order that the Company be dissolved, he shall be liable to a Penalty not exceeding Five Pounds for every Day during which he is so in default.

Petition to be Lis pendens.

114. Any Petition for winding up a Company by the Court under this Act shall constitute a Lis pendens within the Terms of the Act passed in the Session holden in the Second and Third Years of the Reign of Her present Majesty, Chapter Eleven, and intituled *An Act for the better Protection of Purchasers against Judgments, Crown Debts, Lis pendens, and Fiats in Bankruptcy*, provided the same is duly registered in manner required by such Act concerning Suits in Equity.

Extraordinary Powers of Court.

Power of Court to summon Persons before it suspected of having Property of Company.

115. The Court may, after it has made an Order for winding up the Company, summon before it any Officer of the Company or Person known or suspected to have in his Possession any of the Estate or Effects of the Company, or supposed to be indebted to the Company, or any Person whom the Court may deem capable of giving Information concerning the Trade, Dealings, Estate, or Effects of the Company; and the Court may require any such Officer or Person to produce any Books, Papers, Deeds, Writings, or other Documents in his Custody or Power relating to the Company; and if any Person so summoned, after being tendered a reasonable Sum for his Expenses, refuses to come before the Court at the Time appointed, having no lawful Impediment (made known to the Court at the Time of its sitting, and allowed by it), the Court may cause such Person to be apprehended, and brought before the Court for Examination; nevertheless, in Cases where any Person claims any Lien on Papers, Deeds, or Writings or Documents produced by him, such Production shall be without Prejudice to such Lien, and the Court shall have Jurisdiction in the Winding-up to determine all Questions relating to such Lien.

Special Provisions as to Court of Vice Warden of the Stannaries.

116. If, after an Order for Winding-up in the Court of the Vice Warden of the Stannaries, it appears that any Person claims Property in, or any Lien, legal or equitable, upon any of the Machinery, Materials, Ores, or Effects on the Mine or on Premises occupied by the Company in connexion with the Mine, or to which the Company was, at the Time of the Order, *primâ facie* entitled, it shall be lawful for the Vice Warden or the Registrar to adjudicate upon such Claim on Interpleader in the Manner provided by Section Eleven of the Act passed in the Eighteenth Year of the Reign of Her present Majesty, Chapter Thirty-two; and any Action or Issue directed upon such Interpleader may, if the Vice Warden think fit, be tried in his Court or at the Assizes or the Sittings in *London* or *Middlesex*, before a Judge of One of the Superior Courts, in the Manner and on the Terms and Conditions hereinbefore provided in the Case of disputed Debts and Claims of Creditors.

Examination of Parties by Court.

117. The Court may examine upon Oath, either by Word of Mouth or upon written Interrogatories, any Person appearing or brought before them in manner aforesaid concerning the Affairs, Dealings, Estate, or Effects of the Company, and may reduce into Writing the Answers of every such Person, and require him to subscribe the same.

Power to arrest Contributory about to abscond, or to remove or conceal any of his Property.

118. The Court may, at any Time before or after it has made an Order for winding up a Company, upon Proof being given that there is probable Cause for believing that any Contributory to such Company is about to quit the United Kingdom, or otherwise abscond, or to remove or conceal any of his Goods or Chattels, for the Purpose of evading Payment of Calls, or for avoiding Examination in respect of the Affairs of the Company, cause such Contributory to be arrested, and his Books, Papers, Monies, Securities for Monies, Goods, and Chattels to be seized, and him and them to be safely kept until such Time as the Court may order.

Powers of Court cumulative.

119. Any Powers by this Act conferred on the Court shall be deemed to be in addition to and not in restriction of any other Powers subsisting, either at Law or in Equity, of instituting Proceedings against any Contributory, or the Estate of any Contributory, or against any Debtor of the Company for the Recovery of any Call or other Sums due from such Contributory or Debtor, or his Estate, and such Proceedings may be instituted accordingly.

Enforcement of and Appeal from Orders.

Power to enforce Orders.

120. All Orders made by the Court of Chancery in *England* or *Ireland* under this Act may be enforced in the same Manner in which Orders of such Court of Chancery made in any Suit pending therein may be enforced, and for the Purposes of this Part of this Act the Court of the Vice Warden of the Stannaries shall, in addition to its ordinary Powers, have the same Power of enforcing any Orders made by it as the Court of Chancery in *England* has in relation to Matters within the Jurisdiction of such Court, and for the last-mentioned Purposes the Jurisdiction of the Vice Warden of the Stannaries shall be deemed to be co-extensive in local Limits with the Jurisdiction of the Court of Chancery in *England*.

121. Where

Power to order Contributories in Scotland to pay Calls.

121. Where an Order, Interlocutor, or Decree has been made in *Scotland* for winding up a Company by the Court, it shall be competent to the Court in *Scotland* during Session, and to the Lord Ordinary on the Bills during Vacation, on Production by the Liquidators of a List certified by them of the Names of the Contributories liable in Payment of any Calls which they may wish to enforce, and of the Amount due by each Contributory respectively, and of the Date when the same became due, to pronounce forthwith a Decree against such Contributories for Payment of the Sums so certified to be due by each of them respectively, with Interest from the said Date till Payment, at the Rate of Five Pounds *per Centum per Annum*, in the same Way and to the same Effect as if they had severally consented to Registration for Execution, on a Charge of Six Days, of a legal Obligation to pay such Calls and Interest; and such Decree may be extracted immediately, and no Suspension thereof shall be competent, except on Caution or Consignation, unless with special Leave of the Court or Lord Ordinary.

Order made in England to be enforced in Ireland and Scotland.

122. Any Order made by the Court in *England* for or in the Course of the Winding-up of a Company under this Act shall be enforced in *Scotland* and *Ireland* in the Courts that would respectively have had Jurisdiction in respect of such Company if the registered Office of the Company had been situate in *Scotland* or *Ireland*, and in the same Manner in all respects as if such Order had been made by the Courts that are hereby required to enforce the same; and in like Manner Orders, Interlocutors, and Decrees made by the Court in *Scotland* for or in the Course of the Winding-up of a Company shall be enforced in *England* and *Ireland*, and Orders made by the Court in *Ireland* for or in the Course of winding up a Company shall be enforced in *England* and *Scotland* by the Courts which would respectively have had Jurisdiction in the Matter of such Company if the registered Office of the Company were situate in the Division of the United Kingdom where the Order is required to be enforced, and in the same Manner in all respects as if such Order had been made by the Court required to enforce the same in the Case of a Company within its own Jurisdiction.

Mode of dealing with Orders to be enforced by other Courts.

123. Where any Order, Interlocutor, or Decree made by one Court is required to be enforced by another Court, as herein-before provided, an Office Copy of the Order, Interlocutor, or Decree so made shall be produced to the proper Officer of the Court required to enforce the same, and the Production of such Office Copy shall be sufficient Evidence of such Order, Interlocutor, or Decree having been made, and thereupon such last-mentioned Court shall take such Steps in the Matter as may be requisite for enforcing such Order, Interlocutor, or Decree, in the same Manner as if it were the Order, Interlocutor, or Decree of the Court enforcing the same.

Appeals from Orders.

124. Rehearings of and Appeals from any Order or Decision made or given in the Matter of the Winding-up of a Company by any Court having Jurisdiction under this Act, may be had in the same Manner and subject to the same Conditions in and subject to which Appeals may be had from any Order or Decision of the same Court in Cases within its ordinary Jurisdiction; subject to this Restriction, that no such Rehearing or Appeal shall be heard unless Notice of the same is given within Three Weeks after any Order complained of has been made, in manner in which Notices of Appeal are ordinarily given, according to the Practice of the Court appealed from, unless such Time is extended by the Court of Appeal: Provided that it shall be lawful for the Lord Warden of the Stannaries, by a Special or General Order, to remit at once any Appeal allowed and regularly lodged with him against any Order or Decision of the Vice Warden made in the Matter of a Winding-up to the Court of Appeal in Chancery, which Court shall thereupon hear and determine such Appeal, and have Power to require all such Certificates of the Vice Warden, Records of Proceedings below, Documents, and Papers as the Lord Warden would or might have required upon the Hearing of such Appeal, and to exercise all other the Jurisdiction and Powers of the Lord Warden specified in the Act of Parliament passed in the Eighteenth Year of the Reign of Her present Majesty, Chapter Thirty-two, and any Order so made by the Court of Appeal in Chancery shall be final, without any further Appeal.

Judicial Notice to be taken of Signature of Officers.

125. In all Proceedings under this Part of this Act, all Courts, Judges, and Persons judicially acting, and all other Officers, Judicial or Ministerial, of any Court, or employed in enforcing the Process of any Court, shall take judicial Notice of the Signature of any Officer of the Courts of Chancery or Bankruptcy in *England* or in *Ireland*, or of the Court of Session in *Scotland*, or of the Registrar of the Court of the Vice Warden of the Stannaries, and also of the official Seal or Stamp of the several Offices of the Courts of Chancery or Bankruptcy in *England* or *Ireland*, or of the Court of Session in *Scotland*, or of the Court of the Vice Warden of the Stannaries, when such Seal or Stamp is appended to or impressed on any Document made, issued, or signed under the Provisions of this Part of the Act, or any official Copy thereof.

Special Commissioners for receiving Evidence.

126. The Commissioners of the Court of Bankruptcy and the Judges of the County Courts in *England* who sit at Places more than Twenty Miles from the General Post Office, and the Commissioners of Bankrupt and the Assistant Barristers and Recorders in *Ireland*, and the Sheriffs of Counties in *Scotland*, shall be Commissioners for the Purpose of taking Evidence under this Act in Cases where any Company is wound up in any Part of the United Kingdom, and it shall be lawful for the Court to refer the whole or any Part of the Examination of any Witnesses under this Act to any Person hereby appointed Commissioner, although such Commissioner is out of the Jurisdiction of the Court that made the Order or Decree for winding up the Company; and every such Commissioner shall, in addition to any Power of summoning and examining Witnesses, and requiring the Production or Delivery of Documents,

Documents, and certifying or punishing Defaults by Witnesses, which he might lawfully exercise as a Commissioner of the Court of Bankruptcy, Judge of a County Court, Commissioner of Bankrupt, Assistant Barrister, or Recorder, or as a Sheriff of a County, have in the Matter so referred to him all the same Powers of summoning and examining Witnesses, and requiring the Production or Delivery of Documents, and punishing Defaults by Witnesses, and allowing Costs and Charges and Expenses to Witnesses, as the Court which made the Order for winding up the Company has; and the Examination so taken shall be returned or reported to such last-mentioned Court in such Manner as it directs.

Court may order the Examination of Persons in Scotland.

127. The Court may direct the Examination in *Scotland* of any Person for the Time being in *Scotland*, whether a Contributory of the Company or not, in regard to the Estate, Dealings, or Affairs of any Company in the course of being wound up, or in regard to the Estate, Dealings, or Affairs of any Person being a Contributory of the Company, so far as the Company may be interested therein by reason of his being such Contributory, and the Order or Commission to take such Examination shall be directed to the Sheriff of the County in which the Person to be examined is residing or happens to be for the Time, and the Sheriff shall summon such Person to appear before him at a Time and Place to be specified in the Summons for Examination upon Oath as a Witness or as a Haver, and to produce any Books, Papers, Deeds, or Documents called for which may be in his Possession or Power, and the Sheriff may take such Examination either orally or upon written Interrogatories, and shall report the same in Writing in the usual Form to the Court, and shall transmit with such Report the Books, Papers, Deeds, or Documents produced, if the Originals thereof are required and specified by the Order, or otherwise such Copies thereof or Extracts therefrom, authenticated by the Sheriff, as may be necessary; and in case any Person so summoned fails to appear at the Time and Place specified, or appearing refuses to be examined or to make the Production required, the Sheriff shall proceed against such Person as a Witness or Haver duly cited, and failing to appear or refusing to give Evidence or make Production may be proceeded against by the Law of *Scotland*; and the Sheriff shall be entitled to such and the like Fees, and the Witness shall be entitled to such and the like Allowances, as Sheriffs when acting as Commissioners under Appointment from the Court of Session and as Witnesses and Havers are entitled to in the like Cases according to the Law and Practice of *Scotland*: If any Objection is stated to the Sheriff by the Witness, either on the Ground of his Incompetency as a Witness, or as to the Production required to be made, or on any other Ground whatever, the Sheriff may, if he thinks fit, report such Objection to the Court, and suspend the Examination of such Witness until such Objection has been disposed of by the Court.

Affidavits, &c. may be sworn in Ireland, Scotland, or the Colonies before any competent Court or Person.

128. Any Affidavit, Affirmation, or Declaration required to be sworn or made, under the Provisions or for the Purposes of this Part of this Act, may be lawfully sworn or made in *Great Britain* or *Ireland*, or in any Colony, Island, Plantation, or Place under the Dominion of Her Majesty in Foreign Parts, before any Court, Judge, or Person lawfully authorized to take and receive Affidavits, Affirmations, or Declarations, or before any of Her Majesty's Consuls or Vice-Consuls, in any Foreign Parts out of Her Majesty's Dominions, and all Courts, Judges, Justices, Commissioners, and Persons acting judicially shall take judicial Notice of the Seal or Stamp or Signature (as the Case may be) of any such Court, Judge, Person, Consul, or Vice-Consul attached, appended, or subscribed to any such Affidavit, Affirmation, or Declaration, or to any other Document to be used for the Purposes of this Part of this Act.

Voluntary Winding-up of Company.

Circumstances under which Company may be wound up voluntarily.

129. A Company under this Act may be wound up voluntarily,

(1.) Whenever the Period, if any, fixed for the Duration of the Company by the Articles of Association expires, or whenever the Event, if any, occurs, upon the Occurrence of which it is provided by the Articles of Association that the Company is to be dissolved, and the Company in General Meeting has passed a Resolution requiring the Company to be wound up voluntarily:

(2.) Whenever the Company has passed a Special Resolution requiring the Company to be wound up voluntarily:

(3.) Whenever the Company has passed an Extraordinary Resolution to the Effect that it has been proved to their Satisfaction that the Company cannot by reason of its Liabilities continue its Business, and that it is advisable to wind up the same:

For the Purposes of this Act any Resolution shall be deemed to be extraordinary which is passed in such Manner as would, if it had been confirmed by a subsequent Meeting, have constituted a Special Resolution, as herein-before defined.

Commencement of voluntary Winding-up.

130. A voluntary Winding-up shall be deemed to commence at the Time of the passing of the Resolution authorizing such Winding-up.

Effect of voluntary Winding-up on Status of Company.

131. Whenever a Company is wound up voluntarily the Company shall, from the Date of the Commencement of such Winding-up, cease to carry on its Business, except in so far as may be required for the beneficial Winding-up thereof, and all Transfers of Shares except Transfers made to or with the Sanction of the Liquidators, or Alteration in the Status of the Members of the Company taking place after the Commencement of such Winding-up shall be void, but its Corporate State and all its Corporate Powers shall, notwithstanding it is otherwise provided by its Regulations, continue until the Affairs of the Company are wound up.

 132. Notice

Notice of Resolution to wind up voluntarily.

132. Notice of any Special Resolution or Extraordinary Resolution passed for winding up a Company voluntarily shall be given by Advertisement as respects Companies registered in *England* in the *London Gazette*, as respects Companies registered in *Scotland* in the *Edinburgh Gazette*, and as respects Companies registered in *Ireland* in the *Dublin Gazette*.

Consequences of voluntary Winding-up.

133. The following Consequences shall ensue upon the voluntary Winding-up of a Company:

(1.) The Property of the Company shall be applied in satisfaction of its Liabilities *pari passu*, and subject thereto, shall, unless it be otherwise provided by the Regulations of the Company, be distributed amongst the Members according to their Rights and Interests in the Company:

(2.) Liquidators shall be appointed for the Purpose of winding up the Affairs of the Company and distributing the Property:

(3.) The Company in General Meeting shall appoint such Persons or Person as it thinks fit to be Liquidators or a Liquidator, and may fix the Remuneration to be paid to them or him:

(4.) If One Person only is appointed, all the Provisions herein contained in reference to several Liquidators shall apply to him:

(5.) Upon the Appointment of Liquidators all the Power of the Directors shall cease, except in so far as the Company in General Meeting or the Liquidators may sanction the Continuance of such Powers:

(6.) When several Liquidators are appointed, every Power hereby given may be exercised by such One or more of them, as may be determined at the Time of their Appointment, or in default of such Determination by any Number not less than Two:

(7.) The Liquidators may, without the Sanction of the Court, exercise all Powers by this Act given to the Official Liquidator:

(8.) The Liquidators may exercise the Powers herein-before given to the Court of settling the List of Contributories of the Company, and any List so settled shall be *primâ facie* Evidence of the Liability of the Persons named therein to be Contributories:

(9.) The Liquidators may at any Time after the passing of the Resolution for winding up the Company, and before they have ascertained the Sufficiency of the Assets of the Company, call on all or any of the Contributories for the Time being settled on the List of Contributories to the Extent of their Liability to pay all or any Sums they deem necessary to satisfy the Debts and Liabilities of the Company, and the Costs, Charges, and Expenses of winding it up, and for the Adjustment of the Rights of the Contributories amongst themselves, and the Liquidators may in making a Call take into consideration the Probability that some of the Contributories upon whom the same is made may partly or wholly fail to pay their respective Portions of the same:

(10.) The Liquidators shall pay the Debts of the Company, and adjust the Rights of the Contributories amongst themselves.

Effect of Winding-up on Share Capital of Company limited by Guarantee.

134. Where a Company limited by Guarantee, and having a Capital divided into Shares, is being wound up voluntarily, any Share Capital that may not have been called up shall be deemed to be Assets of the Company, and to be a Specialty Debt due from each Member to the Company to the Extent of any Sums that may be unpaid on any Shares held by him, and payable at such Time as may be appointed by the Liquidators.

Power of Company to delegate Authority to appoint Liquidators.

135. A Company about to be wound up voluntarily, or in the course of being wound up voluntarily, may, by an Extraordinary Resolution, delegate to its Creditors, or to any Committee of its Creditors, the Power of appointing Liquidators or any of them, and supplying any Vacancies in the Appointment of Liquidators, or may by a like Resolution enter into any Arrangement with respect to the Powers to be exercised by the Liquidators, and the Manner in which they are to be exercised; and any Act done by the Creditors, in pursuance of such delegated Power, shall have the same Effect as if it had been done by the Company.

Arrangement when binding on Creditors.

136. Any Arrangement entered into between a Company about to be wound up voluntarily, or in the course of being wound up voluntarily, and its Creditors, shall be binding on the Company if sanctioned by an Extraordinary Resolution, and on the Creditors if acceded to by Three Fourths in Number and Value of the Creditors, subject to such Right of Appeal as is herein-after mentioned.

Power of Creditor or Contributory to appeal.

137. Any Creditor or Contributory of a Company that has in manner aforesaid entered into any Arrangement with its Creditors may, within Three Weeks from the Date of the Completion of such Arrangement, appeal to the Court against such Arrangement, and the Court may thereupon, as it thinks just, amend, vary, or confirm the same.

Power for Liquidators or Contributories in voluntary Winding-up to apply to Court.

138. Where a Company is being wound up voluntarily the Liquidators or any Contributory of the Company may apply to the Court in *England*, *Ireland*, or *Scotland*, or to the Lord Ordinary on the Bills in *Scotland* in Time of Vacation, to determine any Question arising in the Matter of such Winding-up, or to exercise, as respects the enforcing of Calls, or in respect of any other Matter, all or any of the Powers which the Court might exercise if the Company were being wound up by the Court; and the Court or Lord Ordinary in the Case aforesaid, if satisfied that the Determination of such Question, or the required Exercise of Power, will be just and beneficial, may accede, wholly or partially, to such Application,

Application, on such Terms and subject to such Conditions as the Court thinks fit, or it may make such other Order, Interlocutor, or Decree on such Application as the Court thinks just.

Power of Liquidators to call General Meeting.

139. Where a Company is being wound up voluntarily the Liquidators may, from Time to Time, during the Continuance of such Winding-up, summon General Meetings of the Company for the Purpose of obtaining the Sanction of the Company by Special Resolution or Extraordinary Resolution, or for any other Purposes they think fit; and in the event of the Winding-up continuing for more than One Year, the Liquidators shall summon a General Meeting of the Company at the End of the First Year, and of each succeeding Year from the Commencement of the Winding-up, or as soon thereafter as may be convenient, and shall lay before such Meeting an Account showing their Acts and Dealings, and the Manner in which the Winding-up has been conducted during the preceding Year.

Power to fill up Vacancy in Liquidators.

140. If any Vacancy occurs in the Office of Liquidators appointed by the Company, by Death, Resignation, or otherwise, the Company in General Meeting may, subject to any Arrangement they may have entered into with their Creditors, fill up such Vacancy, and a General Meeting for the Purpose of filling up such Vacancy may be convened by the continuing Liquidators, if any, or by any Contributory of the Company, and shall be deemed to have been duly held if held in manner prescribed by the Regulations of the Company, or in such other Manner as may, on Application by the continuing Liquidator, if any, or by any Contributory of the Company, be determined by the Court.

Power of Court to appoint Liquidators.

141. If from any Cause whatever there is no Liquidator acting in the Case of a voluntary Winding-up, the Court may, on the Application of a Contributory, appoint a Liquidator or Liquidators: The Court may also, on due Cause shown, remove any Liquidator, and appoint another Liquidator to act in the Matter of a voluntary Winding-up.

Liquidators on Conclusion of Winding-up to make up an Account.

142. As soon as the Affairs of the Company are fully wound up, the Liquidators shall make up an Account showing the Manner in which such Winding-up has been conducted, and the Property of the Company disposed of; and thereupon they shall call a General Meeting of the Company for the Purpose of having the Account laid before them and hearing any Explanation that may be given by the Liquidators: The Meeting shall be called by Advertisement, specifying the Time, Place, and Object of such Meeting; and such Advertisement shall be published One Month at least previously to the Meeting, as respects Companies registered in *England* in the *London Gazette*, and as respects Companies registered in *Scotland* in the *Edinburgh Gazette*, and as respects Companies registered in *Ireland* in the *Dublin Gazette*.

Liquidators to report Meeting to Registrar.

143. The Liquidators shall make a Return to the Registrar of such Meeting having been held, and of the Date at which the same was held, and on the Expiration of Three Months from the Date of the Registration of such Return the Company shall be deemed to be dissolved: If the Liquidators make default in making such Return to the Registrar they shall incur a Penalty not exceeding Five Pounds for every Day during which such Default continues.

Costs of voluntary Liquidation.

144. All Costs, Charges, and Expenses properly incurred in the voluntary Winding-up of a Company, including the Remuneration of the Liquidators, shall be payable out of the Assets of the Company in priority to all other Claims.

Saving of Rights of Creditors.

145. The voluntary Winding-up of a Company shall not be a Bar to the Right of any Creditor of such Company to have the same wound up by the Court, if the Court is of opinion that the Rights of such Creditor will be prejudiced by a voluntary Winding-up.

Power of Court to adopt Proceedings of voluntary Winding-up.

146. Where a Company is in course of being wound up voluntarily, and Proceedings are taken for the Purpose of having the same wound up by the Court, the Court may, if it thinks fit, notwithstanding that it makes an Order directing the Company to be wound up by the Court, provide in such Order or in any other Order for the Adoption of all or any of the Proceedings taken in the course of the voluntary Winding-up.

Winding up subject to the Supervision of the Court.

Power of Court, on Application, to direct Winding-up, subject to Supervision.

147. When a Resolution has been passed by a Company to wind up voluntarily, the Court may make an Order directing that the voluntary Winding-up should continue, but subject to such Supervision of the Court, and with such Liberty for Creditors, Contributories, or others, to apply to the Court, and generally upon such Terms and subject to such Conditions as the Court thinks just.

Petition for winding up, subject to Supervision.

148. A Petition, praying wholly or in part that a voluntary Winding-up should continue, but subject to the Supervision of the Court, and which Winding-up is herein-after referred to as a Winding-up subject to the Supervision of the Court, shall, for the Purpose of giving Jurisdiction to the Court over Suits and Actions, be deemed to be a Petition for winding up the Company by the Court.

Court may have regard to Wishes of Creditors.

149. The Court may, in determining whether a Company is to be wound up altogether by the Court or subject to the Supervision of the Court, in the Appointment of Liquidator or Liquidators, and in all other Matters relating to the winding up subject to Supervision, have regard to the Wishes of the Creditors or Contributories as proved to it by any sufficient Evidence, and may direct Meetings of the Creditors or Contributories to be summoned, held, and regulated in such Manner as the Court directs for the Purpose of ascertaining their Wishes, and may appoint a Person to act as Chairman of any such Meeting, and to report the Result of such Meeting to the Court: In the Case of Creditors, regard shall be

be had to the Value of the Debts due to each Creditor, and in the Case of Contributories to the Number of Votes conferred on each Contributory by the Regulations of the Company.

Power to Court to appoint additional Liquidators in Winding-up subject to Supervision.

150. Where any Order is made by the Court for a Winding-up subject to the Supervision of the Court, the Court may, in such Order or in any subsequent Order, appoint any additional Liquidator or Liquidators; and any Liquidators so appointed by the Court shall have the same Powers, be subject to the same Obligations, and in all respects stand in the same Position as if they had been appointed by the Company: The Court may from Time to Time remove any Liquidators so appointed by the Court, and fill up any Vacancy occasioned by such Removal, or by Death or Resignation.

Effect of Order of Court for winding-up subject to Supervision.

151. Where an Order is made for a Winding-up subject to the Supervision of the Court, the Liquidators appointed to conduct such Winding-up may, subject to any Restrictions imposed by the Court, exercise all their Powers, without the Sanction or Intervention of the Court, in the same Manner as if the Company were being wound up altogether voluntarily; but, save as aforesaid, any Order made by the Court for a Winding-up, subject to the Supervision of the Court, shall for all Purposes, including the staying of Actions, Suits, and other Proceedings, be deemed to be an Order of the Court for winding up the Company by the Court, and shall confer full Authority on the Court to make Calls, or to enforce Calls made by the Liquidators, and to exercise all other Powers which it might have exercised if an Order had been made for winding up the Company altogether by the Court, and in the Construction of the Provisions whereby the Court is empowered to direct any Act or Thing to be done to or in favour of the Official Liquidators, the Expression Official Liquidators shall be deemed to mean the Liquidators conducting the Winding-up, subject to the Supervision of the Court.

Appointment in certain Cases of voluntary Liquidators to Office of Official Liquidators.

152. Where an Order has been made for the Winding-up of a Company subject to the Supervision of the Court, and such Order is afterwards superseded by an Order directing the Company to be wound up compulsorily, the Court may in such last-mentioned Order, or in any subsequent Order, appoint the voluntary Liquidators or any of them, either provisionally or permanently, and either with or without the Addition of any other Persons, to be Official Liquidators.

Supplemental Provisions.

Dispositions after the Commencement of the Winding-up avoided.

153. Where any Company is being wound up by the Court or subject to the Supervision of the Court, all Dispositions of the Property, Effects, and Things in Action of the Company, and every Transfer of Shares, or Alteration in the Status of the Members of the Company made between the Commencement of the winding up and the Order for winding up, shall, unless the Court otherwise orders, be void.

The Books of the Company to be Evidence.

154. Where any Company is being wound up, all Books, Accounts, and Documents of the Company and of the Liquidators shall, as between the Contributories of the Company, be *primâ facie* Evidence of the Truth of all Matters purporting to be therein recorded.

As to Disposal of Books, Accounts, and Documents of the Company.

155. Where any Company has been wound up under this Act and is about to be dissolved, the Books, Accounts, and Documents of the Company and of the Liquidators may be disposed of in the following Way; that is to say, where the Company has been wound up by or subject to the Supervision of the Court, in such Way as the Court directs, and where the Company has been wound up voluntarily, in such Way as the Company by an Extraordinary Resolution directs; but after the Lapse of Five Years from the Date of such Dissolution, no Responsibility shall rest on the Company, or the Liquidators, or anyone to whom the Custody of such Books, Accounts, and Documents has been committed, by reason that the same, or any of them, cannot be made forthcoming to any Party or Parties claiming to be interested therein.

Inspection of Books.

156. Where an Order has been made for winding up a Company by the Court or subject to the Supervision of the Court, the Court may make such Order for the Inspection by the Creditors and Contributories of the Company of its Books and Papers as the Court thinks just, and any Books and Papers in the Possession of the Company may be inspected by Creditors or Contributories in conformity with the Order of the Court, but not further or otherwise.

Power of Assignee to sue.

157. Any Person to whom any Thing in Action belonging to the Company is assigned, in pursuance of this Act, may bring or defend any Action or Suit relating to such Thing in Action in his own Name.

Debts of all Descriptions to be proved.

158. In the event of any Company being wound up under this Act, all Debts payable on a Contingency, and all Claims against the Company, present or future, certain or contingent, ascertained or sounding only in Damages, shall be admissible to Proof against the Company, a just Estimate being made, so far as is possible, of the Value of all such Debts or Claims as may be subject to any Contingency or sound only in Damages, or for some other Reason do not bear a certain Value.

General Scheme of Liquidation may be sanctioned.

159. The Liquidators may, with the Sanction of the Court, where the Company is being wound up by the Court or subject to the Supervision of the Court, and with the Sanction of an Extraordinary Resolution of the Company where the Company is being wound up altogether voluntarily, pay any Classes of Creditors in full, or make such Compromise or other Arrangement as the Liquidators may deem expedient with Creditors or Persons claiming to be Creditors, or Persons having or alleging themselves to have any Claim, present or future, certain or contingent, ascertained or sounding only in Damages against the Company, or whereby the Company may be rendered liable.

160. The

Power to compromise.

160. The Liquidators may, with the Sanction of the Court, where the Company is being wound up by the Court or subject to the Supervision of the Court, and with the Sanction of an Extraordinary Resolution of the Company where the Company is being wound up altogether voluntarily, compromise all Calls and Liabilities to Calls, Debts, and Liabilities capable of resulting in Debts, and all Claims, whether present or future, certain or contingent, ascertained or sounding only in Damages, subsisting or supposed to subsist between the Company and any Contributory or alleged Contributory, or other Debtor or Person apprehending Liability to the Company, and all Questions in any way relating to or affecting the Assets of the Company or the winding up of the Company, upon the Receipt of such Sums, payable at such Times, and generally upon such Terms as may be agreed upon, with Power for the Liquidators to take any Security for the Discharge of such Debts or Liabilities, and to give complete Discharges in respect of all or any such Calls, Debts, or Liabilities.

Power for Liquidators to accept Shares, &c. as a Consideration for Sale of Property of Company.

161. Where any Company is proposed to be or is in the course of being wound up altogether voluntarily, and the whole or a Portion of its Business or Property is proposed to be transferred or sold to another Company, the Liquidators of the first-mentioned Company may, with the Sanction of a Special Resolution of the Company by whom they were appointed, conferring either a general Authority on the Liquidators, or an Authority in respect of any particular Arrangement, receive in Compensation or part Compensation for such Transfer or Sale Shares, Policies, or other like Interests in such other Company, for the Purpose of Distribution amongst the Members of the Company being wound up, or may enter into any other Arrangement whereby the Members of the Company being wound up may, in lieu of receiving Cash, Shares, Policies, or other like Interests, or in addition thereto, participate in the Profits of or receive any other Benefit from the purchasing Company; and any Sale made or Arrangement entered into by the Liquidators in pursuance of this Section shall be binding on the Members of the Company being wound up; subject to this Proviso, that if any Member of the Company being wound up who has not voted in favour of the Special Resolution passed by the Company of which he is a Member at either of the Meetings held for passing the same expresses his Dissent from any such Special Resolution in Writing addressed to the Liquidators or One of them, and left at the registered Office of the Company not later than Seven Days after the Date of the Meeting at which such Special Resolution was passed, such dissentient Member may require the Liquidators to do One of the following Things as the Liquidators may prefer; that is to say, either to abstain from carrying such Resolution into effect, or to purchase the Interest held by such dissentient Member at a Price to be determined in manner herein-after mentioned, such Purchase Money to be paid before the Company is dissolved, and to be raised by the Liquidators in such Manner as may be determined by Special Resolution: No Special Resolution shall be deemed invalid for the Purposes of this Section by reason that it is passed antecedently to or concurrently with any Resolution for winding up the Company, or for appointing Liquidators.; but if an Order be made within a Year for winding up the Company by or subject to the Supervision of the Court, such Resolution shall not be of any Validity unless it is sanctioned by the Court.

Mode of determining Price.

162. The Price to be paid for the Purchase of the Interest of any dissentient Member may be determined by Agreement, but if the Parties dispute about the same, such Dispute shall be settled by Arbitration, and for the Purposes of such Arbitration the Provisions of "The Companies Clauses Consolidation Act, 1845," with respect to the Settlement of Disputes by Arbitration, shall be incorporated with this Act; and in the Construction of such Provisions this Act shall be deemed to be the Special Act, and "the Company" shall mean the Company that is being wound up, and any Appointment by the said incorporated Provisions directed to be made under the Hand of the Secretary, or any Two of the Directors, may be made under the Hand of the Liquidator, if only One, or any Two or more of the Liquidators if more than One.

Certain Attachments, Sequestrations, and Executions to be void.

163. Where any Company is being wound up by the Court or subject to the Supervision of the Court, any Attachment, Sequestration, Distress, or Execution put in force against the Estate or Effects of the Company after the Commencement of the Winding-up shall be void to all Intents.

Fraudulent Preference.

164. Any such Conveyance, Mortgage, Delivery of Goods, Payment, Execution, or other Act relating to Property as would, if made or done by or against any individual Trader, be deemed in the event of his Bankruptcy to have been made or done by way of undue or fraudulent Preference of the Creditors of such Trader, shall, if made or done by or against any Company, be deemed, in the event of such Company being wound up under this Act, to have been made or done by way of undue or fraudulent Preference of the Creditors of such Company, and shall be invalid accordingly; and for the Purposes of this Section the Presentation of a Petition for winding up a Company shall in the Case of a Company being wound up by the Court or subject to the Supervision of the Court, and a Resolution for winding up the Company shall, in the Case of a voluntary Winding-up, be deemed to correspond with the Act of Bankruptcy in the Case of an individual Trader; and any Conveyance or Assignment made by any Company formed under this Act of all its Estate and Effects to Trustees for the Benefit of all its Creditors shall be void to all Intents.

Power of Court to assess Damages against delinquent

165. Where, in the course of the Winding-up of any Company under this Act, it appears that any past or present Director, Manager, Official or other Liquidator, or any Officer of such Company, has misapplied or retained in his own Hands or become liable or accountable for any Monies of the Company,

Directors and Officers.

pany, or been guilty of any Misfeasance or Breach of Trust in relation to the Company, the Court may, on the Application of any Liquidator, or of any Creditor or Contributory of the Company, notwithstanding that the Offence is one for which the Offender is criminally responsible, examine into the Conduct of such Director, Manager, or other Officer, and compel him to repay any Monies so misapplied or retained, or for which he has become liable or accountable, together with Interest after such Rate as the Court thinks just, or to contribute such Sums of Money to the Assets of the Company by way of Compensation in respect of such Misapplication, Retainer, Misfeasance, or Breach of Trust, as the Court thinks just.

Penalty on Falsification of Books.

166. If any Director, Officer, or Contributory of any Company wound up under this Act destroys, mutilates, alters, or falsifies any Books, Papers, Writings, or Securities, or makes or is privy to the making of any false or fraudulent Entry in any Register, Book of Account, or other Document belonging to the Company with Intent to defraud or deceive any Person, every Person so offending shall be deemed to be guilty of a Misdemeanor, and upon being convicted shall be liable to Imprisonment for any Term not exceeding Two Years, with or without Hard Labour.

Prosecution of delinquent Directors in the Case of winding up by Court.

167. Where any Order is made for winding up a Company by the Court or subject to the Supervision of the Court, if it appear in the course of such Winding-up that any past or present Director, Manager, Officer, or Member of such Company has been guilty of any Offence in relation to the Company for which he is criminally responsible, the Court may, on the Application of any Person interested in such Winding-up, or of its own Motion, direct the Official Liquidators, or the Liquidators, (as the Case may be,) to institute and conduct a Prosecution or Prosecutions for such Offence, and may order the Costs and Expenses to be paid out of the Assets of the Company.

Prosecution of delinquent Directors, &c. in case of voluntary Winding-up.

168. Where a Company is being wound up altogether voluntarily, if it appear to the Liquidators conducting such Winding-up that any past or present Director, Manager, Officer, or Member of such Company has been guilty of any Offence in relation to the Company for which he is criminally responsible, it shall be lawful for the Liquidators, with the previous Sanction of the Court, to prosecute such Offender, and all Expenses properly incurred by them in such Prosecution shall be payable out of the Assets of the Company in priority to all other Liabilities.

Penalty of Perjury.

169. If any Person, upon any Examination upon Oath or Affirmation authorized under this Act, or in any Affidavit, Deposition, or solemn Affirmation in or about the Winding-up of any Company under this Act, or otherwise in or about any Matter arising under this Act, wilfully and corruptly gives false Evidence, he shall, upon Conviction, be liable to the Penalties of wilful Perjury.

Power of Courts to make Rules.

Power of Lord Chancellor of Great Britain to make Rules.

170. In *England* the Lord Chancellor of *Great Britain*, with the Advice and Consent of the Master of the Rolls, and any One of the Vice Chancellors for the Time being, or with the Advice and Consent of any Two of the Vice Chancellors, may, as often as Circumstances require, make such Rules concerning the Mode of Proceeding to be had for winding up a Company in the Court of Chancery as may from Time to Time seem necessary, but until such Rules are made the general Practice of the Court of Chancery, including the Practice hitherto in use in winding up Companies, shall, so far as the same is applicable and not inconsistent with this Act, apply to all Proceedings for winding up a Company.

Power of Court of Session in Scotland to make Rules.

171. In *Scotland* the Court of Session may make such Rules concerning the Mode of winding up as may be necessary by Act of Sederunt; but, until such Rules are made, the general Practice of the Court of Session in Suits pending in such Court shall, so far as the same is applicable, and not inconsistent with this Act, apply to all Proceedings for winding up a Company, and Official Liquidators shall in all respects be considered as possessing the same Powers as any Trustee on a Bankrupt Estate.

Power to make Rules in Stannaries Court.

172. The Vice Warden of the Stannaries may from Time to Time, with the Consent provided for by Section Twenty-three of the Act of Eighteenth of *Victoria*, Chapter Thirty-two, make Rules for carrying into effect the Powers conferred by this Act upon the Court of the Vice Warden, but, subject to such Rules, the general Practice of the said Court and of the Registrar's Office in the said Court, including the present Practice of the said Court in winding up Companies, may be applied to all Proceedings under this Act; the said Vice Warden may likewise, with the same Consent, make from Time to Time Rules for specifying the Fees to be taken in his said Court in Proceedings under this Act; and any Rules so made shall be of the same Force as if they had been enacted in the Body of this Act; and the Fees paid in respect of Proceeding taken under this Act, including Fees taken under "The Joint Stock Companies Act, 1856," in the Matter of winding up Companies, shall be applied exclusively towards Payment of such additional Officers, or such Increase of the Salaries of existing Officers, or Pensions to retired Officers, or such other needful Expenses of the Court, as the Lord Warden of the Stannaries shall, from Time to Time, on the Application of the Vice Warden or otherwise, think fit to direct, sanction, or assign, and meanwhile shall be kept as a separate Fund apart from the ordinary Fees of the Court arising from other Business, to await such Direction and Order of the Lord Warden herein, and to accumulate by Investment in Government Securities until the whole shall have been so appropriated.

Power of Lord Chancellor of

173. In *Ireland* the Lord Chancellor of *Ireland* may, as respects the winding up of Companies in *Ireland*, with the Advice and Consent of the Master of the Rolls in *Ireland*, exercise the same Power of

of making Rules as is by this Act herein-before given to the Lord Chancellor of *Great Britain*; but until such Rules are made the general Practice of the Court of Chancery in *Ireland*, including the Practice hitherto in use in *Ireland* in winding up Companies, shall, so far as the same is applicable and not inconsistent with this Act, apply to all Proceedings for winding up a Company. Ireland to make Rules.

PART V.

Registration Office.

174. The Registration of Companies under this Act shall be conducted as follows; (that is to say,) Constitution of Registration Office.

(1.) The Board of Trade may from Time to Time appoint such Registrars, Assistant Registrars, Clerks, and Servants as they may think necessary for the Registration of Companies under this Act, and remove them at pleasure:

(2.) The Board of Trade may make such Regulations as they think fit with respect to the Duties to be performed by any such Registrars, Assistant Registrars, Clerks, and Servants as aforesaid:

(3.) The Board of Trade may from Time to Time determine the Places at which Offices for the Registration of Companies are to be established, so that there be at all Times maintained in each of the Three Parts of the United Kingdom at least One such Office, and that no Company shall be registered except at an Office within that Part of the United Kingdom in which by the Memorandum of Association the registered Office of the Company is declared to be established; and the Board may require that the Registrar's Office of the Court of the Vice Warden of the Stannaries shall be One of the Offices for the Registration of Companies formed for working Mines within the Jurisdiction of the Court:

(4.) The Board of Trade may from Time to Time direct a Seal or Seals to be prepared for the Authentication of any Documents required for or connected with the Registration of Companies:

(5.) Every Person may inspect the Documents kept by the Registrar of Joint Stock Companies; and there shall be paid for such Inspection such Fees as may be appointed by the Board of Trade, not exceeding One Shilling for each Inspection; and any Person may require a Certificate of the Incorporation of any Company, or a Copy or Extract of any other Document or any Part of any other Document, to be certified by the Registrar; and there shall be paid for such Certificate of Incorporation, certified Copy, or Extract such Fees as the Board of Trade may appoint, not exceeding Five Shillings for the Certificate of Incorporation, and not exceeding Sixpence for each Folio of such Copy or Extract, or in *Scotland* for each Sheet of Two hundred Words:

(6.) The existing Registrar, Assistant Registrars, Clerks, and other Officers and Servants in the Office for the Registration of Joint Stock Companies shall, during the Pleasure of the Board of Trade, hold the Offices and receive the Salaries hitherto held and received by them, but they shall in the Execution of their Duties conform to any Regulations that may be issued by the Board of Trade:

(7.) There shall be paid to any Registrar, Assistant Registrar, Clerk, or Servant that may hereafter be employed in the Registration of Joint Stock Companies such Salary as the Board of Trade may, with the Sanction of the Commissioners of the Treasury, direct:

(8.) Whenever any Act is herein directed to be done to or by the Registrar of Joint Stock Companies, such Act shall, until the Board of Trade otherwise directs, be done in *England* to or by the existing Registrar of Joint Stock Companies, or in his Absence to or by such Person as the Board of Trade may for the Time being authorize; in *Scotland* to or by the existing Registrar of Joint Stock Companies in *Scotland*; and in *Ireland* to or by the existing Assistant Registrar of Joint Stock Companies for *Ireland*, or by such Person as the Board of Trade may for the Time being authorize in *Scotland* or *Ireland* in the Absence of the Registrar; but in the event of the Board of Trade altering the Constitution of the existing Registry Office, such Act shall be done to or by such Officer or Officers and at such Place or Places with reference to the local Situation of the registered Offices of the Companies to be registered as the Board of Trade may appoint.

PART VI.

Application of Act to Companies registered under the Joint Stock Companies Acts.

175. The Expression "Joint Stock Companies Acts" as used in this Act shall mean "The Joint Stock Companies Act, 1856," "The Joint Stock Companies Acts, 1856, 1857," "The Joint Stock Banking Companies Act, 1857," and "The Act to enable Joint Stock Banking Companies to be formed on the Principle of Limited Liability," or any One or more of such Acts, as the Case may require; but shall not include the Act passed in the Eighth Year of the Reign of Her present Majesty, Chapter One hundred and ten, and intituled *An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies.* Definition of Joint Stock Companies Acts.

176. Subject

Application of Act to Companies formed under Joint Stock Companies Acts.

176. Subject as herein-after mentioned, this Act, with the Exception of Table A. in the First Schedule, shall apply to Companies formed and registered under the said Joint Stock Companies Acts, or any of them, in the same Manner in the Case of a Limited Company as if such Company had been formed and registered under this Act as a Company limited by Shares, and in the Case of a Company other than a Limited Company as if such Company had been formed and registered as an Unlimited Company under this Act, with this Qualification, that wherever Reference is made expressly or impliedly to the Date of Registration, such Date shall be deemed to refer to the Date at which such Companies were respectively registered under the said Joint Stock Companies Acts or any of them, and the Power of altering Regulations by Special Resolution given by this Act shall, in the Case of any Company formed and registered under the said Joint Stock Companies Acts or any of them, extend to altering any Provisions contained in the Table marked B. annexed to "The Joint Stock Companies Act, 1856," and shall also in the Case of an Unlimited Company formed and registered as last aforesaid extend to altering any Regulations relating to the Amount of Capital or its Distribution into Shares, notwithstanding such Regulations are contained in the Memorandum of Association.

Application of Act to Companies registered under Joint Stock Companies Acts.

177. This Act shall apply to Companies registered but not formed under the said Joint Stock Companies Acts or any of them in the same Manner as it is herein-after declared to apply to Companies registered but not formed under this Act, with this Qualification, that wherever Reference is made expressly or impliedly to the Date of Registration, such Date shall be deemed to refer to the Date at which such Companies were respectively registered under the said Joint Stock Companies Acts or any of them.

Mode of transferring Shares.

178. Any Company registered under the said Joint Stock Companies Acts or any of them may cause its Shares to be transferred in manner hitherto in use, or in such other Manner as the Company may direct.

PART VII.

Companies authorized to register under this Act.

Regulations as to Registration of existing Companies.

179. The following Regulations shall be observed with respect to the Registration of Companies under this Part of this Act; (that is to say,)

(1.) No Company having the Liability of its Members limited by Act of Parliament or Letters Patent, and not being a Joint Stock Company as herein-after defined, shall register under this Act in pursuance of this Part thereof:

(2.) No Company having the Liability of its Members limited by Act of Parliament or by Letters Patent shall register under this Act in pursuance of this Part thereof as an Unlimited Company, or as a Company limited by Guarantee:

(3.) No Company that is not a Joint Stock Company as herein-after defined, shall in pursuance of this Part of this Act register under this Act as a Company limited by Shares:

(4.) No Company shall register under this Act in pursuance of this Part thereof unless an Assent to its so registering is given by a Majority of such of its Members as may be present, personally or by Proxy, in Cases where Proxies are allowed by the Regulations of the Company, at some General Meeting summoned for the Purpose:

(5.) Where a Company not having the Liability of its Members limited by Act of Parliament or Letters Patent is about to register as a Limited Company, the Majority required to assent as aforesaid shall consist of not less than Three Fourths of the Members present, personally or by Proxy, at such last-mentioned General Meeting:

(6.) Where a Company is about to register as a Company limited by Guarantee the Assent to its being so registered shall be accompanied by a Resolution declaring that each Member undertakes to contribute to the Assets of the Company, in the event of the same being wound up, during the Time that he is a Member, or within One Year afterwards, for Payment of the Debts and Liabilities of the Company contracted before the Time at which he ceased to be a Member, and of the Costs, Charges, and Expenses of winding up the Company, and for the Adjustment of the Rights of the Contributories amongst themselves, such Amount as may be required, not exceeding a specified Amount:

In computing any Majority under this Section when a Poll is demanded regard shall be had to the Number of Votes to which each Member is entitled according to the Regulations of the Company of which he is a Member.

Companies capable of being registered.

180. With the above Exceptions, and subject to the foregoing Regulations, every Company existing at the Time of the Commencement of this Act, including any Company registered under the said Joint Stock Companies Acts, consisting of Seven or more Members, and any Company hereafter formed in pursuance of any Act of Parliament other than this Act, or of Letters Patent, or being a Company engaged in working Mines within and subject to the Jurisdiction of the Stannaries, or being otherwise duly constituted by Law, and consisting of Seven or more Members, may at any Time hereafter register itself under this Act as an Unlimited Company, or a Company limited by Shares, or a Company limited by Guarantee; and no such Registration shall be invalid by reason that it has taken place with a view to the Company being wound up.

181. For

Definition of Joint Stock Company.

181. For the Purposes of this Part of this Act, so far as the same relates to the Description of Companies empowered to register as Companies limited by Shares, a Joint Stock Company shall be deemed to be a Company having a permanent paid-up or nominal Capital of fixed Amount, divided into Shares, also of fixed Amount, or held and transferable as Stock, or divided and held partly in one way and partly in the other, and formed on the Principle of having for its Members the Holders of Shares in such Capital, or the Holders of such Stock, and no other Persons; and such Company when registered with Limited Liability under this Act shall be deemed to be a Company limited by Shares.

Proviso as to Banking Company.

182. No Banking Company claiming to issue Notes in the United Kingdom shall be entitled to Limited Liability in respect of such Issue, but shall continue subject to Unlimited Liability in respect thereof, and, if necessary, the Assets shall be marshalled for the Benefit of the general Creditors, and the Members shall be liable for the whole Amount of the Issue, in addition to the Sum for which they would be liable as Members of a Limited Company.

Requisitions for Registration by Companies.

183. Previously to the Registration in pursuance of this Part of this Act of any Joint Stock Company there shall be delivered to the Registrar the following Documents; (that is to say,)

(1.) A List showing the Names, Addresses, and Occupations of all Persons who on a Day named in such List, and not being more than Six clear Days before the Day of Registration, were Members of such Company, with the Addition of the Shares held by such Persons respectively, distinguishing, in Cases where such Shares are numbered, each Share by its Number:

(2.) A Copy of any Act of Parliament, Royal Charter, Letters Patent, Deed of Settlement, Contract of Copartnery, Cost Book Regulations, or other Instrument constituting or regulating the Company:

(3.) If any such Joint Stock Company is intended to be registered as a Limited Company, the above List and Copy shall be accompanied by a Statement specifying the following Particulars; that is to say,

The nominal Capital of the Company and the Number of Shares into which it is divided:

The Number of Shares taken and the Amount paid on each Share:

The Name of the Company, with the Addition of the Word "Limited" as the last Word thereof:

With the Addition, in the Case of a Company intended to be registered as a Company limited by Guarantee, of the Resolution declaring the Amount of the Guarantee.

Requisitions for Registration by existing Company not being a Joint Stock Company.

184. Previously to the Registration in pursuance of this Part of this Act of any Company not being a Joint Stock Company there shall be delivered to the Registrar a List showing the Names, Addresses, and Occupations of the Directors or other Managers (if any) of the Company, also a Copy of any Act of Parliament, Letters Patent, Deed of Settlement, Contract of Copartnery, Cost Book Regulations, or other Instrument constituting or regulating the Company, with the Addition, in the Case of a Company intended to be registered as a Company limited by Guarantee, of the Resolution declaring the Amount of Guarantee.

Power for existing Company to register Amount of Stock instead of Shares.

185. Where a Joint Stock Company authorized to register under this Act has had the whole or any Portion of its Capital converted into Stock, such Company shall, as to the Capital so converted, instead of delivering to the Registrar a Statement of Shares, deliver to the Registrar a Statement of the Amount of Stock belonging to the Company, and the Names of the Persons who were Holders of such Stock, on some Day to be named in the Statement, not more than Six clear Days before the Day of Registration.

Authentication of Statements of existing Companies.

186. The Lists of Members and Directors and any other Particulars relating to the Company hereby required to be delivered to the Registrar shall be verified by a Declaration of the Directors of the Company delivering the same, or any Two of them, or of any Two other principal Officers of the Company, made in pursuance of the Act passed in the Sixth Year of the Reign of His late Majesty King *William* the Fourth, Chapter Sixty-two.

Registrar may require Evidence, &c.

187. The Registrar may require such Evidence as he thinks necessary for the Purpose of satisfying himself whether an existing Company is or not a Joint Stock Company as herein-before defined.

On Registration of Banking Company with Limited Liability Notice to be given to Customers.

188. Every Banking Company existing at the Date of the passing of this Act which registers itself as a Limited Company shall, at least Thirty Days previous to obtaining a Certificate of Registration with Limited Liability, give Notice that it is intended so to register the same to every Person and Partnership Firm who have a Banking Account with the Company, and such Notice shall be given either by delivering the same to such Person or Firm, or leaving the same or putting the same into the Post addressed to him or them at such Address as shall have been last communicated or otherwise become known as his or their Address to or by the Company; and in case the Company omits to give any such Notice as is herein-before required to be given, then as between the Company and the Person or Persons only who are for the Time being interested in the Account in respect of which such Notice ought to have been given, and so far as respects such Account and all Variations thereof down to the Time at which such Notice shall be given, but not further or otherwise, the Certificate of Registration with Limited Liability shall have no Operation.

Exemption of certain Companies from

189. No Fees shall be charged in respect of the Registration in pursuance of this Part of this Act of any Company in Cases where such Company is not registered as a Limited Company, or where previously

Payment of Fees.

viously to its being registered as a Limited Company the Liability of the Shareholders was limited by some other Act of Parliament or by Letters Patent.

Power to Company to change Name.

190. Any Company authorized by this Part of this Act to register with Limited Liability shall, for the Purpose of obtaining Registration with Limited Liability, change its Name, by adding thereto the Word "Limited."

Certificate of Registration of existing Companies.

191. Upon Compliance with the Requisitions in this Part of this Act contained with respect to Registration, and on Payment of such Fees, if any, as are payable under the Tables marked B. and C. in the First Schedule hereto, the Registrar shall certify under his Hand that the Company so applying for Registration is incorporated as a Company under this Act, and, in the Case of a Limited Company, that it is limited, and thereupon such Company shall be incorporated, and shall have perpetual Succession and a Common Seal, with Power to hold Lands; and any Banking Company in *Scotland* so incorporated shall be deemed and taken to be a Bank incorporated, constituted, or established by or under Act of Parliament.

Certificate to be Evidence of Compliance with Act.

192. A Certificate of Incorporation given at any Time to any Company registered in pursuance of this Part of this Act shall be conclusive Evidence that all the Requisitions herein contained in respect of Registration under this Act have been complied with, and that the Company is authorized to be registered under this Act as a Limited or Unlimited Company, as the Case may be, and the Date of Incorporation mentioned in such Certificate shall be deemed to be the Date at which the Company is incorporated under this Act.

Transfer of Property to Company.

193. All such Property, Real and Personal, including all Interests and Rights in, to, and out of Property, Real and Personal, and including Obligations and Things in Action, as may belong to or be vested in the Company at the Date of its Registration under this Act, shall on Registration pass to and vest in the Company as incorporated under this Act for all the Estate and Interest of the Company therein.

Registration not to affect Obligations incurred previously.

194. The Registration in pursuance of this Part of this Act of any Company shall not affect or prejudice the Liability of such Company to have enforced against it, or its Right to enforce, any Debt or Obligation incurred, or any Contract entered into, by, to, with, or on behalf of such Company previously to such Registration.

Continuation of existing Actions and Suits.

195. All such Actions, Suits, and other legal Proceedings as may at the Time of the Registration of any Company registered in pursuance of this Part of this Act have been commenced by or against such Company, or the Public Officer or any Member thereof, may be continued in the same Manner as if such Registration had not taken place; nevertheless, Execution shall not issue against the Effects of any individual Member of such Company upon any Judgment, Decree, or Order obtained in any Action, Suit, or Proceeding so commenced as aforesaid; but in the event of the Property and Effects of the Company being insufficient to satisfy such Judgment, Decree, or Order, an Order may be obtained for winding up the Company.

Effect of Registration under Act.

196. When a Company is registered under this Act in pursuance of this Part thereof, all Provisions contained in any Act of Parliament, Deed of Settlement, Contract of Copartnery, Cost Book Regulations, Letters Patent, or other Instrument constituting or regulating the Company, including, in the Case of a Company registered as a Company Limited by Guarantee, the Resolution declaring the Amount of the Guarantee, shall be deemed to be Conditions and Regulations of the Company, in the same Manner and with the same Incidents as if they were contained in a registered Memorandum of Association and Articles of Association; and all the Provisions of this Act shall apply to such Company and the Members, Contributories, and Creditors thereof, in the same Manner in all respects as if it had been formed under this Act, subject to the Provisions following; (that is to say,)

(1.) That Table A. in the First Schedule to this Act shall not, unless adopted by Special Resolution, apply to any Company registered under this Act in pursuance of this Part thereof:

(2.) That the Provisions of this Act relating to the numbering of Shares shall not apply to any Joint Stock Company whose Shares are not numbered:

(3.) That no Company shall have Power to alter any Provision contained in any Act of Parliament relating to the Company:

(4.) That no Company shall have Power, without the Sanction of the Board of Trade, to alter any Provision contained in any Letters Patent relating to the Company:

(5.) That in the event of the Company being wound up, every Person shall be a Contributory, in respect of the Debts and Liabilities of the Company contracted prior to Registration, who is liable, at Law or in Equity, to pay or contribute to the Payment of any Debt or Liability of the Company contracted prior to Registration, or to pay or contribute to the Payment of any Sum for the Adjustment of the Rights of the Members amongst themselves in respect of any such Debt or Liability; or to pay or contribute to the Payment of the Costs, Charges, and Expenses of winding up the Company, so far as relates to such Debts or Liabilities as aforesaid; and every such Contributory shall be liable to contribute to the Assets of the Company, in the course of the Winding-up, all Sums due from him in respect of any such Liability as aforesaid; and in the event of the Death, Bankruptcy, or Insolvency of any such Contributory as last aforesaid, or Marriage of any such Contributory being a Female, the

Provisions

Provisions herein-before contained with respect to the Representatives, Heirs, and Devisees of deceased Contributories, and with reference to the Assignees of bankrupt or insolvent Contributories, and to the Husbands of married Contributories, shall apply:

(6.) That nothing herein contained shall authorize any Company to alter any such Provisions contained in any Deed of Settlement, Contract of Copartnery, Cost Book Regulations, Letters Patent, or other Instrument constituting or regulating the Company, as would, if such Company had originally been formed under this Act, have been contained in the Memorandum of Association, and are not authorized to be altered by this Act:

But nothing herein contained shall derogate from any Power of altering its Constitution or Regulations which may be vested in any Company registering under this Act in pursuance of this Part thereof by virtue of any Act of Parliament, Deed of Settlement, Contract of Copartnery, Letters Patent, or other Instrument constituting or regulating the Company.

Power of Court to restrain further Proceedings.

197. The Court may, at any Time after the Presentation of a Petition for winding up a Company registered in pursuance of this Part of this Act, and before making an Order for winding up the Company, upon the Application by Motion of any Creditor of the Company, restrain further Proceedings in any Action, Suit, or legal Proceeding against any Contributory of the Company as well as against the Company as herein-before provided, upon such Terms as the Court thinks fit.

Order for winding up Company.

198. Where an Order has been made for winding up a Company registered in pursuance of this Part of the Act, in addition to the Provisions herein-before contained, it is hereby further provided that no Suit, Action, or other legal Proceeding shall be commenced or proceeded with against any Contributory of the Company in respect of any Debt of the Company, except with the Leave of the Court, and subject to such Terms as the Court may impose.

PART VIII.

Application of Act to unregistered Companies.

Winding-up of unregistered Companies.

199. Subject as herein-after mentioned, any Partnership, Association, or Company, except Railway Companies incorporated by Act of Parliament, consisting of more than Seven Members, and not registered under this Act, and herein-after included under the Term unregistered Company, may be wound up under this Act, and all the Provisions of this Act with respect to winding up shall apply to such Company, with the following Exceptions and Additions:

(1.) An unregistered Company shall, for the Purpose of determining the Court having Jurisdiction in the Matter of the Winding-up, be deemed to be registered in that Part of the United Kingdom where its principal Place of Business is situate; or, if it has a principal Place of Business situate in more than One Part of the United Kingdom, then in each Part of the United Kingdom where it has a principal Place of Business; moreover the principal Place of Business of an unregistered Company, or (where it has a principal Place of Business situate in more than One Part of the United Kingdom) such One of its principal Places of Business as is situate in that Part of the United Kingdom in which Proceedings are being instituted, shall for all the Purposes of the winding up of such Company be deemed to be the registered Office of the Company:

(2.) No unregistered Company shall be wound up under this Act voluntarily or subject to the Supervision of the Court:

(3.) The Circumstances under which an unregistered Company may be wound up are as follows; (that is to say,)

(*a.*) Whenever the Company is dissolved, or has ceased to carry on Business, or is carrying on Business only for the Purpose of winding up its Affairs;

(*b.*) Whenever the Company is unable to pay its Debts;

(*c.*) Whenever the Court is of opinion that it is just and equitable that the Company should be wound up:

(4.) An unregistered Company shall, for the Purposes of this Act, be deemed to be unable to pay its Debts,

(*a.*) Whenever a Creditor to whom the Company is indebted, at Law or in Equity, by Assignment or otherwise, in a Sum exceeding Fifty Pounds then due, has served on the Company, by leaving the same at the principal Place of Business of the Company, or by delivering to the Secretary or some Director or principal Officer of the Company, or by otherwise serving the same in such Manner as the Court may approve or direct, a Demand under his Hand requiring the Company to pay the Sum so due, and the Company has for the Space of Three Weeks succeeding the Service of such Demand neglected to pay such Sum, or to secure or compound for the same to the Satisfaction of the Creditor:

(*b.*) Whenever any Action, Suit, or other Proceeding has been instituted against any Member of the Company for any Debt or Demand due, or claimed to be due, from the Company, or from him in his Character of Member of the Company, and Notice in Writing of the

Institution of such Action, Suit, or other legal Proceeding having been served upon the Company by leaving the same at the principal Place of Business of the Company, or by delivering it to the Secretary, or some Director, Manager, or principal Officer of the Company, or by otherwise serving the same in such Manner as the Court may approve or direct, the Company has not within Ten Days after Service of such Notice paid, secured, or compounded for such Debt or Demand, or procured such Action, Suit, or other legal Proceeding to be stayed, or indemnified the Defendant to his reasonable Satisfaction against such Action, Suit, or other legal Proceeding, and against all Costs, Damages, and Expenses to be incurred by him by reason of the same:

(*c.*) Whenever, in *England* or *Ireland*, Execution or other Process issued on a Judgment, Decree, or Order obtained in any Court in favour of any Creditor in any Proceeding at Law or in Equity instituted by such Creditor against the Company, or any Member thereof as such, or against any Person authorized to be sued as nominal Defendant on behalf of the Company, is returned unsatisfied:

(*d.*) Whenever, in the Case of an unregistered Company engaged in working Mines within and subject to the Jurisdiction of the Stannaries, a customary Decree or Order absolute for the Sale of the Machinery, Materials, and Effects of such Mine has been made in a Creditor's Suit in the Court of the Vice Warden:

(*e.*) Whenever, in *Scotland*, the Induciæ of a Charge for Payment on an Extract Decree, or an Extract registered Bond, or an Extract registered Protest, have expired without Payment being made:

(*f.*) Whenever it is otherwise proved to the Satisfaction of the Court that the Company is unable to pay its Debts.

Who to be deemed a Contributory in the event of Company being wound up.

200. In the event of an unregistered Company being wound up every Person shall be deemed to be a Contributory who is liable, at Law or in Equity, to pay or contribute to the Payment of any Debt or Liability of the Company, or to pay or contribute to the Payment of any Sum for the Adjustment of the Rights of the Members amongst themselves, or to pay or contribute to the Payment of the Costs, Charges, and Expenses of winding up the Company, and every such Contributory shall be liable to contribute to the Assets of the Company in the course of the Winding-up all Sums due from him in respect of any such Liability as aforesaid; but in the event of the Death, Bankruptcy, or Insolvency of any Contributory, or Marriage of any Female Contributory, the Provisions herein-before contained with respect to the Personal Representatives, Heirs, and Devisees of a deceased Contributory, and to the Assignees of a bankrupt or insolvent Contributory, and to the Husband of married Contributories, shall apply.

Power of Court to restrain further Proceedings.

201. The Court may, at any Time after the Presentation of a Petition for winding up an unregistered Company, and before making an Order for winding up the Company, upon the Application of any Creditor of the Company, restrain further Proceedings in any Action, Suit, or Proceeding against any Contributory of the Company, or against the Company as herein-before provided, upon such Terms as the Court thinks fit.

Effect of Order for winding up Company.

202. Where an Order has been made for winding up an unregistered Company in addition to the Provisions herein-before contained in the Case of Companies formed under this Act, it is hereby further provided that no Suit, Action, or other legal Proceeding shall be commenced or proceeded with against any Contributory of the Company in respect of any Debt of the Company, except with the Leave of the Court, and subject to such Terms as the Court may impose.

Provision in case of unregistered Company.

203. If any unregistered Company has no Power to sue and be sued in a common Name, or if for any Reason it appears expedient, the Court may by the Order made for winding up such Company, or by any subsequent Order, direct that all such Property, Real and Personal, including all Interest, Claims, and Rights into and out of Property, Real and Personal, and including Things in Action, as may belong to or be vested in the Company, or to or in any Person or Persons on Trust for or on behalf of the Company, or any Part of such Property, is to vest in the Official Liquidator or Official Liquidators by his or their official Name or Names, and thereupon the same or such Part thereof as may be specified in the Order shall vest accordingly, and the Official Liquidator or Official Liquidators may, in his or their official Name or Names, or in such Name or Names and after giving such Indemnity as the Court directs, bring or defend any Actions, Suits, or other legal Proceeding relating to any Property vested in him or them, or any Actions, Suits, or other legal Proceedings necessary to be brought or defended for the Purposes of effectually winding up the Company and recovering the Property thereof.

Provisions in this Part of Act cumulative.

204. The Provisions made by this Part of the Act with respect to unregistered Companies shall be deemed to be made in addition to and not in restriction of any Provisions herein-before contained with respect to winding up Companies by the Court, and the Court or Official Liquidator may, in addition to anything contained in this Part of the Act, exercise any Powers or do any Act in the Case of unregistered Companies which might be exercised or done by it or him in winding up Companies formed under this Act; but an unregistered Company shall not, except in the event of its being wound up, be deemed to be a Company under this Act, and then only to the Extent provided by this Part of this Act.

PART

PART IX.

Repeal of Acts, and temporary Provisions.

Repeal of Acts.

205. After the Commencement of this Act there shall be repealed the several Acts specified in the First Part of the Third Schedule hereto, with this Qualification, that so much of the said Acts as is set forth in the Second Part of the said Third Schedule shall be hereby re-enacted and continue in force as if unrepealed.

Saving Clause as to Repeal.

206. No Repeal hereby enacted shall affect,

(1.) Anything duly done under any Acts hereby repealed:

(2.) The Incorporation of any Company registered under any Act hereby repealed:

(3.) Any Right or Privilege acquired or Liability incurred under any Act hereby repealed:

(4.) Any Penalty, Forfeiture, or other Punishment incurred in respect of any Offence against any Act hereby repealed:

(5.) Table B. in the Schedule annexed to the Joint Stock Companies Act, 1856, or any Part thereof, so far as the same applies to any Company existing at the Time of the Commencement of this Act.

Saving of existing Proceedings for winding up.

207. Where previously to the Commencement of this Act an Order has been made for winding up a Company under any Acts or Act hereby repealed, or a Resolution has been passed for winding up a Company voluntarily, such Company shall be wound up in the same Manner and with the same Incidents as if this Act were not passed, and for the Purposes of such Winding-up such repealed Acts or Act shall be deemed to remain in full Force.

Saving of Conveyance Deeds.

208. Where previously to the Commencement of this Act any Conveyance, Mortgage, or other Deed has been made in pursuance of any Act hereby repealed, such Deed shall be of the same Force as if this Act had not passed, and for the Purposes of such Deed such repealed Act shall be deemed to remain in full Force.

Compulsory Registration of certain Companies.

209. Every Insurance Company completely registered under the Act passed in the Eighth Year of the Reign of Her present Majesty, Chapter One hundred and ten, intituled *An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies*, shall on or before the Second Day of *November* One thousand eight hundred and sixty-two, and every other Company required by any Act hereby repealed to register under the said Joint Stock Companies Acts, or One of such Acts, and which has not so registered, shall, on or before the Expiration of the Thirty-first Day from the Commencement of this Act, register itself as a Company under this Act, in manner and subject to the Regulations herein-before contained, with this Exception, that no Company completely registered under the said Act of the Eighth Year of the Reign of Her present Majesty shall be required to deliver to the Registrar a Copy of its Deed of Settlement; and for the Purpose of enabling such Insurance Companies as are mentioned in this Section to register under this Act, this Act shall be deemed to come into operation immediately on the passing thereof; nevertheless the Registration of such Companies shall not have any Effect until the Time of the Commencement of this Act. No Fees shall be charged in respect of the Registration of any Company required to register by this Section.

Penalty on Company not registering. 21 Vict. c. 14. s. 28.

210. If any Company required by the last Section to register under this Act makes default in complying with the Provisions thereof, then, from and after the Day upon which such Company is required to register under this Act, until the Day on which such Company is registered under this Act (which it is empowered to do at any Time), the following Consequences shall ensue; (that is to say,)

(1.) The Company shall be incapable of suing either at Law or in Equity, but shall not be incapable of being made a Defendant to a Suit either at Law or in Equity:

(2.) No Dividend shall be payable to any Shareholder in such Company:

(3.) Each Director or Manager of the Company shall for each Day during which the Company so being in default carries on Business incur a Penalty not exceeding Five Pounds, and such Penalty may be recovered by any Person, whether a Shareholder or not in the Company, and be applied by him to his own Use:

Nevertheless, such Default shall not render the Company so being in default illegal, nor subject it to any Penalty or Disability, other than as specified in this Section; and Registration under this Act shall cancel any Penalty or Forfeiture, and put an end to any Disability which any Company may have incurred under any Act hereby repealed by reason of its not having registered under the said Joint Stock Companies Acts, 1856, 1857, or One of them.

Temporary Power for Companies to change registered Office.

211. Upon the Application of the Directors of any Company registered under the Joint Stock Companies Acts as herein-before defined, or any of them, made within One Year after the Date of the Commencement of this Act, sanctioned by a Resolution passed at an Extraordinary General Meeting, but subject to the Restrictions herein-after mentioned, the Board of Trade shall have Authority by their Certificate in Writing to change the registered Office of any such Company from any one Part of the United Kingdom of *Great Britain* and *Ireland* to any other Part thereof, and the Registrar of Joint Stock Companies with whom the Memorandum of Registration of such Company has been registered shall, upon Receipt of such Certificate, note in Writing upon the Margin or at the Foot of the said

said Memorandum the Name of the Place to which such registered Office is to be transferred, and the Day upon which such Transfer is pursuant to such Certificate to take place, and shall attach the Certificate to the Memorandum, and the said Registrar shall thereupon transmit to the Registrar of Joint Stock Companies for that Part of the United Kingdom to which the registered Office is to be so transferred Copies of the said Certificate and of the said Memorandum of Registration so noted certified by him; and the said Registrar for the said last-mentioned Part of the United Kingdom shall, upon Receipt of such Copies of Certificate and Memorandum, retain and register the same in like Manner, and on Payment of the like Fees to him as provided in the Case of the Registration of an original Memorandum of Registration, and thereupon the Place of the registered Office shall, from the said last-mentioned Registration and the said Day mentioned in the said Certificate, be the Place mentioned as such on the said Certificate: Provided, however, that such Change shall in nowise alter or affect anything theretofore done by the said Company, or any of their Rights or Liabilities in respect thereof.

Restrictions on Issue of Certificate.

212. The Board of Trade shall not issue their Certificate in pursuance of the foregoing Section until they are satisfied that an Advertisement of the Intention of the Company to apply to the Board of Trade for a Certificate, with a Declaration that all Parties objecting thereto are forthwith to apply to the Board of Trade, has been published once at the least in each of Four successive Weeks in the Newspapers following; that is to say, in some Newspaper circulating in the District where the registered Office of the Company is situate, and also if the Company is registered in *England* in the *London Gazette*, if in *Ireland* in the *Dublin Gazette*, if in *Scotland* in the *Edinburgh Gazette*, nor until the said Board are satisfied that the Objections, if any, that may be urged against the Issue of such Certificate are groundless.

FIRST SCHEDULE.

TABLE A.

REGULATIONS for MANAGEMENT of a COMPANY LIMITED by SHARES.

Shares.

(1.) If several Persons are registered as joint Holders of any Share, any One of such Persons may give effectual Receipts for any Dividend payable in respect of such Share.

(2.) Every Member shall, on Payment of One Shilling, or such less Sum as the Company in General Meeting may prescribe, be entitled to a Certificate, under the Common Seal of the Company, specifying the Share or Shares held by him, and the Amount paid up thereon.

(3.) If such Certificate is worn out or lost, it may be renewed, on Payment of One Shilling, or such less Sum as the Company in General Meeting may prescribe.

Calls on Shares.

(4.) The Directors may from Time to Time make such Calls upon the Members in respect of all Monies unpaid on their Shares as they think fit, provided that Twenty-one Days Notice at least is given of each Call, and each Member shall be liable to pay the Amount of Calls so made to the Persons and at the Times and Places appointed by the Directors.

(5.) A Call shall be deemed to have been made at the Time when the Resolution of the Directors authorizing such Call was passed.

(6.) If the Call payable in respect of any Share is not paid before or on the Day appointed for Payment thereof, the Holder for the Time being of such Share shall be liable to pay Interest for the same at the Rate of Five Pounds per Cent. per Annum from the Day appointed for the Payment thereof to the Time of the actual Payment.

(7.) The Directors may, if they think fit, receive from any Member willing to advance the same all or any Part of the Monies due upon the Shares held by him beyond the Sums actually called for; and upon the Monies so paid in advance, or so much thereof as from Time to Time exceeds the Amount of the Calls then made upon the Shares in respect of which such Advance has been made, the Company may pay Interest at such Rate as the Member paying such Sum in advance and the Directors agree upon.

Transfers of Shares.

(8.) The Instrument of Transfer of any Share in the Company shall be executed both by the Transferor and Transferee, and the Transferor shall be deemed to remain a Holder of such Share until the Name of the Transferee is entered in the Register Book in respect thereof.

(9.) Shares in the Company shall be transferred in the following Form:—

I *A.B.* of in consideration of the Sum of Pounds paid to me by *C.D.* of do hereby transfer to the said *C.D.* the Share [*or* Shares] numbered standing in my Name in the Books of the Company, to hold unto the said *C.D.*, his Executors, Administrators, and Assigns, subject to the several Conditions on which I held the same at the Time of the Execution hereof; and I the said *C.D.* do hereby agree to take the said Share [*or* Shares] subject to the same Conditions. As witness our Hands, the Day of

10. The

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July 24, 25, 26, 27, 28; *Aug.* 2, 4; *Nov.* 6.

[1868 P. 52.]

Company—Prospectus—Concealment of Material Fact—Liability of Directors—Rights of Allottee of Shares—Rights of Transferee—Delay.

Directors of a company issuing a prospectus are bound to disclose every material fact; and if they do not they will be held liable to indemnify any person who takes shares from the company on the faith of the prospectus against any loss which may be occasioned to him by reason of such concealment, even although they may have believed that the concealment will be beneficial to the persons induced to take shares.

A fact which, if disclosed would have so discredited the company as to prevent its formation, is a material fact within the meaning of the foregoing proposition.

The estate of a deceased director is liable in equity in respect of such indemnity to the same extent as the director would have been if living.

A transferee of shares has no greater right to be indemnified by the directors in respect of their misconduct in issuing a prospectus than the original allottee would have had; and if the allottee would have been debarred of his remedy against the directors by laches, condonation, or otherwise, the transferee is also debarred of remedy.

Any person seeking relief against directors of a company in respect of misconduct in issuing a prospectus is bound to come promptly for relief.

In July, 1865, the directors of a company formed to take over the business of a firm which they knew to be insolvent, issued a prospectus in which the fact of such insolvency was withheld from the public. If the fact had been disclosed the company would not have been formed. The directors withheld the fact, honestly believing that the speculation on which they were about to embark would be successful.

In October and December, 1865, the Plaintiff, on the faith of the prospectus, bought in the market shares which had originally been allotted to a partner in the insolvent firm. In May, 1866, the company stopped payment, and was afterwards wound up, and the Plaintiff after considerable litigation was settled on the list of contributories, and was compelled to pay large sums in respect of calls. In March, 1868, the Plaintiff filed the bill in this suit, seeking to be indemnified in respect of his losses by the surviving directors, and the estate of a deceased director:—

Held, that if he had been an original allottee and had come in due time, he would have been entitled to such indemnity; but that he was debarred of his remedy on the ground, first, that he was in no better position than the allottee from whom he bought, and, secondly, that he had come too late for relief.

FOR many years previously to 1865, a firm of bill brokers and money dealers carried on business in the City of *London* under the

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style of *Overend, Gurney, & Co.* The business so carried on was probably the largest of its kind in the commercial world, and the firm had a very high and widespread reputation. Three-fourths of the business was owned by certain persons known as the *London* partners; the remaining fourth was owned by certain persons known as the *Norfolk* partners, being in fact the partners in a banking business carried on at *Norwich* and elsewhere in *Norfolk*.

In 1865 the *London* partners were *Samuel Gurney, Henry Edmund Gurney, David Ward Chapman,* and *Robert Birkbeck;* and the *Norfolk* partners were *Daniel Gurney;* the said *Samuel Gurney* and *Henry Edmund Gurney; John Henry Gurney, Francis Hay Gurney, Henry Birkbeck, William Birkbeck, Charles Henry Gurney,* and *Somerville Arthur Gurney.*

It now appeared that this firm, notwithstanding its reputation, had in the years subsequent to 1857 sustained great losses. These did not arise from any diminution in the money-earning power of the legitimate business of the firm, but were mainly occasioned by large advances being made on insufficient security to firms and companies engaged in business of a speculative and hazardous description. In 1865 these losses occasioned serious anxiety to the partners, and led them to desire the introduction of fresh capital into the firm. For this purpose, they in the first instance made applications to their relations, many of whom were wealthy, and had large sums of money at their disposal; but ultimately it was seen that the amount required was too great for the resources of the private friends of the partners.

Four gentlemen, named *Henry Ford Barclay, Thomas Augustus Gibbs, Harry George Gordon,* and *William Rennie,* all of whom were of high standing in the City of *London,* were then consulted, and the affairs of the firm were fully disclosed to them; and it was determined to form a joint stock company for the purpose of taking over and carrying on the business of the firm. Accordingly, on the 12th of July, 1865, a joint stock company, named *Overend, Gurney, & Co., Limited,* was duly registered under the *Companies Act,* 1862, with a capital of £5,000,000, divided into 100,000 shares of £50 each. The memorandum of association of the company provided as follows:—

"3rd. The objects for which the company is established are the

receiving of money on deposit, or by re-discount of bills, and the employment and investment of such money and of the paid-up capital of the company in the discounting of bills of exchange, promissory notes, and other negotiable securities, and in making advances on loan and investing in securities, and generally the carrying on of the business of bill brokers and money dealers, as heretofore carried on by Messrs. *Overend, Gurney, & Co.*, at No. 65, *Lombard Street*, in the City of *London*, and with a view to the above objects the acquisition of such business upon terms to be agreed by the directors, and the acquisition, whether by way of purchase or amalgamation or otherwise, of such other business or businesses of a like character, and upon such terms, as the directors shall think expedient, and the doing of all acts and things incidental or conducive to the attainment of the above objects."

The articles of association contained the following clause:—

"84. The directors are also authorised to purchase or acquire, upon such terms and under such stipulations as to guarantee or otherwise as may be agreed upon, the business and goodwill of the said Messrs. *Overend, Gurney, & Co.*, as the same now stands, and any other business of a like character which they may hereafter think it expedient to acquire for the benefit of the company."

On the same day a prospectus of the company was issued, stating amongst other things that the directors of the company were *Henry Edmund Gurney, John Henry Gurney, Robert Birkbeck, Henry Ford Barclay, Thomas A. Gibb, Harry G. Gordon*, and *William Rennie*; and also stating as follows:—

"The company is formed for the purpose of carrying into effect an arrangement which has been made for the purchase from Messrs. *Overend, Gurney & Co.*, of their long established business as bill brokers and money dealers, and of the premises in which the business is conducted; the consideration for the goodwill being £500,000, one-half being paid in cash and the remainder in shares of the company, with £15 per share credited thereon: terms which, in the opinion of the directors, cannot fail to ensure a highly remunerative return to the shareholders.

"The business will be handed over to the new company on the

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1st of August next; the vendors guaranteeing the company against any loss on the assets and liabilities transferred.

"Three of the members of the present firm have consented to join the board of the new company, in which they will also retain a large pecuniary interest. Two of them (Mr. *Henry Edmund Gurney* and Mr. *Robert Birkbeck*) will also occupy the position of managing directors, and undertake the general conduct of the business.

"The ordinary business of the company will, under this arrangement, be carried on as heretofore, with the advantage of the co-operation of the board of directors, who also propose to retain the valuable services of the existing staff of the present establishment.

"The directors will give their zealous attention to the cultivation of the business of a first class character only, it being their conviction that they will thus most effectually promote the prosperity of the company and the permanent interests of the shareholders.

"Copies of the company's memorandum and articles of association, as well as of the deed of covenant in relation to the transfer of the business, can be inspected at the offices of the solicitors of the company.

"Applications for shares must be accompanied by the payment of a deposit of £2 per share, which will be received by Messrs. *Barclay, Bevan, Tritton, Twells, & Company*, 54, *Lombard Street*. In the event of no allotment being made, the deposit will be returned in full; should a less number of shares be allotted than are applied for, the deposit will, so far as required, be appropriated towards the payment due upon allotment."

At the time when the prospectus was issued no statement of accounts had been prepared; but the liabilities of the firm on the 31st of July, 1865, as stated in a balance sheet entered in the books of the firm, amounted to £15,281,641 17*s.* 10*d.*, including a balance of £1,053,715 1*s.* 3*d.* due to the partners on their private accounts, but not including liabilities in respect of bills rediscounted, bills payable or credits granted, and guarantees. The assets, as stated in the same balance sheet, appeared of equal amount, but included a sum of £4,213,896 16*s.* 4*d.*, under the

head "Suspense and Guarantee Account." This sum was the amount of debts due from the speculative firms and companies already mentioned, in respect of the advances made to them, against which securities of the estimated value of £1,082,000 only were held by the firm. Deducting from the amount of the suspense and guarantee account the balance due to the partners and the estimated value of the securities, the firm appeared on this statement to be insolvent to the extent of £2,078,181 15*s.* 1*d.*; but the partners had private estates valued at £1,257,000, and also an interest in the *Norwich Bank* and the goodwill thereof, valued at £1,067,000, and, taking these into account, they considered that the firm was not only solvent, but that there remained a considerable surplus in favour of the partners, exclusive of the £500,000 agreed to be given for the goodwill of the firm.

The transfer of the business by the firm to the company was carried into effect by two deeds, both dated the 27th of July, 1865. The first of these deeds was that above mentioned in the prospectus, and was made between the *London* partners of the first part, the *Norfolk* partners of the second part, and the limited company of the third part. It provided for the sale and purchase of the business as a going concern, to take effect at midnight on the 31st of July, 1865, at the price of £500,000—one half to be paid or allowed on account in cash, and the other half to be paid or treated as paid by the issue of 16,666 shares of £50 each, with £15 paid up; which sum was, so far as the directors of the company might require, to be applied and made available by way of material guarantee in aid of the covenants of the parties of the first and second parts therein contained, and the obligation of the company to pay and allow on account; such sum was to be controlled by the right to have the same so applied and made available, and was not to be enforced except in subordination to such right of the company. It also provided that the company should continue and carry on all open or unsettled accounts connected with the business, except such accounts as the directors might require to be reserved or accepted and wound up by the firm as thereinafter provided. It contained a guarantee by the parties of the first and second parts that, irrespective of any value to be attributed to the goodwill of the business, the assets which the company should have

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and take the benefit of on the day of completion should produce a net amount of money equal to or exceeding the aggregate amount of moneys which the company might have to pay or provide, or should pay or provide, in satisfaction and discharge of the obligations and liabilities of the firm. It provided that it should be obligatory on some one of the parties of the first and second parts to continue to act under the style of *Overend, Gurney, & Co.*, for the purpose of winding up any outstanding accounts of the firm which the directors of the company should consent or deem it desirable or expedient to be so wound up; and that no property of any description applicable to such accounts should be transferred to the company, but should be retained by the firm, and applied and disposed of by them for the purpose of winding up such accounts. There were provisions for the sale of the business premises of the firm to the company at a price to be ascertained by valuation; and it was stipulated that such price should be made available as and by way of material guarantee for the protection of the company, in the same way as thereinbefore provided with respect to the £500,000.

The second of the deeds was made between the same parties, and had reference mainly to the winding up by the firm of certain accounts specified in the schedule thereto. It provided that a separate account, to be called "*Overend, Gurney, & Co.'s* Suspense and Guarantee Account," should be opened on the day of completion in the books of the limited company, and that such account should be debited with the total amount of the balances which, as struck on the midnight of the 31st of July, 1865, should appear to the debit of the accounts in the schedule; and that such sum should be treated as due to the company from the firm upon an account stated between them and to be liquidated in account current as thereby provided; and the same account was to be credited with £250,000, being one moiety of the price of the goodwill, with the price of the business premises of the firm, and the total balance due to the partners on their private accounts. Then followed provisions as to the mode in which the accounts in the schedule were to be wound up by the firm, and the moneys received by them accounted for to the company. The account was to be closed and balanced on the 31st of December, 1868; if the balance was on the

credit side of the account the amount thereof was to be paid by the company to the members of the firm within a month; if the balance was on the debit side, the amount thereof was to be deemed a debt due to the company, and to be paid by the members of the firm, but at what time was not specified. It was stipulated that the company should have a lien on the 16,666 shares to be issued in payment of a moiety of the value of the goodwill, and on all property retained by the firm to be applied in winding up the said accounts; and such lien was to be for the purpose of securing to the company the performance, observance, and fulfilment of the covenants and obligations contained in either deed on the part of the members of the firm, and for protecting and indemnifying the company against any loss or damage to be sustained by the non-performance or non-observance thereof; and the company were to be entitled to have the said shares and property made available through the medium of a sale or otherwise, in order to secure the performance, observance, and fulfilment of such covenants and obligations, and for protecting and indemnifying the company as aforesaid.

The schedule included the following accounts: 1. All accounts between the firm and the *Millwall Iron Works Ship Building Company*, and between the firm and any persons in respect of shares owned by or hypothecated to the firm. 2. All accounts between the firm and any company, firm, partnership, or individual whose affairs were being wound up in bankruptcy, or under the *Companies Act*, 1862, or under any arrangement for the benefit of creditors. 3. All accounts between the firm and any other party in respect of advances, loans, or investments made in or upon the shares, debentures, stock, or property of any company incorporated or unincorporated which had been or was in the course of being dissolved and wound up. 4. All accounts which should be open in the books of the firm in respect of any unrealized property, or securities accepted or taken by the firm in satisfaction or settlement of any account which had theretofore been open or subsisting or unsettled between the firm and any other person or persons whomsoever.

The company commenced business on the 1st of August, 1865. Applications for shares were received very much in excess of the

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number of shares to be allotted, and all the shares were duly allotted.

About the 12th of August, 1865, application was made to the committee of the *Stock Exchange* for the appointment of a settling day in the shares of the company. On the occasion of this application the first of the two deeds, dated the 25th of July, was alone produced to the committee, and no mention was made of the existence of the other deed. The application was granted, but, as was deposed by the secretary of the *Stock Exchange*, on the presumption that all deeds relating to the transfer of the business had been produced.

The Plaintiff in this suit received a copy of the prospectus of the company soon after the issue thereof. At that time he had no money in his hands for which he required an immediate investment, and he did not apply for allotment of shares; but he kept the prospectus by him, and subsequently, having received large sums which he wished to invest, he, in October, 1865, purchased in the market 1000 shares in the company at £7 10s. premium, and again in December, 1865, purchased in the market a like number of shares at £6 10s. premium. The shares so purchased were transferred to him by deeds dated the 2nd of November, 1865, and the 3rd of January, 1866.

It appeared in the course of the proceedings in the suit that a very large number, if not the whole, of the shares in question had originally been allotted to *Samuel Gurney*, one of the partners in the firm, and had been by him transferred into the name of his broker, and had been sold by his directions, and that the purchase-money had been carried to the credit of the "Suspense and Guarantee Account," in accordance with the provisions of the second deed.

The company stopped payment on the 10th of May, 1866. On the 11th of June following, a resolution was passed that the company should be wound up voluntarily under the supervision of the Court; and on the 22nd of that month the usual order for winding up under supervision was made. After considerable litigation, the Plaintiff's name was settled on the list of contributories in respect of the 2000 shares held by him (1), and he had since paid

(1) Law Rep. 3 Eq. 576; Ibid. 2 H. L. 325.

all calls made in respect thereof. In the course of the winding-up all the debts of the company had been paid.

Thomas Augustus Gibb, one of the directors, died in November, 1866.

The bill in this suit was originally filed in 1868, and was afterwards amended; and, as amended, was against *John Henry Gurney, Henry Edmund Gurney, Robert Birkbeck, Henry Ford Barclay, Harry George Gordon*, the executors of *Thomas Augustus Gibb, Overend, Gurney, & Co., Limited*, and the liquidators thereof, as Defendants. It contained allegations (amongst others) to the effect that no proper investigation was made by the directors into the affairs of the firm; that the balance sheet already mentioned was imperfect and delusive, omitting, as it did, all reference to the liability of the firm on bills rediscounted, bills payable on crédits granted, and guarantees, amounting to upwards of £8,000,000, of which a considerable part had ripened into claims; that the estimate of £1,082,000 as the value of the securities for the amount of the suspense and guarantee account was excessive; that the firm was in fact insolvent, and that such insolvency was well known to the partners therein and all the directors of the company; that the second of the two deeds was purposely kept from the knowledge of every one but the directors, in order to conceal the nature of the arrangement between the firm and the company and the state and value of the business; that the guarantees contained in the deed were illusory, inasmuch as the private estates of the members of the firm were wholly inadequate to afford anything like security against the liabilities of the firm, and were in fact insolvent to the knowledge of the directors; that if the Plaintiff had known the close connection between the firm and the *Millwall Iron Works Company* (mentioned in the second of the two deeds), and another company, called the *Atlantic and Royal Mail Steam Packet Company*, to which the firm had advanced large sums, he would not have purchased any shares; that the directors were guilty of a gross neglect of duty in not making an independent investigation into the affairs of the firm, and above all, in not disclosing fully and fairly to the public the information which they actually obtained; that the prospectus was issued for the purpose of falsely and fraudulently misrepresenting the state of the business

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and inducing the public to believe that they would become partners in a profitable business if they became shareholders therein; and that the only object of the promoters of the company was to prevent, if possible, by means of the shareholders' money, the stoppage and ruin of the old firm. It charged that, subject to the claims of the creditors of the company, the Plaintiff was entitled to rescind and avoid the contracts of membership entered into by him and to be indemnified by the Defendants (other than the liquidators) against all sums which he had paid or might be called on to pay to the company or the liquidators thereof.

It prayed for the following declarations: 1. That the statements put forward by the directors of the company in the prospectus and in pursuance of their alleged scheme, were so put forward with a view to deceive and mislead the public, and the Plaintiff as one of the public, and that the same contained several misrepresentations and suppressed several important facts which ought to have been made known to the public, and that the Plaintiff was misled and deceived by such misrepresentations, and induced by them and the omissions of the said important facts to purchase the shares so purchased by him in the company; and that the Plaintiff was therefore entitled to have the sales and purchases of the said shares set aside and rescinded so far as the same constituted the Plaintiff, or created a contract on his part to become, a shareholder and member of the Defendant company, subject and without prejudice to the rights of the creditors of the said company. 2. That the directors of the company neglected to discharge the duties which they took upon themselves when they assumed to act as purchasers of the said business on behalf of the shareholders in the said company. 3. That the Defendants, *John Henry Gurney, Henry Edmund Gurney, Robert Birkbeck, Henry Ford Barclay, William Rennie, Harry George Gordon,* and the estate of the said *Thomas Augustus Gibb,* were jointly and severally liable to make good to the Plaintiff or indemnify him against the loss which he had sustained and might sustain in consequence of his having become a member of the Defendant company. 4. That the Plaintiff was entitled to have the equities between himself and the Defendants, *John Henry Gurney, Henry Edmund Gurney, Robert Birkbeck, Henry Ford Barclay, William*

Rennie, Harry George Gordon, and the estate of *Thomas Augustus Gibb,* adjusted; and that the Defendants, the liquidators, ought not to have made any calls or to make any further calls upon the Plaintiff for payment of the debts of the Defendant company without having first exhausted, or until they had exhausted, the liability of the said *John Henry Gurney, Henry Edmund Gurney, Robert Birkbeck, Henry Ford Barclay, Harry George Gordon,* and *William Rennie,* and the estate of the said *Thomas Augustus Gibb.* 5. That as between the Plaintiff and the Defendants, *John Henry Gurney, Henry Edmund Gurney, Robert Birkbeck, Henry Ford Barclay, William Rennie, Harry George Gordon,* and the executors of *Thomas Augustus Gibb,* the said Defendants were primarily liable to pay the debts of the creditors of the said company. It then went on to pray for the proper relief, for the purpose of giving due effect to the preceding declarations, or such of them as the Court should think the Plaintiff entitled to, including an injunction to restrain the liquidators from making or enforcing any further calls upon or against the Plaintiff, as a contributory of the Defendant company, until the liability of the directors should have been exhausted in payment of the debts and liabilities of the company; and delivery up and cancellation of the transfer deeds executed by the Plaintiff, and the removal of the name of the Plaintiff from the list of members and contributories of the company, without prejudice to the Plaintiff's liability to the creditors of the company, in case the remaining contributories of the company should prove to be unable to pay in full the debts of such company.

The Defendants all insisted that the company had been formed in perfect good faith, and not in pursuance of any such fraudulent scheme as alleged in the bill; and they much relied on the facts (which were proved in the cause), that each of the directors had become a shareholder to a considerable amount, and had held his shares to the last; that some of them had induced their near relations to become and continue shareholders; and that others had deposited large sums with the company without taking any security, and that such sums had remained on deposit at the time of the stoppage.

With respect to the alleged fraudulent suppression of the second

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deed, it was shewn that instructions were given by the solicitor of the company to counsel simply to prepare and settle the necessary deed of transfer; that the preparation of two deeds was the result of a suggestion of counsel to that effect; that Messrs. *Gordon* and *Rennie* required the deeds to be settled by independent counsel on their behalf; that in consequence of the counsel engaged in the preparation of the deeds having other engagements they were able to settle the first of the two only previously to the issue of the prospectus, and that they were unable to settle the other until the 24th of July. They submitted that the preparation of two deeds was a matter with which the directors could not under the circumstances properly interfere. They alleged that the second deed was believed by the directors to be merely part of the machinery by which the guarantee contained in the first deed was to be carried out; and they submitted that they were under these circumstances under no obligation to disclose its existence. They denied that it was concealed or withheld with any fraudulent purpose.

The Defendant, *Henry Ford Barclay*, in addition to the defences set up by the other surviving directors, relied on the fact that he had nothing whatever to do with the preparation or publication of the prospectus. It appeared that in July, 1865, application was made to him to become a director of the company, and that he consented to act as such, but upon condition that he should not be required to attend to or take part in the formation or promotion of the company, or to perform any duties with reference to the affairs thereof, until his return from a voyage on which he was about to set out. Accordingly he took no part in the formation of the company, but on the evening of the 13th of July he received a bundle of the prospectuses, which had been issued on the previous day, with forms of applications for shares, and filled up these forms on behalf of his mother and two of his children. He embarked on his voyage on the following day, and did not return to *England* until the 5th of August, 1870, and it was not until after that date that he entered on his duties as director.

The executors of *Thomas Augustus Gibb*, by their answer, set up, by way of defence, the fact that the injury or wrong complained of by the bill was not committed within six calendar months before

the death of their testator, and they insisted that no action or suit could be maintained against them in respect thereof, and claimed the benefit of the statute 3 & 4 Will. 4, c. 42.

It appeared that Mr. *Peek* never examined the first deed, although it was open to the inspection of the public, nor instituted any investigation into the affairs of the company previously to the failure thereof.

Subsequently to the institution of this suit the surviving directors were indicted, and were tried before the Lord Chief Justice of *England*, in December, 1869. The indictment contained (amongst others) counts framed on the statute 24 & 25 Vict. c. 96, s. 84, which provides as follows: "Whosoever, being a director, manager, or public officer of any body corporate or public company, shall make, circulate, or publish, or concur in making, circulating, or publishing, any written statement or account which he shall know to be false in any material particular, with intent to deceive or defraud any member, shareholder, or creditor of such body corporate or public company, or with intent to induce any person to become a shareholder or partner therein, or to intrust or advance any property to such body corporate or public company, or to enter into any security for the benefit thereof, shall be guilty of a misdemeanor." The Defendants were acquitted (1).

Mr. *Kay*, Q.C., Mr. *Swanston*, Q.C., and Mr. *Jolliffe*, for the Plaintiff:—

The duties of persons who issue a prospectus are thus laid down by Vice-Chancellor *Kindersley*, in *New Brunswick and Canada Railway Company* v. *Muggeridge* (2): "Those who issue a prospectus, holding out to the public the great advantages which will accrue to persons who will take shares in a proposed undertaking, and inviting them to take shares on the faith of the representations therein contained, are bound to state everything with strict and scrupulous accuracy, and not only to abstain from stating as fact that which is not so, but to omit no one fact within their

(1) A special report of the proceedings at the trial, including the summing up of the Lord Chief Justice, has been published by Mr. *W. F. Finlason*, and is hereafter cited as "*Reg.* v. *Gurney*, *Finlason's* Report."

(2) 1 Dr. & Sm. 363, 381.

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knowledge the existence of which might in any degree affect the nature, or extent, or quality of the privileges and advantages which the prospectus holds out as inducements to take shares." This passage has since been cited with approbation by Lord *Chelmsford*, in *Central Railway Company of Venezuela* v. *Kisch* (1), and the present Lord Chancellor, in *Henderson* v. *Lacon* (2). We say that the directors did not fulfil these duties: that they, with full knowledge that the firm was insolvent, concealed the fact in the prospectus issued by them; and that, whether such concealment was the result of fraudulent intent or not, they are liable in equity to make good all loss occasioned to persons who dealt on the faith that the prospectus was a document disclosing the whole truth. The evidence in the case is substantially the same as was before the House of Lords in *Oakes* v. *Turquand* (3). Each of the learned Lords who addressed the House, when judgment was given, expressed a strong opinion that the prospectus was not fairly or properly framed; and we submit that your Lordship must arrive at the same conclusion.

The relief we ask is, first, that the contract between the Plaintiff and the company may be rescinded, subject to the rights of the creditors—a point left open when the case of *Oakes* v. *Turquand* (4) was before the House of Lords; and, secondly, that the Plaintiff be indemnified in respect of the loss he has suffered by reason of the improper concealment of the state of the affairs of the firm.

The objection is raised, on behalf of the Defendants, that the Plaintiff's remedy is at law and not in equity. In answer to that we say, first, that there is a concurrent jurisdiction in equity in such cases, even where there is only a single Defendant; secondly, that relief will be given in equity in a case such as the present, in order to avoid multiplicity of actions, for at law we should be compelled to bring a separate action against each director; and, thirdly, that one of the directors in the present case being dead, the legal rule, *actio personalis moritur cum personâ*, prevents our bringing any action against his representatives, and, consequently, we must come for relief into this Court.

(1) Law Rep. 2 H. L. 99, 113.
(2) Ibid. 5 Eq. 249, 263.
(3) Law Rep. 2 H. L. 325.
(4) Ibid. 379.

In *Evans* v. *Bicknell* (1) Lord *Eldon* says: "It is a very old head of equity, that if a representation is made to another person going to deal in a matter of interest upon the faith of that representation, the former shall make that representation good, if he knows it to be false." In *Burrowes* v. *Lock* (2) Sir *W. Grant*, M.R., acting on that *dictum*, decided that a trustee who had received notice of an incumbrance on the interest of his *cestui que trust*, but, having forgotten the fact, represented to a purchaser that the interest was unincumbered, was bound to indemnify the purchaser. That case shews that wilful fraud is no ingredient in the equity of the person who claims indemnity. These cases were followed in the recent case of *Slim* v. *Croucher* (3), decided by the full Court of Appeal. The jurisdiction of the Court was upheld in *Colt* v. *Woollaston* (4); *Green* v. *Barrett* (5); *Cridland* v. *Lord De Mauley* (6); *Ramshire* v. *Bolton* (7); and *Hill* v. *Lane* (8); although in all these cases the objection was raised that the Plaintiff's remedy was at law.

In *Barry* v. *Croskey* (9), which was decided on a demurrer, the present Lord Chancellor makes these observations: "I can suppose a bill of this description to be filed against a single Defendant, upon which a Court of Equity, though having indisputably concurrent jurisdiction with a Court of Law, would not think fit to exercise that jurisdiction; but the present bill avers a combination of several Defendants, against some of whom the Plaintiff may have a direct remedy at law, while against others he may have no remedy at law, or no remedy except by as many separate actions of deceit as there are parties Defendants to the suit. The bill avers, whether truly or not it is impossible at present to say, that the several Defendants have combined to practise jointly this scheme of deceit, one being put forward, but as the agent and for the benefit of the rest. If these averments are true, I apprehend it is a proper case for relief in this Court." Here is a case in which we have no remedy at law against some of the parties, viz., the executors of *Gibb*; and our only remedy against the others is by bringing sepa-

(1) 6 Ves. 174, 182.
(2) 10 Ves. 470.
(3) 1 D. F. & J. 518.
(4) 2 P. Wms. 154.
(5) 1 Sim. 45.
(6) 1 De G. & Sm. 459.
(7) Law Rep. 8 Eq. 294.
(8) Ibid. 11 Eq. 215.
(9) 2 J. & H. 1, 30.

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rate actions of deceit; therefore we say, with the Lord Chancellor, that it is a proper case for relief in this Court.

In *Ingram* v. *Thorp* (1) the Plaintiff, to whom representations had been made by a deceased person, was held entitled to have them made good out of his estate. In *Rawlins* v. *Wickham* (2) the like relief was given. That case is valuable as shewing that it is not necessary that the representations be fraudulently made. In *Smith* v. *Pococke* (3) it was decided that the *Statute of Limitations* had no application to a case of this description in a Court of Equity.

It may be said, on the other side, that the representation which we seek to have made good was not made to the Plaintiff, inasmuch as he was not an original allottee of shares, but only a purchaser in the market. But in *Bedford* v. *Bagshaw* (4) a person who had bought shares in the market on the faith of false representations made to the committee of the *Stock Exchange*, was held to be entitled to damages. In *Duranty's Case* (5) it was laid down, that a person who had been misled by reports issued by the directors of a company might have a remedy against the directors.

Mr. *Roxburgh*, Q.C., and Mr. *Lindley*, for the Messrs. *Gurney* and *Robert Birkbeck*:—

In the first place we say, that all observations made in the case of *Oakes* v. *Turquand* (6) must be discarded. The present Defendants had no opportunity of defending themselves in that case, and the evidence in the present case displaces entirely the notion of their having committed any fraud, and establishes that they acted throughout *bonâ fide* and to the best of their judgment. The result of the trial before the Lord Chief Justice shews that. The indictment was framed on the statute 24 & 25 Vict. c. 96; and the issue was, whether the directors issued the prospectus, or conspired to issue it, with the object of defrauding the public. The Lord Chief Justice, in his summing-up, clearly shewed his opinion to be that there was no foundation for such a charge; the jury agreed with him, and he afterwards disallowed the costs of the

(1) 7 Hare, 67.
(2) 3 De G. & J. 304.
(3) 2 Drew. 197.
(4) 4 H. & N. 538.
(5) 26 Beav. 268.
(6) Law Rep. 2 H. L. 325.

prosecution: *Reg.* v. *Gurney* (1). It has been repeatedly held that there is no difference between legal and equitable fraud, and therefore we are fully entitled to claim the benefit of the decision.

If, then, these directors acted *bonâ fide*, how can the Plaintiff complain? The prospectus refers to the articles of association of the company as open to inspection, and therefore the Plaintiff must be taken to have bought with full knowledge of the provisions therein contained: *Hallows* v. *Fernie* (2). Now the articles provide that the directors may purchase, upon such terms and under such stipulations as to guarantee or otherwise, as may be agreed upon, the business of *Overend, Gurney, & Co.* The directors did purchase the business upon terms which they honestly believed would be remunerative, and under stipulations as to guarantee which they honestly considered would be ample security to the shareholders. In all respects, therefore, they acted within the powers conferred on them by the articles, and the Plaintiff is simply in the position of a principal complaining that his agent has entered into a contract which he was duly authorized to make. This is the very point of the decision of the Lord Chancellor in *Overend, Gurney, & Co.* v. *Gurney* (3), a suit instituted by the liquidators in respect of the matters now complained of by the Plaintiff. It may be said that the bill in that suit did not make a case of fraud; and that is true in this sense, that the strong expressions used in the Plaintiff's bill are not in the liquidators' bill; still, all the facts necessary to raise the questions were before the Court, and a demurrer to the bill was allowed.

As regards the second deed, we say that it was entirely subsidiary to the first; that the first contained everything essential to the transfer of the business, and the second was merely a piece of machinery, directing the mode in which the excepted accounts mentioned in the first deed were to be liquidated. The same thing might have been done more simply by a resolution of the board of directors, or by a written memorandum, and then the Plaintiff could not have had even the semblance of a ground for complaint, for the directors are under no obligation to make known all their resolutions to their shareholders.

(1) *Finlason's* Report; see p. 255, *et seq.*, and p. 270.

(2) Law Rep. 3 Eq. 520.

(3) Ibid. 4 Ch. 701.

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Assuming, however, that the directors did not disclose everything which they ought to have done, we say that the Plaintiff, being a mere transferee of shares, and not an original allottee, has no ground of complaint. Suppose the directors had called a meeting and disclosed everything to the original allottees, could a purchaser from one of them afterwards complain? The office of the prospectus is to invite people to come in originally as shareholders, not to invite them to buy shares in the market. There is no privity whatever between a company and a purchaser in the market. In *Blain* v. *Agar* (1), which was a case in which shareholders sought relief in respect of the fraudulent conduct of directors, it was held that the Plaintiffs might maintain their bill in the character of original purchasers, but not in the character of purchasers from prior purchasers (2). In *Bedford* v. *Bagshaw* (3) the ground of the decision was, that the directors fraudulently procured the appointment of a settling day on the *Stock Exchange*, and that without such appointment the Plaintiff could never have been a purchaser; here no such case is alleged or proved. Moreover, at the highest, the Plaintiff could only claim to be in the same position as the person to whom his shares were originally allotted, viz., Mr. *Samuel Gurney*, one of the partners in the firm, and as such well acquainted with the state of its affairs: *Ffooks* v. *South Western Railway Company* (4).

As to the case of *New Brunswick and Canada Railway Company* v. *Muggeridge* (5), that was a suit for specific performance, and the suppression of a material fact no doubt constituted a good defence to such a suit; but it has no application to the present case. There is no foundation for the assertion that at common law you must bring as many actions as you have Defendants: *Chitty* on Pleading (6).

Sir *Roundell Palmer*, Q.C., Mr. *Fry*, Q.C., and Mr. *Sayer*, for *Henry Ford Barclay*:—

The Plaintiff is clearly not entitled to any relief in the shape of setting aside the transfers to him, or having his name removed

(1) 2 Sim. 289.
(2) Ibid. 296.
(3) 4 H. & N. 538.
(4) 1 Sm. & Giff. 142.
(5) 1 Dr. & Sm. 363.
(6) Vol. i. pp. 96, 97.

from the list of contributories. He has been settled on the list by the House of Lords, and must remain there for all purposes. There is no such thing as being a contributory by halves—a contributory until the debts are paid, and then being at liberty to rescind the contract. Besides, it is clearly settled, that after a company is wound up a shareholder's contract cannot be set aside: *Clarke* v. *Dickson* (1); *Deposit and General Life Assurance Company* v. *Ayscough* (2); *Mixer's Case* (3); *Western Bank of Scotland* v. *Addie* (4). This would be so if the Plaintiff were an original allottee; but he is not; he is only a purchaser in the market, and if the contract is to be set aside the former owner ought to be here: *Duranty's Case* (5); *Nicol's Case* (6); *Ex parte Worth* (7). Nor can the Plaintiff have any relief on the ground of negligence. That is not a ground for coming into equity; or, if it be, the Plaintiff should be the company; and, in fact, this question was raised and decided adversely to the company in the suit of *Overend, Gurney, & Co.* v. *Gurney* (8).

There remains only the question, whether the plaintiff is entitled to any relief in the shape of indemnity from the directors. We deny the truth of the proposition, that wherever an action for deceit will lie a bill in equity will also lie. Equity will interfere only in the following cases: first, wherever a contract is to be rescinded; secondly, where fraud, in the proper sense of the word, is to be redressed; thirdly, where a representation has been made which binds the conscience of the party, and estops and obliges him to make it good. In the last case the representation in equity is equivalent to a contract, and very nearly coincides with a warranty at law; and in order that a person may avail himself of relief founded on it he must shew that there was such a proximate relation between himself and the person making the representation as to bring them virtually into the position of parties contracting with each other.

In *Rawlins* v. *Wickham* (9) the object of the suit was rescission

(1) E. B. & E. 148.
(2) 6 E. & B. 761.
(3) 4 De G. & J. 575.
(4) Law Rep. 1 H. L., Sc. 145.
(5) 26 Beav. 268.
(6) 3 De G. & J. 387.
(7) 4 Drew. 529.
(8) Law Rep. 4 Ch. 701.
(9) 3 De G. & J. 304.

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of a contract; it falls, therefore, under the first of the three classes, and is inapplicable as an authority here. Like observations apply to the cases of *Green* v. *Barrett* (1), *Cridland* v. *Lord De Mauley* (2) and *Colt* v. *Woollaston* (3), although into all of them fraud may have entered in a greater or less degree.

As to the cases which rest upon fraud (and the case of the Plaintiff as put by the bill is one of fraud), it is necessary to prove the *scienter* in equity just as much as at law: *Henderson* v. *Lacon* (4); *Ship* v. *Crosskill* (5); *Pike* v. *Vigers* (6); *Attwood* v. *Small* (7); and *New Brunswick and Canada Railway Company* v. *Conybeare* (8).

The third class of cases is illustrated by *Evans* v. *Bicknell* (9); *Burrowes* v. *Lock* (10); *Slim* v. *Croucher* (11); and *Ingram* v. *Thorp* (12). In all of these cases there was a representation made with a view to a particular contract. How can that be said to be so here? The object of the prospectus was to induce persons to become applicants for shares to be allotted to them, and after the allotment was made it was *functus officio*. A person purchasing shares on that prospectus is applying the representations made for one purpose to a wholly different transaction; and, whether or not he can maintain an action, he has no ground for seeking relief in equity: *Burnes* v. *Pennell* (13). This view has been adopted with reference to the very question now under discussion by Vice-Chancellor *Shadwell*, in *Blain* v. *Agar* (14), and by Lord Justice *Turner* in *Nicol's Case* (15), and *Barrett's Case* (16).

Clifford v. *Brooke* (17) and *Ogilvie* v. *Currie* (18) shew that without proof of actual fraud you cannot bring into this Court a transaction which is properly the subject of an action at law.

If a representation has been innocently made by an agent, and it turns out to be incorrect, the agent is not liable: *Cornfoot* v.

(1) 1 Sim. 45.
(2) 1 De G. & Sm. 459.
(3) 2 P. Wms. 154.
(4) Law Rep. 5 Eq. 249.
(5) Ibid. 10 Eq. 73.
(6) 2 D. & Wal. 1, 252.
(7) 6 Cl. & F. 232.
(8) 9 H. L. C. 711.
(9) 6 Ves. 174.
(10) 10 Ves. 470.
(11) 1 D. F. & J. 518.
(12) 7 Hare, 67.
(13) 2 H. L. C. 497.
(14) 2 Sim. 289.
(15) 3 De G. & J. 387, 439.
(16) 3 D. J. & S. 30.
(17) 13 Ves. 131.
(18) 37 L. J. (Ch.) 541.

Fowke (1); *National Exchange Company of Glasgow* v. *Drew* (2); and *Udell* v. *Atherton* (3).

We submit therefore that, fraud in this case being disproved, the Plaintiff has no title to relief in this Court against any of the Defendants, and certainly not against Mr. *Barclay*, who took no part in issuing the prospectus.

Mr. *Fooks*, Q.C., and Mr. *W. Fooks*, for *Harry George Gordon* :—

The case made by the bill is one of fraudulent misrepresentation or concealment. In order to establish such a case fraudulent intent and motive, *mens rea*, must be proved. A false representation does not give rise to an action for deceit unless it is fraudulently made: *Taylor* v. *Ashton* (4); *Scott* v. *Dickson* (5); and *Western Bank of Scotland* v. *Addie* (6). The same rule applies in equity: *Heymann* v. *European Central Railway Company* (7); *Pulsford* v. *Richards* (8); and *Adamson* v. *Evitt* (9). Moreover, the representation complained of must be of fact, not a mere expression of opinion or belief: *Haycraft* v. *Creasy* (10); *Evans* v. *Collins* (11). Again, the damage must be a proximate, not a remote, consequence of the acts complained of: *Collis* v. *Selden* (12).

Therefore, in order to succeed, the Plaintiff must shew, first, that the statements in the prospectus were knowingly false and intended to deceive; secondly, that he was within the class of persons intended to be deceived; thirdly, that he was deceived by the statements in question; fourthly, that the loss he has suffered was the immediate consequence of the misrepresentation. Upon the evidence we say that he has not succeeded in establishing any one of these propositions.

Mr. *Jessel*, Q.C., Mr. *Macnaghten*, and Mr. *Medd*, for *William Rennie* :—

Although it has been laid down that fraudulent concealment is

(1) 6 M. & W. 358.
(2) 2 Macq. 103.
(3) 7 H. & N. 172.
(4) 11 M. & W. 401; 12 L. J. (Ex.) 363.
(5) 29 L. J. (Ex.) 62, n.
(6) Law Rep. 1 H. L., Sc. 145.
(7) Ibid. 7 Eq. 154.
(8) 17 Beav. 87.
(9) 2 Russ. & My. 66.
(10) 2 East, 92.
(11) 5 Q. B. 804.
(12) Law Rep. 3 C. P. 495.

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equivalent to fraudulent misrepresentation, no one has ever said that non-disclosure, without fraud, is equivalent to untrue statement without fraud.

Moreover, it is not competent to the Plaintiff to seek relief against the Defendants on the ground of non-disclosure without fraud. His bill is founded on allegations of fraud, and that being so, he cannot pick out facts which, if properly alleged in the bill, might create an independent equity: *Hickson* v. *Lombard* (1)

Again, on what principle is the amount of relief to be given to the Plaintiff to be ascertained? He is only a transferee; he bought at seven premium; but suppose he had bought at seven discount; then he could not have compelled the Defendants to pay the full amount he had lost.

Sir *R. Baggallay*, Q.C., Mr. *Macnaghten*, and Mr. *Maclean*, for the executors of *T. A. Gibb*:—

We rely on the statute 3 & 4 Will. 4, c. 42, s. 2. It is true that the enactment in terms refers only to actions at law; but wherever there is concurrent jurisdiction Courts of Equity (in the absence of any special circumstances entitling the Plaintiff to equitable relief) adopt, by analogy, the rules adopted in Courts of Law: *Lansdowne* v. *Lansdowne* (2), and *Bishop of Winchester* v. *Knight* (3). In suits of this description there is no remedy in equity, except where there has been profit to the wrongdoer: *Powell* v. *Aiken* (4); or a breach of trust: *Walsham* v. *Stainton* (5). In *Rawlins* v. *Wickham* (6), so much relied on by the Plaintiffs, the issue was, not whether the representations of a deceased person were to be made good out of his estate, but whether a contract he had entered into was to be rescinded; and rescission was decreed.

Mr. *Ferrers*, for the company and the liquidators.

Mr. *Kay*, in reply:—

The result of the indictment cannot in any way affect this case. The Lord Chief Justice, throughout his summing up, carefully

(1) Law Rep. 1 H. L. 324.
(2) 1 Madd. 116.
(3) 1 P. Wms. 406.
(4) 4 K. & J. 343, 358.
(5) 1 H. & M. 322; 1 D. J. & S. 678.
(6) 3 De G. & J. 304.

distinguishes between liability in a civil and in a criminal court: *Reg.* v. *Gurney* (1).

It is not necessary in all cases of fraud to prove the *scienter*, even at law. In *Taylor* v. *Ashton* (2), Baron *Parke* expresses his assent to the proposition that in order to constitute fraud it is not necessary to shew that the Defendants knew the fact they stated to be untrue; that it is enough that the fact is untrue if they communicated it for a deceitful purpose. In order to support an action for deceit, "it is only necessary to shew that what the Defendant asserted was false within his own knowledge, or asserted recklessly, without any knowledge on the subject" (3). That was laid down in *Moore* v. *Burke* (4). That case also lays down, that although a prospectus be not the influencing motive to take shares, but a material one, the Plaintiff is entitled to recover. The same thing was laid down in *Clarke* v. *Dickson* (5), and in *Reynell* v. *Sprye* (6).

Nov. 6. LORD ROMILLY, M.R.:—

This suit is instituted by Mr. *Peek*, praying, in substance, that the Defendants, the late directors of the limited company of *Overend, Gurney, & Co.*, and also that the executors of Mr. *Gibb*, a deceased director, out of his estate, may be made jointly and severally liable to indemnify and make good to the Plaintiff the losses he has sustained by reason of his having purchased 2000 shares in this company, in consequence, as he alleges, of the prospectus put forth by the directors, which intentionally suppressed facts of vital importance which, if disclosed, would have prevented him from making any such purchase.

The case, as regards the surviving directors and as regards the estate of the deceased director, is, though in many respects the same, so far distinguishable, that I think it convenient to consider first the case of the surviving directors, and afterwards examine how far these considerations affect the estate of the deceased director.

(1) Fin. Rep. pp. 215, 250, 251, 266.
(2) 11 M. & W. 401; 12 L. J. (Ex.) 363.
(3) 1 Sm. L. C. 6th Ed. p. 168.
(4) 4 F. & F. 258.
(5) 6 C. B. (N.S.) 453.
(6) 1 D. M. & G. 660.

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The case made by the Plaintiff against the directors is the publication of a prospectus knowingly and wilfully incorrect and deceptive; that this incorrectness and deception were not produced by any untrue statement, but by the suppression of a material and important fact. I have therefore to consider whether any fact was concealed, whether it was material, and whether it was known to the directors who issued the prospectus.

In order to explain and fully understand the fact said to be concealed, it is necessary to recur shortly to the formation of this company, and the circumstances and motives which led to it.

The firm of *Overend, Gurney, & Co.* was, in the year 1856, and had been long previously to that period, widely known as a great bill-broking and money-lending firm, of great wealth and influence, and enjoying the highest reputation in the *City of London.* In 1856 *Samuel Gurney* the elder, to whose skill and judgment the position and celebrity of the firm were principally due, died. In 1857 some reverses occurred, and *David Barclay Chapman,* one of the then partners of the concern, retired from the firm. At this time the business and the partners stood in this position:—The *London* bill-broking house was, and always had been, intimately connected with the *Norwich* banking firm of the same name. The *London* firm consisted of four partners; it took three-fourths of the profits made by the *London* firm, and it paid one-fourth of them to the *Norwich Bank.* The *London* firm took no part of the profits of the *Norwich Bank.* Two persons, and two only—*Samuel Gurney* the younger, and *Henry Edmund Gurney*—were partners in both firms. The remaining partners in the *London* firm were *David Ward Chapman* and *Robert Birkbeck.* The *Norwich* firm consisted of seven partners, namely, *Daniel Gurney, John Henry Gurney, Francis Hay Gurney, Henry Birkbeck* and *William Birkbeck,* added to the two members of the *London* firm already mentioned.

Subsequently to this period, namely, the year 1856, the affairs of the *London* firm appear to have been carried on in a very different manner from what they had been during the time of *Samuel Gurney* the elder. Money was advanced on insufficient security, and to assist in hazardous speculations. In 1861, *John Henry Gurney,* who was one of the partners in the *Norwich* firm, and not otherwise than as such interested in the *London* firm, came to

London and attended especially to the business of the *London* firm, which seems to have been carried on almost exclusively under his direction. The business, however, did not improve; the losses continued, the imprudent speculations did not cease; and the consequence of all this was, that in the early part of the year 1865 it became obvious to the partners that they could not go on as they had done, and that some very considerable change must occur, or that both the firms would be compelled to be wound up. Accordingly, in the month of April or May, 1865, Mr. *John Henry Gurney*, Mr. *H. E. Gurney*, and Mr. *Jones*, the solicitor of the firm, met together, and proposed the formation of a company, and the consequent accession of new funds, for the purpose of reinstating the firms.

At this time it is, in my opinion, judging from the evidence before me, clear, that if the firm had attempted to go on without assistance they must have speedily stopped, and that if they had stopped they would have paid but a very small dividend. I say this, judging from the experience (which is large) which the Court has in such matters, and still more so from the evidence of the results appearing in this cause.

In giving the account of the state of this concern which I do here, I shall not refer in detail to those parts of the evidence which appear to me to establish the facts on which I rely, but I shall merely state the results which appear to me to flow necessarily from the evidence laid before me. The *Norwich* firm, it is true, was not implicated in the speculations assisted and fostered by the *London* firm; but the two firms were intimately connected together, both because the *Norwich Bank* was a sharer in the profits of the *London* firm, and because two of its partners were partners in both firms; and I think it clear that no stoppage of the *London* house could have failed to bring with it the downfall of the *Norwich* house. The state of the concern, as it appears in this cause, was most alarming. As I judge from the evidence, the result was that the liabilities of the *London* firm, totally independent of its ordinary and regular business, which it has been pleased in this case to call its legitimate business, were in round numbers four millions sterling. Its assets to meet these liabilities were one million. The balance of loss would be three millions—the exact figures, I

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think, were £3,117,000—and the estimated produce of the whole of the assets was £1,080,000. The firm might be called upon at any time to meet the liabilities; the assets could not be realized without the lapse of much time and the bestowal of much care, and the only fund to meet the excess was to be found in the private resources of the partners. Nevertheless, the members of the firm did not consider, as they now say and contend, that this was a state of insolvency. They endeavour to make out their case in this manner: of course the private fortunes of the partners were assets to pay the debts of the firm, and these might fairly be estimated at £1,257,000. The amount to be obtained from the *Norwich* firm was set down at £767,000; and the goodwill of the *Norwich* firm was put at £300,000, making together £1,067,000; and with the private estates of the partners this would amount to £2,320,000, in addition to which they added the goodwill of the *London* firm at half a million. But even with every mode of putting down the assets in the most favourable manner to them, I cannot make out that a smaller deficit than £500,000 would have occurred if everything could have been realized at once and as favourably as they expected: for it must be borne in mind that in the case of a stoppage the goodwill of a firm vanishes, and also that the compulsory realization of assets, as we learn by daily experience, takes a heavy percentage away from their value.

In this state of things I have carefully considered the matter, and I have canvassed the evidence and the figures which are not in dispute in every way I can; and regarding it most favourably for the partners, I think it clear that in April and May, 1865, the old firm was hopelessly insolvent, and that this circumstance was known to all the members of both firms. I also am of opinion that the project of forming a joint-stock company to carry on the business of the *London* firm was for the purpose of maintaining, or what is vulgarly called "bolstering up," that firm. Thereupon, with this view, they applied to and obtained the consent of four gentlemen of great means and high reputation in the city of *London* to concur with them in forming the joint-stock company of *Overend, Gurney, & Co.* These gentlemen were the Defendants *Henry Ford Barclay, Harry George Gordon, William Rennie,* and a gentleman, who has died pending this suit, named *Thomas Augustus Gibb,* and

whose executors are now defendants to this bill. Better associates could not possibly have been obtained. They were all gentlemen of great commercial experience and high reputation in the city of *London* for practical, businesslike habits, and were also all wealthy men. To these gentlemen the partners in *Overend, Gurney, & Co.* frankly and openly explained their condition, the state of their firm, and laid open to them all their accounts; and, with this knowledge before them, they all consented to join in forming the new company of *Overend, Gurney, & Co.* They were well aware, as they must have been, that in the state of the commercial world at that time the shares in the new company would be eagerly sought for, and that no difficulty would be found in filling the list of shareholders. Accordingly, on the 12th of July, 1865, they issued a prospectus for the formation of a limited joint-stock company for the purchase of the business of the old firm at the price of £500,000, of which one-half was to be paid in money and the other half in shares, on which £15 per share was to be credited as paid up. The capital of the company was to consist of 100,000 shares of £50 each, on which £15 per share was intended to be called up. With a million and a half sterling to be thus obtained, they did not doubt the power of the company to tide over the then existing difficulties of the old firm, and to lay the foundation of a new and thriving concern, carrying on and confining its business to what was called the legitimate business of the old house of *Overend, Gurney, & Co.* Now, in doing this, I am convinced that they all acted *bonâ fide*, with their eyes open. It was done to protect and preserve that most valuable asset, the reputation and goodwill of the old business, the value of which they estimated, and perhaps justly, at £500,000, but which goodwill would become zero if the old firm were stopped.

Nothing, I think, shews more clearly what was passing in the minds of all the directors than the following passage in the answer of *Henry Ford Barclay*: "From my connection with the families of the *Gurneys* and *Birkbecks*, I knew that the business carried on by them under the style of *Overend, Gurney, & Co.* had for many years been extremely lucrative and profitable, that the said firm were in first-rate credit, and that the various members of the said firm were possessed of great wealth; and until the month of May,

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1865, I had no reason to believe, and did not believe, that the business carried on by the said firm had been otherwise than uniformly profitable. Some time towards the end of that month, my wife's sister, *Elizabeth de Bunsen*, who was then staying at my house, spoke to me concerning the affairs of the said firm. She then informed me that it was considered advisable, owing to heavy losses which had been sustained by the said firm, to take steps for the introduction of fresh capital into the said business. This was the first intimation to me that the said firm had not been always most prosperous and successful. The said *Elizabeth de Bunsen* asked me to see her brother, the Defendant *Henry Edmund Gurney*, and to endeavour to settle with him some plan by which the private funds of some of the members of the family might be applied in the purchase of the business or the reconstruction of the said firm. She also then stated to me that she believed that several members of the family not then actually connected with the said firm would be ready and willing to join in any suitable plan which might be devised, and to contribute funds for the purpose of carrying such plan into effect. Accordingly, I shortly afterwards had an interview with the Defendant *Henry Edmund Gurney*, at the *Fenchurch Street* railway station, when we discussed the matter shortly, and I perfectly recollect that he then incidentally stated to me that the said firm could pay all claims, and were in fact perfectly solvent. A few days afterwards I had another very brief interview with the Defendant *Henry Edmund Gurney*, in *Lombard Street*, when he informed me that there was an amount of £4,000,000 locked up in securities, which were not immediately convertible, and he also stated that there was capital of about £1,000,000 standing to the credit of the partners. I gathered from the conversation of the Defendant *Henry Edmund Gurney* that he considered that if £500,000, or thereabouts, of additional capital could be contributed by various members of the family not connected with the said firm, such a sum would be sufficient for the requirements of the said firm, and that the business and profits of the said firm were large enough to employ such additional capital most profitably. I thought that I and some others connected with the *Gurneys* could contribute from £400,000 to £500,000; but, having regard to the magnitude of the business, and especially to

the amount of the deposits, which I was informed then amounted to no less than £14,000,000, I did not agree with the view expressed by the Defendant *Henry Edmund Gurney* that such a sum would prove sufficient. At the Defendant *Henry Edmund Gurney's* request, on leaving him, I called on and had an interview with the Defendant *William Rennie*, and very shortly discussed the same matter with him. To the best of my recollection he agreed with me, that from the enormous business in which the said firm were engaged, and the immense sums with which they were in the habit of dealing, the whole matter was too large to be undertaken by any private means which we could command."

I select this passage, not that it is evidence against the other Defendants, but because it appears to me to express very clearly what the rest of the evidence establishes to have been present in the minds of all the Defendants, namely, that the leading object of the formation of the new company was to prop up the old firm, and, to use the words I have read, that the matter (that is, the support of the existing concern) was too large to be undertaken by any private means which they (that is, the partners), or their families, could command. It was to supply this deficiency, which the partners and their families could not command money enough to meet, and in the expectation that the million to be obtained from the new joint-stock company would be sufficient to restore and retrieve the firm, that the scheme was entertained and the company established. This fact, the real object of the formation of the company, was wholly concealed from the public; but the fact was perfectly well known to all the persons who joined to form the company, and this is admitted by them all.

Then comes this question: was it honestly concealed from the public? By the word "honestly" I mean this: were the directors, in forming this company, aware that it was essential for the accomplishment of their object, that is, the formation of this joint-stock company, that the state of the old firm should not be divulged? In other words, was it essential that the fact, to put it no higher than Mr. *Henry Ford Barclay* puts it, that if the firm had been then wound up it would have required all the private estates of the partners to enable them to meet their liabilities—was it essential that this circumstance should not be divulged, and did

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they conceal it accordingly? It is necessary, therefore, in the first place, in order to arrive at a correct answer to this question, to examine minutely in what respect this fact was material; and I think that the word "material" here means, whether the publication of this fact would have prevented the formation of the company. Then it must be ascertained whether the directors were cognisant that this would have been the result of publishing this fact. As to the first, I am of opinion that the fact was most material; and the evidence in this case, in my opinion, proves it, if there could, indeed, have been any doubt upon the matter, or the necessity of any evidence to prove it. What first began to shake the stability of the concern? The evidence shows that it was a report, too well founded, that the partners were selling their private estates in order to meet the liabilities of the old firm. But even this is not required. It is only necessary to open our eyes and examine what occurs daily among the merchants and men of business in the city of *London* to see that the slightest inkling of a doubt as to the stability of the old firm would instantly have occasioned a most searching investigation by the most able and competent persons into, and a complete disclosure of the state of the old firm. I do not entertain the slightest doubt that if it had become generally known, when the prospectus was issued, that the liabilities of the old firm exceeded £3,000,000, and that to meet this amount of liabilities the firm had no assets that were not already engaged to meet the current liabilities—that they had in fact nothing with which to meet it but the private fortunes of the old partners and the goodwill of the business—if this had been known, I say, I do not doubt that few, if any, shares would have been taken in the new company; and in so stating the case I am, in my opinion, considerably understating the position in which the business stood, and I am wholly omitting a most material element in all such cases, namely, the impossibility of rapidly realizing securities, and the equal impossibility of preventing creditors from rapidly enforcing their claims. What I have now stated is, in my opinion, shewn by the whole course of those events which have accompanied the formation of this disastrous company. The facts of this case prove how material the formation of the company was for the maintenance of the old firm; for not only could not the old firm have gone on without assistance,

but even the million subscribed by the public was not sufficient to enable them to do so, though confined to the legitimate business, as it is called. The concern was dragged down by the dead weight of the liabilities of the old firm, for which the new company was not liable. I am of opinion, therefore, that this fact, namely, the state of the old firm, was a most material fact.

The second question is this: Did the directors know this? I do not entertain the slightest doubt that they all perfectly well knew it, and knew well, that if the company was to be formed at all this fact must not be told. It is to be remembered that these were all gentlemen well versed in commercial concerns, and perfectly cognisant of all the phases which they take, and upon what slight matters the credit of a business may depend, and how slight a matter will shake it and test its stability to the utmost. I believe that they would not have hesitated in expressing an affirmative opinion as to the materiality of the knowledge of this fact in any similar case in which they were not personally concerned. But then arises the observation so strongly put forward on their behalf—If they thought so, why did they embark in the concern? Why did they advance large sums of money in a concern which, as the event shews, was sure to come to ruin, and to involve them in a great pecuniary loss; and why did they stick to the concern to the last? The answer is, that they were embarking personally in a great speculation which they believed would turn out well, and which, if it did, would produce a large amount of profit to them; that it was a question of probabilities, and that they had calculated the chances with great care, and had convinced themselves that they should win. But, as in many other cases of similar speculation, they miscalculated the chances; they did not take into account the events which might and which did arise. They did not foresee, they did not allow for, the crisis and general panic which were about to arise. They knew, as Mr. *Henry Ford Barclay* says in the passage which I have read, that the firm could not go on with the means of the existing partners; but they honestly, that is they truly and firmly believed, that with one million, or one million and a half, to be levied from the public, they would be able wholly to reinstate the affairs of the concern, and that, when once the difficulty was tided over, the great and

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lucrative business, what is called the legitimate business, of *Overend, Gurney, & Co.*, would produce great profits to all the members of the company.

But then comes this question: Were they justified in inducing the public to join with them in a speculation which they honestly believed would turn out successful, without giving the public all the information they themselves possessed about the matter? This raises the great and important question, which arises in a Court of Equity, but which did not, and could not, arise in a Criminal Court, namely: Does this honest sincere belief in the probable success of a company exonerate the directors who form it from the consequences of the concealment of an important fact on which it is highly probable that the success of the scheme may depend? Does it justify such directors in retaining in their own breasts all knowledge of this fact? It does exonerate them from any liability in a Criminal Court; does it do so in a Court of Equity? I think not. Does the innocent concealment of a most material fact by a man who by so doing has induced another to embark in a concern which is equally injurious to both, and which the other man would not have embarked in if he had known the whole truth, exonerate the man who has concealed it? It is proper, however, that I should guard against a misconstruction, or rather misconception, of my meaning in using the word "innocent." I mean merely that the concealment, however culpable, does not amount to a crime. There is, as I shall presently have occasion to observe, every species of gradation of culpability in these matters. In the case of a concealment of a most material fact, does the belief of the concealer that such concealment will be beneficial to himself and to the man whom he induced thereby to join with him in the speculation, exonerate him from the consequences? I think not.

It is to be observed also, in my judgment, that the fact concealed was of such moment that upon its being known or not depended the whole scheme; that the formation of the company was impossible if it had been known. It appears to me, nor do I entertain any doubt on the matter, that when the directors met together they assumed, as a matter of course, that the then state of the firm was not to be divulged; not that any one proposed its concealment, and that another assented to any such proposition, but that it

was treated by common consent as a matter of course. If it had been suggested it would have been stopped at once, as, if done, fatal to the whole scheme. They considered that the public must judge for themselves in these matters, and that, if not required, it was not for them to volunteer information. They might have said, the formation of such companies is common but such investigation is rarely required, and here certainly it was never even asked for. It is very possible that in ordinary cases this may be true; but in a vast concern, known to be carrying on a large and lucrative business, and where the partners were all men of large property, the insolvency of such a firm, coupled with the doubt whether, even with the assistance of the whole of the private fortunes of all the partners, the liabilities could be met, and the certainty that they could not if rapidly enforced—in such a case the insolvency of the firm about to be converted into a joint stock company ceased to be an ordinary circumstance.

I am of opinion, therefore, that, even if, so far as the extent of the business of the old firm was concerned, such an excuse or defence could be correct, and conceding that, if there had been no exceptional matters in the case of the liabilities and the assets belonging to it, the concealment of the state of the concern would not have been material—even if this be conceded, which concession I should not be disposed to make without qualification—still, in a case where the liabilities exceeded the assets and the securities by three millions, and this deficiency could be met only by the private estates of the partners and the value of the goodwill, that is, the reputation of the old firm, then the fact becomes of far greater importance, and assumes a far graver aspect. When the unexpected calamity happens, a director cannot be allowed to say, "I knew the fact well, but I did not consider it of any moment." The Court must judge for itself whether it was of moment or not, and will impute to each director that knowledge which, if he did not possess, he ought to have possessed, and will visit him with the consequences naturally flowing from it. This, in my opinion, is a familiar doctrine of equity. It would be easy to illustrate it by many instances, but I will only take one. Suppose the assignee for value of a patent were to found a joint stock company for the purpose of working the invention, which was one of great value,

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and that he was aware that the original inventor and patentee contested the validity of the sale to the person from whom the assignee and founder had bought it, or that some stranger was contesting the validity of the patent itself; but that having examined into the matter, the founder of the company had convinced himself that the sale was a good one, and that neither the original patentee nor the stranger would be able to disturb the sale or the patent: in such a case, would the founder of the company be justified in concealing this fact from the persons applying for shares, and could he afterwards keep the allottees to their bargain when it appeared that the patentee was instituting proceedings to set the whole aside; and could he be allowed to say, "I looked into the matter carefully, and satisfied myself that the original patentee or the stranger about to contest the validity must fail"? Still less could he do so after the original patentee or after the stranger had succeeded, and the subject-matter of the patent had become of no value; nor would it be any excuse in a Court of Equity that the person so founding the company honestly believed what he said, and had embarked all his own property in the speculation.

Here I cannot but make one observation on what appears to me the extremely ill-advised prosecution of the directors for a criminal offence—an offence of which I venture to think no rational man could ever have found that they were guilty. No doubt they did not intentionally try to induce persons to put money into a concern which they knew or believed would fail. They firmly believed that it would all turn out well for themselves and for the others; but this is no excuse in equity, which requires, to sustain such transactions, not that there should be merely an absence of any intention or even of any motive to deceive, but that the truth should be told, and that not partially, but that the whole truth should be told. And the man who induces another to enter into a contract without telling him the whole truth relative to the subject-matter of the contract, cannot afterwards compel that person to perform the contract entered into in such ignorance, or escape from the necessity of making good to him the injury he has inflicted upon him. Accordingly I am of opinion that the trial at *Guildhall* before the Lord Chief Justice, admirable as his summing-

up was, and in every way correct as the verdict of the jury was, has nothing whatever to do with this case, and that if it were allowed in any respect to influence my judgment in this case, it would, in my opinion, be tending to sap the foundations of the highest principles on which the doctrine of equity depends, the doctrine of which may be expressed in the words under the sanction of which witnesses give evidence, and which requires the truth, the whole truth, and nothing but the truth to be told.

A more dangerous doctrine could scarcely be laid down than that, unless a fraud is of so deep a dye of moral turpitude that it amounts to a crime and is punishable in a Court of criminal jurisdiction, the Court of Equity has no power to entertain the consideration of it, or to compel the author of it to rectify the calamities he has thereby produced. The distinction between the case of equitable and criminal jurisdiction in matters of fraud is laid down in many cases, but I think it is well put in *Burnes* v. *Pennell* (1). It is the *suppressio veri* or the *suggestio falsi* which is the foundation of the right to relief in equity, and this exists whether it were fraudulently or mistakenly done. It is the superadded guilty intention which gives the criminal jurisdiction, but which does not take away the equitable jurisdiction. A man may not have intended to deceive, and may have believed that he did not, when he was really suppressing the truth or suggesting what was false. If so, he is not liable to an indictment in a criminal Court, but he is equally responsible in equity as if he had, while committing these acts, done so with a view to injure others or to benefit himself.

Burrowes v. *Lock* (2) and many other cases establish that distinction. No doubt the trustees in that case could not have been made guilty in a criminal Court, and had it not been for the ill-considered prosecution in this case I should not have expected to have heard this doctrine questioned.

In stating the proposition, I have said that the absence of any intention and of any motive to deceive would not, in equity, support a contract founded on the suppression of a material fact, or relieve the concealer from the consequences of so doing; but I am by no means of opinion that the present case can be put so high in favour of the Defendants. The real state of the case I believe to be

(1) 2 H. L. C. 497. (2) 10 Ves. 470.

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this: they wished to form this company; they believed sincerely and honestly, after investigation, that it would turn out profitably for themselves and the other shareholders, and, come what might, they intended to stick by the company; but they knew that any disclosure of the circumstances of the old firm would render it impossible to form the company, and accordingly it was a *sine quâ non* that these should not be divulged. I do not think that anything turns on the fact of two deeds instead of one; the material consideration is, that it was necessary that nothing should lead any one to ascertain and publish the condition of the old firm, which, if done, would have rendered the whole scheme impracticable; and this was, in my opinion, not only true, but it was the truth well known to every one of them, and the concealment runs through the whole transaction. It is true that Mr. *H. F. Barclay* says in his answer that he expected "that the company to be formed for this purpose would be honestly and rightly" brought before the public by the promoters, of whom he says he was not one. On considering his answer, however, I am not of that opinion. But it is not material; for most certainly he was one of the first directors, and most constant in his attendance, and it was his duty to see that this honest disclosure had been made, which, in my opinion, it had not. I have no doubt they all thought alike in the matter, but this expectation and intention so spoken of by him did not include the communication of the state of affairs of the old firm. If such a communication had been made there would have been an immediate stoppage of both the old firms, and a meeting of the creditors of both would have been called; but the panacea adopted in ignorance of the truth, that a new joint stock company should be established, would not, as I believe, have been possible. In truth the case stands shortly thus: to disclose the state of the firm was bankruptcy to the partners; to conceal it was the establishment of a new, and probably a thriving, joint stock company. I find myself unable to make any distinction in this matter between Mr. *Henry Ford Barclay* and the rest of the directors. It is clear that they all acted together; that they all approved of the prospectus, if not before it was issued, immediately after it was issued; and Mr. *Henry Ford Barclay*, who had been previously consulted and induced to join, on his return,

found no fault with it, nor proposed any alteration or fresh communication to be made to the public.

The prospectus itself is a model for such a purpose. The first sentence I believe to be strictly true, when the directors said that, in their opinion, it would insure a highly remunerative return to the shareholders; but the shareholders had not the means afforded to them of forming an independent judgment on that subject. The second paragraph it was not in the power of the members of the old firm to perform. The state of the existing liabilities and assets of the old firm made it impossible for their guarantee to be worth anything, and this by reason of the insolvent state of that firm; but no allusion is made to the amount of the claims against the old firm, all of which would have, as I now understand it, to be made at the office of the new company, and to be there paid out of the general assets of both the old firm and the new company, subject to the subsequent apportionment of them between the members of the old firm and the shareholders of the new company. It is not as if the creditors of the old firm, or any selected number of them whose liabilities were not taken up by the new company, would have had to present their claims at a different office, and to be paid in a different place; but, so far as the public were concerned, they seem to be treated as all alike, without any distinction. Accordingly I, after some time, became aware of the utter inutility of what I at first was anxious to obtain, namely, a correct list of all the liabilities repudiated by the new company. I had at one time imagined that a creditor of the old firm, whose liability had not been adopted by the new company, would, on presenting his bill or making his demand, have been informed that he must go elsewhere to be paid, and that the only persons liable to pay him were the members of the old firm, and not the assets of the new company of *Overend, Gurney, & Co.*, who repudiated the transaction. This, of course, as I saw clearly upon a fuller examination of the matter as the case proceeded, was impossible. The new company were obliged to pay all the debts, whether of the old firm or the new company, whether adopted by them or not; and had they not done so, an immediate bankruptcy of the old firm and an overpowering run on the new company would forthwith have taken place. All that the new company of *Overend, Gurney, & Co.* could do was to require

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the members of the old firm to supply them with money to meet these claims. The result was that which might naturally have been expected; they sold their estates to supply the necessary funds, and even by so doing the members of the old firm were not able to supply the new company with money sufficient to meet the demands made upon them, and repay the advances made by the new company for liquidating these claims. In the meantime the sale of the private estates and the realization of the private property of the old partners startled and alarmed the public, the shares began to fall, the claims began to multiply, and the assets failed. The *Bank of England* was applied to for assistance, and very wisely refused to make any advances; and the company stopped payment, and has had to be wound up in chancery.

After the occurrence of these events it seems quite simple that all this should have happened; and it seems quite strange that it should not have been foreseen by the gentlemen who joined or who established the concern as directors; but in truth they were all carried away by their sanguine expectations of the profits to be ultimately realized, and thereby involved themselves, and many others who were ignorant of the previous state of the concern, in great and heavy losses. But this mistake on the part of the directors does not, in my opinion, exonerate them from the consequences of their having failed to divulge the important fact on which the whole scheme turned; and the result is that, in my opinion, if in this case any one of the shareholders in *Overend, Gurney, & Co.* had, shortly after the shares had been allotted to him, discovered, either by inspection of the books or otherwise, the facts appearing in the papers before me, and had stated them in a bill, and had required his shares to be cancelled and his money to be returned, this Court would not have hesitated to give him the relief he asked for, or, if that was impossible, would have made the directors personally liable to make good to him the losses he had sustained.

There is, however, one view of this case, that was presented to me by Mr. *Roxburgh*, to which, though it does not, in my opinion, alter the view I have taken of the case, it is necessary to refer. It is suggested that the public were not asked to become shareholders in a company formed to carry on the business of *Overend*,

Gurney, & Co., which had been bought by the directors, but that they were invited to confide to the directors to make that purchase, and to complete the whole arrangement for that purpose, and that the whole management of it was confided to them, and that the shareholders cannot now complain, the more so as the directors, having been themselves deceived, cannot be supposed to have intended to deceive the public. But in truth, if this were so, it would leave the matter exactly in the same position, because it was equally the duty of the directors to inform the persons whom they asked to authorize them to buy the business at half a million what they had ascertained to be the state of the concern before they reposed that trust in them. But in truth this company does not in the least differ from the multitude of other companies which have been founded on the purchase of private businesses, and which are all subject to the same rules and governed by the same equities. I retain therefore my opinion, that a shareholder who came in sufficient time would have been enabled to get rid of his contract to take shares, or obtain indemnity from the directors.

This, however, does not dispose of the present case. There are two other considerations which must be carefully borne in mind and examined in this case. The plaintiff was not an allottee of these shares. Does the case of deception apply to the case of a transferee, as well as to the case of an allottee? And still more (which applies to both cases in a greater or less degree), does the Plaintiff come in sufficient time and with sufficient diligence to induce this Court to interfere in his favour?

As regards these two latter considerations, the facts appear to me to press strongly against the Plaintiff. In considering them I am, of course, assuming that if the matter had been brought immediately to the cognisance of the Court the allottees could have renounced their shares and could have required to be repaid their advances, or could have obtained indemnity. But a question of considerable importance and of a distinct character arises as regards the transfer of a share, namely, whether the misconduct of the directors is a vice that taints the share itself, into whosesoever hands it passes, or whether the share itself is purified by the conduct of the allottee or any subsequent holder of the share. I will endeavour

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to illustrate my meaning by an example. Directors are guilty of improper concealment and of unfounded representation; an allottee who takes a share discovers their misconduct, and calls on the directors to cancel his share; they consent, but point out to him that the other advantages of the scheme are so great that it will still in all probability succeed—a circumstance which might possibly have occurred in the present case. The allottee, after fully considering the matter, resolves to keep the share, notwithstanding the misconduct of the directors, and afterwards he sells his share to *A.* Can *A.* proceed against the directors, or is his remedy limited to an action against the original allottee? Of course the same point would arise in the case of laches or of undue influence. The decided cases seem to be at first sight not quite in harmony with each other on this point. The cases of *Blain* v. *Agar* (1) and *Duranty's Case* (2) seem to point one way; while *Bedford* v. *Bagshaw* (3) seems to point in a different direction. But I think these cases are reconcileable, and that if the allottee is barred by time or condonation, the transferee is bound also by the same bar. If I intended to proceed entirely upon this ground, it might, I think, require further investigation; but as the matter now stands, and being of opinion that the Plaintiff could do no more than the original allottee could have done, I think the original allottee was cognisant of the whole matter.

But besides this objection to the Plaintiff's demand, I think the delay of the Plaintiff in instituting proceedings in this case is fatal to his success. It is necessary, in considering the question of time, to keep distinct the case where the holder of the share repudiates his contract, and applies to this Court to annul it, and to remove his name from the list of shareholders, and the case where, being unable to obtain this latter relief, he applies to make the directors answerable for having induced him to take the shares. Here, whatever may have been the misconduct of the directors, the repudiation of the shares and the cancellation of the contract is not open to the Plaintiff, nor indeed is it asked for by the Plaintiff's bill; for though the conduct of the directors as regards the suppression of truth and the misstatement of fact must

(1) 1 Sim. 37; 2 Sim. 289. (2) 26 Beav. 268.
(3) 4 H. & N. 538.

be treated alike in both cases, and I have consequently so dealt with it in the observations I have already made, yet the time which has elapsed, and the order for the winding-up of the company, have entirely shut off the Plaintiff from obtaining the former branch of relief; it having been settled in this very case, under the name of *Oakes* v. *Turquand* in the House of Lords, and also in *Kent* v. *Freehold Land and Brickmaking Company* (1), that in order to obtain the first branch of the relief—namely, the cancellation of the shares and the return of the deposit—the repudiation of the shares must be by bill, which must be filed before the winding-up of the company has commenced, as was the case in *Reese River Silver Mining Company* v. *Smith* (2).

The question here is, therefore, reduced to this: whether the personal liability of the directors depends on the same or on similar principles as regards the time when that relief is sought, as it does when the cancellation of the contract is asked; or whether there is any, and if any what, lapse of time which will bar the shareholder from requiring the personal indemnity of the directors who have improperly induced him to take the shares. I intend by no means to lay down a hard and fast line that the liquidation of the company bars all this relief, as it does the cancellation of shares; and it is also true that the usual rule of equity is, that a man is entitled to relief as soon as he discovers the fraud practised on him, and that he is not barred by time previously elapsed; but it is also true that this rule does not apply to a case where a man wilfully shuts his eyes, and refuses to investigate the matter, which, upon principles of ordinary common sense, he is called upon to do. When a man takes shares in a company he ought to ascertain at once whether the representations on the faith of which he took his shares are correct or not. I apply the word "representations" in the largest and most general sense; for where a man conceals an important fact, it is virtually equivalent to a representation that the fact concealed does not exist, and in all such cases the allottee ought, by investigation of the books and inquiries from the directors, to ascertain the real state of the case. If he postpones doing so for an unreasonable time this Court will not relieve him. What is an unreasonable time must depend upon

(1) Law Rep. 3 Ch. 493. (2) Law Rep. 4 H. L. 64.

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circumstances; but unquestionably a most important circumstance is the failure of the company; and if he does not apply for redress before that event it becomes rigidly incumbent on him to shew why he did not come sooner; and though no technical rule, as in the case of the cancellation of shares, applies as regards the liability of directors, yet morally, and so far as equity is concerned, the same principle applies to both cases. I do not mean to say there may not be cases where there have been criminal falsification and concealment in the strictest sense of the word, and devices used to prevent investigation, where the mere failure of the company would not bar the applicant who sought to make the directors liable; but the burden of proof falls on him to shew that it is not the mere failure of the company which has caused this proceeding. In ordinary cases a shareholder must apply at once without watching for the success or failure of the scheme. The Plaintiff in this case did not apply for shares to be allotted to him, but bought shares in the market, in October, 1865, and again at the beginning of January, 1866; but he never made any inquiry into the matter or the condition of the concern until after the failure of the company, which was on the 10th of May, 1866, when the bank stopped. I consider that in this matter Mr. *Peek* cannot, as I have already stated, be put in a more favourable position than if he had been an original allottee. The consequence is, that from July, 1865, when the original prospectus was issued, until May, 1866, no sort of inquiry was made by him, nor was any investigation attempted; nor do I believe that any investigation would have taken place, or any inquiry have been made down to the present time, had it not been for the failure of the company. There is no conduct more rigidly reprobated in equity than the system of playing fast and loose—the intention of adopting a company if successful, and repudiating it if it fail—of calling upon directors for indemnity for the suppression of facts if the plan be disastrous, and of condoning it if the plan prosper. I am of opinion that I should be violating this principle of equity if I were to give relief in this case. I am of opinion that the Plaintiff comes too late for equity to assist him, and that on this ground I must dismiss his bill.

I now turn to the case of Mr. *Gibb's* executors. The observations I have hitherto made apply to all the surviving directors. These

observations show that as regards Mr. *Gibb's* estate, the case, in my opinion, stands exactly in the same position as that of the others. If an allottee had, before the failure of *Overend, Gurney, & Co.*, or of their loss of credit, applied to this Court for relief, either in the way of cancellation of the shares or making the directors liable for their suppression of truth, the estate of Mr. *Gibb* would have been equally liable with the surviving directors, and the decease of one would not exonerate his estate from the liability to repair the wrong he had done. I shall treat his estate, therefore, as I should have treated him if he had been alive, and for the reasons I have stated I shall dismiss the bill as against his executors as well as against all the other defendants. But I shall dismsss the bill without costs, and I do so for this reason, which I wish fully to explain: that, in my opinion, the directors were guilty of gross misconduct in concealing the insolvency of the old firm. Mr. *Roxburgh*, in a very able part of his argument, pointed out many passages in which the words "a dishonest and nefarious purpose," or equivalent expressions, were employed in the bill as applicable to the directors. He observed justly that the Court treated with great severity charges of fraud where they were not proved; and he referred to observations of mine in former cases where I have repudiated any distinction being taken between equitable fraud and moral fraud, and where I have stated that all fraud was dishonest and must be treated as such. He then referred to the trial on the indictment, to shew that they had been acquitted of all criminal fraud, and he thence inferred that they were acquitted of all moral fraud and therefore of all equitable fraud; and that as a necessary consequence the bill must be dismissed with costs. This same line of argument was adopted generally for the defence. I assent in a great measure to the argument, which at the time, and since, I thought very ably put, and which I have endeavoured to state as fairly as I can; but it appears to me to involve this assumption, which I think erroneous, viz., that all frauds are of equal moral intensity. But it is not because all frauds are dishonest, and all frauds are treated as such in a Court of Equity, that therefore there is no distinction between one species of fraud and another. Some are of much deeper dye than others; and it is not until the frauds

M. R. 1871 PEEK v. GURNEY.

assume such deep dye, that they are cognisable by a Court of criminal jurisdiction. It is not that they are not all highly culpable in an extended moral sense, but that they are not all criminal in the sense that, under the statute passed for that purpose, they can be taken notice of in a Court of criminal procedure. The case of *Burrowes* v. *Lock* (1) affords an illustration of what I wish to convey. The trustees there said that there was no prior charge on the fund; there was such a charge, but they had forgotten it; they were compelled in equity to make it good. It is obvious that, if this transaction had occurred yesterday, no criminal indictment could have been maintained against them; they would have been triumphantly acquitted. But were they therefore absolved in equity? Far from it. Whether they had or had not forgotten the matter was a thing between themselves and their own consciences; no one could prove it; but they were bound to know the truth and to tell it, and equity treated them exactly as if they had known it. Suppose it to have been proved in that case that the trustees did remember the prior charge when they denied its existence, but that they did so in the belief that the estate was sufficient to discharge both, and that on a criminal indictment they had been found not guilty, having in fact no object to gain or advantage to obtain: would that fact have paralysed the arm of equity, and would it have exonerated them from the consequence of having innocently said what was false? Certainly not. This is a similar case. Here the directors were not only bound to know the state of the concern, but they did actually know it, and they suppressed the fact. They did so innocently in this sense, that they did not gain, and did not seek to gain, any advantage to themselves by such concealment; but they were nevertheless highly culpable in a moral point of view, although the act was not one cognisable in a Court of criminal procedure, but was one which by the English law (I think properly) is not treated as a crime. But the equitable jurisdiction and the consequences remain untouched, and I should, in my opinion, be acting improperly if I were to give costs to the persons who, in my judgment, have by their misconduct occasioned the calamities caused by the failure of *Overend, Gurney, &*

(1) 10 Ves. 470.

Co., even though the calamity has to some extent fallen upon themselves.

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Bill dismissed without costs.

Solicitors: Mr. *W. A. Downing*; Messrs. *Young, Jones, & Co.*; Messrs. *Bevan & Whitting*; Messrs. *Wilson, Bristowes, & Carpmael*; Messrs. *Young, Maples, Teesdale, & Co.*; Messrs. *Uptons, Johnson, & Co.*; Messrs. *Maynard & Son.*

RICHARDSON *v.* MORTON.

M. R. 1871 Nov. 9, 10.

[1870 R. 178.]

Legacy to Infant—Charge on Real Estate if Personal Estate deficient—Waste by Executor—Time when Deficiency to be ascertained.

Where a legacy to an infant, with interest for maintenance till twenty-one, was charged on testator's real estate, if the personal estate should be inadequate, and the personal estate was sufficient for all the purposes of the will at the time of the testator's death, but was subsequently wasted by the testator's personal representative:—

Held, that the legacy could not, on the infant attaining twenty-one, be made chargeable on the real estate.

JOHN MORTON, by his will, dated the 27th of June, 1855, bequeathed to *Thomas Richardson*, then an infant, the sum of £350, with interest at 4 per cent. till he should attain twenty-one, to be paid to his father in the meantime for his maintenance; and after certain other legacies the testator gave his estate at *Bowstead Hill* to his brother *William Morton*, and *Ann*, his wife, and the survivor of them, for life, charged and chargeable as thereinafter mentioned, and subject thereto he devised the same to his nephew *Thomas Morton* in fee; and he gave to five other nephews and nieces £100 each, to be paid to them, without interest, when *Thomas Morton* should come into possession of his said estates; and he charged the same upon the said estate accordingly, in exoneration of his personal estate, the said legacies to be vested interests in the said legatees from the date of his will. And after making certain specific bequests the testator gave all the rest of his personal estate to his said brother, *W. Morton*, for his own life, but subject to the

Chattel or Article in, upon, under, or with any Cask, Bottle, Stopper, Vessel, Case, Cover, Wrapper, Band, Reel, Ticket, Label, or other Thing to which any Trade Mark shall have been falsely applied, or to which any forged or counterfeit Trade Mark shall have been applied; or shall apply or attach to any Chattel or Article any Case, Cover, Reel, Wrapper, Band, Ticket, Label, or other Thing to which any Trade Mark shall have been falsely applied, or to which any forged or counterfeit Trade Mark shall have been applied; or shall inclose, place, or attach any Chattel or Article in, upon, under, with, or to any Cask, Bottle, Stopper, Vessel, Case, Cover, Reel, Wrapper, Band, Ticket, Label, or other Thing having thereon any Trade Mark of any other Person; every Person aggrieved by any such wrongful Act shall be entitled to maintain an Action or Suit for Damages in respect thereof against the Person who shall be guilty of having done such Act or causing or procuring the same to be done, and for preventing the Repetition or Continuance of the wrongful Act, and the Committal of any similar Act.

Defendant obtaining a Verdict to have full Indemnity for Costs.

23. In every Action which any Person shall under the Provisions of this Act commence as Plaintiff for or on behalf of Her Majesty for recovering any Penalty or Sum of Money, if the Defendant shall obtain Judgment, he shall be entitled to recover his Costs of Suit, which shall include a full Indemnity for all the Costs, Charges, and Expenses by him expended or incurred in, about, or for the Purposes of the Action, unless the Court or a Judge thereof shall direct that Costs of the ordinary Amount only shall be allowed.

A Plaintiff suing for a Penalty may be compelled to give Security for Costs.

24. In any Action which any Person shall, under the Provisions of this Act, commence as Plaintiff for or on behalf of Her Majesty for recovering any Penalty or Sum of Money, if it shall be shown to the Satisfaction of the Court or a Judge thereof that the Person suing as Plaintiff for or on behalf of Her Majesty has no Ground for alleging that he has been aggrieved by the committing of the alleged Offence in respect of which the Penalty or Sum of Money is alleged to have become payable, and also that the Person so suing as Plaintiff is not resident within the Jurisdiction of the Court, or not a Person of sufficient Property to be able to pay any Costs which the Defendant may recover in the Action, the Court or Judge shall or may order that the Plaintiff shall give Security by the Bond or Recognizance of himself and a Surety, or by the Deposit of a Sum of Money, or otherwise, as the Court or Judge shall think fit, for the Payment to the Defendant of any Costs which he may be entitled to recover in the Action.

Act not to affect the Cutlers of Hallamshire, nor to repeal 59 G. 3. c. 7.

25. Nothing in this Act contained shall be construed to affect the Rights and Privileges of the Corporation of Cutlers of the Liberty of *Hallamshire* in the County of *York*, nor shall anything in this Act contained be construed in any way to repeal or make void any of the Provisions contained in the Fifty-ninth *George* Third, Chapter Seven, intituled *An Act to regulate the Cutlery Trade in* England.

Short Title.

26. The Expression "The Merchandise Marks Act, 1862," shall be a sufficient Description of this Act.

CAP. LXXXIX.

An Act for the Incorporation, Regulation, and Winding-up of Trading Companies and other Associations. [7th *August* 1862.]

'WHEREAS it is expedient that the Laws relating to the Incorporation, Regulation, and Winding-up of Trading Companies and other Associations should be consolidated 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, as follows:

Preliminary.

Short Title.

1. This Act may be cited for all Purposes as "The Companies Act, 1862."

Commencement of Act.

2. This Act, with the Exception of such temporary Enactment as is herein-after declared to come into operation immediately, shall not come into operation until the Second Day of *November* One thousand eight hundred and sixty-two, and the Time at which it so comes into operation is herein-after referred to as the Commencement of this Act.

Definition of Insurance Company.

3. For the Purposes of this Act a Company that carries on the Business of Insurance in common with any other Business or Businesses shall be deemed to be an Insurance Company.

Prohibition of Partnerships exceeding certain Number.

4. No Company, Association, or Partnership consisting of more than Ten Persons shall be formed, after the Commencement of this Act, for the Purpose of carrying on the Business of Banking, unless it is registered as a Company under this Act, or is formed in pursuance of some other Act of Parliament, or of Letters Patent; and no Company, Association, or Partnership consisting of more than Twenty Persons shall be formed, after the Commencement of this Act, for the Purpose of carrying on any other Business that has for its Object the Acquisition of Gain by the Company, Association, or Partnership, or by the individual Members thereof, unless it is registered as a Company under this Act, or is formed in pursuance of some other Act of Parliament, or of Letters Patent, or is a Company engaged in working Mines within and subject to the Jurisdiction of the Stannaries.

5. This

No. IX.

An Act to legalize Partnerships with Limited Liability. [8*th July*, 1853.]

LIMITED PARTNERSHIPS.

WHEREAS it is expedient to encourage the formation of Partnerships for the promotion of Agricultural Mining Mercantile Mechanical Manufacturing and other undertakings and that object would be promoted by enabling persons to employ their capital as partners in certain cases without liability to the debts of the partnership beyond the amount contributed by them Be it therefore enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof as follows :— Preamble.

1. After the passing of this Act limited partnerships may be formed for the transaction of Agricultural Mining Mercantile Mechanical Manufacturing or other business by any number of persons upon the terms and subject to the conditions and liabilities hereinafter prescribed Provided that nothing herein shall authorize any such partnership for the purpose either of Banking or Insurance. Limited partnerships may be formed except for Banking and Insurance.

2. Every such partnership may consist of general partners who shall be jointly and severally responsible as general partners are now by law and of persons to be called special partners who shall contribute General and special partners and their liabilities.

to the common stock specific sums in money as capital beyond which they shall not be responsible for any debt of the partnership except in the cases hereinafter provided for.

Certificate to be made by the partners specifying names capital &c.

3. All the persons forming any such partnership shall before commencing business sign a certificate containing the style of the firm under which the partnership is to be conducted the names and places of residence of all the partners distinguishing the general from the special partners the amount of capital which each special partner contributes and also if any the amount contributed by the general partners to the common stock the general nature of the business to be transacted the principal place at which it is to be transacted the time when such partnership is to commence and when it is to terminate.

Style of partnership.

4. Such style or firm shall contain the names of general partners only or the name of one such partner with (in either case) the addition of the words "and another" or "and others" and the general partners only shall transact the business of the partnership and if in the carrying on of such business or in any contract connected therewith the name of any special partner shall be used with his consent or privity or if he shall personally make any contract respecting the concerns of the partnership every such special partner shall be deemed to be a general partner with respect to the contract or matter in which his name has been so used or as to which he shall have so contracted.

Certificate to be acknowledged and recorded.

5. No such partnership shall be deemed formed until such certificate as aforesaid shall have been acknowledged by each partner before some Justice of the Peace and registered in the Office of the Registry of Deeds in Sydney in a book to be kept for that purpose open to public inspection and if any false statement shall be made in any such certificate all the persons interested in the partnership shall be liable for all the engagements thereof as general partners Provided that no clerical error or matter not of substance shall be deemed false within the meaning of this section unless some person may have been prejudiced thereby in which case the special partners shall be liable to the person so prejudiced.

If false all shall be liable as general partners.

Certificate to be published for four weeks.

6. A copy of such certificate shall for four weeks next after such registration be published once at least in the *Government Gazette* and in some newspaper printed nearest to the intended principal place of business of the partnership and in case such publication be not so made the partnership shall be deemed general.

Duration of partnership limited.

7. No partnership under this Act shall be entered into for a longer period than seven years but such partnership may be renewed at the end of that period or at the termination of any shorter period for which a partnership may be formed provided that the partners sign a fresh certificate in the terms of this Act and acknowledge and register the same in the same manner as if the partnership were an original partnership with limited liability.

Provision for renewal of partnership.

8. Upon every renewal or continuation of a limited partnership beyond the time originally agreed upon for its duration a certificate thereof shall be signed acknowledged registered and published in like manner as the original certificate and every partnership which shall be renewed or continued otherwise than in conformity with the provisions of this section shall be deemed general.

Capital stock not to be withdrawn.

9. During the continuance of any partnership under the provisions of this Act no part of the certified capital thereof shall be withdrawn nor shall any division of interest or profit be made so as to reduce such capital below the aggregate amount stated in the certificate and if any part of such capital shall be so withdrawn or any such division be made so that at any time during the continuance or

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at the termination of the partnership the assets shall not be sufficient to pay the partnership debts the special partners shall severally be liable to refund every sum by them respectively received in diminution of such capital or by way of such interest or profit and all such sums may be recovered as money had and received by them respectively to the use of the general partners and may in the case of any judgment having been obtained against the general partners be recovered by the plaintiff against the special partners or either of them by process of execution to be issued under such judgment by leave of the Supreme Court.

Suits to be by and against general partners.

10. All suits respecting the business of any partnership established under this Act shall be prosecuted by and against the general partners only except in the cases in which it is provided by this Act that special partners shall or may be deemed general partners in which cases every special partner who shall have become liable as a general partner may be joined in the suit as a defendant at the discretion of the party suing.

Dissolution how effected.

11. No dissolution of a limited partnership shall take place except by operation of law before the time specified in the certificate unless a notice of such dissolution shall be signed acknowledged registered and published in like manner as the original certificate.

Liabilities not specially provided for.

12. In all cases not hereinbefore otherwise provided for all the members of a limited partnership shall be subject to the liabilities and entitled to the rights of general partners.

Accounting.

13. The general partners shall be liable to account to each other and to the special partners for their management of the concern both in law and equity as other partners now are by law.

Frauds by partners.

14. Every partner who shall be guilty of any fraud in the affairs of the partnership shall be liable civilly to the party injured to the extent of his damage and shall also be liable to an indictment for a misdemeanor punishable by fine or imprisonment or both in the discretion of the Court by which he shall be tried.

Books of account to be kept and to be open to inspection.

15. If the general partners shall not at all times cause regular books of account to be kept or shall not have the same open at all reasonable times to the inspection of the special partners such special partners shall on default herein be entitled to have the partnership dissolved and the accounts thereof taken by the Supreme Court.

As to liability of special partners if proper books be not kept or be incorrectly kept.

16. The special partners shall be bound to see that such books are so kept and if such books shall not be so kept or shall with the knowledge or privity of the special partners or any of them be kept incorrectly or contain any false or deceptive entries whereby the ascertainment of the matters mentioned in the first part of the eighth* section hereof shall or may be affected the certified capital of such special partners or such one or more of them having such knowledge or privity as aforesaid shall as against creditors be deemed to have been withdrawn and they or he shall be liable accordingly under the provisions of the said eighth* section hereof.

*[*Sic—but qu. ninth.*]

15

No. XXI.

An Act to limit the Liability of Mining Partnerships. [9*th May*, 1861.]

LIMITED MINING PARTNERSHIPS.

Preamble.

WHEREAS it is expedient that encouragement should be given for the investment of capital in Mining Adventures and that provision should be made for the limitation of the personal liability of shareholders in Mining Companies Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows:—

Application and interpretation of this Act.

1. This Act shall extend and apply only to Companies formed or to be formed for mining purposes and in the construction and interpretation of this Act the words "mining purposes" shall mean the purpose of obtaining any precious or other metal by any mode or method whatsoever whereby the soil or earth or any rock or stone may be disturbed removed carted carried washed sifted smelted refined crushed or otherwise dealt with for the purpose of obtaining such metal whether such metal shall be the property of such Company or of any other person whatsoever and the word "Company" shall include any partnership or co-adventure.

Liability limited.

2. Any shareholder in any Mining Company registered under the provisions of this Act shall only be liable for any debts liabilities or obligations incurred on behalf of such Company to the amount of the share or shares for which such shareholder has agreed to subscribe or of which he shall have become the holder by any transfer registered in the books of the Company.

Company to sue and be sued by and in name of Manager.

3. Every such Company shall appoint a Manager by and in whose name the Company may sue or be sued plead or be impleaded in all Courts and places whatever and no action or suit at Law or in Equity shall be brought against any member of such Company for the recovery of any debts contracted for or by the Company unless such member shall be the Manager thereof Provided that nothing herein contained shall be deemed to apply to any particular contract which shall have been authorized by the person to be charged therewith.

4.

Contracts made by the Manager to be binding on the Company.

4. All contracts made by the Manager for the time being or by his authority for the purposes of the said Company shall be binding upon the Company and upon the assets thereof as herein provided and such assets may be seized and sold in execution in any action against such Manager for any debt incurred by him on behalf of the said Company.

Proceedings not to abate by death of Manager.

5. The death removal or resignation of such Manager shall not abate any such action or proceeding but the same may be continued and prosecuted in the name of the next succeeding Manager for the time being of the Company And if such Company shall neglect or fail to appoint such succeeding Manager then such action or proceeding may be continued and prosecuted in the name of the Company Provided that no second suit action or proceeding shall be at any time commenced by or against such Company or such succeeding Manager where the merits shall have been tried and decided in the first suit or action.

Companies to be registered.

6. Any Company which may hereafter be formed under the provisions of this Act shall lodge with the Registrar of the District Court nearest to the place of operations or proposed operations a memorial in the form of the Schedule to this Act signed by the Manager of such Company and the said memorial shall be published in the *Government Gazette* and at least twice in one or more of the newspapers published and circulating in the district and copies of such *Gazette* and newspapers shall be forwarded to the said Registrar who shall thereupon proceed to register such Company And a copy of the said memorial shall within thirty days after such advertisement be filed in the Supreme Court Sydney.

Companies in existence may be registered.

7. Any Company formed previous to the passing of this Act may be registered under the provisions of this Act if a majority in number and value of the shareholders in such Company shall express their consent thereto in writing and such consent together with a memorial as hereinbefore provided shall be lodged with the Registrar of District Court nearest as aforesaid and shall be published in the *Government Gazette* and at least four times in one or more of the newspapers published and circulated in the district and copies of such publication shall be forwarded to the said Registrar And such Registrar shall thereupon at a period not less than thirty days after the date of such first-named publication proceed to register such Company Provided always that notwithstanding such registration any person having any claim or demand in respect of any contract matter or thing which shall have been made or happened before such registration shall have the same remedy as if such registration had not taken place.

Proof of registration and of appointment of Manager.

8. A copy of such memorial as hereinbefore mentioned purporting to be certified by the said Registrar of District Court whose handwriting it shall not be necessary to prove and sealed with the seal of such Court shall be *primâ facie* evidence of the due appointment of such Manager and that the Company has been duly registered under the provisions of this Act.

Change of persons not to alter liability.

9. Notwithstanding any change in the persons who may constitute any Company registered under the provisions of this Act the persons who shall subsequently become members of such Company shall be subject to the same liability only as if they had been members of such Company at the time it was registered.

Company to add "Limited."

10. Every Company registered under this Act shall add to the style and title under which the business of such Company is carried on the word "Limited."

Company to have a registered office.

11. Every such Company shall have a registered office to which all communications and notices may be addressed and service of any notice at such office shall be deemed to be service upon the Company and

and any Company which shall carry on business without having such an office shall be liable to a penalty not exceeding five pounds for every day during which business shall be so carried on.

Notice of removal or substitution to be registered.

12. Notice of the removal of any such registered office or of the substitution of any other person as Manager of any Company registered under this Act shall be lodged with the Registrar of District Court wherein such Company was originally registered and such Registrar shall thereupon proceed to record such removal or substitution.

Manager to keep a register of shareholders and shares.

13. The Manager of every Company registered under this Act shall keep or cause to be kept a book or books containing the names in full and residence of the shareholders an account of the number of shares held by each of them the said shareholders and of the amount or amounts paid thereon and every transfer of a share or portion of a share together with the name and residence of the transferee and such book or books shall at all times be open free of charge for the inspection of creditors and shareholders and if any Manager shall neglect to keep such book or books or shall wilfully falsify any of the aforesaid particulars he shall be deemed to be guilty of a misdemeanor.

Unpaid calls to be a debt.

14. The amount of calls which for the time being may be unpaid upon any share shall be deemed to be a debt due from the holder of such share to the Company and payment thereof may be enforced by and in the name of the Manager before any two or more Justices of the Peace.

Accounts to be periodically published.

15. The Manager of every Company registered under this Act shall make and publish in the *Government Gazette* in the months of January and July respectively in each year a full and correct account of the assets and liabilities of such Company and any Manager who shall wilfully falsify such accounts shall be deemed to be guilty of a misdemeanor.

Company may be wound up if unable to pay its debts.

16. Whenever any execution issued on a judgment decree or order in favour of any creditor in any action suit or other legal proceeding instituted by such creditor against any Company registered under this Act is returned unsatisfied either in whole or in part by the person appointed to execute the same or whenever any creditor to whom such Company is indebted in a sum exceeding fifty pounds then due has served on the Company a demand under his hand requiring the Company to pay the sum so due and the Company has for the space of three weeks succeeding the service of such demand neglected to pay such sum or to secure or compound for the same to the satisfaction of the creditor such Company shall be deemed to be unable to pay its debts and any such creditor as aforesaid may make application for winding up the Company to the Judge of District Court of the district wherein such Company is registered.

Application to be by petition.

17. Any application for the winding up of a Company registered under this Act shall be by petition and there shall be filed or lodged at the time when such petition is presented an affidavit verifying the same.

Hearing of petition.

18. Upon the hearing of any petition as aforesaid the said Judge of District Court may dismiss such petition with or without costs to be paid by the petitioner or he may make an order directing the Company by a day to be named in such order to pay or secure payment to the petitioning creditor of all moneys that may be proved to be due to him together with such costs as such Judge may direct or the said Judge may if he so thinks fit on the hearing of such petition make an order or decree for winding up the Company forthwith or such other order as to such Judge shall appear to be just.

Order for winding up Company.

19. If at the expiration of the time named in such order as aforesaid such payment is not made or security given the said Judge

of District Court may thereupon make an order or decree for winding up the Company.

Company may be wound up by consent of majority of shareholders.

20. It shall be lawful for a majority of the shareholders being not less than two-thirds in number and value in any such Company in general meeting assembled and called by fourteen days notice advertised in some newspaper published in the district to pass special resolutions requiring the Company to be wound up under the provisions of this Act and thereupon a petition signed by the shareholders concurring therein and verified as hereinbefore directed may be presented by some person who shall be appointed at such meeting to the Judge of District Court of the district wherein such Company shall be registered and the Judge may if he so thinks fit on the hearing of such petition make an order or decree for winding up the Company forthwith or such other order as to such Judge shall appear to be just.

Judge of District Court to receive proof of debts.

21. The said Judge of District Court shall have power to receive proof of debts and to examine witnesses and shall proceed herein in the same manner or as near as may be as the Chief Commissioner of Insolvent Estates.

Official Agent to be appointed.

22. When the Judge of District Court shall make any order or decree for winding up any such Company he shall appoint a competent person to act as Official Agent therein and such Official Agent shall have power to collect all debts and to sell or dispose of all the assets owing and belonging to such Company and to enforce payment by the shareholders of the amounts if any unpaid upon the shares held by them or any of them.

Distribution of assets.

23. All moneys collected by such Official Agent shall be distributed by him amongst the creditors of the Company in proportion to their several claims and if any balance shall remain after all the creditors shall have been paid in full of their just demands then such balance shall be divided amongst the shareholders of the Company in proportion to their respective shares therein Provided that such Official Agent shall be entitled to retain for his own use and in payment for his services a sum equal to five pounds per centum upon the amount so collected by him.

Shareholders liable to contribute if Company is wound up to the extent of their shares.

24. If any such Company shall be wound up as hereinbefore provided and the assets of such Company shall be insufficient to pay the debts of the Company and the costs charges and expenses of winding up the same every shareholder shall be liable to contribute thereto in proportion to his interest in such Company and such contribution may be enforced by and in the name of the Official Agent before any two or more Justices of the Peace Provided that such contribution shall in no case be in excess of the amount if any unpaid on the shares held by any such shareholder.

Agent to publish schedule.

25. At least one month before making such distribution the Official Agent shall make and publish in the *Government Gazette* and in one or more newspapers published and circulating in the district wherein mining operations have been carried on by such Company a schedule shewing the assets and liabilities of the Company the amount of moneys collected by him and the mode of distribution thereof and any such Official Agent who shall knowingly and wilfully falsify such schedule shall be deemed to be guilty of a misdemeanor and shall be dealt with accordingly.

Company may issue preference shares.

26. It shall be lawful for any Company registered under this Act to issue preference shares within the limits of the Company's nominal capital for the security of and in payment of rent for any machinery or materials or both which shall be furnished by any person whether a member of such Company or otherwise for the use and benefit of such Company and such preference shares shall be a first charge upon the profits and a first claim upon any effects of the Com-

pany

pany and all machinery and materials furnished as aforesaid shall be registered with full particulars by the Registrar of District Court as the property of the person or persons furnishing the same and the preference shares issued in that behalf shall take priority in the order of the date of issue Provided always that no preference shares shall be issued without the consent in writing of a majority in number and value of the shareholders and all such preference shares shall be subject to all debts and liabilities of the Company at the date of the issuing of such preference shares as aforesaid.

Liability of machinery or materials furnished and registered.

27. Any machinery or materials furnished and registered as aforesaid shall not be levied upon for any debt or liability of the Company renting the same but any machinery or materials or both which shall be upon the claim or be used by a Company registered under this Act and not registered as aforesaid may be levied upon and sold as though it were the property of the Company.

Company may mortgage their own plant or machinery.

28. Any Company registered under this Act shall be empowered to mortgage or give lien upon any plant or machinery the property of such Company Provided always that every such mortgage or lien shall be subject to any and every debt and liability which shall have been incurred prior to and remain unpaid at the time of the Company contracting such mortgage or lien but shall take priority of all liens given and debts and liabilities contracted subsequently thereto and provided further that all liens given as aforesaid shall be registered with full particulars by the Registrar of District Court.

SCHEDULE.

I the undersigned [*here insert Manager's name*] hereby make application to register [*here insert the name of the Company*] under the provisions of the "*Mining Partnerships Limited Liability Act* 1861" and I do solemnly and sincerely declare that the following statement is to the best of my belief and knowledge true in every particular namely—

1. The name and style of the Company is
2. The place of operations [*or intended operations as the case may be*] is at
3. The nominal capital of the Company is pounds in shares of each
4. The amount already paid up is
5. The name [*in full*] of the Manager is
6. The office of the Company is at
7. The names [*in full*] and several residences of the shareholders and the number of shares held by each at this date are as follows:—

[*Here insert complete list.*]

(Signed) A. B.
Manager.

Witness to signature—
C. D.

No. XIX.

COMPANIES.

An Act for the Incorporation Regulation and Winding up of Trading Companies and other Associations. [18*th June*, 1874.]

Preamble.

WHEREAS it is expedient to facilitate and make better provision for the incorporation regulation and winding up of trading Companies and other Associations Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows :—

Preliminary.

Short title.

1. This Act may be cited for all purposes as the "Companies Act."

Definition of insurance company.

2. For the purposes of this Act a company that carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance company.

Prohibition of partnerships exceeding certain number.

3. No company association or partnership consisting of more than ten persons shall be formed after the commencement of this Act for the purpose of carrying on the business of Banking unless it is registered as a company under this Act or is formed in pursuance of some other Act of Parliament or of a Royal Charter or Letters Patent and no company association or partnership consisting of more than twenty persons shall be formed after the commencement of this Act for the purpose of carrying on any other business that has for its object the acquisition of gain by the company association or partnership or by the individual members thereof unless it is registered as a company

company under this Act or is formed in pursuance of some other Act of Parliament or of a Royal Charter or Letters Patent or is a company formed for mining purposes under or in pursuance of the Act twenty-fourth Victoria number twenty-one. Exceptions.

4. This Act is divided into seven parts relating to the following subject matters— Division of Act.

The first part—to the constitution and incorporation of companies and associations under this Act

The second part—to the distribution of the capital and liability of members of companies and associations under this Act

The third part—to the management and administration of companies and associations under this Act

The fourth part—to the winding up of companies and associations under this Act

The fifth part—to the registration office

The sixth part—to companies authorized to register under this Act

The seventh part—to application of this Act to unregistered companies.

PART I.

CONSTITUTION AND INCORPORATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Memorandum of Association.

5. Any seven or more persons associated for any lawful purpose may by subscribing their names to a memorandum of association and otherwise complying with the requisitions of this Act in respect of registration form an incorporated company with or without limited liability. Mode of forming company.

6. The liability of the members of a company formed under this Act may according to the memorandum of association be limited either to the amount if any unpaid on the shares respectively held by them or to such amount as the members may respectively undertake by the memorandum of association to contribute to the assets of the company in the event of its being wound up. Mode of limiting liability of members.

7. Where a company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares hereinafter referred to as a company limited by shares the memorandum of association shall contain the following things (that is to say)— Memorandum of association of a company limited by shares.

(1.) The name of the proposed company with the addition of the word "limited" as the last word in such name

(2.) The place in New South Wales in which the registered office of the company is proposed to be situate

(3.) The objects for which the proposed company is to be established

(4.) A declaration that the liability of the members is limited

(5.) The amount of capital with which the company proposes to be registered divided into shares of a certain fixed amount

Subject to the following regulations—

(1.) That no subscriber shall take less than one share

(2.) That each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes.

8.

Memorandum of association of a company limited by guarantee.

8. Where a company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the company in the event of the same being wound up hereinafter referred to as a company limited by guarantee the memorandum of association shall contain the following things (that is to say)—

(1.) The name of the proposed company with the addition of the word "limited" as the last word in such name

(2.) The place in New South Wales in which the registered office of the company is proposed to be situate

(3.) The objects for which the proposed company is to be established

(4.) A declaration that each member undertakes to contribute to the assets of the company in the event of the same being wound up during the time that he is a member or within one year afterwards for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member and of the costs charges and expenses of winding up the company and for the adjustment of the rights of the contributories amongst themselves such amount as may be required not exceeding a specified amount.

Memorandum of association of an unlimited company.

9. Where a company is formed on the principle of having no limit placed on the liability of its members hereinafter referred to as an unlimited company the memorandum of association shall contain the following things (that is to say)—

(1.) The name of the proposed company

(2.) The place in New South Wales in which the registered office of the company is proposed to be situate

(3.) The objects for which the proposed company is to be established.

Signature and effect of memorandum of association.

10. The memorandum of association shall be signed by each subscriber in the presence of and be attested by one witness at the least It shall when registered bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto and as if there were in the memorandum contained on the part of himself his heirs executors and administrators a covenant to observe all the conditions of such memorandum subject to the provisions of this Act.

Power of certain companies to alter memorandum of association.

11. Any company limited by shares may so far modify the conditions contained in its memorandum of association if authorized to do so by its regulations as originally framed or as altered by special resolution in manner hereinafter mentioned as to increase its capital by the issue of new shares of such amount as it thinks expedient or to consolidate and divide its capital into shares of larger amount than its existing shares or to convert its paid-up shares into stock but save as aforesaid and save as is hereinafter provided in the case of a change of name no alteration shall be made by any company in the conditions contained in its memorandum of association.

Power of companies to change name.

12. Any company under this Act with the sanction of a special resolution of the company passed in manner hereinafter mentioned and with the approval of the Governor with the advice of the Executive Council testified in writing under the hand of the Clerk of the Council may change its name and upon such change being made the Registrar shall enter the new name on the register in the place of the former name and shall issue a certificate of incorporation altered to meet the circumstances of the case but no such alteration of name shall affect any rights or obligations of the company or render defective any legal proceedings instituted or to be instituted by or against the company and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

Articles of Association.

13. The memorandum of association may in the case of a company limited by shares and shall in the case of a company limited by guarantee or unlimited be accompanied when registered by articles of association signed by the subscribers to the memorandum of association and prescribing such regulations for the company as the subscribers to the memorandum of association deem expedient The articles shall be expressed in separate paragraphs numbered arithmetically they may adopt all or any of the provisions contained in the table marked A in the first schedule hereto They shall in the case of a company whether limited by guarantee or unlimited that has a capital divided into shares state the amount of capital with which the company proposes to be registered and in the case of a company whether limited by guarantee or unlimited that has not a capital divided into shares state the number of members with which the company proposes to be registered for the purpose of enabling the Registrar to determine the fees payable on registration In a company limited by guarantee or unlimited and having a capital divided into shares each subscriber shall take one share at the least and shall write opposite to his name in the memorandum of association the number of shares he takes. Regulations to be prescribed by articles of association.

14. In the case of a company limited by shares if the memorandum of association is not accompanied by articles of association or in so far as the articles do not exclude or modify the regulations contained in the table marked A in the first schedule hereto the last-mentioned regulations shall so far as the same are applicable be deemed to be the regulations of the company in the same manner and to the same extent as if they had been inserted in articles of association and the articles had been duly registered. Application of table A.

15. The articles of the association shall be printed and shall be signed by each subscriber in the presence of and be attested by one witness at the least When registered they shall bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto and there were in such articles contained a covenant on the part of himself his heirs executors and administrators to conform to all the regulations contained in such articles subject to the provisions of this Act and all moneys payable by any member to the company in pursuance of the conditions and regulations of the company or any of such conditions or regulations shall be deemed to be a specialty debt due from such member to the company. Signature and effect of articles of association.

General Provisions.

16. The memorandum of association and the articles of association if any shall be delivered to the Registrar of Joint Stock Companies hereinafter mentioned and called the Registrar who shall retain and register the same There shall be paid to the Registrar by a company having a capital divided into shares in respect of the several matters mentioned in the table marked B in the first schedule hereto the several fees therein specified or such smaller fees as the Governor with the advice of the Executive Council may from time to time direct and by a company not having a capital divided into shares in respect of the several matters mentioned in the table marked C in the first schedule hereto the several fees therein specified or such smaller fees as the Governor with the advice aforesaid may from time to time direct. Registration of memorandum of association and articles of association. Fees.

17. Upon the registration of the memorandum of association and of the articles of association in cases where articles of association are required by this Act or by the desire of the parties to be registered the Registrar shall certify under his hand that the company is incorporated Effect of registration.

rated and in the case of a limited company that the company is limited The subscribers of the memorandum of association together with such other persons as may from time to time become members of the company shall thereupon be a body corporate by the name contained in the memorandum of association capable forthwith of exercising all the functions of an incorporated company and having perpetual succession and a common seal with power to hold lands and to sue and be sued in all Courts in the Colony but with such liability on the part of the members to contribute to the assets of the company in the event of the same being wound up as is hereinafter mentioned A certificate of the incorporation of any company given by the Registrar shall be conclusive evidence that all the requisitions of this Act in respect of registration have been complied with.

Copies of memorandum and articles to be given to members.

18. A copy of the memorandum of association having annexed thereto the articles of association if any shall be forwarded to every member at his request on payment of the sum of one shilling or such less sum as may be prescribed by the company for each copy and if any company makes default in forwarding a copy of the memorandum of association and articles of association if any to a member in pursuance of this section the company so making default shall for each offence incur a penalty not exceeding one pound.

Prohibition against identity of name in company.

19. No company shall be registered under a name identical with that by which a subsisting company is already registered or so nearly resembling the same as to be calculated to deceive except in a case where such subsisting company is in the course of being dissolved and testifies its consent in such manner as the Registrar requires and if any company through inadvertence or otherwise is without such consent as aforesaid registered by a name identical with that by which a subsisting company is registered or so nearly resembling the same as to be calculated to deceive such first-mentioned company may with the sanction of the Registrar change its name and upon such change being made the Registrar shall enter the new name on the register in the place of the former name and shall issue a certificate of incorporation altered to meet the circumstances of the case but no such alteration of name shall affect any rights or obligations of the company or render defective any legal proceedings instituted or to be instituted by or against the company and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

PART II.

Distribution of Capital and Liability of Members of Companies and Associations under this Act.

Distribution of Capital.

Nature of interest in company.

20. The shares or other interest of any member in a company under this Act shall be personal estate capable of being transferred in manner provided by the regulations of the company and shall not be of the nature of real estate and each share shall in the case of a company having a capital divided into shares be distinguished by its appropriate number.

Definition of "members."

21. The subscribers of the memorandum of association of any company under this Act shall be deemed to have agreed to become members of the company whose memorandum they have subscribed and upon the registration of the company shall be entered as members on the register

register of members hereinafter mentioned and every other person who has agreed to become a member of a company under this Act and whose name is entered on the register of members shall be deemed to be a member of the company.

Transfer by personal representative.

22. Any transfer of the share or other interest of a deceased member of a company under this Act made by his personal representative shall notwithstanding such personal representative may not himself be a member be of the same validity as if he had been a member at the time of the execution of the instrument of transfer.

Register of members.

23. Every company under this Act shall cause to be kept in one or more books a register of its members and there shall be entered therein the following particulars—

(1.) The names and addresses and the occupations if any of the members of the company with the addition in the case of a company having a capital divided into shares of a statement of the shares held by each member distinguishing each share by its number and of the amount paid or agreed to be considered as paid on the shares of each member.

(2.) The date at which the name of any person was entered in the register as a member.

(3.) The date at which any person ceased to be a member.

And any company acting in contravention of this section shall incur a penalty not exceeding five pounds for every day during which its default in complying with the provisions of this section continues and every director or manager of the company who shall knowingly and wilfully authorize or permit such contravention shall incur the like penalty.

Annual list of members.

24. Every company under this Act and having a capital divided into shares shall make once at least in every year a list of all persons who on the fourteenth day succeeding the day on which the ordinary general meeting or if there is more than one ordinary meeting in each year the first of such ordinary general meetings is held are members of the company and such list shall state the names addresses and occupations of all the members therein mentioned and the number of shares held by each of them and shall contain a summary specifying the following particulars—

(1.) The amount of the capital of the company and the number of shares into which it is divided.

(2.) The number of shares taken from the commencement of the company up to the date of the summary.

(3.) The amount of calls made on each share.

(4.) The total amount of calls received.

(5.) The total amount of calls unpaid.

(6.) The total amount of shares forfeited.

(7.) The names addresses and occupations of the persons who have ceased to be members since the last list was made and the number of shares held by each of them.

The above list and summary shall be contained in a separate part of the register and shall be completed within seven days after such fourteenth day as is mentioned in this section and a copy shall forthwith be forwarded to the Registrar of Joint Stock Companies.

Penalty on company not keeping a proper register.

25. If any company under this Act and having a capital divided into shares makes default in complying with the provisions of this Act with respect to forwarding such list of members or summary as is hereinbefore mentioned to the Registrar such company shall incur a penalty not exceeding five pounds for every day during which such default continues and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Company to give notice of consolidation or of conversion of capital into stock.

26. Every company under this Act having a capital divided into shares that has consolidated and divided its capital into shares of larger amount than its existing shares or converted any portion of its capital into stock shall give notice to the Registrar of Joint Stock Companies of such consolidation division or conversion specifying the shares so consolidated divided or converted.

Effect of conversion of shares into stock.

27. Where any company under this Act and having a capital divided into shares has converted any portion of its capital into stock and given notice of such conversion to the Registrar all the provisions of this Act which are applicable to shares only shall cease as to so much of the capital as is converted into stock and the register of members hereby required to be kept by the company and the list of members to be forwarded to the Registrar shall show the amount of stock held by each member in the list instead of the amount of shares and the particulars relating to shares hereinbefore required.

No entry of trusts on register.

28. No notice of any trust expressed implied or constructive shall be entered on the register or be receivable by the Registrar in the case of companies registered under this Act.

Certificate of shares or stock.

29. A certificate under the common seal of the company specifying any share or shares or stock held by any member of a company shall be *primâ facie* evidence of the title of the member to the share or shares or stock therein specified.

Inspection of register.

30. The register of members commencing from the date of the registration of the company shall be kept at the registered office of the company hereinafter mentioned Except when closed as hereinafter mentioned it shall during business hours but subject to such reasonable restrictions as the company in general meeting may impose so that not less than two hours in each day be appointed for inspection be open to the inspection of any member gratis and to the inspection of any other person on the payment of one shilling or such less sum as the company may prescribe for each inspection and every such member or other person may require a copy of such register or of any part thereof or of such list or summary of members as is hereinbefore mentioned on payment of sixpence for every hundred words required to be copied If such inspection or copy is refused the company shall incur for each refusal a penalty not exceeding two pounds and a further penalty not exceeding two pounds for every day during which such refusal continues and every director and manager of the company who shall knowingly authorize or permit such refusal shall incur the like penalty and in addition to the above penalty any Judge of the Supreme Court sitting in Chambers may by order compel an immediate inspection of the register.

Power to close register.

31. Any company under this Act may upon giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situated close the register of members for any time or times not exceeding in the whole thirty days in each year.

Notice of increase of capital and of members to be given to the Registrar.

32. Where a company has a capital divided into shares whether such shares may or may not have been converted into stock notice of any increase in such capital beyond the registered capital and where a company has not a capital divided into shares notice of any increase in the number of members beyond the registered number shall be given to the Registrar in the case of an increase of capital within fifteen days from the date of the passing of the resolution by which such increase has been authorized and in the case of an increase of members within fifteen days from the time at which such increase of members has been resolved on or has taken place and the Registrar shall forthwith record the amount of such increase of capital or members If such notice is not given within the period aforesaid the company in default shall incur a penalty not exceeding five pounds for every day during which

such

such neglect to give notice continues and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Remedy for improper entry or omission of entry in register.

33. If the name of any person is without sufficient cause entered in or omitted from the register of members of any company under this Act or if default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the company the person or member aggrieved or any member of the company or the company itself may by motion in the Supreme Court either in its common law or in its equitable jurisdiction or by application to a Judge thereof sitting in chambers or in such other manner as the Court may direct apply for an order of the Court or Judge that the register may be rectified and the Court or Judge may either refuse such application with or without costs to be paid by the applicant or may if satisfied of the justice of the case make an order for the rectification of the register and may direct the company to pay all the costs of such a motion or application and any damages the party aggrieved may have sustained The Court or Judge may in any proceeding under this section decide on any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the register whether such question arises between two or more members or alleged members or between any members or alleged members and the company and generally the Court or Judge may in any such proceeding decide any question that it may be necessary or expedient to decide for the rectification of the register Provided that the Court or Judge may direct an issue to be tried in the said Court on the trial of which any question of law may be raised for the decision of the Court.

Notice to Registrar of rectification of register.

34. Whenever any order has been made rectifying the register in the case of a company hereby required to send a list of its members to the Registrar the Court or Judge shall direct that due notice of such rectification be given to the Registrar.

Register to be evidence.

35. The register of members shall be *primâ facie* evidence of any matters by this Act directed or authorized to be inserted therein.

Liability of Members.

Liability of present and past members of company.

36. In the event of a company formed under this Act being wound up every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company and the costs charges and expenses of the winding up and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves with the qualifications following (that is to say)—

(1.) No past member shall be liable to contribute to the assets of the company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding up.

(2.) No past member shall be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member.

(3.) No past member shall be liable to contribute to the assets of the company unless it appears to the Court or other authority in by or under which the company is being wound up that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act.

(4.) In the case of a company limited by shares no contribution shall be required from any member exceeding the amount (if any) unpaid on the shares in respect of which he is liable as a present or past member.

(5.)

(5.) In the case of a company limited by guarantee no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association

(6.) Nothing in this Act contained shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members upon any such policy or contract is restricted or whereby the funds of the company are alone made liable in respect of such policy or contract

(7.) No sum due to any member of a company in his character of a member by way of dividends profits or otherwise shall be deemed to be a debt of the company payable to such member in a case of competition between himself and any other creditor not being a member of the company but any such sum may be taken into account for the purposes of the final adjustment of the rights of the contributories amongst themselves.

Companies may have directors with unlimited liability.

37. Where after the commencement of this Act a company is formed as a limited company the liability of the directors or managers of such company or the managing director may if so provided by the memorandum of association be unlimited.

Liability of director past and present where liability is unlimited.

38. The following modifications shall be made in the thirty-sixth section with respect to the contributions to be required in the event of the winding up of a limited company from any director or manager whose liability is unlimited—

(1.) Subject to the provisions hereinafter contained any such director or manager whether past or present shall in addition to his liability (if any) to contribute as an ordinary member be liable to contribute as if he were at the date of the commencement of such winding up a member of an unlimited company

(2.) No contribution required from any past director or manager who has ceased to hold such office for a period of one year or upwards prior to the commencement of the winding up shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company

(3.) No contribution required from any past director or manager in respect of any debt or liability of the company contracted after the time at which he ceased to hold such office shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company

(4.) Subject to the provisions contained in the regulations of the company no contribution required from any director or manager shall exceed the amount (if any) which he is liable to contribute as an ordinary member unless the Court deems it necessary to require such contribution in order to satisfy the debt and liabilities of the company and the costs charges and expenses of the winding up.

Director with unlimited liability may have set-off as under section 160.

39. In the event of the winding up of any limited company the Court if it think fit may make to any director or manager of such company whose liability is unlimited the same allowance by way of set-off as under the one hundred and sixtieth section of this Act it may make to a contributory where the company is not limited.

Notice to be given to director on his election that his liability will be unlimited.

40. In any limited company in which the liability of a director or manager is unlimited the director or manager of the company (if any) and the member who proposes any person for election or appointment to such office shall add to such proposal a statement that the liability of the person holding such office will be unlimited and the promoters

promoters directors managers and secretary (if any) of such company or one of them shall before such person accepts such office or acts therein give him notice in writing that his liability will be unlimited If any director manager or proposer make default in adding such statement or if any promoter director manager or secretary make default in giving such notice he shall be liable to a penalty not exceeding one hundred pounds and shall also be liable for any damage which the person so elected or appointed may sustain from such default but the liability of the person elected or appointed shall not be affected by such default.

Existing limited company may by special resolution make liability of directors unlimited.

41. Any limited company may by a special resolution if authorized so to do by its regulations as originally framed or as altered by special resolution from time to time modify the conditions contained in its memorandum of association so far as to render unlimited the liability of its directors or managers or of the managing director and such special resolution shall be of the same validity as if it had been originally contained in the memorandum of association and a copy thereof shall be embodied in or annexed to every copy of the memorandum of association which is issued after the passing of the resolution and any default in this respect shall be deemed to be a default in complying with the provisions of the eighty-sixth section of this Act and shall be punished accordingly.

Reduction of Capital and Shares.

Power to company to reduce capital.

42. Any company limited by shares may by special resolution so far modify the conditions contained in its memorandum of association if authorized so to do by its regulations as originally framed or as altered by special resolution as to reduce its capital but no such resolution for reducing the capital of any company shall come into operation until an order of the Court is registered by the Registrar of Joint Stock Companies as hereinafter mentioned.

Company to add "and reduced" to its name for a limited period.

43. The company shall after the date of the passing of any special resolution for reducing its capital add to its name until such date as the Court may fix the words "and reduced" as the last words in its name and those words shall until such date be deemed to be part of the name of the company within the meaning of this Act.

Company to apply to the Court for an order confirming reduction.

44. A company which has passed a special resolution for reducing its capital may apply to the Court by petition for an order confirming the reduction and on the hearing of the petition the Court if satisfied that with respect to every creditor of the company who under the provision of this Act is entitled to object to the reduction either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined or has been secured as hereinafter provided may make an order confirming the reduction on such terms and subject to such conditions as it deems fit.

Creditors may object to reduction and list of objecting creditors to be settled by the Court.

45. Where a company proposes to reduce its capital every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which if that date were the commencement of the winding up of the company would be admissible in proof against the company shall be entitled to object to the proposed reduction and to be entered in the list of creditors who are so entitled to object The Court shall settle a list of such creditors and for that purpose shall ascertain as far as possible without requiring an application from any creditor the names of such creditors and the nature and amount of their debts or claims and may publish notices fixing a certain day or days within which creditors of the company who are not entered on the list are to claim to be so entered or to be excluded from the right of objecting to the proposed reduction.

Court may dispense with consent of creditor on security being given for the defendant.

46. Where a creditor whose name is entered on the list of creditors and whose debt or claim is not discharged or determined does not consent to the proposed reduction the Court may (if it think fit) dispense with such consent on the company securing the payment of the debt or claim of such creditor by setting apart and appropriating in such manner as the Court may direct a sum of such amount as hereinafter mentioned that is to say—

(1.) If the full amount of the debt or claim of the creditor is admitted by the company or though not admitted is such as the company are willing to set apart and appropriate then the full amount of the debt or claim shall be set apart and appropriated.

(2.) If the full amount of the debt or claim of the creditor is not admitted by the company and is not such as the company are willing to set apart and appropriate or if the amount is contingent or not ascertained then the Court may if it think fit inquire into and adjudicate upon the validity of such debt or claim and the amount for which the company may be liable in respect thereof in the same manner as if the company were being wound up by the Court and the amount fixed by the Court on such inquiry and adjudication shall be set apart and appropriated.

Order and minute to be registered.

47. The Registrar of Joint Stock Companies upon the production to him of an order of the Court confirming the reduction of the capital of a company and the delivery to him of a copy of the order and of a minute (approved by the Court) showing with respect to the capital of the company as altered by the order the amount of such capital the number of shares in which it is to be divided and the amount of each share shall register the order and minute and on the registration the special registration confirmed by the order so registered shall take effect.

Notice of such registration shall be published in such manner as the Court may direct.

The Registrar shall certify under his hand the registration of the order and minute and his certificate shall be conclusive evidence that all the requisitions of this Act with respect to the reduction of capital have been complied with and that the capital of the company is such as is stated in the minute.

Minute to form part of memorandum of association.

48. The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of association of the company and shall be of the same validity and subject to the same alteration as if it had been originally contained in the memorandum of association and subject as in this Act mentioned no member of the company whether past or present shall be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount which has been paid on such share and the amount of the share as fixed by the minute.

Saving of rights of creditors who are ignorant of proceedings.

49. If any creditor who is entitled in respect of any debt or claim to object to the reduction of the capital of a company under this Act is in consequence of his ignorance of the proceedings taken with a view to such reduction or of their nature and effect with respect to his claim not entered on the list of creditors and after such reduction the company is unable within the meaning of the one hundred and thirty-second section of this Act to pay to the creditor the amount of such debt or claim every person who was a member of the company at the date of the registration of the order and minute relating to the reduction of the capital of the company shall be liable to contribute for the payment of such debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had

had commenced to be wound up on the day prior to such registration and on the company being wound up the Court on the application of such creditor and on proof that he was ignorant of the proceedings taken with a view to the reduction or of their nature and effect with respect to his claim may if it think fit settle a list of such contributories accordingly and make and enforce calls and orders on the contributories settled on such list in the same manner in all respects as if they were ordinary contributories in a winding up but the provisions of this section shall not affect the rights of the contributories of the company among themselves.

Copy of registered minute.

50. A minute when registered shall be embodied in every copy of the memorandum of association issued after its registration and if any company makes default in complying with the provisions of this section it shall incur a penalty not exceeding one hundred pounds for each copy in respect of which such default shall be made and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Penalty on concealment of name of creditor.

51. If any director manager or officer of the company wilfully conceals the name of any creditor of the company who is entitled to object to the proposed reduction or wilfully misrepresents the nature or amount of the debt or claim of any creditor of the company or if any director or manager of the company aids or abets in or is privy to any such concealment or misrepresentation as aforesaid every such director manager or officer shall be guilty of a misdemeanor.

Subdivision of Shares.

Shares may be divided into shares of a smaller amount.

52. Any company limited by shares may by special resolutions so far modify the conditions contained in its memorandum of association if authorized so to do by its resolutions as originally framed or as altered by special resolution as by subdivision of its existing shares or any of them to divide its capital or any part thereof into shares of smaller amount than is fixed by its memorandum of association Provided that in the subdivision of the existing shares the proportion between the amount which is paid and the amount (if any) which is unpaid on each share of reduced amount shall be the same as it was in the case of the existing share or shares from which the share of reduced amount is derived.

Special resolution to be embodied in memorandum of association.

53. The statement of the number and amount of the shares into which the capital of the company is divided contained in every copy of the memorandum of association issued after the passing of any such special resolution shall be in accordance with such resolution and any company which makes default in complying with the provisions of this section shall incur a penalty not exceeding one pound for each copy in respect of which such default is made and every director and manager of the company who knowingly or wilfully authorizes or permits such default shall incur the like penalty.

Associations not for profit.

Special provisions as to associations formed for purposes not of gain.

54. When any association is about to be formed under this Act as a limited company if it proves to the Governor and the Executive Council that it is formed for the purpose of promoting commerce art science religion charity or any other useful object and that it is the intention of such association to apply the profits (if any) or other income of the association in promoting its objects and to prohibit the payment of any dividend to the members of the association the Governor with the advice of the Executive Council may by license under the hand of the Colonial Secretary direct such association to be registered with limited liability without the addition of the word limited to its name and such association may be registered accordingly

and

and upon registration shall enjoy all the privileges and be subject to the obligations by this Act imposed on limited companies with the exceptions that none of the provisions of this Act that require a limited company to use the word limited as any part of its name or to publish its name or to send a list of its members directors or managers to the Registrar shall apply to an association so registered The license of the Governor with the advice aforesaid may be granted upon such conditions and subject to such regulations as the Governor with the advice aforesaid think fit to impose and such conditions and regulations shall be binding on the association and may at the option of the said Board be inserted in the memorandum and articles of association or in both or one of such documents.

Prohibition against such associations holding land.

55. No association formed for the purpose of promoting commerce art science religion charity or any other like object not involving the acquisition of gain by the company or by the individual members thereof shall without the sanction of the Governor with the advice of the Executive Council hold more than two acres of land but the Governor with the advice aforesaid may by license under the hand of the Colonial Secretary empower any such association to hold lands in such quantity and subject to such conditions as he may think fit.

Calls upon Shares.

Company may have some shares fully paid and others not.

56. Nothing shall be deemed to prevent any company if authorized by its regulation as originally granted or as altered by special resolution from doing any one or more of the following things viz. :—

(1.) Making arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid.

(2.) Accepting from any member of the company who assents thereto the whole or a part of the amount remaining unpaid on any share or shares held by him either in discharge of the amount of a call payable in respect of any other share or shares held by him or without any call having been made.

(3.) Paying dividend in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others.

Manner in which shares are to be issued and held.

57. Every share in any company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash unless the same shall have been otherwise determined by contract duly made in writing and filed with the Registrar of Joint Stock Companies at or before the issue of such shares.

Transfer upon Shares.

Transfer may be registered at request of transferor.

58. A company shall on the application of the transferor of any share or interest in the company enter in its register of members the name of the transferee of such share or interest in the same manner and subject to the same conditions as if the application for such entry were made by the transferee.

Share warrants to bearer.

Warrant of limited shares fully paid up may be issued in name of bearer.

59. In the case of a company limited by shares the company if authorized so to do by its regulations as originally framed or as altered by special resolution and subject to the provisions of such regulations may with respect to any share which is fully paid up or with respect to stock issue under their common seal a warrant stating that the bearer of the warrant is entitled to the share or shares or stock therein specified and may provide by coupons or otherwise for the payment of future dividends on the share or shares or stock included in such warrant hereinafter referred to as a share warrant.

Effect of share warrant.

60. A share warrant shall entitle the bearer of such warrant to the shares or stock specified in it and such shares or stock may be transferred by the delivery of the share warrant.

Re-registration of bearer of a share warrant in the register.

61. The bearer of a share warrant shall subject to the regulations of the company be entitled on surrendering such warrant for cancellation to have his named entered as a member in the register of members And the company shall be responsible for any loss incurred by any person by reason of the company entering in its register of members the name of any bearer of a share warrant in respect of the shares or stock specified therein without the share warrant being surrendered and cancelled.

Regulations of the company may make the bearer of a warrant a member.

62. The bearer of a share warrant may if the regulations of a company so provide be deemed to be a member of the company within the meaning of this Act either to the full extent or for such purposes as may be prescribed by the regulations Provided that the bearer of a share warrant shall not be qualified in respect of the shares or stock specified in such warrant for being a director or manager of the company in cases where such a qualification is prescribed by the regulations of the company.

Entries in register where share warrant issued.

63. On the issue of a share warrant in respect of any share or stock the company shall strike out of its register of members the name of the member then entered therein as holding such share or stock as if he had ceased to be a member and shall enter in the register the following particulars—

(1.) The fact of the issue of the warrant.

(2.) A statement of the shares or stock included in the warrant distinguishing each share by its number.

(3.) The date of the issue of the warrant.

And until the warrant is surrendered the above particulars shall be deemed to be the particulars which are required by the twenty-third section of this Act to be entered in the register of members of a company and on the surrender of a warrant the date of such surrender shall be entered as if it were the date at which a person ceased to be a member.

Particulars to be contained in annual summary.

64. After the issue by the company of a share warrant the annual summary required by the twenty-fourth section of this Act shall contain the following particulars—The total amount of shares or stock for which share warrants are outstanding at the date of the summary and the total amount of share warrants which have been issued and surrendered respectively since the last summary was made and the number of shares or amount of stock comprised in each warrant.

Penalties on persons committing forgery.

65. Whosoever forges or alters or offers utters disposes of or puts off knowing the same to be forged or altered any share warrant or coupon or any document purporting to be a share warrant or coupon issued in pursuance of this Act or demands or endeavours to obtain or receive any share or interest of or in any company under this Act or to receive any dividend or money payable in respect thereof by virtue of any such forged or altered share warrant or coupon or document purporting as aforesaid knowing the same to be forged or altered with intent in any of the cases aforesaid to defraud shall be guilty of felony and being convicted thereof shall be liable to be imprisoned for any term not less than two years with or without hard labour.

Penalties on persons falsely personating owners of shares.

66. Whosoever falsely and deceitfully personates any owner of any shares or interest of or in any company or of any share warrant or coupon issued in pursuance of this Act and thereby obtains or endeavours to obtain any such share or interest or share warrant or coupon or receives or endeavours to receive any money due to any such owner as if such offender were the true and lawful owner shall be guilty of

felony

felony and being convicted thereof shall be liable to be imprisoned for any term not less than two years with or without hard labour.

Penalties on persons engraving plates &c.

67. Whosoever without lawful authority or excuse the proof whereof shall be on the party accused engraves or makes upon any plate wood stone or other material any share warrant or coupon purporting to be a share warrant issued or made by any particular company under and in pursuance of this Act or to be a blank share warrant or coupon or uses any such plate wood stone or other material for the making or printing of any such share warrant or coupon or any such blank share warrant or coupon or any part thereof respectively or knowingly has in his custody or possession any such plate wood stone or other materials shall be guilty of felony and upon conviction thereof shall be liable to be imprisoned for any term not less than two years with or without hard labour.

Contracts.

Contracts how made.

68. Contracts on behalf of any company may be made as follows (that is to say)—

(1.) Any contract which if made between private persons would be by law required to be in writing and if made according to English law to be under seal may be made on behalf of the company in writing under the common seal of the company and such contract may be in the same manner varied or discharged.

(2.) Any contract which if made between private persons would be by law required to be in writing and signed by the party to be charged therewith may be made on behalf of the company in writing signed by any person acting under the express or implied authority of the company and such contract may in the same manner be varied or discharged.

(3.) Any contract which if made between private persons would by law be valid by parol only and not reduced into writing may be made by parol on behalf of the company by any person acting under the express or implied authority of the company and such contract may in the same way be varied or discharged.

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.

Prospectus &c. to specify dates and names of parties to any contract made prior to issue of such prospectus &c.

69. Every prospectus of a company and every notice inviting persons to subscribe for shares in any joint stock company shall specify the names and the dates of the parties to any contract entered into by the company or the promoters directors or trustee thereof before the issue of such prospectus or notice whether subject to adoption by the directors of the company or otherwise and any prospectus not specifying the same shall be deemed fraudulent on the part of the promoters directors and officers of the company knowingly issuing the same as regards any person taking shares in the company on the faith of such prospectus unless he shall have had notice of such contract.

Company to hold meeting within four months after registration.

70. Every company formed under this Act shall hold a general meeting within four months after its memorandum of association is registered and if such meeting is not held the company shall be liable to a penalty not exceeding five pounds a day for every day after the expiration of such four months until the meeting is held and every director or manager of the company and every subscriber of the memorandum of association who knowingly authorizes or permits such default shall be liable to the same penalty.

PART III.

MANAGEMENT AND ADMINISTRATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Provisions for Protection of Creditors.

Registered office of company.

71. Every company under this Act shall have a registered office to which all communications and notices may be addressed If any company under this Act carries on business without having such an office it shall incur a penalty not exceeding five pounds for every day during which business is so carried on.

Notice of situation.

72. Notice of the situation of such registered office and of any change therein shall be given to the Registrar and recorded by him and until such notice is given the company shall not be deemed to have complied with the provisions of this Act with respect to having a registered office.

Publication of name by a limited company.

73. Every limited company under this Act whether limited by shares or by a guarantee shall paint or affix and shall keep painted or affixed its name on the outside of every office or place in which the business of the company is carried on in a conspicuous position in letters easily legible and shall have its name engraved in legible characters on its seal and shall have its name mentioned in legible characters in all notices advertisements and other official publications of such company and in all bills of exchange promissory-notes indorsements cheques and orders for money or goods purporting to be signed by or on behalf of such company and in all bills of parcels invoices receipts and letters of credit of the company.

Penalties on non-publication of name.

74. If any limited company under this Act does not paint or affix and keep painted or affixed its name in manner directed by this Act it shall be liable to a penalty not exceeding five pounds for not so painting or affixing its name and for every day during which such name is not kept so painted or affixed and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall be liable to the like penalty And if any director manager or officer of such company or any person on its behalf uses or authorizes the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid or issues or authorizes the issue of any notice advertisement or other official publication of such company or signs or authorizes to be signed on behalf of such company any bill of exchange promissory-note indorsement cheque order for money or goods or issues or authorizes to be issued any bill of parcels invoice receipt or letter of credit of the company wherein its name is mentioned in manner aforesaid he shall be liable to a penalty of fifty pounds and shall further be personally liable to the holder of any such bill of exchange promissory-note cheque or order for money or goods for the amount thereof unless the same is duly paid by the company.

Register of mortgages.

75. Every limited company under this Act shall keep a register of all mortgages and charges specifically affecting property of the company and shall enter in such register in respect of each mortgage or charge a short description of the property mortgaged or charged the amount of charge created and the names of the mortgagees or persons entitled to such charge If any property of the company is mortgaged or charged without such entry as aforesaid being made every director manager or other officer of the company who knowingly and wilfully authorizes or permits the omission of such entry shall incur a penalty not exceeding fifty pounds The register of mortgages required by this section shall be open to inspection by any creditor or member of the

company at all reasonable times and if such inspection is refused any officer of the company refusing the same and every director and manager of the company authorizing or knowingly and wilfully permitting such refusal shall incur a penalty not exceeding five pounds and a further penalty not exceeding two pounds for every day during which such refusal continues and in addition to the above penalty any Judge of the Supreme Court sitting in chambers may by order compel an immediate inspection of the register.

Certain companies to publish statement.

76. Every limited Banking company and every insurance company and deposit provident or benefit society under this Act shall before it commences business and also on the first Monday in February and the first Monday in August in every year during which it carries on business make a statement in the form marked D in the first schedule hereto or as near thereto as circumstances will admit and a copy of such statement shall be put up in a conspicuous place in the registered office of the company and in every branch office or place where the business of the company is carried on and if default is made in compliance with the provisions of this section the company shall be liable to a penalty not exceeding five pounds for every day during which such default continues and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty Every member and every creditor of any company mentioned in this section shall be entitled to a copy of the above-mentioned statement on payment of a sum not exceeding sixpence.

List of directors to be sent to Registrar.

77. Every company under this Act and not having a capital divided into shares shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers and shall send to the Registrar of Joint Stock Companies a copy of such register and shall from time to time notify to the Registrar any change that takes place in such directors or managers.

Penalty on company not keeping register of directors.

78. If any company under this Act and not having a capital divided into shares makes default in keeping a register of its directors or managers or in sending a copy of such register to the Registrar in compliance with the foregoing rules or in notifying to the Registrar any change that takes place in such directors or managers such delinquent company shall incur a penalty not exceeding five pounds for every day during which such default continues and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Promissory-notes and bills of exchange.

79. A promissory-note or bill of exchange shall be deemed to have been made accepted or indorsed by any company under this Act if made accepted or indorsed in the name of the company by any person acting under the authority of the company or if made accepted or indorsed by or on behalf or on account of the company by any person acting under the authority of the company.

Prohibition against carrying on business with less than seven members.

80. If any company under this Act carries on business when the number of its members is less than seven for a period of six months after the number has been so reduced every person who is a member of such company during the time that it so carries on business after such period of six months and is cognizant of the fact that it is so carrying on business with fewer than seven members shall be severally liable for the payment of the whole debts of the company contracted during such time and may be sued for the same without the joinder in the action or suit of any other member.

Provisions for Protection of Members.

General meeting of Company.

81. A general meeting of every company under this Act shall be held once at the least in every year.

82. Subject to the provisions of this Act and to the conditions contained in the memorandum of association any company formed under this Act may in general meeting from time to time by passing a special resolution in manner hereinafter mentioned alter all or any of the regulations of the company contained in the articles of association or in the table marked A in the first Schedule where such table is applicable to the company or make new regulations to the exclusion of or in addition to all or any of the regulations of the company and any regulations so made by special resolution shall be deemed to be regulations of the company of the same validity as if they had been originally contained in the articles of association and shall be subject in like manner to be altered or modified by any subsequent special resolution. Power to alter regulations by special resolution.

83. A resolution passed by a company under this Act shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the company for the time being entitled according to the regulations of the company to vote as may be present in person or by proxy (in cases where by the regulations of the company proxies are allowed) at any general meeting of which notice specifying the intention to propose such resolution has been duly given and such resolution has been confirmed by a majority of such members for the time being entitled according to the regulations of the company to vote as may be present in person or by proxy at a subsequent general meeting of which notice has been duly given and held at an interval of not less than fourteen days nor more than one month from the date of the meeting at which such resolution was first passed At any meeting mentioned in this section unless a poll is demanded by at least five members a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the same Notice of any meeting shall for the purposes of this section be deemed to be duly given and the meeting to be duly held whenever such notice is given and meeting held in manner prescribed by the regulations of the company In computing the majority under this section when a poll is demanded reference shall be had to the number of votes to which each member is entitled by the regulations of the company. Definition of special resolution.

84. In default of any regulations as to voting every member shall have one vote and in default of any regulations as to summoning general meetings a meeting shall be held to be duly summoned of which seven days' notice in writing has been served on every member in manner in which notices are required to be served by the table marked A in the first schedule hereto and in default of any regulations as to the persons to summon meetings five members shall be competent to summon the same and in default of any regulation as to who is to be chairman of such meeting it shall be competent for any person elected by the members present to preside. Provision where no regulation as to meetings.

85. A copy of any special resolution that is passed by any company under this Act shall be printed and forwarded to the Registrar of Joint Stock Companies and be recorded by him If such copy is not so forwarded within fifteen days from the date of the confirmation of the resolution the company shall incur a penalty not exceeding two pounds for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty. Registry of special resolutions.

86. Where articles of association have been registered a copy of every special resolution for the time being in force shall be annexed to or embodied in every copy of the articles of association that may be issued Copies of special resolutions.

issued after the passing of such resolution Where no articles of association have been registered a copy of any special resolution shall be forwarded in print to any member requesting the same on payment of one shilling or such less sum as the company may direct And if any company makes default in complying with the provisions of this section it shall incur a penalty not exceeding one pound for each copy in respect of which such default is made and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Execution of deeds on behalf of companies.

87. Any company under this Act may by instrument in writing under its common seal empower any person either generally or in respect of any specified matters as its attorney to execute deeds on its behalf in any place wheresoever situate and every deed signed by such attorney on behalf of the company and under his seal shall be binding on the company and have the same effect as if it were under the common seal of the company.

Examination of affairs of company by inspectors.

88. The Governor with the advice of the Executive Council may appoint one or more competent inspectors to examine into the affairs of any company under this Act and to report thereon in such manner as the Governor with such advice may direct upon the applications following (that is to say)—

(1.) In the case of a Banking company that has a capital divided into shares upon the application of members holding not less than one-third part of the whole shares of the company for the time being issued.

(2.) In the case of any other company that has a capital divided into shares upon the application of members holding not less than one-fifth part of the whole shares of the company for the time being issued.

(3.) In the case of any company not having a capital divided into shares upon the application of members being in number not less than one-fifth of the whole number of persons for the time being entered on the register of the company as members.

Application for inspection to be supported by evidence.

89. The application shall be supported by such evidence as the Governor with the advice of the Executive Council may require for the purpose of showing that the applicants have good reason for requiring such investigation to be made and that they are not actuated by malicious motives in instituting the same The Governor with such advice may also require the applicants to give security for payment of the cost of the inquiry before appointing any inspector or inspectors.

Inspection of books.

90. It shall be the duty of all officers and agents of the company to produce for the examination of the inspectors all books and documents in their custody or power and any inspector may examine upon oath the officers and agents of the company in relation to its business and may administer such oath accordingly If any officer or agent refuses to produce any book or document hereby directed to be produced or to answer any question relating to the affairs of the company he shall incur a penalty not exceeding five pounds in respect of each offence.

Result of examination how dealt with.

91. Upon the conclusion of the examination the inspectors shall report their opinion to the Governor and Executive Council and such report shall be written or printed as the Governor with the advice of such Council directs A copy shall be forwarded by the Colonial Secretary to the registered office of the company and a further copy shall at the request of the members upon whose application the inspection was made be delivered to them or to any one or more of them All expenses of and incidental to any such examination as aforesaid shall be defrayed by the members upon whose application the inspectors were

were appointed unless the Governor with the advice of the Executive Council shall direct the same to be paid out of the assets of the company which he with such advice is hereby authorized to do.

Power of company to appoint inspectors.

92. Any company under this Act may by special resolution appoint inspectors for the purpose of examining into the affairs of the company and the inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Governor with the advice of the Executive Council with this exception that instead of making their report to the Governor and Executive Council they shall make the same in such manner and to such persons as the company in general meeting directs and the officers and agents of the company shall incur the same penalties in case of any refusal to produce any book or document hereby required to be produced to such inspectors or to answer any question as they would have incurred if such inspector had been appointed by the Governor with the advice aforesaid.

Report of inspectors to be evidence.

93. A copy of the report of any inspectors appointed under this Act authenticated by the seal of the company into whose affairs they have made inspection shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in such report.

Notices.

Service of notices on company.

94. Any summons notice order or other document required to be served upon the company may be served by leaving the same or sending it through the post in a prepaid letter addressed to the company at their registered office.

Rules as to notices by letter.

95. Any document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof and in proving service of such document it shall be sufficient to prove that such document was properly directed and that it was put as a prepaid letter into the post office.

Authentication of notices of company.

96. Any summons notice order or proceeding requiring authentication by the company may be signed by any director secretary or other authorized officer 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.

Legal Proceedings.

Recovery of penalties.

97. All offences under this Act made punishable by any penalty may be prosecuted summarily before two or more Justices of the Peace.

Evidence of proceedings at meetings.

98. Every company under this Act shall cause minutes of all resolutions and proceedings of general meetings of the company and of the directors or managers of the company in cases where there are directors or managers to be duly entered in books to be from time to time provided for the purpose and any such minute as aforesaid if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had or by the chairman of the next succeeding meeting shall be received as evidence in all legal proceedings and until the contrary is proved every general meeting of the company or meeting of directors or managers in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened and all resolutions passed thereat or proceedings had to have been duly passed and had and all appointments

ments of directors managers or liquidators shall be deemed to be valid and all acts done by such directors managers or liquidators shall be valid notwithstanding any defect that may afterwards be discovered in their appointments or qualifications.

Provision as to costs in certain cases.

99. Where a limited company is plaintiff in any action suit or other legal proceeding any Judge having jurisdiction in the matter may if it appears by any credible testimony that there is reason to believe that if the defendant be successful in his defence the assets of the company will be insufficient to pay his costs require sufficient security to be given for such costs and may stay all proceedings until such security is given.

Declaration in action against members.

100. In any action or suit brought by the company against any member to recover any call or other moneys due from such member in his character of member it shall not be necessary to set forth the special matter but it shall be sufficient to allege that the defendant is a member of the company and is indebted to the company in respect of a call made or other moneys due whereby an action or suit hath accrued to the company.

Alteration of Forms.

Alteration of forms.

101. The forms set forth in the second schedule hereto or forms as near thereto as circumstances admit shall be used in all matters to which such forms refer and the Governor with the advice of the Executive Council may from time to time make such alterations in the tables and forms contained in the first schedule hereto so that no such alteration increases the amount of fees payable to the Registrar in the said schedule mentioned and the Governor with such advice may also from time to time make such alterations in the forms in the second schedule or make such additions to the last mentioned forms as he with such advice deems requisite Any such table or form when altered shall be published in the *Government Gazette* and upon such publication being made such table or form shall have the same force as if it were included in the schedule to this Act but no alteration made by the Governor with the advice aforesaid in the table marked A contained in the first schedule shall affect any company registered prior to the date of such alteration or repeal as respects such company any portion of such table.

Arbitrations.

Power for companies to refer matters to arbitration.

102. Any company under this Act may from time to time by writing under its common seal agree to refer and may refer to arbitration as hereinafter provided any existing or future difference question or other matter whatsoever in dispute between itself and any other company or person and the companies parties to the arbitration may delegate to the person or persons to whom the reference is made power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves or by the directors or other managing body of such companies and no party to any such agreement of reference shall have power to revoke the same without the consent in writing of the other party thereto nor shall the death of any party operate as a revocation thereof.

Mode of conducting arbitrations.

103. Whenever any dispute authorized by this Act to be referred to arbitration shall have been in manner hereinbefore provided agreed to be so referred and wherever any dispute directed by this Act to be so referred shall have arisen then except where and so far as the parties

to

to such reference shall otherwise agree or provide such arbitration shall be conducted in the manner and shall have the effect hereinafter provided.

Appointment of arbitrators.

104. 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 shall give notice in writing thereof to the other party and every appointment of an arbitrator shall be made on the part of the company under its common seal or under the hand of the manager or secretary or any two directors of the company or if there be a liquidator or liquidators of the company under the hand of the liquidator if only one or any two or more of the liquidators if more than one 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 after any such appointment shall have been made neither party shall have power to revoke the same without the consent in writing of the other nor shall the death of any party operate as a revocation thereof and if for the space of twenty-one 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 alone to hear and determine the matters referred and his powers and authorities shall be the same and his decision as effectual as if he had been the single arbitrator appointed by both parties.

Appointment of new arbitrators.

105. 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 manner herein provided for the appointment of an original arbitrator 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 alone and his powers shall be as full and his decision as effectual as if he had been the single arbitrator appointed by both parties 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.

Appointment of arbitrators to supply vacancies.

106. When more than one arbitrator shall have been appointed if before the matters referred to them are determined either of such arbitrators die or become incapable or refuse or for fourteen consecutive days neglect to act as arbitrator the party by whom he was appointed shall in manner herein provided for the appointment of an original arbitrator appoint an arbitrator in his place And where the party by which an arbitrator ought to be appointed in the place of the arbitrator so dying or becoming incapable or refusing or neglecting to act fails to make the appointment within fourteen days after being thereunto requested in writing by the other party then on the application of such other party the Registrar may appoint an arbitrator and the arbitrator so appointed by the Registrar shall for the purposes of this Act be deemed to be appointed by the party so failing.

Appointment of arbitrators by Registrar to supply vacancies.

On death &c. of single arbitrator matter to be commenced *de novo*.

107. If where a single arbitrator shall have been appointed such arbitrator shall die or become incapable or refuse or for fourteen consecutive days neglect to act before he shall have made his award the matters referred to him shall be determined by arbitration under this Act in the same manner as if such arbitrator had not been appointed.

Appointment of umpire.

108. 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 impartial and qualified person to be their umpire to decide on any such matters on which they shall differ and if such umpire shall die or become incapable to act or refuse or for fourteen consecutive days neglect to act they shall forthwith after such death refusal neglect or disability appoint another impartial and qualified person to be their umpire in his place.

Appointment of umpire by Registrar.

109. If the arbitrators do not appoint an umpire within seven days after the reference is made to the arbitrators then on the application of either party to the arbitration the Registrar may appoint an umpire and the umpire so appointed shall for the purposes of this Act be deemed to be appointed by the arbitrators.

Appointment of umpire by Registrar to supply vacancy.

110. If the arbitrators fail to appoint a new umpire within seven days after notice in writing to them of the decease incapacity or failure to act of their former umpire then on the application of either party to the arbitration the Registrar may appoint an umpire and the umpire so appointed shall for the purposes of this Act be deemed to be appointed by the arbitrators so failing.

Succeeding arbitrators and umpires to have powers of predecessors.

111. Every arbitrator appointed in the place of a preceding arbitrator and every umpire appointed in the place of a preceding umpire shall respectively have the like powers and authorities as his respective predecessor.

Umpire may decide on arbitrators' default.

112. 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 ready to be delivered to the parties within such time as they agree on or failing such agreement within thirty days next after the matters in difference are referred to such arbitrators 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.

Solemn declaration of arbitrators or umpire.

113. 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 provi-
"sions of 'The Companies Act.'

"A.B.

"Made and subscribed in the
"presence of ."

Production of documents.

114. The said arbitrators or their umpire may call for the production of any documents or evidence 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.

Procedure in the arbitration.

115. The arbitrator and the arbitrators and the umpire respectively may proceed in the business of the reference in such manner as he and they respectively shall think fit.

Arbitration may proceed *ex parte*.

116. The arbitrator and the arbitrators and the umpire respectively may proceed in the absence of one of the parties in every case in which after giving notice in that behalf to the other party the arbitrator or the arbitrators or the umpire shall think fit so to proceed.

Several awards may be made.

117. The arbitrator and the arbitrators and the umpire respectively may if he and they respectively think fit make several awards each on part of the matters referred instead of one award on all the matters referred and every such award on part of the matters shall for such

such time as shall be stated in the award the same being such as shall have been specified in the agreement for arbitration or in the event of no time having been so specified for any time which the arbitrator may be legally entitled to fix be binding as to all the matters to which it extends and as if the matters awarded on were all the matters referred and that notwithstanding the other matters or any of them be not then or thereafter awarded on.

Costs of arbitration and award.

118. The costs of and attending the arbitration and the award shall be in the discretion of the arbitrator and the arbitrators and the umpire respectively.

Payment of costs.

119. If and so far as the award does not otherwise determine the costs of and attending the arbitration and the award shall be borne and paid by the parties in equal shares and in other respects the parties shall bear their own respective costs.

Awards made in due time to bind all parties.

120. Every award of the arbitrator or of the arbitrators or of the umpire if made in writing under his or their respective hand or hands and ready to be delivered to the parties within such time as they agree on or failing such agreement within thirty days next after the matters in difference are referred to the arbitrator or the arbitrators or the umpire (as the case may be) or within such extended time or times (if any) as shall have been appointed for that purpose by the arbitrator or the arbitrators or the umpire respectively by writing under his or their respective hand or hands shall be binding and conclusive on all the parties to the reference.

Awards to be obeyed.

121. Except only so far as the parties bound by any award in accordance with this Act from time to time otherwise agree all things by every award in accordance with this Act lawfully required to be done omitted or suffered shall be done omitted or suffered accordingly.

Agreements arbitrations and awards to have effect.

122. Full effect shall be given by all Courts according to their respective jurisdiction and by the parties respectively and otherwise to all agreements references arbitrations and awards in accordance with this Act and the performance or observance thereof by any company or corporation aggregate party thereto may by the Supreme Court when such Court thinks fit be compelled by distress infinite on the property of such companies or corporations respectively or by any other process against such companies or corporations respectively or their respective property that the Court or any Judge thereof shall direct and when requisite frame for the purpose and by any other party by the mode and process of the Court by which the performance or observance of awards is enforced in ordinary cases of arbitration.

Submission may be made a rule of Court.

123. Every submission to arbitration under the provisions of this Act may be made a rule of the Supreme Court on the application of either of the parties and the Court may remit the whole or any of the matters to the arbitrator or arbitrators or umpire with any directions the Court may think fit.

Not to be set aside for matter of form.

124. No award made with respect to any question or dispute referred to arbitration under the provisions of this Act shall be set aside or be deemed invalid for irregularity or error in matter of form.

Matters not specially provided for to be dealt with under the general law of arbitration.

125. In matters not otherwise provided for by this Act the laws statutes and practice for the time being in force with respect to ordinary cases of arbitration shall so far as the same are applicable and can be applied extend and apply to all arbitrations under the provisions of this Act.

PART IV.

WINDING UP OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Preliminary.

Meaning of "contributory."

126. The term "contributory" shall mean every person liable to contribute to the assets of a company under this Act in the event of the same being wound up It shall also in all proceedings for determining the persons who are to be deemed contributories and in all proceedings prior to the final determination of such proceedings include any person alleged to be a contributory.

Liability of contributory.

127. The liability of any person to contribute to the assets of a company under this Act in the event of the same being wound up shall be deemed to create a debt of the nature of a specialty accruing due from such person at the time when his liability commenced but payable at the time or respective times when calls are made as hereinafter mentioned for enforcing such liability and it shall be lawful in the case of the insolvency of any contributory to prove against his estate the estimated value of his liability to future calls as well as calls already made.

Contributories in case of death.

128. If any contributory dies either before or after he has been placed on the list of contributories hereinafter mentioned his personal representatives heirs and devisees shall be liable in a due course of administration to contribute to the assets of the company in discharge of the liability of such deceased contributory and such personal representatives heirs and devisees shall be deemed to be contributories accordingly.

Contributories in case of insolvency.

129. If any contributory becomes insolvent either before or after he has been placed on the list of contributories his assignees shall be deemed to represent such insolvent for all the purposes of the winding up and shall be deemed to be contributories accordingly and may be called upon to admit to proof against the estate of such insolvent or otherwise to allow to be paid out of his assets in due course of law any moneys due from such insolvent in respect of his liability to contribute to the assets of the company being wound up.

Contributories in case of marriage.

130. If any female contributory marries either before or after she has been placed on the list of contributories her husband shall during the continuance of the marriage be liable to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married and he shall be deemed to be a contributory accordingly.

Winding up by Court.

Under what circumstances companies may be wound up by the Court.

131. A company under this Act may be wound up by the Court as hereinafter defined under the following circumstances (that is to say)—

(1.) Whenever the company has passed a special resolution requiring the company to be wound up by the Court.

(2.) Whenever the company does not commence its business within a year from its incorporation or suspends its business for the space of a whole year.

(3.) Whenever the members are reduced in number to less than seven.

(4.) Whenever the company is unable to pay its debts.

(5.) Whenever the Court is of opinion that it is just and equitable that the company should be wound up.

Company when deemed unable to pay its debts.

132. A company under this Act shall be deemed to be unable to pay its debts—

(1.) Whenever a creditor by assignment or otherwise to whom the company is indebted at law or in equity in a sum exceeding fifty pounds then due has served on the company by leaving

leaving the same at their registered office a demand under his hand requiring the company to pay the sum so due and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum or to secure or compound for the same to the reasonable satisfaction of the creditor.

(2.) Whenever execution or other process issued on a judgment decree or order obtained in any Court in favour of any creditor at law or in equity in any proceeding instituted by such creditor against the company is returned unsatisfied in whole or in part.

(3.) Whenever it is proved to the satisfaction of the Court that the company is unable to pay its debts.

Definition of "the Court."

133. The expression "the Court" as used in this part of this Act shall mean the Supreme Court in its equity jurisdiction held and exercised by and before the Primary Judge in Equity Provided that when in making an order for winding up a company under this Act the said Court directs (as it is hereby authorized to do) all subsequent proceedings for winding up the same to be had and taken before the Chief Commissioner of Insolvent Estates such Chief Commissioner shall for such winding up have all the powers of the Supreme Court in Equity subject however to appeal to the said Court before the said Primary Judge.

Application for winding up to be made by petition.

134. Any application to the Court for the winding up of a company under this Act shall be by petition and such petition may be presented by the company or by any one or more creditor or creditors contributory or contributories of the company or by all or any of the above parties together or separately and every order which may be made on any such petition shall operate in favour of all the creditors and all the contributories of the company in the same manner as if it had been made upon the joint petition of a creditor and a contributory.

Contributory when not qualified to prevent winding up petition.

135. No contributory of a company under this Act shall be capable of presenting a petition for winding up such company unless the members of such company are reduced in numbers to less than seven or unless the shares in which he is a contributory or some of them either were originally allotted to him or have been held by him and registered in his name for a period of at least six months during the eighteen months previously to the commencement of the winding up or have devolved upon him through the death of a former owner Provided that where a share has during the whole or any part of the six months been held by or registered in the name of the wife of a contributory either before or after her marriage or by or in the name of any trustee or trustees for such wife or for the contributory such share shall for the purpose of this section be deemed to have been held by and registered in the name of the contributory.

Power of Equity Judge in chambers.

136. The Primary Judge in Equity of the Supreme Court may do in Chambers any act which the Court is hereby authorized to do.

Commencement of winding up by the Court.

137. A winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.

Court may grant injunction.

138. The Court may at any time after the presentation of a petition for winding up a company under this Act and before making an order for winding up the company upon the application of the company or of any creditor or contributory of the company restrain further proceedings in any action suit or proceeding against the company upon such terms as the Court thinks fit the Court may also at any time after the presentation of such petition and before the first appointment of liquidators appoint provisionally an official liquidator of the estate and effects of the company.

Course to be pursued by Court on hearing petition.

139. Upon hearing the petition the Court may dismiss the same with or without costs or may adjourn the hearing conditionally or unconditionally and may make any interim order or any other order that it deems just.

Actions to be stayed after order for winding up.

140. When an order has been made for winding up a company under this Act no suit action or other proceeding shall be proceeded with or commenced against the company except with the leave of the Court and subject to such terms as the Court may impose.

Copy of order to be forwarded to the Registrar.

141. When an order has been made for winding up a company under this Act a copy of such order shall forthwith be forwarded by the company to the Registrar of joint stock companies who shall make a minute thereof in his books relating to the company.

Power of Court to stay proceedings.

142. The Court may at any time after an order has been made for winding up a company upon the application by motion of any creditor or contributory of the company and upon proof to the satisfaction of the Court that all proceedings in relation to such winding up ought to be stayed make an order staying the same either altogether or for a limited time on such terms and subject to such conditions as it deems fit.

Effect of order on share capital of company limited by guarantee.

143. When an order has been made for winding up a company limited by guarantee and having a capital divided into shares any share capital that may not have been called up shall be deemed to be assets of the company and to be a debt of the nature of a specialty due to the company from each member to the extent of any sums that may be unpaid on any shares held by him and payable at such time as may be appointed by the Court.

Court may have regard to wishes of creditors or contributories.

144. The Court may as to all matters relating to the winding up have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence and may if it thinks it expedient direct meetings of the creditors or contributories to be summoned held and conducted in such manner as the Court directs for the purpose of ascertaining their wishes and may appoint a person to act as chairman of any such meeting and to report the result of such meeting to the Court In the case of creditors regard is to be had to the value of the debts due to each creditor and in the case of contributories to the number of votes conferred on each contributory by the regulations of the company.

Winding up may be referred to District Court.

145. When the Court makes an order for winding up a company it may if it thinks fit direct all subsequent proceedings to be had in a District Court held under the "District Courts Act of 1858" and the Acts amending the same and thereupon such District Court shall for the purpose of winding up the company be deemed to be the Court within the meaning of this Act and shall have for the purpose of such winding up all the jurisdiction and powers of the Court.

As to transfer of suit from one District Court to another.

146. If during the progress of a winding up it is made to appear to the Court that the same could be more conveniently prosecuted in any other District Court it shall be competent for the Court to transfer the same to such other District Court and thereupon the winding up shall proceed in such other District Court.

Parties aggrieved may appeal.

147. If any party in a winding up under this Act is dissatisfied with a determination or direction of a District Court Judge on any matter in such winding up such party may appeal from the same to the Court Provided that such party shall within thirty days after such determination or direction give notice of such appeal to the other party or his attorney and also deposit with the Registrar of the District Court the sum of ten pounds as security for the costs of the appeal and the Court may make such final or other decree or order as it thinks fit and may also make such order with respect to the costs of the said appeal as such Court may think proper and such orders shall be final.

Powers to frame rules and orders under section 102 of the "District Courts Act of 1858."

148. The District Court Judges shall frame the rules and orders for regulating the practice of the District Court under this Act and forms of proceedings therein and from time to time may amend such rules orders and forms and such rules orders and forms or amended rules orders and forms certified under the hands of such Judges or of any three or more of them shall be submitted to the Primary Judge in Equity who may allow or disallow or alter the same and so from time to time and the rules orders and forms or amended rules orders and forms so allowed or altered shall from a day to be named by the Primary Judge in Equity be in force in every District Court.

Scale of costs to be framed by the Judges.

149. The District Court Judges mentioned in the foregoing section shall be empowered to frame a scale of costs and charges to be paid to counsel and attorneys with respect to all proceedings in a winding up under this Act and from time to time to amend such scale and such scale or amended scale certified under the hands of such Judges or any three or more of them shall be submitted to the Primary Judge in Equity who from time to time may allow disallow or alter the same and the scale or amended scale so allowed or altered shall from a day to be named by the Primary Judge in Equity be in force in every District Court.

Remuneration of Registrars and bailiffs of District Courts in winding up of companies.

150. The Registrars of the District Courts shall be remunerated for the duties to be performed by them under this Act by receiving for their own use such fees as may be from time to time authorized to be taken by any orders to be made by the District Court Judges or any three or more of them with the consent of the Primary Judge in Equity and the District Court Judges are hereby authorized and empowered with such consent as aforesaid from time to time to make such order as aforesaid Provided that it shall be lawful for the said District Court Judges with the like consent as aforesaid by an order to direct that after the date named in the order any Registrar or bailiff shall in lieu of receiving such fees be paid such fixed or fluctuating allowance as may in each case be thought just and after such date the said fees shall be accounted for and paid over by such Registrar or bailiff in such manner as may be directed in the order.

Official Liquidators.

Appointment of official liquidator.

151. For the purpose of conducting the proceedings in winding up a company and assisting the Court or other authority in by or under which the company is being wound up therein there may be appointed by the Court by which the order for winding it up is made a person or persons to be called an official liquidator or official liquidators and such Court may appoint such person or persons either provisionally or otherwise as it thinks fit to the office of official liquidator or official liquidators In all cases if more persons than one are appointed to the office of official liquidator such Court shall declare whether any Act hereby required or authorized to be done by the official liquidator is to be done by all or any one or more of such persons such Court may also determine whether any and what security is to be given by any official liquidator on his appointment If no official liquidator is appointed or during any vacancy in such appointment all the property of the company shall be deemed to be in the custody of such Court.

Resignation—removal—compensation.

152. Any official liquidator may resign or be removed by the Court on due cause shown and any vacancy in the office of an official liquidator appointed by the Court shall be filled by the Court There shall be paid to the official liquidator such salary or remuneration by way of per centage or otherwise as the Court may direct and if more liquidators than one are appointed such remuneration shall be distributed amongst them in such proportions as the Court directs.

153.

Style and duties of official liquidator.

153. The official liquidator or liquidators shall be described by the style of the official liquidator or official liquidators of the particular company in respect of which he is or they are appointed and not by his or their individual name or names He or they shall take into his or their custody or under his or their control all the property effects and choses in action to which the company is or appears to be entitled and shall perform such duties in reference to the winding up of the company as may be imposed by the Court.

Powers of official liquidator.

154. The official liquidator shall have power with the sanction of the Court to do the following things—

To bring or defend any action suit or prosecution or other legal proceeding civil or criminal in the name and on behalf of the company.

To carry on the business of the company so far as may be necessary for the beneficial winding up of the same.

To sell the real and personal property effects and choses in action of the company by public auction or private contract with power to transfer the whole thereof to any person or company or to sell the same in parcels.

To do all acts and to execute in the name and on behalf of the company all deeds receipts agreements of reference or submissions to arbitration and other documents and for that purpose to use when necessary the company's seal.

To prove rank claim and draw a dividend in the matter of the insolvency of any contributory for any balance against the estate of such contributory and to take and receive dividends in respect of such balance in the matter of insolvency as a separate debt due from such insolvent and ratably with the other separate creditors.

To draw accept make and indorse any bill of exchange or promissory-note in the name and on behalf of the company also to raise upon the security of the assets of the company from time to time any requisite sum or sums of money and the drawing accepting making or indorsing of every such bill of exchange or promissory note as aforesaid on behalf of the company shall have the same effect with respect to the liability of such company as if such bill or note had been drawn accepted made or indorsed by or on behalf of such company in the course of carrying on the business thereof.

To take out if necessary in his official name letters of administration to any deceased contributory and to do in his official name any other act that may be necessary for obtaining payment of any moneys due from a contributory or from his estate and which act cannot be conveniently done in the name of the company and in all cases where he takes out letters of administration or otherwise uses his official name for obtaining payment of any moneys due from a contributory such moneys shall for the purpose of enabling him to take out such letters or recover such moneys be deemed to be due to the official liquidator himself.

To do and execute all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

Discretion of official liquidator.

155. The Court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the Court and where an official liquidator is provisionally appointed may limit and restrict his powers by the order appointing him.

156. The official liquidator may with the sanction of the Court appoint a solicitor to assist him in the performance of his duties. Solicitor to official liquidator.

Ordinary powers of Court.

157. As soon as may be after making an order for winding up the company the Court shall settle a list of contributories with power to rectify the register of members in all cases where such rectification is required in pursuance of this Act and shall cause the assets of the company to be collected and applied in discharge of its liabilities. Order for collection of assets.

158. In settling the list of contributories the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or being liable to the debts of others it shall not be necessary where the personal representative of any deceased contributory is placed on the list to add the heirs or devisees of such contributory nevertheless such heirs or devisees may be added as and when the Court thinks fit. Provision as to representative contributories.

159. The Court may at any time after making an order for winding up a company require any contributory for the time being settled on the list of contributories or any trustee receiver banker or agent or officer of the company to pay deliver convey surrender or transfer forthwith or within such time as the Court directs to or into the hands of the official liquidator any sum or balance books papers estate or effects which happen to be in his hands for the time-being and to which the company is *primâ facie* entitled. Power of Court to require delivery of property.

160. The Court may at any time after making an order for winding up the company make an order on any contributory for the time being settled on the list of contributories directing payment to be made in manner in the said order mentioned of any moneys due from him or from the estate of the person whom he represents to the company exclusive of any moneys which he or the estate of the person whom he represents may be liable to contribute by virtue of any call made or to be made by the Court in pursuance of this part of this Act and it may in making such order when the company is not limited allow to such contributory by way of set-off any moneys due to him or the estate which he represents from the company on any independent dealing or contract with the company but not any moneys due to him as a member of the company in respect of any dividend or profit Provided that when all the creditors of any company whether limited or unlimited are paid in full any moneys due on any account whatever to any contributory from the company may be allowed to him by way of set-off against any subsequent call or calls. Power of Court to order payment of debts by contributory.

161. The Court may at any time after making an order for winding up a company and either before or after it has ascertained the sufficiency of the assets of the company make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of contributories to the extent of their liability for payment of all or any sums it deems necessary to satisfy the debts and liabilities of the company and the costs charges and expenses of winding it up and for the adjustment of the rights of the contributories amongst themselves and it may in making a call take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same. Power of Court to make calls.

162. The Court may order any contributory purchaser or other person from whom money is due to the company to pay the same into a Bank to be named by the Court to the account of the official liquidator instead of to the official liquidator and such order may be enforced in the same manner as if it had directed payment to the official liquidator. Power of Court to order payment into Bank.

Regulation of account with Court.

163. All moneys bills notes and other securities paid and delivered into such Bank in the event of a company being wound up by the Court shall be subject to such order and regulation for the keeping of the account of such moneys and other effects and for the payment and delivery in or investment and payment and delivery out of the same as the Court may direct.

Provision in case of representative contributory not making payment ordered.

164. If any person made a contributory as personal representative of a deceased contributory makes default in paying any sum ordered to be paid by him proceedings may be taken for administering the personal and real estates of such deceased contributory or either of such estates and of compelling payment thereout of the moneys due.

Order conclusive evidence.

165. Any order made by the Court in pursuance of this Act upon any contributory shall subject to the provisions herein contained for appealing against such order be conclusive evidence that the moneys if any thereby appearing to be due or ordered to be paid are due and all other pertinent matters stated in such order are to be taken to be truly stated as against all persons and in all proceedings whatsoever.

Court may exclude creditors not proving within certain time.

166. The Court may fix a certain day or certain days on or within which creditors of the company are to prove their debts or claims or to be excluded from the benefit of any distribution made before such debts are proved.

Courts to adjust rights of contributories.

167. The Court shall adjust the rights of the contributories amongst themselves and distribute any surplus that may remain amongst the parties entitled thereto.

Court to order costs.

168. The Court may in the event of the assets being insufficient to satisfy the liabilities make an order as to the payment out of the estate of the company of the costs charges and expenses incurred in winding up any company in such order or priority as the Court thinks just.

Dissolution of company.

169. When the affairs of the company have been completely wound up the Court shall make an order that the company be dissolved from the date of such order and the company shall be dissolved accordingly.

Registrar to make minute of dissolution.

170. Any order so made shall be reported by the official liquidator to the Registrar who shall make a minute accordingly in his books of the dissolution of such company.

Penalty on not reporting dissolution.

171. If the official liquidator makes default in reporting to the Registrar in the case of a company being wound up by the Court the order that the company be dissolved he shall be liable to a penalty not exceeding five pounds for every day during which he is so in default.

Petition to be *lis pendens*.

172. Any petition for winding up a company by the Court under this Act shall constitute a *lis pendens*.

Extraordinary powers of Court.

Power of Court to summon persons suspected of having property of the company.

173. The Court may after it has made an order for winding up the company summon before it any officer of the company or person known or suspected to have in his possession any of the estate or effects of the company or supposed to be indebted to the company or any person whom the Court may deem capable of giving information concerning the trade dealings estate or effects of the company and the Court may require any such officer or person to produce any books papers deeds writings or other documents in his custody or power relating to the company and if any person so summoned after being tendered a reasonable sum for his expenses refuses to come before the Court at the time appointed having no lawful impediment (made known to the Court at the time of its sitting and allowed by it) the Court may cause such person to be apprehended and brought before the Court for examination nevertheless in cases where any person claims any lien on papers deeds or writings or documents produced by him such production

production shall be without prejudice to such lien and the Court shall have jurisdiction in the winding up to determine all questions relating to such lien.

Examination before the Court.

174. The Court may examine upon oath either by word of mouth or upon written interrogatories any person appearing or brought before them in manner aforesaid concerning the affairs dealings estate or effects of the company and may reduce into writing the answers of every such person and require him to subscribe the same.

Power to arrest absconding contributory.

175. The Court may at any time before or after it has made an order for winding up a company upon proof being given that there is probable cause for believing that any contributory to such company is about to quit the Colony or otherwise abscond or to remove or conceal any of his goods or chattels for the purpose of evading payment of calls or for avoiding examination in respect of the affairs of the company cause such contributory to be arrested and his books papers moneys securities for moneys goods and chattels to be seized and him and them to be safely kept until such time as the Court may order.

Powers of Court cumulative.

176. Any powers by this Act conferred on the Court shall be deemed to be in addition to and not in restriction of any other powers subsisting either at law or in equity of instituting proceedings against any contributory or the estate of any contributory or against any debtor of the company for the recovery of any call or other sums due from such contributory or debtor or his estate and such proceedings may be instituted accordingly.

Enforcement of and Appeal from Orders.

Power to enforce orders.

177. All orders made by the Court under this Act may be enforced in the same manner in which orders of the Supreme Court made in any suit pending therein in its equity jurisdiction may be enforced.

Appeals from orders.

178. Rehearings of and appeals from any order or decision made or given in the matter of the winding up of a company by the Court constituted or consisting of the said Primary Judge in Equity may be had and when made or had shall be made or had within the same time and in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the said Primary Judge in cases within his ordinary jurisdiction.

Affidavits &c. may be sworn before certain persons.

179. Any affidavit affirmation or declaration required to be sworn or made under the provisions or for the purposes of this part of this Act may be lawfully sworn or made in Great Britain or Ireland or in any colony island plantation or place under the dominion of Her Majesty before any Court Judge or person lawfully authorized to take and receive affidavits affirmations or declarations or before any of Her Majesty's Consuls or Vice-Consuls in any Foreign Parts out of Her Majesty's dominions and all Court Judges Justices Commissioners and persons acting judicially shall take judicial notice of the seal or stamp or signature (as the case may be) of any such Court Judge person Consul or Vice-Consul attached appended or subscribed to any such affidavit affirmation or declaration or to any other document to be used for the purposes of this part of this Act.

Voluntary winding up of Company.

Circumstances under which company may be wound up voluntarily.

180. A company under this Act may be wound up voluntarily—

(1.) Whenever the period if any fixed for the duration of the company by the articles of association expires or whenever the event if any occurs upon the occurrence of which it is provided by the articles of association that the company is to be dissolved and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily.

(2.) Whenever the company has passed a special resolution requiring the company to be wound up voluntarily.

(3.) Whenever the company has passed an extraordinary resolution to the effect that it has been proved to their satisfaction that the company cannot by reason of its liabilities continue its business and that it is advisable to wind up the same.

For the purposes of this Act any resolution shall be deemed to be extraordinary which is passed in such manner as would if it had been confirmed by a subsequent meeting have constituted a special resolution as hereinbefore defined.

Commencement of voluntary winding up

181. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution authorizing such winding up.

Effect of voluntary winding up.

182. Whenever a company is wound up voluntarily the company shall from the date of the commencement of such winding up cease to carry on its business except in so far as may be required for the beneficial winding up thereof and all transfers of shares except transfers made to or with the sanction of the liquidators or alteration in the status of the members of the company taking place after the commencement of such winding up shall be void but its corporate state and all its corporate powers shall notwithstanding it is otherwise provided by its regulations continue until the affairs of the company are wound up.

Notice of resolution to wind up voluntarily.

183. Notice of any special resolution or extraordinary resolution passed for winding up a company voluntarily shall be given by advertisement in the *Government Gazette*.

Consequences of voluntary winding up

184. The following consequences shall ensue upon the voluntary winding up of a company—

(1.) The property of the company shall be applied in satisfaction of its liabilities *pari passu* and subject thereto shall unless it be otherwise provided by the regulations of the company be distributed amongst the members according to their rights and interests in the company.

(2.) Liquidators shall be appointed for the purpose of winding up the affairs of the company and distributing the property.

(3.) The company in general meeting shall appoint such persons or person as it thinks fit to be liquidators or a liquidator and may fix the remuneration to be paid to them or him.

(4.) If one person only is appointed all the provisions herein contained in reference to several liquidators shall apply to him.

(5.) Upon the appointment of liquidators all the powers of the directors shall cease except in so far as the company in general meeting or the liquidators may sanction the continuance of such powers.

(6.) When several liquidators are appointed every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment or in default of such determination by any number not less than two.

(7.) The liquidators may without the sanction of the Court exercise all powers by this Act given to the official liquidator.

(8.) The liquidators may exercise the powers hereinbefore given to the Court of settling the list of contributories of the company and any list so settled shall be *primâ facie* evidence of the liability of the persons named therein to be contributories.

(9.) The liquidators may at any time after the passing of the resolution for winding up the company and before they have ascertained the sufficiency of the assets of the company call

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on all or any of the contributories for the time being settled on the list of contributories to the extent of their liability to pay all or any sums they deem necessary to satisfy the debts and liabilities of the company and the costs charges and expenses of winding it up and for the adjustment of the rights of the contributories amongst themselves and the liquidators may in making a call take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same.

(10.) The liquidators shall pay the debts of the company and adjust the rights of the contributories amongst themselves. Effect of voluntary winding up on share capital of company limited by guarantee.

185. Where a company limited by guarantee and having a capital divided into shares is being wound up voluntarily any share capital that may not have been called up shall be deemed to be assets of the company and to be a specialty debt due from each member to the company to the extent of any sums that may be unpaid on any shares held by him and payable at such time as may be appointed by the liquidators.

186. A company about to be wound up voluntarily or in the course of being wound up voluntarily may by an extraordinary resolution delegate to its creditors or to any committee of its creditors the power of appointing liquidators or any of them and supplying any vacancies in the appointment of liquidators or may by a like resolution enter into any arrangement with respect to the powers to be exercised by the liquidators and the manner in which they are to be exercised and any act done by the creditors in pursuance of such delegated power shall have the same effect as if it had been done by the company. Power of company to delegate appointment of liquidators.

187. Any arrangement entered into between a company about to be wound up voluntarily or in the course of being wound up voluntarily and its creditors shall be binding on the company if sanctioned by an extraordinary resolution and on the creditors if acceded to by three-fourths in number and value of the creditors subject to such right of appeal as is hereinafter mentioned. Arrangement when binding on creditors.

188. Any creditor or contributory of a company that has in manner aforesaid entered into any arrangement with its creditors may within three weeks from the date of the completion of such arrangement appeal to the Court against such arrangement and the Court may thereupon as it thinks just amend vary or confirm the same. Power of creditor or contributory to appeal.

189. Where a company is being wound up voluntarily the liquidators or any contributory of the company may apply to the Court to determine any question arising in the matter of such winding up or to exercise as respects the enforcing of calls or in respect of any other matter all or any of the powers which the Court might exercise if the company were being wound up by the Court and the Court if satisfied that the determination of such question or the required exercise of power will be just and beneficial may accede wholly or partially to such application on such terms and subject to such conditions as the Court thinks fit or it may make such other order or decree on such application as the Court thinks just. Power for liquidators or contributories in voluntary winding up to apply to Court.

190. Where a company is being wound up voluntarily the liquidators may from time to time during the continuance of such winding up summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or extraordinary resolution or for any other purposes they think fit and in the event of the winding up continuing for more than one year the liquidators shall summon a general meeting of the company at the end of the first year and of each succeeding year from the commencement of the winding up or as soon thereafter as may be convenient and shall Power of liquidators to call general meetings.

lay

lay before such meeting an account showing their acts and dealings and the manner in which the winding up has been conducted during the preceding year.

Power to fill up vacancy in liquidators.

191. If any vacancy occurs in the office of liquidators appointed by the company by death resignation or otherwise the company in general meeting may subject to any arrangement they may have entered into with their creditors fill up such vacancy and a general meeting for the purpose of filling up such vacancy may be convened by the continuing liquidator or liquidators (if any) or by any contributory of the company and shall be deemed to have been duly held if held in manner prescribed by the regulations of the company or in such other manner as may on application by the continuing liquidator or liquidators (if any) or by any contributory of the company be determined by the Court.

Power of Court to appoint liquidators.

192. If from any cause whatever there is no liquidator acting in the case of a voluntary winding up the Court may on the application of a contributory appoint a liquidator or liquidators the Court may also on due cause shewn remove any liquidator and appoint another liquidator to act in the matter of a voluntary winding up.

Liquidators on conclusion of winding up to make up an account.

193. As soon as the affairs of the company are fully wound-up the liquidators shall make up an account shewing the manner in which such winding up has been conducted and the property of the company disposed of and thereupon they shall call a general meeting of the company for the purpose of having the account laid before them and hearing any explanation that may be given by the liquidators The meeting shall be called by advertisement specifying the time place and object of such meeting and such advertisement shall be published one month at least previously to the meeting in the *Government Gazette* and in one or more newspapers circulating in the district in which the registered office of the company is situated.

Liquidators to report meeting to the Registrar.

194. The liquidators shall make a return to the Registrar of such meeting having been held and of the date at which the same was held and on the expiration of three months from the date of the registration of such return the company shall be deemed to be dissolved and if the liquidators make default in making such return to the Registrar they shall incur a penalty not exceeding five pounds for every day during which such default continues.

Costs of voluntary liquidation.

195. All costs charges and expenses properly incurred in the voluntary winding up of a company including the remuneration of the liquidators shall be payable out of the assets of the company in priority to all other claims.

Saving rights of creditors.

196. The voluntary winding up of a company shall not be a bar to the right of any creditor of such company to have the same wound up by the Court if the Court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding up.

Power of Court to adopt proceedings of voluntary winding up.

197. Where a company is in course of being wound up voluntarily and proceedings are taken for the purpose of having the same wound up by the Court the Court may if it thinks fit notwithstanding that it makes an order directing the company to be wound up by the Court provide in such order or in any other order for the adoption of all or any of the proceedings taken in the course of the voluntary winding up.

Winding up subject to the supervision of the Court.

Power of Court on application to direct winding up subject to supervision.

198. When a resolution has been passed by a company to wind up voluntarily the Court may make an order directing that the voluntary winding up shall continue but subject to such supervision of the Court and with such liberty for creditors contributories or others to apply to the Court and generally upon such terms and subject to such conditions as the Court thinks just.

199.

Petition for winding up subject to supervision.

199. A petition praying wholly or in part that a voluntary winding up should continue but subject to the supervision of the Court and which winding up is hereinafter referred to as a winding up subject to the supervision of the Court shall for the purpose of giving jurisdiction to the Court over suits and actions be deemed to be a petition for winding up the company by the Court.

Court may have regard to wishes of creditors.

200. The Court may in determining whether a company is to be wound up altogether by the Court or subject to the supervision of the Court in the appointment of a liquidator or liquidators and in all other matters relating to the winding up subject to supervision have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence and may direct meetings of the creditors or contributories to be summoned held and regulated in such manner as the Court directs for the purpose of ascertaining their wishes and may appoint a person to act as chairman of any such meeting and to report the result of such meeting to the Court In the case of creditors regard shall be had to the value of the debts due to each creditor and in the case of contributories to the number of votes conferred on each contributory by the regulations of the company.

Court may appoint official liquidators in winding up subject to supervision.

201. Where any order is made by the Court for a winding up subject to the supervision of the Court the Court may in such order or in any subsequent order appoint any additional liquidator or liquidators and any liquidators so appointed by the Court shall have the same powers be subject to the same obligations and in all respects stand in the same position as if they had been appointed by the company The Court may from time to time remove any liquidators so appointed by the Court and fill up any vacancy occasioned by such removal or by death or resignation.

Effect of order of Court for winding up subject to supervision.

202. Where an order is made for a winding up subject to the supervision of the Court the liquidators appointed to conduct such winding up may subject to any restrictions imposed by the Court exercise all their powers without the sanction or intervention of the Court in the same manner as if the company were being wound up altogether voluntarily but save as aforesaid any order made by the Court for a winding up subject to the supervision of the Court shall for all purposes including the staying of actions suits and other proceedings be deemed to be an order of the Court for winding up the company by the Court and shall confer full authority on the Court to make calls or to enforce calls made by the liquidators and to exercise all other powers which it might have exercised if an order had been made for winding up the company altogether by the Court and in the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidators the expression "official liquidators" shall be deemed to mean the liquidators conducting the winding up subject to the supervision of the Court.

Voluntary liquidators may in certain cases be appointed official liquidators.

203. Where an order has been made for the winding up of a company subject to the supervision of the Court and such order is afterwards superseded by an order directing the company to be wound up compulsorily the Court may in such last mentioned order or in any subsequent order appoint the voluntary liquidators or any of them either provisionally or permanently and either with or without the addition of any other persons to be official liquidators.

Supplemental Provisions.

After commencement of winding up dispositions of property of company void.

204. Where any company is being wound up by the Court or subject to the supervision of the Court all dispositions of the property effects and choses in action of the company and every transfer of shares or alteration in the status of the members of the company made between the commencement of the winding up and the order for winding up shall unless the Court otherwise orders be void.

205.

Books of company to be *primâ facie* evidence.

205. Where any company is being wound up all books accounts and documents of the company and of the liquidators shall as between the contributories of the company be *primâ facie* evidence of the truth of all matters purporting to be therein recorded.

Disposal of books and documents.

206. Where any company has been wound up under this Act and is about to be dissolved the books accounts and documents of the company and of the liquidators may be disposed of in the following way (that is to say) where the company has been wound up by or subject to the supervision of the Court in such way as the Court directs and where the company has been wound up voluntarily in such way as the company by an extraordinary resolution directs but after the lapse of five years from the date of such dissolution no responsibility shall rest on the company or the liquidators or any one to whom the custody of such books accounts and documents has been committed by reason that the same or any of them cannot be made forthcoming to any party or parties claiming to be interested therein.

Inspection of books.

207. Where an order has been made for winding up a company by the Court or subject to the supervision of the Court the Court may make such order for the inspection by the creditors and contributories of the company of its books and papers as the Court thinks just and any books and papers in the possession of the company may be inspected by creditors or contributories in conformity with the order of the Court but not further or otherwise.

Power of assignee of chose in action to sue.

208. Any person to whom any chose in action belonging to the company is assigned in pursuance of this Act may bring or defend any action or suit relating to such chose in action in his own name.

Debts of all descriptions to be proved.

209. In the event of any company being wound up under this Act all debts payable on a contingency and all claims against the company present or future certain or contingent ascertained or sounding only in damages shall be admissible to proof against the company a just estimate being made so far as it is possible of the value of all such debts or claims as may be subject to any contingency or sound only in damages or for some other reason do not bear a certain value.

General scheme of liquidation may be sanctioned.

210. The liquidators may with the sanction of the Court where the company is being wound up by the Court or subject to the supervision of the Court and with the sanction of an extraordinary resolution of the company where the company is being wound up altogether voluntarily pay any classes of creditors in full or make such compromise or other arrangement as the liquidators may deem expedient with creditors or persons claiming to be creditors or persons having or alleging themselves to have any claim present or future certain or contingent ascertained or sounding only in damages against the company or whereby the company may be rendered liable.

Power to compromise.

211. The liquidators may with the sanction of the Court where the company is being wound up by the Court or subject to the supervision of the Court and with the sanction of an extraordinary resolution of the company where the company is being wound up altogether voluntarily compromise all calls and liabilities to calls debts and liabilities capable of resulting in debts and all claims whether present or future certain or contingent ascertained or sounding only in damages subsisting or supposed to subsist between the company and any contributory or alleged contributory or other debtor or person apprehending liability to the company and all questions in any way relating to or affecting the assets of the company or the winding-up of the company upon the receipt of such sums payable at such times and generally upon such terms as may be agreed upon with power for the liquidators to take any security for the discharge of such debts or liabilities and to give complete discharges in respect of all or any such calls debts or liabilities.

Liquidators may accept shares as consideration for sale of property of company.

212. Where any company is proposed to be or is in the course of being wound up altogether voluntarily and the whole or a portion of its business or property is proposed to be transferred or sold to another company the liquidators of the first-mentioned company may with the sanction of a special resolution of the company by whom they were appointed conferring either a general authority on the liquidators or an authority in respect of any particular arrangement receive in compensation or part compensation for such transfer or sale shares policies or other like interests in such other company for the purpose of distribution amongst the members of the company being wound up or may enter into any other arrangement whereby the members of the company being wound-up may in lieu of receiving cash shares policies or other like interests or in addition thereto participate in the profits of or receive any other benefit from the purchasing company and any sale made or arrangement entered into by the liquidators in pursuance of this section shall be binding on the members of the company being wound up subject to this proviso that if any member of the company being wound up who has not voted in favour of the special resolution passed by the company of which he is a member at either of the meetings held for passing the same expresses his dissent from any such special resolution in writing addressed to the liquidators or one of them and left at the registered office of the company not later than seven days after the date of the meeting at which such special resolution was passed such dissentient member may require the liquidators to do one of the following things as the liquidators may prefer (that is to say) either to abstain from carrying such resolution into effect or to purchase the interest held by such dissentient member at a price to be determined in manner hereinafter mentioned such purchase money to be paid before the company is dissolved and to be raised by the liquidators in such manner as may be determined by special resolution No special resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to or concurrently with any resolution for winding-up the company or for appointing liquidators but if an order be made within a year for winding-up the company by or subject to the supervision of the Court such resolution shall not be of any validity unless it is sanctioned by the Court.

Mode of determining price.

213. The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement but if the parties dispute about the same such dispute shall be settled by arbitration under and in accordance with the provisions herein contained in relation to arbitration.

Certain attachments sequestrations and executions to be void.

214. Where any company is being wound up by the Court or subject to the supervision of the Court any attachment sequestration distress or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.

Voidable preferences.

215. Any such conveyance mortgage delivery of goods payment execution or other act relating to property as would if made or done by or against any individual be deemed in the event of his insolvency to be void or voidable shall if made or done by or against any company be deemed in the event of such company being wound up under this Act to be void or voidable in like manner and for the purposes of this section the presentation of a petition for winding up a company shall in the case of a company being wound up by the Court or subject to the supervision of the Court and a resolution for winding up the company shall in the case of a voluntary winding up be deemed to correspond with the sequestration of the estate of an individual and any conveyance or assignment made by any company formed under this Act of all its estate and effects to trustees for the benefit of all its creditors shall be void to all intents.

Power of Court to assess damages against delinquent officers.

216. Where in the course of the winding up of any company under this Act it appears that any past or present director manager official or other liquidator or any officer of such company has misapplied or retained in his own hands or become liable or accountable for any moneys of the company or been guilty of any misfeasance or breach of trust in relation to the company the Court may on the application of any liquidator or of any creditor or contributory of the company notwithstanding that the offence is one for which the offender is criminally responsible examine into the conduct of such director manager or other officer and compel him to repay any moneys so misapplied or retained or for which he has become liable or accountable together with interest after such rate as the Court thinks just or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication retainer misfeasance or breach of trust as the Court thinks just.

Penalty on falsification of books.

217. If any director officer or contributory of any company wound up under this Act destroys mutilates alters or falsifies any books papers writings or securities or makes or is privy to the making of any false or fraudulent entry in any register-book of account or any other document belonging to the company with intent to defraud or deceive any person every person so offending shall be deemed to be guilty of a misdemeanour and upon being convicted shall be liable to imprisonment for any term not exceeding two years with or without hard labour.

Prosecution of delinquent directors or officers on winding up by Court.

218. Where any order is made for winding up a company by the Court or subject to the supervision of the Court if it appear in the course of such winding up that any past or present director manager officer or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible the Court may on the application of any person interested in such winding up or of its own motion direct the official liquidators or the liquidators (as the case may be) to institute a prosecution or prosecutions for such offence and may order the costs and expenses to be paid out of the assets of the company.

Prosecution on voluntary winding up.

219. Where a company is being wound up altogether voluntarily if it appear to the liquidators conducting such winding up that any past or present director manager officer or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible it shall be lawful for the liquidators with the previous sanction of the Court to prosecute such offender and all expenses properly incurred by them in such prosecution shall be payable out of the assets of the company in priority to all other liabilities.

Penalty of perjury.

220. If any person upon any examination upon oath or affirmation authorized under this Act or in any affidavit deposition or solemn affirmation in or about the winding up of any company under this Act or otherwise in or about any matter arising under this Act wilfully and corruptly gives false evidence he shall upon conviction be liable to the penalties of wilful perjury.

Power of Court to make Rules.

Supreme Court may make rules.

221. The Judges of the Supreme Court may as often as circumstances require make such rules concerning the mode of proceeding to be had for winding up a company in the Court as may from time to time seem necessary but until such rules are made the general practice of the Supreme Court in its Equity Jurisdiction shall so far as the same is applicable and not inconsistent with this Act apply to all proceedings for winding up a company.

PART V.

CONSTITUTION OF REGISTRATION OFFICE.

Constitution of registration office.

222. The registration of companies under this Act shall be conducted as follows (that is to say)—

(1.) The Governor may with the advice of the Executive Council from time to time appoint such Registrars Assistant Registrars clerks and servants as he with such advice may think necessary for the registration of companies under this Act and remove them at pleasure.

(2.) The Governor may with the advice of the Executive Council make regulations with respect to the duties to be performed by any such Registrars Assistant Registrars clerks and servants as aforesaid and may determine the place or places at which offices for the registration of companies are to be established.

(3.) It shall be lawful for the Governor with the advice aforesaid to apportion (as he may think fit) among the Registrars Assistant Registrars clerks and servants as aforesaid as remuneration for their services the fees authorized by this Act to be received.

(4.) Every person may inspect the documents kept by the Registrar and may require a copy or extract of any document or part of a document to be certified by the Registrar and there shall be paid for such inspection and for such certified copy or extract the respective fees specified in the said tables B and C Such certified copy or extract shall be *primâ facie* evidence of the matters therein contained in all legal proceedings whatever.

(5.) Whenever any act is herein directed to be done to or by the Registrar of Joint Stock Companies such act shall until a Registrar of Joint Stock Companies shall have been appointed be done to or by the Registrar General who shall until such appointment have the powers and be subject to the liabilities given to and imposed upon the Registrar of Joint Stock Companies.

PART VI.

COMPANIES AUTHORIZED TO REGISTER UNDER THIS ACT.

Registration of existing companies.

223. The following regulations shall be observed with respect to the registration of companies under this part of this Act (that is to say)—

(1.) No company having the liability of its members limited by Act of Parliament Royal Charter or Letters Patent and not being a joint stock company as hereinafter defined shall register under this Act in pursuance of this part thereof.

(2.) No company having the liability of its members limited by Act of Parliament Royal Charter or by Letters Patent shall register under this Act in pursuance of this part thereof as an unlimited company or as a company limited by guarantee.

(3.) No company that is not a joint stock company as hereinafter defined shall in pursuance of this part of this Act register under this Act as a company limited by shares.

(4.) No company shall register under this Act in pursuance of this part thereof unless an assent to its so registering is given by a majority of such of its members as may be present personally or by proxy in cases where proxies are allowed by the regulations of the company at some general meeting summoned for the purpose

(5.) Where a company not having the liability of its members limited by Act of Parliament Royal Charter or letters patent is about to register as a limited company the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present personally or by proxy at such last-mentioned general meeting

(6.) Where a company is about to register as a company limited by guarantee the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company in the event of the same being wound up during the time that he is a member or within one year afterwards for payment of the debts and liabilities of the company contracted before the time at which he ceased to be a member and of the costs charges and expenses of winding up the company and for the adjustment of the rights of the contributories amongst themselves such amount as may be required not exceeding a specified amount.

In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the regulations of the company of which he is a member.

Companies capable of being registered.

224. With the above exceptions and subject to the foregoing regulations every company existing at the time of the commencement of this Act consisting of seven or more members and any company hereafter formed in pursuance of any Act of Parliament other than this Act Royal Charter or of letters patent or being otherwise duly constituted by law and consisting of seven or more members may at any time hereafter register itself under this Act as an unlimited company or a company limited by shares or a company limited by guarantee and no such registration shall be invalid by reason that it has taken place with a view to the company being wound up.

Definition of "Joint Stock Company."

225. For the purposes of this part of this Act so far as the same relates to the description of companies empowered to register as companies limited by shares a joint stock company shall be deemed to be a company having a permanent paid-up or nominal capital of fixed amount divided into shares also of fixed amount or held and transferable as stock or divided and held partly in one way and partly in the other and formed on the principle of having for its members the holders of shares in such capital or the holders of such stock and no other persons and such company when registered with limited liability under this Act shall be deemed to be a company limited by shares.

Proviso as to Banking companies.

226. No Banking company claiming to issue notes shall be entitled to limited liability in respect of such issue but shall continue subject to unlimited liability in respect thereof and if necessary the assets shall be marshalled for the benefit of the general creditors and the members shall be liable for the whole amount of the issue in addition to the sum for which they would be liable as members of a limited company.

Requisites to registration by company.

227. Previously to the registration in pursuance of this part of this Act of any joint stock company there shall be delivered to the Registrar the following documents (that is to say)—

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

(2.) A copy of any Act of Parliament Royal Charters Letters Patent deed of settlement contract of copartnery or other instrument constituting or regulating the company.

(3.) If any such joint stock company is intended to be registered as a limited company the above list and copy shall be accompanied by a statement specifying the following particulars (that is to say)—

The nominal capital of the company and the number of shares into which it is divided

The number of shares taken and the amount paid on each share

The name of the company with the addition of the word "limited" as the last word thereof

With the addition in the case of a company intended to be registered as a company limited by guarantee of the resolution declaring the amount of the guarantee.

Requisites to registration by company not being a joint stock company.

228. Previously to the registration in pursuance of this part of this Act of any company not being a joint stock company there shall be delivered to the Registrar a list shewing the names addresses and occupations of the directors or other managers (if any) of the company also a copy of any Act of Parliament Royal Charter Letters Patent deed of settlement contract of copartnery or other instrument constituting or regulating the company with the addition in the case of a company intended to be registered as a company limited by guarantee of the resolution declaring the amount of guarantee.

Power for company to register stock instead of shares.

229. Where a joint stock company authorized to register under this Act has had the whole or any portion of its capital converted into stock such company shall as to the capital so converted instead of delivering to the Registrar a statement of shares deliver to the Registrar a statement of the amount of stock belonging to the company and the names of the persons who were holders of such stock on some day to be named in the statement not more than six clear days before the day of registration.

Verification of particulars.

230. The lists of members and directors and any other particulars relating to the company hereby required to be delivered to the Registrar shall be verified by a declaration of the directors of the company delivering the same or any two of them or of any two other principal officers of the company made in pursuance of the Act ninth Victoria number nine.

Evidence of existence as a company may be required.

231. The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether an existing company is or not a joint stock company as hereinbefore defined.

Notice to customers on registration of limited Banking company.

232. Every Banking company existing at the date of the passing of this Act which registers itself as a limited company shall at least thirty days previous to obtaining a certificate of registration with limited liability give notice that it is intended so to register the same to every person and partnership firm who have a Banking account with the company and such notice shall be given either by delivering the same to such person or firm or leaving the same or putting the same as a prepaid letter into the post addressed to him or them at such address as shall have been

been last communicated or otherwise become known as his or their address to or by the company and in case the company omits to give any such notice as is hereinbefore required to be given then as between the company and the person or persons only who are for the time being interested in the account in respect of which such notice ought to have been given and so far as respects such account and all variations thereof down to the time at which such notice shall be given but not further or otherwise the certificate of registration with limited liability shall have no operation.

Exemption from fees.

233. No fees shall be charged in respect of the registration in pursuance of this part of this Act of any company in cases where such company is not registered as a limited company or where previously to its being registered as a limited company the liability of the shareholders was limited by some other Act of Parliament or by Royal Charter or Letters Patent.

Change of name.

234. Any company authorized by this part of this Act to register with limited liability shall for the purpose of obtaining registration with limited liability change its name by adding thereto the word "limited."

Certificate of registration.

235. Upon compliance with the requisitions in this part of this Act contained with respect to registration and on payment of such fees (if any) as are payable under the tables marked B and C in the first schedule hereto the Registrar shall certify under his hand that the company so applying for registration is incorporated as a company under this Act and in the case of a limited company that it is limited and thereupon such company shall be incorporated and shall have perpetual succession and a common seal with power to hold lands and to exercise all the functions of an incorporated company.

Certificate to be evidence of compliance with Act.

236. A certificate of incorporation given at any time to any company registered in pursuance of this part of this Act shall be conclusive evidence that all the requisitions herein contained in respect of registration under this Act have been complied with and that the company is authorized to be registered under this Act as a limited or unlimited company as the case may be and the date of incorporation mentioned in such certificate shall be deemed to be the date at which the company is incorporated under this Act.

Vesting of property.

237. All such property real and personal including all interests and rights in to and out of property real and personal and including obligations and choses in action as may belong to or be vested in the company at the date of its registration under this Act shall on registration pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

Previous obligations not affected.

238. The registration in pursuance of this part of this Act of any company shall not affect or prejudice the liability of such company to have enforced against it or its right to enforce any debt or obligation incurred or any contract entered into by to with or on behalf of such company previously to such registration.

Continuation of existing actions and suits.

239. All such actions suits and other legal proceedings as may at the time of the registration of any company registered in pursuance of this part of this Act have been commenced by or against such company or the public officer or any member thereof may be continued in the same manner as if such registration had not taken place nevertheless execution shall not issue against the effects of any individual member of such company upon any judgment decree or order obtained in any action suit or proceeding so commenced as aforesaid but in the event of the property and effects of the company being insufficient to satisfy such judgment decree or order an order may be obtained for winding up the company.

240. When a company is registered under this Act in pursuance of this part thereof all provisions contained in any Act of Parliament deed of settlement contract of copartnery Royal Charter Letters Patent or other instrument constituting or regulating the company including in the case of a company registered as a company limited by guarantee the resolution declaring the amount of the guarantee shall be deemed to be conditions and regulations of the company in the same manner and with the same incidents as if they were contained in a registered memorandum of association and articles of association and all the provisions of this Act shall apply to such company and the members contributories and creditors thereof in the same manner in all respects as if it had been formed under this Act subject to the provisions following (that is to say)— Effect of registration.

(1.) That table A in the first schedule to this Act shall not unless adopted by special resolution apply to any company registered under this Act in pursuance of this part thereof.

(2.) That the provisions of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered.

(3.) That no company shall have power to alter any provision contained in any Act of Parliament relating to the company.

(4.) That no company shall have power without the sanction of the Governor with the advice of the Executive Council to alter any provision contained in any Royal Charter or Letters Patent relating to the company.

(5.) That in the event of the company being wound-up every person shall be a contributory in respect of the debts and liabilities of the company contracted prior to registration who is liable at law or in equity to pay or contribute to the payment of any debt or liability of the company contracted prior to registration or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves in respect of any such debt or liability or to pay or contribute to the payment of the costs charges and expenses of winding up the company so far as relates to such debts or liabilities as aforesaid and every such contributory shall be liable to contribute to the assets of the company in the course of the winding-up all sums due from him in respect of any such liability as aforesaid and in the event of the death or insolvency of any such contributory as last aforesaid or marriage of any such contributory being a female the provisions hereinbefore contained with respect to the representatives heirs and devisees of deceased contributories and with reference to the assignees of insolvent contributories and to the husbands of married contributories shall apply.

(6.) That nothing herein contained shall authorize any company to alter any such provisions contained in any deed of settlement contract of copartnery Royal Charter Letters Patent or other instrument constituting or regulating the company as would if such company had originally been formed under this Act have been contained in the memorandum of association and are not authorized to be altered by this Act.

But nothing herein contained shall derogate from any power of altering its constitution or regulations which may be vested in any company registering under this Act in pursuance of this part thereof by virtue of any Act of Parliament deed of settlement contract of copartnery Royal Charter Letters Patent or other instrument constituting or regulating the company.

Power of Court to restrain proceedings.

241. The Court may at any time after the presentation of a petition for winding up a company registered in pursuance of this part of this Act and before making an order for winding up the company upon the application by motion of any creditor of the company restrain further proceedings in any action suit or legal proceeding against any contributory of the company as well as against the company as hereinbefore provided upon such terms as the Court thinks fit.

After order actions not to be proceeded with except by leave of the Court.

242. Where an order has been made for winding up a company registered in pursuance of this part of the Act in addition to the provisions hereinbefore contained it is hereby further provided that no suit action or other legal proceeding shall be commenced or proceeded with against any contributory of the company in respect of any debt of the company except with the leave of the Court and subject to such terms as the Court may impose.

PART VII.

Application of Act to Unregistered Companies.

Winding up of unregistered companies.

243. Subject as hereinafter mentioned any partnership association or company except railway or tramway companies incorporated by Act of Parliament consisting of more than seven members and not registered under this Act and hereinafter included under the term "unregistered company" may be wound up under this Act and all the provisions of this Act with respect to winding up shall apply to such company with the following exceptions and additions—

(1.) The principal place of business of an unregistered company shall for all the purposes of the winding up of such company be deemed to be the registered office of the company.

(2.) No unregistered company shall be wound up under this Act voluntarily or subject to the supervision of the Court.

(3.) The circumstances under which an unregistered company may be wound up are as follows (that is to say)—

(*a.*) Whenever the company is dissolved or has ceased to carry on business or is carrying on business only for the purpose of winding up its affairs.

(*b.*) Whenever the company is unable to pay its debts.

(*c.*) Whenever the Court is of opinion that it is just and equitable that the company should be wound up.

(4.) An unregistered company shall for the purposes of this Act be deemed unable to pay its debts.

(*a.*) Whenever a creditor to whom the company is indebted at law or in equity by assignment or otherwise in a sum exceeding fifty pounds then due has served on the company by leaving the same at the principal place of business of the company or by delivering to the secretary or some director or principal officer of the company or by otherwise serving the same in such manner as the Court may approve or direct a demand under his hand requiring the company to pay the sum so due and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum or to secure or compound for the same to the satisfaction of the creditor.

(*b.*)

(*b.*) Whenever any action suit or other proceeding has been instituted against any member of the company for any debt or demand due or claimed to be due from the company or from him in his character of member of the company and notice in writing in the institution of such action suit or other legal proceeding having been served upon the company by leaving the same at the principal place of business of the company or by delivering it to the secretary or some director manager or principal officer of the company or by otherwise serving the same in such manner as the Court may approve or direct the company has not within ten days after service of such notice paid secured or compounded for such debt or demand or procured such action suit or other legal proceeding to be stayed or indemnified the defendant to his reasonable satisfaction against such suit action or other legal proceeding and against all costs damages and expenses to be incurred by him by reason of the same.

(*c.*) Whenever execution or other process issued on a judgment decree or order obtained in any Court in favour of any creditor in any proceeding at law or in equity instituted by such creditor against the company or any member thereof as such or against any person authorized to be sued as nominal defendant on behalf of the company is returned unsatisfied.

(*d.*) Whenever it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

Who to be deemed contributories.

244. In the event of an unregistered company being wound up every person shall be deemed to be a contributory who is liable at law or in equity to pay or contribute to the payment of any debt or liability of the company or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves or to pay or contribute to the payment of the costs charges and expenses of winding up the company and every such contributory shall be liable to contribute to the assets of the company in the course of the winding up all sums due from him in respect of any such liability as aforesaid But in the event of the death or insolvency of any contributory or marriage of any female contributory the provisions hereinbefore contained with respect to the personal representatives heirs and devisees of a deceased contributory and to the assignees of an insolvent contributory and to the husband of married contributories shall apply.

Power of Court to restrain proceedings.

245. The Court at any time after the presentation of a petition for winding up an unregistered company and before making an order for winding up the company may upon the application of any creditor of the company restrain further proceedings in any action suit or proceeding against any contributory of the company or against the company as hereinbefore provided upon such terms as the Court thinks fit.

Effect of order for winding up company.

246. Where an order has been made for winding up an unregistered company in addition to the provisions hereinbefore contained in the case of companies formed under this Act it is hereby further provided that no suit action or other legal proceeding shall be commenced or proceeded with against any contributory of the company in respect of any debt of the company except with the leave of the Court and subject to such terms as the Court may impose.

Provision in case of unregistered company.

247. If any unregistered company has no power to sue and be sued in a common name or if for any reason it appears expedient the Court may by the order made for winding up such company or by any subsequent order direct that all such property real and personal (including all interest claims and rights in to and out of property real and personal and including choses in action) as may belong to or be vested

in

in the company or to or in any person or persons in trust for or on behalf of the company or any part of such property is to vest in the official liquidator or official liquidators by his or their official name or names and thereupon the same or such part thereof as may be specified in the order shall vest accordingly and the official liquidator or official liquidators may in his or their official name or names or in such name or names and after giving such indemnity as the Court directs bring or defend any actions suits or other legal proceeding relating to any property vested in him or them or any actions suits or other legal proceedings necessary to be brought or defended for the purpose of effectually winding up the company and recovering the property thereof.

Provisions in this part of the Act to be cumulative.

248. The provisions made by this part of the Act with respect to unregistered companies shall be deemed to be made in addition to and not in restriction of any provisions hereinbefore contained with respect to winding up companies by the Court and the Court or official liquidator may in addition to anything contained in this part of the Act exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed under this Act but an unregistered company shall not except in the event of its being wound up be deemed to be a company under this Act and then only to the extent provided by this part of this Act.

Repeal of Acts.

249. After the commencement of this Act the Acts eleventh Victoria number nineteen and seventeenth Victoria number nine shall be repealed but such repeal shall not affect—

(1.) Anything previously duly done under either of the said Acts.

(2.) Any right or privilege acquired or liability incurred under either of the said Acts.

(3.) Any penalty forfeiture or other punishment incurred in respect of any offence against either of the said Acts.

Law matters pending under Act 11 Vict. No. 19.

250. The repeal of the Act eleven Victoria number nineteen shall not affect any proceedings or matters which may have been commenced before or are still pending under the last-mentioned Act at the time this Act comes into operation and all such proceedings and matters shall be proceeded with and determined in the same manner as if this Act had not been passed Provided nevertheless that the Chief Commissioner of Insolvent Estates shall subject to appeal to the Supreme Court as in Insolvency exercise the powers and authority of the Supreme Court or a Judge thereof cumulatively with all the powers and duties now vested in him by law for the purpose of winding up and finally determining all such proceedings and matters so commenced or pending as aforesaid.

Commencement of Act.

251. This Act shall commence and come into operation immediately upon the expiration of one month after its passing.

VICTORIA.

ANNO TRICESIMO QUINTO

VICTORIÆ REGINÆ.

No. CCCCIX.

An Act for the Incorporation and Winding-up of Mining Companies. [23rd *November* 1871.]

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

Preliminary.

Repeal of former Acts. First Schedule.

1. Subject to the provisions hereinafter contained the Acts mentioned in the First Schedule hereto shall to the extent therein specified be and the same are hereby repealed.

Saving of existing rights and duties.

2. Where before the time of the coming into operation of this Act any offence has been wholly or partly committed against any Act so repealed or any forfeiture or penalty has been incurred under or made valid by any such Act, or any act has been done or any power has been exercised or any appointment has been made or any instrument has been executed or any operation has been effected under the authority of such repealed Acts or has been validated thereby, or any right liability capacity privilege disability or protection shall have accrued or any action prosecution or winding up, or other proceeding shall have been commenced, and be pending at the time of the coming into operation of this Act every such offence shall be dealt with and punished and every such forfeiture and penalty shall be enforced recovered and applied; and every such act and every such exercise of such power and every such appointment and instrument and operation and every such right liability capacity

Published as a Supplement to the 'Victoria Government Gazette' of Friday, 24th November, 1871.

capacity privilege disability and protection shall continue and be in force and shall be subject to the same conditions and restrictions and may be enforced in the same manner, and every such action or prosecution and every such winding-up except as provided in Part V. of this Act, and every such other proceeding shall be continued and defended in the same manner as if such first-mentioned Act had not been repealed, and no incorporation of any company registered under any such repealed Act shall, except as provided by the said Part V., be affected by such repeal.

Title of Act.

3. This Act shall come into operation on the first day of December One thousand eight hundred and seventy-one and shall be called and may be cited as "*The Mining Companies Act* 1871," and is divided into Parts as follows:—

Part I.—Constitution of Companies.
Part II.—Winding-up.
Part III.—Prepayment Companies.
Part IV.—No-liability Companies.
Part V.—Extension of Act to other Companies.
Part VI.—Miscellaneous.
Part VII.—Offences.

"*Companies Statute* 1864" not to apply.

4. Notwithstanding anything in the fourth section of "*The Companies Statute* 1864" any company association or partnership formed for mining purposes may be formed and may carry on any mining business that has for its object the acquisition of gain to such company association or partnership or to the individual members thereof, without being registered as a company under the said Statute or formed in pursuance of any other Act of the Parliament of Victoria or of letters patent.

Application and interpretation of this Act.

5. This Act shall extend and apply only to companies formed or to be formed for mining purposes. And in the construction and interpretation of this Act the words and expressions following shall unless there be anything in the context or subject matter inconsistent therewith have the respective meanings hereby assigned to them (that is to say):—The words "mining purposes" shall mean the purpose of obtaining any precious or other metal or mineral of any kind by any mode or method whatsoever whereby the soil or earth or any rock or stone may be disturbed removed carted carried washed sifted smelted refined crushed or otherwise dealt with for the purpose of obtaining such metal or mineral, whether such metal or mineral shall be the property of such company or of the Crown or of any other person whomsoever; and the word "company" shall mean and include any partnership or co-adventure for mining purposes, and wherever mentioned in the First Part of this Act shall mean and include as well a company deemed to be incorporated under that Part as a company actually so incorporated; and the expression "under this Act" wherever occurring in such First Part shall mean "under the First Part of this Act;" and the expression "the court" where occurring in this Act shall mean the Court of Mines for the district within which the operations of the company in relation to which the words

words are used are or were being carried on; and the word "judge" where so used shall mean the judge of such court; and the expression "the clerk" shall mean the clerk of such court at the place of its sittings where a winding-up order is made or the proceedings under any such order are thereby directed to be carried on, or his deputy or assistant, and the term *Gazette* shall mean the *Government Gazette*.

Part I.—Constitution of Companies.

1.—*Registration Incorporation &c.*

Mode of obtaining registration.

6. Any company formed for mining purposes previously to the passing of this Act and not already registered under "*The Mining Companies Limited Liability Act* 1864" or which may hereafter be formed for such purposes, two-thirds of the shares in which in the latter case shall have been subscribed for, may become incorporated under the provisions of this Part of this Act by obtaining registration as hereinafter mentioned. In order to obtain such registration there must be lodged in the office of the Registrar-General a memorandum signed by some person as the manager of such company which shall contain the several matters and may be in the form contained in the Second Schedule hereto. The said memorandum must be verified by a statutory declaration of the person so signing as manager containing the statements and made in the form in the said Schedule. Within seven days after the day of such lodgment a copy of the said memorandum and declaration shall be published in one or more than one newspaper circulating in the district within which the company's operations are being or to be carried on, and a like copy shall be forwarded to the office of the *Gazette* for publication therein, and which, on the proper payment being made therefor, shall accordingly be therein published. As soon after such publication as the same can be done copies of such newspapers and also of the said *Gazette* and of any rules proposed to be made by such company shall be forwarded to the office of the Registrar-General to be there retained and filed with the said memorandum.

Second Schedule.

Registration effected by Registrar-General.

7. The Registrar-General shall keep a register book to be entitled "The Mining Companies' Register Book," and on receipt by him of the said newspapers, *Gazette* copies, and copy of rules (if any) he shall enter the date of such receipt, and shall write and sign at the foot of the copy of the memorandum so lodged the words "The above company was registered by me on the day of eighteen hundred and by the name of "The company limited," and upon such writing being signed by the Registrar-General the said company shall be deemed to be registered under this Part of this Act.

Incorporation of company.

8. Upon such registration the persons whose names shall be contained in the said memorandum together with such other persons as may thereafter from time to time become members of the company shall

shall be a body corporate by the name contained in such memorandum, capable forthwith of exercising all the functions of an incorporated company, and having a perpetual succession and a common seal, with power to hold lands including mining interests under any Act relating to mining, but with such liability on the part of the members to contribute to the assets of the company as provided in this Act.

Company to add "limited."

9. Every company registered under this Part of this Act shall add to the style and title under which the business of such company is carried on the word "limited." If in any legal proceeding the title of a company shall be wrongly stated such proceeding may be amended by a right statement of the title if there shall appear in such proceeding anything showing what is the right title, and if the court or judge thereof shall consider that no party to such proceeding would be prejudiced by such amendment.

Proof of registration and of appointment of manager.

Third Schedule.

10. A certificate in the form or to the effect in the Third Schedule to this Act purporting to be under the hand of the Registrar-General (who is hereby required to give such certificate to any person applying for the same on payment of one shilling), and which certificate shall describe the *Gazette* and newspapers and copy of the rules aforesaid, the *Gazette* and copy by their respective dates, and the newspapers by their respective names and dates, shall be conclusive evidence in all courts that the company has been duly registered under the provisions of this Act and of the time of its registration.

Copies of *Gazette* to be evidence of shareholders.

11. Any copy of the *Gazette* described in such certificate as aforesaid shall be *primâ facie* evidence that the persons named therein as shareholders in any such company are such shareholders.

Shares unsubscribed for and transferred to a company to be its property.

12. After a company shall be registered all shares therein which from time to time shall remain unsubscribed for shall, until subscribed for, and all shares which may be transferred thereto as hereinafter provided for shall until re-issued be the property of the company, and shall be registered in its name or in the name of a trustee appointed by it for the purpose; but no liability shall attach to the company or to any such trustee in respect of any of such shares.

2.—*Liability of Shareholders.*

Liability of shareholders.

13. Every person in whose name any share in a company shall be registered in the register of members hereinafter mentioned shall, while it shall be so registered, be liable to contribute to the assets of the company for the purposes thereof, and for its debts liabilities and obligations and for adjusting the rights of the shareholders amongst themselves to the amount from time to time remaining unpaid on such share, but not further or otherwise save in respect of any additional liability which may be incurred under section forty-four hereof: Provided however that no contribution in the form of a call shall exceed the amount fixed for calls by the rules of the company.

3.—*Registered*

3.—*Registered Office.*

Company to have office.

14. Every such company shall have an office which shall be accessible to the public while the business of the company is being carried on for not less than four hours on some days not to be less than two in each week to be fixed by the rules of the company, and service of any notice or legal process shall be deemed to be good service on the company if enclosed in a registered letter addressed to the manager of such company at such office, or if left thereat with any person in charge of the same or delivered to the manager or clerk personally.

Service of notices, &c., upon company.

Service on company after cessation of business and no office.

15. If a company having ceased to carry on business shall have no registered office or manager any such notice or process may be published in the *Gazette*, and such publication shall be deemed service upon the company.

Notice of registered office.

16. Notice under the common seal, and signed by two or more of the directors of a company of the situation of its registered office, and also, immediately after any change of such office, of such change, shall be filed with, and registered by, the Registrar-General, who shall enter the same at the foot of the registry of the said company in the Mining Companies Register book. A copy of every such notice shall be published in the *Gazette*, and until after such publication as to the original situation of the office the company shall not be deemed to have complied with the provisions of this Act with respect to having a registered office, and until after such publication as to a change of the office the office previously existing shall be deemed to be the office of the company.

4.—*Manager.*

First manager to continue after incorporation.

17. The manager who shall have signed such memorandum shall continue after the incorporation of the company in respect of which he shall have signed it, and until a new manager shall be regularly appointed to be the manager thereof.

Notice of manager.

18. A notice similar to and sealed in like manner as that hereinbefore directed to be filed of the situation and of any change of the registered office must be filed with the Registrar-General of the name and of any change of the manager, and such notice as to the manager shall be dealt with, and copies thereof published, in like manner as is directed in the case of notices as to the registered office.

Manager's duty to lodge notices as to office and manager.

19. It shall be the duty of the manager for the time being to file both such notices and publish such copies.

Manager to be present at office while open to the public.

20. The manager of every company shall be present at the registered office of his company by himself or his agent or clerk on every day while the business of the company is being carried on, on the days and at the hours on and at which the registered office is to be accessible to the public as aforesaid.

Certain contracts made by the manager to be binding on the company.

21. Every contract made by the manager for the time being of a company for the purchase of goods or the performance of work and the supply of the materials for the same to an amount in the aggregate not exceeding fifty pounds for the purposes of the company shall be binding upon the company and upon the assets thereof, and such assets may be seized

seized and sold in execution in any action against such company upon any such contract; but no such contract shall be binding upon the manager himself.

On cessation of business without winding up manager to have three months salary only.

22. If a company shall cease to carry on business without being wound up, the manager shall not be entitled to recover more than three months salary from the date of the last meeting of the directors or shareholders, unless his services shall be retained for a longer period by some special agreement or by a resolution of the directors or of the company.

Manager shall deposit books, &c., with the clerk, when.

23. At the expiration of six months from the time at which a company shall have ceased to carry on business without being wound up, the manager shall deposit with the clerk the register of shareholders in, and all other books and documents belonging to the company in his possession or under his control, and the said clerk shall receive and give a receipt therefor: Provided that the court or the judge thereof may, if it shall appear reasonable to do so, extend the time for such further time as shall be thought fit.

5.—*Directors.*

Election of directors.

24. If previously to the incorporation of a company the number of, and the persons who are to be, the directors thereof shall not have been determined the company shall, at an extraordinary meeting to be called as hereinafter provided as soon as may be after its incorporation, determine by a majority of shareholders there present in person or by proxy such number and persons, and shall also by such majority determine so far as shall not be provided by rules theretofore made, or made at the said meeting, the mode of election of future directors, the qualifications powers term of office and mode of retirement of directors, and the number of them who are to form a quorum, and may by such majority continue the then existing manager in his office, or appoint another in his stead, and the directors so determined upon shall have the custody and use of the common seal, and shall carry on and transact the business and affairs of the company, and shall, until their successors shall be appointed, continue to be such directors, and none of such directors shall be or continue to be directors of any company or companies working or holding ground abutting on or next to the company or companies which may be engaged in litigation with the company of which they were first appointed directors.

Directors' reports.

25. Not less than one week previously to the day for holding a general meeting of a company the directors thereof shall lodge in the company's office for the inspection of the shareholders in, and creditors of the company a full and true report, and, as far as may be, up to the day of the framing thereof, of the state and prospects and of the assets and liabilities of the company, together with any other matter which by any rules of the company they shall be bound to set forth in reports to be made by them.

6.—*Transfers.*

Shares not to be tranferred when company is being wound up.

26. No share in a company under this Part of this Act shall unless the whole amount of such share be fully paid up be transferred in any such

such company after the presenting of a petition for the winding up thereof unless such petition shall have been dismissed or proceedings thereunder stayed altogether.

Name of transferree to be entered on register.

27. Save as hereinafter mentioned no such share shall be deemed to be transferred unless and until the name of the transferree be entered as such transferree in the register of shareholders.

To be entered by the manager; in what case.

28. When any person shall produce to, and leave with, the manager of a company any scrip certificate thereof upon which shall be written a blank form of transfer of a share represented thereby, signed by the person whose name shall then appear on the register of shareholders as the holder of the said share, and shall name to the manager as transferree thereof, either himself or some person for whom he shall be authorized by a writing, to be produced to, and left with, the manager, to act as agent, the manager shall give to such person a receipt for such scrip signed by him as manager, dated of the day upon which it shall be given, describing by its number and otherwise as may be, the share represented by the scrip, and setting forth that the scrip has been left with him for the purpose of transferring the said share from the person in whose name it shall so appear on the register as aforesaid to the person named to the manager as the transferree, and shall within seven days from such day, if no call shall be due on the share, enter in the register of shareholders the name of the person so named to him as transferree; and shall thereafter, when required, deliver to such person, or to his agent for him, a new scrip for the share so transferred filled up with the name of the person who shall then be the transferree.

On default of manager receipt to be title to share.

29. If the manager shall not make the entry in the register as and when he is in the preceding section required, the said receipt shall, after the lapse of the said seven days, entitle the person thereby named as the intended transferree of the share to be deemed the transferree thereof, and he shall be entitled to apply to the court or the judge thereof, under the provisions hereinafter contained, for an order directing the manager to duly enter in the register the transfer of the said share.

Trust on fraudulent transfer incapable of being enforced.

30. If any person being a shareholder in any such company shall with the view of evading the liabilities incident to his share transfer the same upon some trust or understanding under or according to which he is to be entitled at any future time to have retransferred to him, or to resume the ownership of, or to have any interest in such share, such person shall be disabled from enforcing in any court any trust for him in such share.

Shares may be transferred to the company.

31. Any person desirous of freeing himself from a share in a company may transfer the same to the company, and on production to the manager by him or his agent authorized in writing of the scrip representing the share to be transferred whereon shall be written a transfer of the share to the company signed by the person who shall then appear on the register of shareholders as the holder of the share, and if the person producing the scrip be an agent, on production and leaving with the manager his authority, the manager shall, on being requested

requested by the person producing the scrip to accept a transfer of the share for the company, give to such person a receipt of the like import to that mentioned in the twenty-eighth section hereof, save that it shall name the company as the transferree, and shall within seven days from the day of the date of the receipt, if no call shall be due on the share, enter in the register of shareholders the name of the company or of some trustee on its behalf as the transferree thereof.

On default of manager receipt to be proof of transfer.

32. If the manager shall not make the entry as and when he is in the preceding section required, the said receipt shall, after the lapse of the said seven days, be conclusive evidence that the share has been transferred to the company, and thenceforth the person by whom, or on whose behalf the transfer was required, shall be freed from the share, and all liability thereon.

7.—*Register of Shareholders.*

Register of shareholders.

33. The shares in a company shall be numbered in consecutive order, and the manager shall keep or cause to be kept in a book appropriated to the purpose a register of the shareholders in the company, and there shall be entered therein the particulars following :—

(I.) The names and addresses and, if known, the occupations of the shareholders in the company:

(II.) The shares held by each shareholder distinguishing each share by its number and the amount paid or (if any) agreed to be considered as paid on the shares of each shareholder:

(III.) The date at which the name of any person was entered in the register as a member, and the date at which any person ceased to be a member.

egister to be open to creditors and shareholders and to be *primâ facie* evidence of matters therein.

34. Such register shall at all times be open free of charge for the inspection of creditors or shareholders and shall be *primâ facie* evidence of the truth of all matters therein contained which are by this Act required or authorized to be inserted therein.

Rectification of register.

35. On the application to the court or the judge thereof of any member of the company, or of the company, or any person claiming to be interested as transferror or transferree of a share, complaining that the name of any person is, or remains, improperly entered in, or omitted from, the register, the court or judge shall decide the question, and, if it shall be right so to do, direct that the register shall be rectified accordingly, and to that end may order the manager to enter any person as transferree of a share, and give to such person the proper scrip, and may make such other order, and as to costs as shall be just. The court may on such application decide on any question relating to the title of any party thereto to have his name entered in, or omitted from, the register whether such question shall arise between two or more members or alleged members, or between any such members and the company, and generally may decide any question necessary or expedient to decide for the rectification of the register.

8.—*Books*

8.—*Books of Account.*

Books of account to be kept.

36. The manager of a company shall keep true accounts of the affairs and transactions thereof.

Half-yearly statements.

37. The directors of a company shall cause half-yearly statements of such affairs and transactions to be made, and a printed copy of such half-yearly statement shall be forthwith served upon the Registrar-General accompanied by a statutory declaration verifying the same. No book or document belonging to a company shall be liable to be seized in execution for any debt, or, except as herein provided, to be taken under any judgment decree or order of any court out of the control of such company, and the Registrar-General is hereby empowered to prescribe from time to time the form in which the books of account and half-yearly statement of every company shall be kept, and the directors shall keep such books and prepare such statement according to the form so prescribed.

Books to be open to inspection.

38. Books of account and such statement verified by the statutory declaration of the manager, and also the reports of the directors as hereinbefore directed to be made, shall, during office hours, be open to the inspection of the shareholders in, and creditors of, the company: Provided that for the inspection of any such accounts or statement there shall be paid one shilling to the manager for the benefit of the company.

Copy of statement and accounts to be furnished.

39. A copy of any such statement or of such accounts shall, within two days after service upon the manager of a notice in writing by any creditor of, or shareholder in, the company of which he shall be manager requesting the same, be furnished by him to the person so requesting, provided that at the time of the service of the notice the sum of Ten shillings be paid to him for each of the said copies as shall be required. The accounts, a copy of which is to be furnished, may be limited at the manager's discretion to three months ending with the day of the service of the notice. Every copy furnished under this section must be certified by the manager as true and be signed by him.

9.—*Contracts.*

Contracts how made varied or discharged.

40. Contracts on behalf of any company may be made varied or discharged as follows (that is to say):—

(I.) Any contract which if made between private persons would be by law required to be in writing under seal may be made varied or discharged in the name and on behalf of the company in writing under the common seal of the company.

(II.) 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 may be made varied or discharged in the name and on behalf of the company in writing signed by any person acting under the express or implied authority of the company.

(III.) Any contract which if made between private persons would by law be valid although made by parol only and not reduced

reduced into writing may be made varied or discharged by parol in the name and on behalf of the company by any person acting under the express or implied authority of the company.

10.—*Extraordinary Meetings.*

Extraordinary meetings.

41. An extraordinary meeting of a company shall be convened by inserting in the *Gazette* and in a newspaper published in Melbourne, in two numbers thereof, in each of two consecutive weeks, and in a newspaper circulating in the locality wherein the registered office of the company shall be situated in one number thereof, in each of the same weeks, a notice signed by the manager of the company that on some day to be named therein not to be earlier than fourteen days after the day of the first of the said insertions, and at the hour and place to be therein stated such meeting will be held; and such notice shall specify the nature of the business to be transacted otherwise such meeting shall not have power to transact any business, and every such notice so given shall be sufficient without any other notice whatsoever any rule of law or of the company to the contrary notwithstanding; the manager shall also post a written notice of such meeting outside the door of the registered office.

Extraordinary meeting when manager refuses to convene.

42. Where by the instrument or deed of association or the rules of a company it shall be, or is provided that an extraordinary meeting of shareholders may or shall be convened by the directors or manager on being requested to do so by the holders of a specified number of shares in the company, if, for five days after such request, the directors or manager as the case may be shall refuse or neglect to convene such meeting, the shareholders requesting such meeting to be called or the majority of them may sign all such notices and do all such acts as shall under such instrument or rules be necessary for the purposes of convening an extraordinary meeting of shareholders of such company; and any such meeting so convened shall have the same power in every respect as if such meeting had been convened by such manager in the manner directed by any such instrument or rules.

Voting by proxy.

43. In the absence of any rule to the contrary every shareholder may vote at any meeting of the company by proxy given by a writing signed by such shareholder, but every such proxy shall be a proxy given for a special purpose.

11.—*Increase of Capital.*

Capital may be increased.

44. Any company may, after the final call has been made, with the sanction, given at an extraordinary meeting thereof, of a majority consisting of not less than two-thirds in number and value of the shareholders in such company in person or by proxy from time to time increase its capital by increasing the amount payable in respect of each share, or by the issue of new shares, or by both of these means, every such increase to be in the case of new shares of such amount and to be divided into shares of such respective amounts as such majority shall direct.

45. Notice

45. Notice of the resolution for the increase of capital, setting forth the mode and particulars of the increase, and headed with the name of the company, shall immediately after such meeting be inserted by the manager in the *Gazette* and in one or more than one newspaper, published in Melbourne, and one or more than one newspaper circulating in the neighbourhood of the registered office of the company. Any such new shares shall not for the space of fourteen days after the latest of the said publications be open to the public but only to the shareholders in the company: such new shares may be made preference shares and may be issued upon such terms as such majority shall direct: a similar notice signed by the manager and by two at least of the directors of the company and in the form or to the effect directed by the Fourth Schedule to this Act, verified by the statutory declaration of the manager in the form contained in the same schedule, shall be lodged with the Registrar-General within fourteen days from the time at which such increase shall have been resolved on, and such notice shall be filed by the Registrar-General with the memorandum originally lodged by the company, and shall, or a copy thereof purporting to be signed by the Registrar-General, be conclusive evidence that such increase was legally and properly resolved upon, and, as the case may be, of the increased amount of the shares or of the number amount and nature of the new shares.

Notice of the increase of capital.

Notice of increase of capital.

Fourth schedule.

Copy of notice evidence that increase of capital was rightly effected.

46. Any capital raised by the increase of capital shall, subject to the provisions aforesaid, be considered as part of the original capital, and be subject to the same provisions with reference to the payment of calls or otherwise as if it had been part of such original capital.

New capital to be deemed part of original capital.

12.—*Power to Borrow Money and to Mortgage.*

47. Any company may with the sanction of such majority given at such meeting as last aforesaid from time to time borrow money not exceeding such sum as such majority shall direct, and may secure the repayment thereof or of any sum previously borrowed or liability incurred by the directors of such company and interest thereon by a mortgage or bill of sale of the property of the company or any part thereof.

Power to borrow money and to mortgage.

48. No such mortgage or bill of sale shall have any effect unless and until it shall have been registered or filed with the Registrar-General, and all such mortgages and bills of sale affecting the same property shall have priority according to the respective times of registration and filing, and so soon as the same shall be sealed with the company's seal and registered shall bind the company whether any preliminaries hereby required shall have been observed or not.

Mortgage and bill of sale ineffectual until registered.

13.—*Dividends Payable only out of Profits.*

49. No dividend shall be payable to the shareholders of any company except out of the profits arising from the business of such company. If any director of a company shall wilfully pay or permit to be paid any dividend otherwise than out of such profits, he shall be liable

Dividends payable from profits only.

Directors paying dividends otherwise to be personally liable.

liable to a penalty of not less than One hundred pounds nor exceeding Five hundred pounds, and in default of payment thereof to imprisonment for a period of not less than three nor exceeding twelve months and shall also be liable to the creditors of the company for the amount of the debts due by the company to them respectively to the extent that the dividends so paid shall have exceeded the profits, and such amount may be recovered by the creditors or the liquidator suing on behalf of the creditors. If the whole shall be recovered from one director he may recover contribution against any other director who shall have also made or permitted such payment.

14.—*Calls.*

Calls to be due on second Wednesday in any month.

50. The calls upon shares in every company shall be made in such time and manner as that they shall be payable on the second Wednesday in a month and on that day only such day not to be less than seven days from the day on which the call shall be made; a notice shall be printed on the face of each company's scrip stating that that day is the day on which calls are payable. When a call shall have been made notice of the day when it will be payable and of the place for payment thereof shall be published in the *Gazette* in a daily newspaper published in Melbourne and in one or more papers circulating in the locality wherein the registered office of the company shall be situated.

No call to be made until previous call paid.

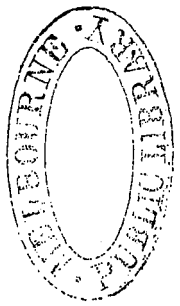
51. When a call shall have been made no subsequent call shall be made until after the expiration of fourteen days from the day when the call so made shall be payable.

How calls recoverable.

52. The amount of any call which for the time being may be unpaid upon any share in a company shall on and from the day when it shall be payable be deemed to be a debt due from the holder of such share to the company, and shall, provided proceedings for the purpose be commenced within fourteen days from that day, be recoverable, with interest thereon, and costs of suit, by the manager, describing himself in any proceeding therefor as manager of the company to whom the call shall be due, in any county court, or payment thereof with such interest and costs may be enforced against the shareholder on the complaint of the manager, describing himself as aforesaid, before any justice, and in the same manner as payment of any of the demands mentioned in the forty-first section of "*The Justices of the Peace Statute* 1865" may be enforced and payment of any number of calls due by a shareholder may be enforced in one and the same proceeding.

What to be stated and proved on suing for calls.

53. In any such proceeding it shall be sufficient to state in the plaint or summons that the defendant, or, if the proceedings be in the county court against an executor or administrator of a deceased shareholder, that the shareholder was, at the time of his death, and his estate still is, indebted to the company in the sum due for the call, setting forth the day upon which the call was due, and in the sum claimed for interest thereon, and a resolution purporting to be a resolution of the directors of the company declaring a call to be due on that day appearing in the book in which such a resolution ought to



to be entered, or a copy of such resolution verified as being such by the statutory declaration of the manager whose signature or handwriting thereto it shall not be necessary to prove, shall be *primâ facie* evidence that such call was duly made; and proof that the person taking such proceeding was at the commencement thereof acting as manager of the company shall be sufficient proof of his appointment as such: Provided that if, pending any such proceedings, the manager shall, by death resignation or otherwise, cease to be such the name of the succeeding manager shall, on such evidence as the court before which the proceedings shall be pending shall think sufficient that he is the succeeding manager, be substituted in the proceedings for the name of the manager so ceasing, after which the character of the succeeding manager as such shall not be disputed and the proceedings shall be carried on in his name.

Forfeiture of shares for non-payment of calls.

54. Any share upon which a call due thereon shall, at the expiration of fourteen days after the day upon which it shall be due, be unpaid shall thereupon be absolutely forfeited without any resolution of directors or other proceeding, provided that no proceeding for the recovery of the call shall during such fourteen days have been commenced. If any such proceeding shall be taken and the amount of any judgment or order obtained thereon against the shareholder shall not, within fourteen days after such judgment or order shall be obtained, be paid, or cannot within that time be levied out of any property of the shareholder, the share shall at the end of the said fourteen days be absolutely forfeited without any such resolution or proceeding as aforesaid.

Forfeited shares to be sold by auction.

55. Every forfeited share shall be sold by public auction advertised in the *Gazette*, in a daily newspaper published in Melbourne, and in one or more papers circulating in the locality wherein the registered office of the company shall be situated, not less than seven nor more than fourteen days before the day appointed for the sale, and the proceeds shall be applied in payment of the call due thereon, and of the expense of such advertisement, and any other expenses necessarily incurred in respect of the forfeiture, and, in case of any proceedings having been taken for the recovery of the call, of all costs and expenses incurred against the shareholder in respect of such proceedings, and the balance (if any) shall be paid to him upon his delivering to the company the scrip representing such forfeited share.

Redemption of forfeited shares.

56. Notwithstanding anything hereinbefore contained any person a share belonging to whom shall have been forfeited as aforesaid shall be entitled, at any time up to, or on the day previous to that upon which it is intended to sell the share to redeem the said share by payment to the manager of all calls due thereon, and of all expenses incurred by the company in respect of the forfeiture, and of all costs and expenses of any such proceeding as aforesaid which may have been taken; and upon such payment the manager shall re-enter the name of such person in the register of shareholders, and he shall thereupon be entitled to the share as if the forfeiture had not been incurred.

57. On

Office to be open the day before sale advertised.

57. On the day previous to that on which a forfeited share is to be advertised for sale the company's office shall be open during the hours for which, on days when it is by the rules of the company to be open, it is by such rules to be kept open.

15.—*Rules of Company.*

Company may make rules.

58. The majority in number and value of the shareholders in any company may from time to time both before and after incorporation make and alter rules for the management and purposes of the company not inconsistent with this Act; but if any such rule shall be made or altered after incorporation it shall be made or altered only at an extraordinary meeting of the shareholders. A copy of every rule made or altered by a company shall, immediately after the making or altering thereof, be filed at the Registrar-General's office.

PART II.—WINDING UP.

1.—*When and how Winding up is to be effected.*

When companies may be wound up.

59. A company may be wound up by the court in any of the events following (that is to say):—

(I.) When at an extraordinary meeting of any such company a majority in number and value of the shareholders therein shall have passed a resolution requiring the company to be so wound up:

(II.) Where a company shall not have taken *bonâ fide* steps towards the commencement of its business within six months from the date of its incorporation or shall suspend its business for the space of a whole year:

(III.) When the company is unable to pay its debts:

(IV.) When a company has made a conveyance or assignment of its property to a trustee or trustees for the benefit of its creditors generally:

(V.) When a company has made a conveyance gift delivery or transfer of its property or of any part thereof with intent to defeat or delay its creditors:

(VI.) When the court shall be of opinion that it is just and equitable that the company should be wound up.

Company when unable to pay its debts.

60. A company under this Part of this Act shall be deemed unable to pay its debts:—

(I.) When a creditor by assignment or otherwise to whom such company is indebted at law or in equity in a sum exceeding Fifty pounds then due shall have served on the company a demand under his hand requiring the company to pay the sum so due, and the company shall have for the space of six weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor:

(II.) When

(II.) When any execution or other process issued on a judgment decree or order in favour of any creditor in any action suit or other legal proceeding instituted by such creditor against a company shall be returned unsatisfied either in whole or in part:

(III.) When it shall be proved to the satisfaction of the court that the company is unable to pay its debts.

Winding up to be by petition.

61. Any application for the winding up of a company shall be by petition addressed to the court by the company, or by one or more than one shareholder therein, or creditor thereof, or by any of such parties together, and such petition may be presented, *ex parte*, to the court, or, in any part of the colony, to the judge thereof: Provided that seven days previously to the presenting thereof a notice of the intention to present the same shall be served at the company's office.

Frame of petition.

62. A petition for winding up a company shall be entitled in the matter of this Act and of the company to which the petition shall relate, and shall set forth the character of the petitioner, whether company, shareholder, or creditor, and the event on the alleged occurrence of which the winding up shall be sought, and, in case the winding up shall be sought on the ground mentioned in the sixth paragraph of the fifty-ninth section, the petition shall set forth the reasons for which the petitioner submits that it is just and equitable that the company should be wound up; and the petition shall then pray that the company may be wound up, and shall be signed by the party presenting the same, and, if presented by a company, be sealed with its seal. It shall, if presented by a company, be signed by, and verified by the affidavit of, the manager or a director thereof, and, if presented by any other person by his affidavit, or, if such other person be a creditor, by the affidavit of any person on his behalf who can depose to the facts.

Proceeding on presentation.

63. On the presentation of the petition the court or judge may thereupon either grant or refuse the prayer thereof, or may order that it shall be heard before the court on a day and at a place within its district to be named in the order. If a judge on such presentation shall make an order for winding up, he shall, as part of the order, direct at what place of the sitting of his court the winding up proceedings are to be carried on, and shall direct such notice, and upon such parties of such proceedings to be served as he shall think fit. If on such presentation a hearing of the petition at a future day shall be ordered, the court or judge so ordering shall direct such notice and upon such parties to be served of such hearing as it or he shall think right.

Hearing of the petition.

64. On the coming on of any such hearing or on any adjournment thereof, and on proof of such service of the said notice of hearing, as the court shall think sufficient, and on such further evidence (if any) as the court may require, and can be obtained in relation to the facts averred in the petition, the court may make such order as it shall think right, either for a winding up of the company, or for dismissal of the petition, or may, on sufficient cause therefor being shown, adjourn its decision conditionally or unconditionally for any reasonable time, and may make such order as to costs as it shall think just.

65. Every

Order to fix a day and place for meeting of creditors.

65. Every winding up order shall appoint a day and place for a general meeting of the creditors of the company, and shall be served on such parties and in such manner as the court shall direct.

Form of order. Fifth Schedule.

66. Any such order may be in the form in the Fifth Schedule hereto or to the like effect, and if made by a judge shall be entitled as of the court of which he shall be judge, as in the form in the Schedule referred to.

Advertisement and notice of order.

67. Within ten days after any such order shall have been made the petitioner shall advertise the same in one or more than one newspaper published in Melbourne, and in one or more than one newspaper circulating in the neighbourhood of the place where the registered office of the company shall be situated.

Commencement of the winding up.

68. When an order for winding up shall be made the winding up shall be deemed to have commenced at the time of the presentation of the petition therefor.

Order to be filed with company's memorandum.

69. On the making of any such order a copy thereof certified and signed by the clerk shall be forwarded to the office of the Registrar-General where it shall be filed with the memorandum originally lodged by the company.

Property of company shall vest in clerk.

70. Immediately upon the making of such order the property of the company ordered to be wound up shall vest in the clerk.

No petition by creditor whose debt is due one year.

71. No petition shall be presented by any creditor after the lapse of one year from the time when his debt shall have been due and payable, or, if judgment shall have been obtained thereon, from the time when such judgment shall have been obtained.

2.—*Stay of previous, or of winding up, Proceedings.*

Previous legal proceedings may be restrained.

72. At any time after the presentation of a petition for the winding up of a company the court may, upon the application of the company or of a creditor of, shareholder in, or contributory to it, restrain further proceedings in any action suit or proceeding against the company upon such terms as the court shall think fit, and after any such order shall have been made no suit action or other proceeding shall be continued or commenced without the leave of the court and subject to such terms as the court may impose.

Winding up proceedings may be stayed.

73. The court may at any time after the making of a winding up order, upon the application of any such creditor shareholder or contributory, and upon being satisfied that the proceedings upon such order should be stayed, make an order staying the same, either altogether, or for a limited time, on such terms as it shall think fit.

3.—*Liquidator.*

Appointment of liquidator.

74. The creditors of the company shall on the day and at the place appointed for their meeting by resolution appoint some fit person, whether a creditor or not, to be liquidator of the estate of the company at such remuneration (if any) as they may from time to time determine; and shall by resolution determine whether any and what security is to be given, and to whom, by the person so appointed. 75. No

Appointment of liquidator to be sanctioned by the court.

75. No such appointment shall be effectual without the sanction of the court, but the court may, upon the acceptance in writing of office by the person so appointed, and upon being satisfied that the requisite security (if any shall be required) has been given, make an order confirming his appointment.

Liquidator may resign his office.

76. A liquidator may resign his office, but only with the sanction of the court, and subject to such order as the court may think it right to make ; and on such resignation the court shall make such orders as may be necessary for the preservation and administration of the estate of the company until a new liquidator shall be appointed. No such sanction of the court shall prevent a liquidator so resigning from being liable to account as such to any subsequent liquidator.

Appointment of successor to liquidator removed, resigning, &c.

77. The creditors may at any meeting by resolution remove the liquidator, and on the vacancy of the office of liquidator by any such removal, or by the resignation or death of a liquidator the creditors may, subject to such sanction and order of confirmation, and with such remuneration and upon the giving of such security as aforesaid, appoint another person to fill the office so become vacant.

Creditors may vote by proxy or in person.

78. The creditors may at any of their meetings attend and vote by proxy or in person.

Powers and duties of a succeeding liquidator.

79. Any successor to a liquidator shall during his continuance in office have all the powers, perform all the duties, and be subject to all the responsibilities which his predecessor, if he had continued in office, would have had, should have performed, and would have been liable to.

Adoption of proceedings by liquidator's successor.

80. Any such successor may, after the confirmation of the order of his appointment, with the sanction of the court, adopt any proceedings then pending which may have been taken by his predecessor in office whether by suit action or otherwise, or may with such sanction repudiate any such proceeding.

Remuneration may be withheld from the liquidator.

81. The court shall have power, on the application of the company or any creditor thereof, or contributory as hereinafter described thereto, to make an order that the remuneration of the liquidator shall be withheld in the whole or in part if the court shall think that by reason of his conduct such order would be proper.

On confirmation of appointment of liquidator company's property to vest in him.

82. Immediately upon the making of an order confirming the appointment of a liquidator the property of the company ordered to be wound up shall be divested out of the clerk and shall vest in such liquidator, and on the making of an order confirming the appointment of any successor to him shall so far as it shall then exist vest in such successor.

Manager &c. to lodge register book and documents with the liquidator.

83. After the making of any such order the court shall direct that the manager of the company shall deliver to the liquidator upon or before a day named in the order the register of the shareholders in the company, and all books and documents and other property belonging or relating to the company in his possession or under his control, and shall make such order as against any other person in whose possession or under whose control such register or any such

such books or documents or other property may be, and such manager or other person shall, at the time of making such delivery, lodge with the liquidator a list of such books documents and property, with a statutory declaration subscribed thereto, made by such manager or other person, stating that there are no books or documents or other property belonging or relating to the company in his control other than those mentioned in the said list, and no manager director solicitor attorney or other person shall have any lien for salary costs or otherwise upon any of such books documents or property after any such order shall have been made.

Clerk of liquidator.

84. The liquidator may with the sanction of the court employ any person to be his clerk to assist him in the winding up of any company.

Liquidator and his clerk to be officers of the court.

85. Every liquidator and any such clerk employed by him shall be deemed to be an officer of the court, and shall be amenable to it to the same extent as any officer of the Supreme Court is amenable to such court. And such liquidator and clerk shall as to any duty hereby required to be performed by them respectively be deemed to be officers, and any such duty to be a duty, within the meaning of the one hundred and sixty-sixth section of the "*Mining Statute* 1865."

And to be within the 166th section of the "*Mining Statute* 1865."

Liquidator to have an office.

86. The liquidator shall have an office situate in such locality as the court, by the order confirming his appointment shall direct as the most convenient place for the administration of the affairs of the company. He, or his clerk, shall attend daily at such office during the usual hours for business in such locality, and service during these hours at such office of any notice intended for the liquidator shall be good service upon him.

Liquidator to keep accounts.

87. The liquidator shall keep in the said office proper books of account of the assets and liabilities of such company, and of his receipts on account thereof, and of their disposal, and such books and all other books belonging or relating to the company in his possession or under his control shall during such hours as aforesaid be open every day during his acting in such winding up to the inspection of the shareholders in, and creditors of, and contributories, as hereinafter described, to the company, and on request by any such shareholder creditor or contributory and payment of ten shillings he shall give to him a copy signed and certified as true by him the said liquidator of the said accounts as existing at the time of such request.

Books to be open to inspection of shareholders and creditors.

Liquidator to submit to examination.

88. The court may on the application to it of any such shareholder, creditor, or contributory, order that the liquidator shall submit to an examination on oath before the court at any time which the court shall appoint by a barrister or attorney on behalf of such shareholder creditor or contributory, touching the said accounts, and he shall then answer such questions as may be asked of him subject to the control of the court, and the court shall on such examination make such order as it shall think the case requires, and also as to the costs of the examination as it shall think fit.

4.—*Course*

4.—Course to be pursued by Liquidator.

Liquidator to take possession of and realize property.

89. As soon as may be after the making of the order confirming the appointment of the liquidator he shall take possession of the property of the company and shall with all reasonable speed sell such part of the same as shall not be money by public auction or private contract, together or in parcels as shall be most prudent, and the proceeds of such sale or sales as also all other moneys received by him on account of the company he shall pay into some bank to be fixed upon by the court and stated in the order confirming his appointment to the credit of an account to be entitled in the matter of the winding up of the company.

Liquidator to sue for calls.

90. The liquidator shall also as soon as may be after the making of such order collect, and, if necessary, sue for and recover, by any of the modes by which the manager of the company might have done so, and which he is hereby empowered to do, all calls which previously to the commencement of the winding up may have been made and shall be unpaid in respect of shares which shall not have been forfeited, and any moneys received or recovered by him in respect of such calls shall be paid into the bank and to the account aforesaid. Section fifty-three of this Act shall apply to any proceeding by the liquidator under this present section, the word "liquidator" being, for the purpose of such application, substituted for the word "manager."

Money in the hands of others to be paid into a bank.

91. After the making of any such order the court may direct that any bank banker or other person having in its or his hands any money to which the company is *prima facie* entitled shall show cause within such time as the court shall direct why such bank banker or other person should not forthwith, or within such time as the court shall direct, pay the same into the bank so fixed upon by the court as aforesaid to the said account.

Advertisement for creditors to come in and prove.

92. The court shall by its order confirming the appointment of the liquidator fix upon a day upon which the creditors of the company are to come in and prove their debts before the court, such day to be fixed so as to afford time for the notice thereof hereby required; and the liquidator shall insert in one or more than one newspaper published in Melbourne and in one or more than one newspaper circulating in the district within which the company's registered office was situated in two consecutive numbers of such newspaper or, if more than one, of each of them, a notice of such day, the last of which insertions must be not less than fourteen days previous thereto, and requiring the creditors to come in and prove their debts on the said day before the said court, and stating, as is hereby enacted, that any creditor not so coming in shall be excluded from the benefit of any distribution made before the debt of any such creditor shall be proved.

Proof of debts by affidavit.

93. Proof of a debt by affidavit shall be sufficient unless the company or any creditor of, shareholder in, or contributory to it, shall require further proof of such debt; and any creditor shareholder or contributory may at any time, by notice to any person claiming to be a creditor of the company, require such person, whether he shall have previously given any

any proof of the debt claimed by him or not, to appear before the court on a day not to be less than three days from the time of the service of the said notice, and prove in the ordinary course of law the debt so claimed by him; and in default of his so appearing, or of proving to the satisfaction of the court the debt so claimed, or any part thereof, such debt, or such part thereof as shall not be so proved shall not be inserted in the statement next hereinafter mentioned; or, if inserted therein, shall be struck out by the court.

5.—*Contributories.*

Who are to be contributories.

94. If the assets of a company ordered to be wound up shall not be sufficient for payment of its debts and liabilities and of the costs charges and expenses of the winding up, and of such sums as may be required for the adjustment amongst themselves of the rights of the contributories herein described, the following persons shall be liable to contribute to such assets, such persons being hereinafter called contributories to the company.

(I.) The persons who at the time of the commencement of the winding up shall be registered in the register of shareholders as holding shares in the company, and the amount of whose shares shall not have been fully paid up.

(II.) The real and personal representatives, in a due course of administration, of any shareholder who, if living, would have been a contributor.

(III.) The assignee or trustee in insolvency or committee in lunacy of any such shareholder in the representative capacity of such assignee trustee or committee.

(IV.) Any married woman in whose name any share in the company shall be registered in the company's books.

But no contribution shall be required from any contributory exceeding the amount unpaid on the share in respect of which the contribution shall be required.

6.—*Statement of Assets—List of Contributories—Settling thereof, and Proceedings thereunder.*

Statement of assets and debts.

95. After the realization of the company's property, including the recovery of such calls as the liquidator shall be able to recover, he shall prepare a statement which shall show the assets of the company, distinguishing the sum or sums produced by the sale or sales of the company's property, and also all other moneys received or recovered by him, or paid in on account of the company, and also showing from, and by whom, and on what account received or paid in; and also setting forth a list of the

the debts proved; and, as far as shall then be known, of the sums which may be required for the adjustment of the rights of the contributories amongst themselves; and, in case such assets shall not be sufficient to liquidate the debts of the company and for payment of such sums as aforesaid, further stating what contribution per share, so far as the liability thereon will permit, will for those purposes be required from the contributories, and shall also in that case set forth a list of the contributories of the said company with, annexed to the name of each contributory, the number of shares held by him, and the sum to be paid in respect of such shares. The contribution to be made shall be such a sum upon each share (not exceeding the amount unpaid thereon) as, if paid on every share, would be sufficient with the assets of the company to liquidate its debts.

And list of contributories.

96. The liquidator shall lodge such statement in his office, and immediately after the preparation thereof shall insert in one or more than one newspaper published in Melbourne, and one or more than one newspaper circulating in the district in which the company's office was situated in two consecutive numbers of such newspaper, or, if more than one, of each of them, a notice that such statement has been so lodged, and, in case such contributions as aforesaid shall be required, that a list of contributories is comprised in the said statement, and that on a day to be named in the said notice, not to be less than fourteen days from the last insertion thereof, the said list of contributories will be settled by the court, and that on that day, or any day to which such settling shall be adjourned, any objections to the said list by any contributory or creditor will be heard and adjudicated upon by the court.

Statement and list of contributories to be lodged in liquidator's office and published in newspapers.

97. Upon the day fixed for settling the list of contributories, or upon such other day to which such settling or the continuation thereof may be adjourned, and at which settling the liquidator shall be present, the court shall, after hearing any objections and answers to the list which may be urged, by the company or any contributory or creditor or by the liquidator, and on being satisfied that the contributions mentioned in such list will be necessary for the purposes aforesaid, settle such list, amending or altering the same if proper to do so, and with power on such settling to rectify the register of shareholders in all cases where such rectification is required for the purposes of justice.

Settling of list of contributories.

98. After such list shall be settled the court shall make an order that the persons whose names shall be then thereon as contributories shall respectively pay the respective amounts which shall then be annexed to their names respectively, and such order shall be filed by the clerk.

Order on contributories to pay.

99. Immediately after the making of the said order the liquidator shall send by post in a prepaid letter to each contributory a notice of the sum to be paid by him, setting forth the respective numbers of the shares in respect of which contributions are due, and the respective amounts of such contributions, and requiring such sum to be paid to him the said liquidator within ten days after the insertion of the last of the

Notice to contributories.

the said advertisements. Such notice shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office.

Contributory may apply for removal of his name from list.

100. At any time after the making of the said order any person named as a contributory on the said list may, on notice to the liquidator, apply to the court or the judge thereof that his name be removed from the said list, or that he be rated at a sum less than that which by the said list he is charged with, and the court or judge shall thereupon make such order as shall be right, and in the latter case, if so ordered, the order for payment of contributions shall apply to such lesser sum.

Order to pay equivalent to an order of justices.

101. The order for payment of contributions shall as against each contributory personally liable have the same force and effect as an order of justices for the payment of any of the demands mentioned in the forty-first section of "*The Justices of Peace Statute* 1865" and may after the lapse of the said ten days be enforced by the liquidator in his official capacity in the same manner and by the same process as any such order of justices may be enforced. If any such contributory shall be liable in a representative capacity the amount payable by him under the said order may be recovered by the liquidator in the case of a real or personal representative in a county court, and in the case of the assignee or trustee of the estate of an insolvent or person whose estate is under liquidation, by proof thereof against such estate, under the "*Insolvency Statute* 1871," and obtaining thereout in due course of law such amount or such dividends thereon as can be obtained.

Further contributions.

102. In case the full amount of the said contributions cannot be obtained, and the contributions ordered shall not have been to the full extent of the amount unpaid on the shares of the contributories, the liquidator shall prepare and lodge as aforesaid a further statement setting forth the amount of the debts of the company still remaining unpaid, the amount necessary for their payment, and for the payment of the other sums aforesaid, the names of the persons who are to contribute to that amount, and the sum to be contributed by each, and the same course as to advertising and settling the list of contributories in the last-mentioned statement shall be pursued as herein is directed in regard to the list in the first-mentioned statement; and a corresponding order shall be made thereon with the like force and effect, and in like manner enforceable and recoverable, and a corresponding notice thereof given, and the person required to contribute may apply for a like order for removal of his name from such second list.

No contributory to stand on second list except so far as former contributories unable to pay.

103. Before settling any such second list of contributories the court shall determine whether, and to what extent, the sums therein charged are necessary, having regard to the possibility or otherwise of recovering from any of the contributories in the first list the contribution or contributions theretofore charged against him or them or any part thereof: And the court shall allow the names on such second list

to

to stand for such sums only as shall be necessary, having regard to such possibility or otherwise; but may afterwards amend such list, by increasing the sums so allowed in case the inability to recover any contributions shall make the same necessary, and shall be shown to its satisfaction.

When useless to proceed against a contributory.

104. In determining upon such possibility or otherwise the court, in any case where the liquidator shall state that he has not taken legal steps to enforce against any contributory the contribution ordered against him on the ground that such steps would be fruitless, may on such evidence being given as it shall think sufficient of the truth of such statement accept the same as proof of the impossibility of recovering such contribution, and act accordingly.

Liquidator may prove in insolvency of or administer estates contributory.

105. The liquidator may prove in the matter of the insolvency of any contributory any contribution ordered to be paid, or other debt due, by such contributory to the company and receive dividends in respect thereof, and if necessary, in order to obtain payment out of the estate of any deceased contributory of any contribution ordered to be paid by him or other debt due by his estate to the company, take out letters of administration to such contributory; and bring any action or suit or take any other legal proceeding and do any other act that may be necessary for the purpose of recovering such contribution or debt, or for obtaining payment of any moneys due to or recovering the estate and effects of the company from a contributory or his estate, or from any other person or his estate, and which cannot be conveniently done in the name of the company, in all which cases the moneys claimed by him shall for the purpose of enabling him to take such proceedings and recover such moneys be deemed to be due to himself, and may also with the sanction of the court defend any action suit or other legal proceeding.

Courts may control liquidator in any of such proceedings.

106. The court may on the application of the company or of any contributory thereto or creditor thereof control the action of the liquidator in any of the matters in the next preceding section authorized, and on such application make such order in respect of such matters as it shall think fit.

How liquidator described in actions, &c.

107. In any action suit or other proceeding brought or taken by or against a liquidator he shall be described by his proper name followed by the words "liquidator of the company," inserting the name of the company in full.

7.—*Plan of Distribution.*

Plan of distribution.

108. After the property of the company shall be realized and the contributions required and obtainable be paid, the liquidator shall with the approval of the court prepare a schedule showing the realized amount of the assets including the contributions and the liabilities of the company, the amount of moneys available for the claims in the matter of the winding up, and the proposed plan of distribution thereof. Such schedule as regards the said distribution shall be as follows:—

(1.) The

(I.) The costs charges and expenses incurred in the winding up as and to the extent which the court shall direct ... ... £ s. d.

(II.) The remuneration of the liquidator and of his clerk (if any) ... ... £ s. d.

(III.) Two weeks wages in full as a preferential claim over mortgages and all other debts of the company to any laborers employed by the company in or about its mine, provided so much shall have been actually and *bonâ fide* due when the winding up order was made ... ... £ s. d.

(IV.) Any rent which may be due by the company at the commencement of the winding up not exceeding three months rent ... ... £ s. d.

(V.) The debts of the company as far as such moneys will extend having regard to any legal priority which may exist as amongst the said debts, and so far as there is no such legal priority the debts shall be paid *pari passu* including the balance of any rent due after the payment of three months thereof as above provided ... ... £ s. d.

Notice of plan of distribution.

109. Upon the completion of the schedule the liquidator shall publish in the *Gazette* a notice stating that the schedule is open in his office for inspection by the contributors to and creditors of the company, and that the claims mentioned in the schedule will, after the lapse of fourteen days from the publication of the notice, be paid at the said office.

8.—*Distribution of Surplus.*

Distribution of surplus.

110. The court shall adjust the rights of the contributors amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto.

9.—*Dissolution of Company.*

Order dissolving the company.

111. When the winding up of a company shall be completed the court shall make an order that the company shall be dissolved from the day of the date of such order, and the company shall be dissolved accordingly, and by such order the court shall direct the manner in which the books and documents of the company are to be disposed of.

10.—*Voluntary Winding up.*

Voluntary winding up.

112. When at an extraordinary meeting of a company, which shall not then be in debt, two-thirds in number and value of the shareholders therein shall have passed a resolution requiring the company to be voluntarily wound up the said company may be wound up, without resort to the court, and such majority shall thereupon by resolution determine the course to be pursued by the directors for the purpose, and the mode of

of disposal of any surplus of the company's property which may remain after the completion of the winding up; and on such winding up being completed such company shall become dissolved, and the books and documents thereof be disposed of as such majority shall direct.

Part III.—Prepayment Companies.

Prepayment companies.

113. A company may be formed under this Act on a system to be called the "Prepayment System." In such a company no part of its expenditure incurred at or previous to the time of making a call shall be paid out of the call; but some time before the commencement of each month the company shall make an estimate of the sum which will probably be required for its working expenses during such month, and which cannot be paid otherwise than by means of a call, and shall make a call of so much per share, not exceeding the amount unpaid thereon, and not exceeding the amount of a call as fixed by the company's rules or deed of association, as shall be necessary for the payment of that sum or so much thereof as the calls available will be sufficient to meet. Notice of the call shall be published in the *Gazette*, in a daily newspaper published in Melbourne and in one or more papers circulating in the locality wherein the registered office of the company shall be situated, and shall require payment thereof at the company's registered office on the day on which calls are by the First Part of this Act to be due which shall occur next before the commencement of the said month, and the call shall from that day be a debt due by the shareholder to the company.

Liability of director incurring extra unauthorized expenditure.

114. Any director of such company who shall incur, or authorize, any expenditure in the business of the company beyond what the sum realized by means of such call shall be sufficient to meet, unless such extra expenditure shall be made out of money borrowed with the sanction of an extraordinary meeting of the company, or out of profits, shall be personally liable for such expenditure, and neither the company nor its property shall be liable therefor.

Application of Parts I. and II. to prepayment companies.

115. Subject as aforesaid and also to the following qualifications, Parts I. and II. of this Act, shall, so far as they are capable of doing so, apply to prepayment companies:—

(I.) In the memorandum to be lodged with the Registrar-General for the purposes of obtaining registration the expression "with prepayment" after the word "limited" shall be used, and there shall be added in the entry by the said Registrar-General in the Mining Register Book, as required by section seven, and in all other cases, to the name of every such company the words "Limited with Prepayment."

(II.) For section twenty-one shall, as regards such companies, be substituted the following section—"The manager for the time being of a prepayment company may make contracts on behalf of the company for the purchase of goods or the performance of work and the supply of the materials for the same to an amount in the aggregate not exceeding the sum which at the time of making of any such contract shall be standing

standing to the credit of the company in respect of calls paid in. Every such contract shall be binding on the company, and on the assets thereof, which assets may be seized and sold in execution in any action against such company upon any such contract, but no such contract shall be binding upon the manager himself."

PART IV.—NO-LIABILITY COMPANIES.

No-liability system.

116. Companies may be incorporated under this Act for mining purposes on a system to be called "The No-liability System." Every company so incorporated shall add to its name the words "No-liability."

Shareholder not liable to calls or contributions.

117. The acceptance of a share in any such company, whether by original allotment or by transfer, shall not be deemed a contract on the part of the person accepting the same to pay any calls in respect thereof, or any contribution to the debts and liabilities of the company, and such person shall not be liable to be sued for any such calls or contributions; but he shall not be entitled to a dividend upon any share upon which a call shall be due and unpaid.

Application of Part I. to no-liability companies.

118. Subject as aforesaid, and also to the qualifications following, Part I. of this Act shall, so far as it is capable of doing so, apply to no-liability companies: –

(I.) It shall be necessary that five per cent. of the subscribed capital shall be paid up prior to registration and a statutory declaration made by the manager verifying such payment shall be filed with the Registrar-General.

(II.) The memorandum to be lodged with the Registrar-General for the purpose of obtaining registration of any such company shall be in the form and contain the statements in the Sixth Schedule hereto.

Sixth Schedule.

(III.) In the entry to be made by the Registrar-General in the Mining Companies Register Book as required by section seven the words "No-liability" are to be added to the name of the company instead of the words "limited"; and, generally, instead of that word the words "No-liability" are to be added as part of the company's name.

(IV.) The following sections shall not apply to such companies:— sections thirteen, twenty-six, so far as it requires that on the transfer of a share the amount thereof shall be paid up; twenty-eight, so far as it requires that on such transfer no sum shall be due for calls; forty-six, so far as it relates to the payment of calls; forty-nine, so far as it relates to the liability of directors; fifty-two, fifty-three, fifty-four and fifty-five.

(V.) For sections fifty-four and fifty-five shall be substituted the following section:—

Forfeiture of shares.

Any share upon which a call shall at the expiration of fourteen days after the day for its payment be unpaid shall thereupon

thereupon be absolutely forfeited without any resolution of directors or other proceeding. The share, when forfeited, shall be sold by public auction, advertised in the *Gazette* not less than seven nor more than fourteen days before the day appointed for the sale, and the proceeds shall be applied in payment of the call unpaid thereon and of the expense of the advertisement, and of any other expenses necessarily incurred in respect of the forfeiture, and the balance (if any) shall be paid to the shareholder on his delivering to the company the scrip representing the forfeited share.

(VI.) No provision in the said Part relating to the liability of members of a company shall apply to no-liability companies.

Winding up of no-liability companies.

119. Part II. of this Act, with the exception of all the provisions therein relating to calls or contributions shall apply to the winding up of no-liability companies.

Distribution of surplus.

120. If after all the liabilities of a no-liability company shall be discharged there shall remain any surplus of its property the same shall be distributed amongst the parties entitled thereto; and after the complete distribution of the assets of the company the court shall make an order that the company shall be dissolved from the day of the date of such order, and the company shall be dissolved accordingly; and the court shall by such order direct the manner in which the books and documents of the company are to be disposed of.

PART V.—EXTENSION OF ACT TO OTHER COMPANIES.

1.—*Companies under "The Mining Companies Limited Liability Act* 1864."

Previously registered companies may be registered as no-liability companies.

121. Any company registered under "*The Mining Companies Limited Liability Act* 1864," or formed for mining purposes previously to the passing of this Act, may, with the consent of a majority in number and value of the shareholders in such company, present in meeting personally or by proxy, and with the consent in writing of the creditors (if any) be incorporated as a no-liability company.

Part IV. to apply in such case.

122. Part IV. of this Act shall apply to any such companies seeking to be or becoming so incorporated.

On registration as a no-liability company liability of shareholders to cease.

123. On the registration of any such company as a no-liability company all liability of the shareholders for calls shall from thenceforth cease. In the event of the winding up of such a company, the shareholders shall not be bound to contribute to the debts or liabilities of the company.

Until such registration to be deemed to be incorporated under First Part.

124. Until any company registered under "*The Mining Companies Limited Liability Act* 1864" shall be registered as a no-liability company it shall from and after the time of the commencement of this Act be deemed to be registered and incorporated under Part I. of this Act,

Act, and if after that time commenced to be wound up shall be wound up under Part II. of this Act, the provisions of which shall in such case apply to such company, but the word "registered" added to the name of any such company shall be sufficient without the word "limited."

Saving of previous proceedings.

125. All acts and rules heretofore done and made by, and all deeds and articles of association of, any such last-mentioned company and all actions and other proceedings pending at the time of the commencement of this Act under the said last-mentioned Act, except as to windings up so far as the same are to be continued under this Act, shall have the same force and effect and be carried on as if this Act had not passed, and all documents which were by the said Act made evidence of any matters or things shall continue to be such evidence as thereby ordained; and all rights, as to increasing capital, borrowing money, and otherwise, and all liabilities of any such company shall continue in force for and against it notwithstanding its constructive incorporation under this Act; and such company may after such its incorporation sue or be sued as theretofore in respect of any such right or liability: but all acts and proceedings of any such company hereafter to be done and commenced unless and until it shall be registered as a no-liability company shall be governed by this Act except Parts III. and IV. thereof, and every such company must, within thirty days after this Act shall come into operation, send to the clerk of the court at the place where the memorial upon which its registry was effected shall lie a notice of the name of its manager and of the situation of its registered office.

When companies under the "*Mining Companies Limited Liability Act* 1864" may be wound up under this Act.

126. If at the time of the coming into operation of this Act any such last-mentioned company shall be in course of being wound up, the court before which the winding up shall be pending may, if it shall think that no prejudice would be thereby done to any person, and on being satisfied that three-fourths in number and value of the creditors of such company require the same, order that such winding up shall be continued under Part II. of this Act, and thereupon such winding up shall so far as will be possible be so continued, and a liquidator be appointed, and other things done necessary to give effect to such order; and upon such order being made the duties authorities and rights of the official agent who had been acting in such winding up shall cease; but such official agent shall be accountable to the liquidator so to be appointed, as such liquidator, for the acts and receipts done and received by him the said official agent in, or under colour of, his office.

PART VI.—MISCELLANEOUS.

Deputy judge and clerk to have power to act.

127. Any judge or deputy-judge of a Court of Mines sitting under the "*Mining Statute* 1865," for any other such judge may do the acts and perform the duties hereby required to be done and performed by such other judge, and any deputy clerk of such court may do the acts and perform the duties hereby required to be done and performed by the clerk for whom he shall be deputy.

Summonses to witnesses.

128. Any party to any legal proceeding under this Act may obtain at the office of the clerk of the court summonses to witnesses to be served

served with or without a clause requiring the production of books deeds papers and writings in their possession or under their control.

Parties may act by barristers or attorneys.

129. Any party to any such proceeding may act therein by a barrister or by an attorney not employed as advocate by any other attorney, and the fees to be paid to such barristers and attorneys shall be fixed by the general rules to be made as hereinafter mentioned, and shall be deemed part of the costs of the proceedings unless the court or the judge thereof shall otherwise order.

Service of notices.

130. Except where otherwise herein or in any schedule hereto provided notices required to be served on individuals under this Act may be served personally, or at the dwelling of the person to be served, upon any inmate of years of discretion, or at the place of business of such person upon his servant or agent there employed, and an affidavit of the service by the person effecting the same must be endorsed upon or written under a copy of the notice served describing how the same has been served, and such affidavit shall be *primâ facie* evidence that such notice was duly served.

Directors not to let on tribute without sanction of shareholders

131. The directors of any company shall not let the whole or any portion of a mine or claim on tribute without the sanction of the shareholders present at a general meeting called for that purpose.

General rules.

132. The Governor in Council may from time to time, but subject to this Act, frame general rules for carrying out the provisions hereof and for the fees to be paid to barristers and attorneys engaged in proceedings thereunder, and for the expenses to be paid to witnesses, and from time to time rescind or alter any such rule, and such rules shall be published in the *Government Gazette*, and from and after the time thereby fixed for the commencement of their operation shall have the same force as if herein enacted. In the making or altering of any such rules under this Act a company may adopt as rules any of the articles contained in the Seventh Schedule hereto, or may so adopt any of the same modified as it shall think fit, but so as not to be inconsistent with the provisions of this Act.

Seventh Schedule.

Part VII.—Offences.

Penalty on company for not having an office.

133. If any company shall carry on business without having a registered office as required by this Act it shall be liable to a penalty not exceeding Five pounds for every day during which business shall be so carried on.

Liability of managers as for misdemeanor.

134. Any manager of a company shall in each of the following cases be guilty of a misdemeanor, and on conviction thereof be liable to be imprisoned for any time not exceeding twelve months.

(I.) If he shall wilfully neglect to make in the share-register of the company any transfer of any share which it is his duty to make, or if he wilfully make any false entry of such transfer in such register.

(II.) If he shall wilfully make any false entry or statement in any accounts which he is hereby directed to keep.

(III.) If

(III.) If after having been lawfully directed so to do he shall wilfully neglect or refuse to lodge with the liquidator the register of the shareholders in a company ordered to be wound up and all other books documents and other property of such company in his possession or under his control together with the list thereof subscribed with the statutory declaration hereinbefore in that behalf mentioned.

(IV.) If at the expiration of six months from the time at which a company shall have ceased to carry on business without being wound up, or of such extended time therefor as shall be allowed by the court or judge, he shall not deposit with the clerk the said register and all other books and documents belonging to the company in his possession or under his control.

Liability of manager to penalties.

135. Any such manager shall in each of the following cases be liable to a penalty not exceeding ten pounds:—

(I.) If he shall wilfully neglect to lodge the notices in respect of the registered office of the company of which he is manager, or in respect of the manager, or to publish copies thereof or advertisements in the *Gazette* and newspapers as hereinbefore directed.

(II.) If he shall wilfully omit to keep such accounts as he is hereinbefore required to keep.

(III.) If he shall wilfully refuse to permit any person to inspect or obstruct any person in inspecting any book or account of a company, or report of directors thereof which such person is entitled to inspect, or shall, on the tender to him of one shilling, wilfully refuse to permit any such person to inspect, or obstruct him in inspecting, any statement to the inspection of which such person shall, on the payment of the said sum, be entitled under the provisions hereof.

(IV.) If, upon such request and payment as hereinbefore in that behalf directed, he shall wilfully refuse or neglect to furnish any copy of accounts or of any statement which, on such request and payment, he is hereby required to furnish.

Director omitting to make reports or statements, or making false statements.

136. Any director of a company who shall wilfully omit duly to lodge in the company's office any report which he is hereby required so to lodge, or to cause to be made any statement which he is hereby required to cause to be made, having at his disposal funds of the company sufficient to enable him to cause the same to be printed, or who shall wilfully make any false statement in any such report or statement, shall for every such offence be liable to a penalty not exceeding fifty pounds.

Director obstructing inspection of books.

137. Any director who shall wilfully refuse to permit any person to inspect or obstruct any person in inspecting any book or account of a company, or any report or statement of the directors thereof which such person is entitled to inspect shall be liable to a penalty not exceeding ten pounds.

138. Any

Liability of liquidator as for misdemeanor.

138. Any liquidator of a company shall in each of the following cases be guilty of a misdemeanor, and on conviction thereof shall be liable to be imprisoned for any time not exceeding twelve months.

(I.) If he shall wilfully make any false statement in any statement list or schedule which he is hereby directed to prepare, set forth, or make.

(II.) If he shall state to the court that the taking of legal proceedings to enforce a contribution against a contributory would be fruitless not having reasonable grounds for believing the same.

Liability of liquidator to penalty.

139. Any liquidator who shall wilfully omit to perform any duty in other respects hereby imposed upon him shall be liable to a penalty not exceeding twenty pounds.

Penalty for falsification of books or notices.

140. If any person wilfully falsify any book or account of any company under this Act, or sign any memorial or notice required by this Act, knowing the same to be untrue, he shall be guilty of a misdemeanor and liable to be imprisoned for a term not exceeding twelve months.

Penalties on persons committing forgery.
30 & 31 Vict., c. 131 s. 34.

141. Any person who shall forge or alter or offer utter dispose of or put off, knowing the same to be forged or altered, any scrip certificate or any document purporting to be a scrip certificate issued in pursuance of this Act, or who shall demand or endeavour to obtain or receive any share or interest of, or in, any company under this Act, or to receive any dividend or money payable in respect thereof by virtue of any such forged or altered scrip certificate or document purporting as aforesaid, knowing the same to be forged or altered, with intent in any of the cases aforesaid to defraud, shall be guilty of felony, and being convicted thereof shall be liable to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement.

Penalties on persons falsely personating owner of shares.
30 & 31 Vict., c. 131 s. 35.

142. Any person who shall falsely and deceitfully personate any owner of any share or interest in, any company issued in pursuance of this Act and thereby obtain or endeavour to obtain any such share or interest, or receive, or endeavour to receive, any money due to any such owner as if such person were the true and lawful owner shall be guilty of felony, and being convicted thereof shall be liable to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement.

Court may direct prosecution in certain cases.

143. It shall be the duty of the court in case at any time it considers it has reason to believe that any of the offences mentioned in this Part of this Act has been committed to direct that a prosecution therefor shall be instituted by any Crown prosecutor or other proper officer.

SCHEDULES.

SCHEDULES.

FIRST SCHEDULE.

Section 1.

Date of Act.	Title of Act.	Extent of Repeal.
27 Vict. No. 228	"*An Act to limit the Liability of Mining Com-panies.*"	The whole
31 Vict. No. 324	"*An Act to amend 'The Mining Companies "'Limited Liability Act* 1864.'"	The whole, except section 9.
32 Vict. No. 354	"*An Act to amend 'The Mining Companies "'Limited Liability Act* 1864' *and for other "purposes.*"	Sections 1, 2, and 4.
33 Vict. No. 372	"*An Act to amend 'The Mining Companies "'Limited Liability Act* 1864' *and for other "purposes.*"	Section 1.

SECOND SCHEDULE.

Section 6.

I the undersigned hereby make application to register [*here insert the name of the company*] as a Limited Company [*or* Limited with Prepayment *as the case may be*] under the provisions of "*The Mining Companies Act* 1871."

1. The name of the company is to be
2. The place of operations [*or* intended operations] is at
3. The registered office of the company will be situated at
4. The nominal capital of the company is pounds in shares of each.
5. The number of shares subscribed for is being not less than two-thirds of the entire number of shares in the company.
6. The number of paid up shares (if any) is
7. The amount already paid up is
8. The name of the manager is
9. The names and addresses and occupations of the shareholders and the number of shares held by each at this date are as follows:—

[*Here set forth names, &c., of shareholders.*]

A.B.
Manager.

Dated this day of 18 .

Witness to signature C.D.

I A.B.

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by an action for the purpose, but had no right virtute officii to have any part of the New Zealand mortgages appropriated to the estate of their testatrix in specie.

Order appealed from affirmed and appeal dismissed with costs.

Lords' Journals, November 13, 1896.

Solicitor for appellants: *J. A. Bertram.*
Solicitor for respondent: *Solicitor of Inland Revenue.*

[HOUSE OF LORDS.]

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ARON SALOMON (PAUPER) . . . . . APPELLANT;

AND

A. SALOMON AND COMPANY, LIMITED RESPONDENTS.

BY ORIGINAL APPEAL.

AND

A. SALOMON AND COMPANY, LIMITED APPELLANTS;

AND

ARON SALOMON . . . . . RESPONDENT.

BY CROSS APPEAL.

Company—Private Company—One Man Company—Limited Liability—Winding-up—Fraud upon Creditors—Liability to indemnify Company in respect of Debts—Rescission—Companies Act 1862 (25 & 26 *Vict. c.* 89) *ss.* 6, 8, 30, 43.

It is not contrary to the true intent and meaning of the Companies Act 1862 for a trader, in order to limit his liability and obtain the preference of a debenture-holder over other creditors, to sell his business to a limited company consisting only of himself and six members of his own family, the business being then solvent, all the terms of sale being known to and approved by the shareholders, and all the requirements of the Act being complied with.

A trader sold a solvent business to a limited company with a nominal capital of 40,000 shares of 1*l.* each, the company consisting only of the vendor, his wife, a daughter and four sons, who subscribed for one share each, all the terms of sale being known to and approved by the shareholders.

In part payment of the purchase-money debentures forming a floating security were issued to the vendor. Twenty thousand shares were also issued to him and were paid for out of the purchase-money. These shares gave the vendor the power of outvoting the six other shareholders. No shares other than these 20,007 were ever issued. All the requirements of the Companies Act 1862 were complied with. The vendor was appointed managing director, bad times came, the company was wound up, and after satisfying the debentures there was not enough to pay the ordinary creditors:—

Held, that the proceedings were not contrary to the true intent and meaning of the Companies Act 1862; that the company was duly formed and registered and was not the mere "alias" or agent of or trustee for the vendor; that he was not liable to indemnify the company against the creditors' claims; that there was no fraud upon creditors or shareholders; and that the company (or the liquidator suing in the name of the company) was not entitled to rescission of the contract for purchase.

The decisions of Vaughan Williams J. and the Court of Appeal ([1895] 2 Ch. 323) reversed.

THE following statement of the facts material to this report is taken from the judgment of Lord Watson:—

The appellant, Aron Salomon, for many years carried on business, on his own account, as a leather merchant and wholesale boot manufacturer. With the design of transferring his business to a joint stock company, which was to consist exclusively of himself and members of his own family, he, on July 20, 1892, entered into a preliminary agreement with one Adolph Anholt, as trustee for the future company, settling the terms upon which the transfer was to be made by him, one of its conditions being that part payment might be made to him in debentures of the company. A memorandum of association was then executed by the appellant, his wife, a daughter, and four sons, each of them subscribing for one share, in which the leading object for which the company was formed was stated to be the adoption and carrying into effect, with such modifications (if any) as might be agreed on, of the provisional agreement of July 20. The memorandum was registered on July 28, 1892; and the effect of registration, if otherwise valid, was to incorporate the company, under the name of "Aron Salomon and Company, Limited," with liability limited by shares, and having a nominal capital of 40,000*l.*, divided into 40,000 shares of 1*l.* each. The company adopted

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the agreement of July 20, subject to certain modifications which are not material; and an agreement to that effect was executed between them and the appellant on August 2, 1892. Within a month or two after that date the whole stipulations of the agreement were fulfilled by both parties. In terms thereof, 100 debentures, for 100*l.* each, were issued to the appellant, who, upon the security of these documents, obtained an advance of 5000*l.* from Edmund Broderip. In February 1893 the original debentures were returned to the company and cancelled; and in lieu thereof, with the consent of the appellant as beneficial owner, fresh debentures to the same amount were issued to Mr. Broderip, in order to secure the repayment of his loan, with interest at 8 per cent.

In September 1892 the appellant applied for and obtained an allotment of 20,000 shares; and from that date until an order was made for its compulsory liquidation, the share register of the company remained unaltered, 20,001 shares being held by the appellant, and six shares by his wife and family. It was all along the intention of these persons to retain the business in their own hands, and not to permit any outsider to acquire an interest in it.

Default having been made in the payment of interest upon his debentures, Mr. Broderip, in September 1893, instituted an action in order to enforce his security against the assets of the company. Thereafter a liquidation order was made, and a liquidator appointed, at the instance of unsecured creditors of the company. It has now been ascertained that, if the amount realised from the assets of the company were, in the first place, applied in extinction of Mr. Broderip's debt and interest, there would remain a balance of about 1055*l.*, which is claimed by the appellant as beneficial owner of the debentures. In the event of his claim being sustained there will be no funds left for payment of the unsecured creditors, whose debts amount to 7733*l.* 8*s.* 3*d.*

The liquidator lodged a defence, in name of the company, to the debenture suit, in which he counter-claimed against the appellant (who was made a party to the counter-claim), (1.) to have the agreements of July 20 and August 2, 1892 rescinded,

(2.) to have the debentures already mentioned delivered up and cancelled, (3.) judgment against the appellant for all sums paid by the company to the appellant under these agreements, and (4.) a lien for these sums upon the business and assets. The averments made in support of these claims were to the effect that the price paid by the company exceeded the real value of the business and assets by upwards of 8200*l.*; that the arrangements made by the appellant for the formation of the company were a fraud upon the creditors of the company; that no board of directors of the company was ever appointed, and that in any case such board consisted entirely of the appellant, and there never was an independent board. The action came on for trial on the counter-claim before Vaughan Williams J., when the liquidator was examined as a witness on behalf of the company, whilst evidence was given for the appellant by himself, and by his son, Emanuel Salomon, one of the members of the company, who had been employed in the business for nearly twenty years.

The evidence shews that, before its transfer to the new company, the business had been prosperous, and had yielded to the appellant annual profits sufficient to maintain himself and his family, and to add to his capital. It also shews that at the date of transfer the business was perfectly solvent. The liquidator, whose testimony was chiefly directed toward proving that the price paid by the company was excessive, admitted on cross-examination that the business, when transferred to the company, was in a sound condition, and that there was a substantial surplus. No evidence was led tending to support the allegation that no board of directors was ever appointed, or that the board consisted entirely of the appellant. The non-success and ultimate insolvency of the business, after it came into the hands of the company, was attributed by the witness Emanuel Salomon to a succession of strikes in the boot trade, and there is not a tittle of evidence tending to modify or contradict his statement. It also appears from the evidence that all the members of the company were fully cognisant of the terms of the agreements of July 20 and August 2, 1892, and that they were willing to accept and did accept these terms.

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At the close of the argument Vaughan Williams J. announced that he was not prepared to grant the relief craved by the company. He at the same time suggested that a different remedy might be open to the company; and, on the motion of their counsel, he allowed the counter-claim to be amended. In conformity with the suggestion thus made by the Bench, a new and alternative claim was added for a declaration that the company or the liquidator was entitled (1.) to be indemnified by the appellant against the whole of the company's unsecured debts, namely, 7733*l.* 8*s.* 3*d.*; (2.) to judgment against the appellant for that sum; and (3.) to a lien for that amount upon all sums which might be payable to the appellant by the company in respect of his debentures or otherwise until the judgment was satisfied. There were also added averments to the effect that the company was formed by the appellant, and that the debentures for 10,000*l.* were issued in order that he might carry on the business, and take all the profits without risk to himself; and also that the company was the "mere nominee and agent" of the appellant.

Vaughan Williams J. made an order for a declaration in the terms of the new and alternative counter-claim above stated, without making any order on the original counter-claim.

Both parties having appealed, the Court of Appeal (Lindley, Lopes and Kay L.JJ.) being of opinion that the formation of the company, the agreement of August 1892, and the issue of debentures to the appellant pursuant to such agreement, were a mere scheme to enable him to carry on business in the name of the company with limited liability contrary to the true intent and meaning of the Companies Act 1862, and further to enable him to obtain a preference over other creditors of the company by procuring a first charge on the assets of the company by means of such debentures, dismissed the appeal with costs, and declined to make any order on the original counter-claim. (1)

Against this order the appellant appealed, and the company brought a cross-appeal against so much of it as declined to make any order upon the original counter-claim. Broderip having been paid off was no party to this appeal or cross-appeal.

(1) Reported as *Broderip* v. *Salomon*, [1895] 2 Ch. 323.

June 15, 22, 29. *Cohen Q.C.* and *Buckley Q.C.* (*McCall Q.C.* and *Muir Mackenzie* with them), for the appellant in the original appeal. The view of Vaughan Williams J. that the company was the mere alias or agent of the appellant so as to make him liable to indemnify the company against creditors, was not adopted by the Court of Appeal, who seem to have considered the company as the appellant's trustee. There is no evidence in favour of either view. The sale of the business was bonâ fide: the business was genuine and solvent, with a substantial surplus. All the circumstances were known to and approved by the shareholders. All the requirements of the Companies Act, 1862, were strictly complied with: the purpose was lawful, the proceedings were regular. How could the registrar refuse to register such a company? What objection is it that the vendor desires to convert his unlimited into a limited liability? That is the prime object of turning a private business into a limited company, practised every day by banks and other great firms. And what difference to creditors could it make whether the debentures were held by the vendor or by strangers? Whoever held them had the preference over creditors—that is the future creditors—all the old creditors having been paid off by the vendor. There was no misrepresentation of fact, and no one was misled: where is "the fraud upon creditors" spoken of in the Court of Appeal? The creditors were under no obligation to trust the company; they might, if they had desired, have found out who held the shares, and in what proportion, and who held the debentures. There is not a word in ss. 6, 8, 30, 43, or any other section of the Companies Act, 1862, forbidding or even pointing against such a company so formed and for such objects. Then, if the company was a real company, fulfilling all the requirements of the Legislature, it must be treated as a company, as an entity, consisting indeed of certain corporators, but a distinct and independent corporation. The Court of Appeal seem to treat the company sometimes as substantial and sometimes as shadowy and unreal: it must be one or the other, it cannot be both. A Court cannot impose conditions not imposed by the Legislature, and say that the shareholders must not be related

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to each other, or that they must hold more than one share each. There is nothing to prevent one shareholder or all the shareholders holding the shares in trust for some one person. What is prohibited is the entry of a trust on the register: s. 30. If all the shares were held in trust that would not make the company a trustee. The authorities relied upon below (which all turn upon some one being deceived or defrauded) do not touch the present case and do not support the judgment below.

[They referred to *Reg.* v. *Arnaud* (1); *In re Ambrose Lake Tin and Copper Mining Co.* (2); *In re British Seamless Paper Box Co.* (3); *Farrar* v. *Farrars, Limited* (4); *North-West Transportation Co.* v. *Beatty* (5); *In re National Debenture and Assets Corporation* (6); *In re George Newman & Co.* (7)]

As to the cross-appeal, there being no fraud, misrepresentation or deceit, not even any failure of consideration, there is no ground for rescission. Moreover, the company's assets having been sold the company is not in a position to ask for it.

Farwell Q.C. and *H. S. Theobald*, for the respondents. The question is one of fact rather than law, and the true inferences from the facts are these: The appellant incorporated the company to carry on his business without risk to himself and at his creditors' expense. The business was decaying when the company was formed, and though carried on as before, nay with more (borrowed) money, it failed very soon after the sale. To get an advantage over creditors the vendor took debentures and concealed the fact from them. The purchase-money was exorbitant, the price dictated solely by the vendor, and there was no independent person acting for the company. Though incorporated under the Acts the company never had an independent existence: it was in fact the appellant under another name; he was the managing director, the other directors being his sons and under his control. The shareholders other than himself were his own family, and his vast preponderance of shares made him absolute master.

(1) (1846) 9 Q. B. 806.
(2) (1880) 14 Ch. D. 390, 394, 398.
(3) (1881) 17 Ch. D. 467, 476, 479.
(4) (1888) 40 Ch. D. 395.
(5) (1887) 12 App. Cas. 589.
(6) [1891] 2 Ch. 505.
(7) [1895] 1 Ch. 674, 685.

He could pass any resolution, and he would receive all the profits—if any. Whether therefore the company is considered as his agent, or his nominee or his trustee, matters little. The business was solely his, conducted solely for him and by him, and the company was a mere sham and fraud, in effect entirely contrary to the intent and meaning of the Companies Act. The liquidator is therefore entitled to counter-claim against him for an indemnity. As to the cross-appeal and the claim for rescission the decision in *Erlanger* v. *New Sombrero Phosphate Co.* (1) and the observations of Lord Cairns are precisely applicable and conclusive in favour of rescission. See also *Adam* v. *Newbigging*. (2)

[LORD WATSON referred to *Western Bank of Scotland* v. *Addie* (3), following *Clarke* v. *Dickson*. (4)]

[They also referred to *Ex parte Cowen* (5) ; *In re Smith*. (6)]

The House took time for consideration.

NOV. 16. LORD HALSBURY L.C. My Lords, the important question in this case, I am not certain it is not the only question, is whether the respondent company was a company at all—whether in truth that artificial creation of the Legislature had been validly constituted in this instance; and in order to determine that question it is necessary to look at what the statute itself has determined in that respect. I have no right to add to the requirements of the statute, nor to take from the requirements thus enacted. The sole guide must be the statute itself.

Now, that there were seven actual living persons who held shares in the company has not been doubted. As to the proportionate amounts held by each I will deal presently; but it is important to observe that this first condition of the statute is satisfied, and it follows as a consequence that it would not

(1) (1878) 3 App. Cas. 1218, 1236, 1238.
(2) (1888) 13 App. Cas. 308.
(3) (1867) L. R. 1 H. L., Sc. 145.
(4) (1858) E. B. & E. 148.
(5) (1867) L. R. 2 Ch. 563.
(6) (1890) 25 Q. B. D. 536, 541.

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be competent to any one—and certainly not to these persons themselves—to deny that they were shareholders.

I must pause here to point out that the statute enacts nothing as to the extent or degree of interest which may be held by each of the seven, or as to the proportion of interest or influence possessed by one or the majority of the shareholders over the others. One share is enough. Still less is it possible to contend that the motive of becoming shareholders or of making them shareholders is a field of inquiry which the statute itself recognises as legitimate. If they are shareholders, they are shareholders for all purposes; and even if the statute was silent as to the recognition of trusts, I should be prepared to hold that if six of them were the cestuis que trust of the seventh, whatever might be their rights inter se, the statute would have made them shareholders to all intents and purposes with their respective rights and liabilities, and, dealing with them in their relation to the company, the only relations which I believe the law would sanction would be that they were corporators of the corporate body.

I am simply here dealing with the provisions of the statute, and it seems to me to be essential to the artificial creation that the law should recognise only that artificial existence—quite apart from the motives or conduct of individual corporators. In saying this, I do not at all mean to suggest that if it could be established that this provision of the statute to which I am adverting had not been complied with, you could not go behind the certificate of incorporation to shew that a fraud had been committed upon the officer entrusted with the duty of giving the certificate, and that by some proceeding in the nature of scire facias you could not prove the fact that the company had no real legal existence. But short of such proof it seems to me impossible to dispute that once the company is legally incorporated it must be treated like any other independent person with its rights and liabilities appropriate to itself, and that the motives of those who took part in the promotion of the company are absolutely irrelevant in discussing what those rights and liabilities are.

I will for the sake of argument assume the proposition that

the Court of Appeal lays down—that the formation of the company was a mere scheme to enable Aron Salomon to carry on business in the name of the company. I am wholly unable to follow the proposition that this was contrary to the true intent and meaning of the Companies Act. I can only find the true intent and meaning of the Act from the Act itself; and the Act appears to me to give a company a legal existence with, as I have said, rights and liabilities of its own, whatever may have been the ideas or schemes of those who brought it into existence.

I observe that the learned judge (Vaughan Williams J.) held that the business was Mr. Salomon's business, and no one else's, and that he chose to employ as agent a limited company; and he proceeded to argue that he was employing that limited company as agent, and that he was bound to indemnify that agent (the company). I confess it seems to me that that very learned judge becomes involved by this argument in a very singular contradiction. Either the limited company was a legal entity or it was not. If it was, the business belonged to it and not to Mr. Salomon. If it was not, there was no person and no thing to be an agent at all; and it is impossible to say at the same time that there is a company and there is not.

Lindley L.J., on the other hand, affirms that there were seven members of the company; but he says it is manifest that six of them were members simply in order to enable the seventh himself to carry on business with limited liability. The object of the whole arrangement is to do the very thing which the Legislature intended not to be done.

It is obvious to inquire where is that intention of the Legislature manifested in the statute. Even if we were at liberty to insert words to manifest that intention, I should have great difficulty in ascertaining what the exact intention thus imputed to the Legislature is, or was. In this particular case it is the members of one family that represent all the shares; but if the supposed intention is not limited to so narrow a proposition as this, that the seven shareholders must not be members of one family, to what extent may influence or authority or intentional purchase of a majority among the shareholders be carried so as

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to bring it within the supposed prohibition? It is, of course, easy to say that it was contrary to the intention of the Legislature—a proposition which, by reason of its generality, it is difficult to bring to the test; but when one seeks to put as an affirmative proposition what the thing is which the Legislature has prohibited, there is, as it appears to me, an insuperable difficulty in the way of those who seek to insert by construction such a prohibition into the statute.

As one mode of testing the proposition, it would be pertinent to ask whether two or three, or indeed all seven, may constitute the whole of the shareholders? Whether they must be all independent of each other in the sense of each having an independent beneficial interest? And this is a question that cannot be answered by the reply that it is a matter of degree. If the Legislature intended to prohibit something, you ought to know what that something is. All it has said is that one share is sufficient to constitute a shareholder, though the shares may be 100,000 in number. Where am I to get from the statute itself a limitation of that provision that that shareholder must be an independent and beneficially interested person?

My Lords, I find all through the judgment of the Court of Appeal a repetition of the same proposition to which I have already adverted—that the business was the business of Aron Salomon, and that the company is variously described as a myth and a fiction. Lopes L.J. says: "The Act contemplated the incorporation of seven independent bonâ fide members, who had a mind and a will of their own, and were not the mere puppets of an individual who, adopting the machinery of the Act, carried on his old business in the same way as before, when he was a sole trader." The words "seven independent bonâ fide members with a mind and will of their own, and not the puppets of an individual," are by construction to be read into the Act. Lopes L.J. also said that the company was a mere nominis umbra. Kay L.J. says: "The statutes were intended to allow seven or more persons, bonâ fide associated for the purpose of trade, to limit their liability under certain conditions and to become a corporation. But they were not intended to legalise a pretended association for the purpose of

enabling an individual to carry on his own business with limited liability in the name of a joint stock company."

My Lords, the learned judges appear to me not to have been absolutely certain in their own minds whether to treat the company as a real thing or not. If it was a real thing; if it had a legal existence, and if consequently the law attributed to it certain rights and liabilities in its constitution as a company, it appears to me to follow as a consequence that it is impossible to deny the validity of the transactions into which it has entered.

Vaughan Williams J. appears to me to have disposed of the argument that the company (which for this purpose he assumed to be a legal entity) was defrauded into the purchase of Aron Salomon's business because, assuming that the price paid for the business was an exorbitant one, as to which I am myself not satisfied, but assuming that it was, the learned judge most cogently observes that when all the shareholders are perfectly cognisant of the conditions under which the company is formed and the conditions of the purchase, it is impossible to contend that the company is being defrauded.

The proposition laid down in *Erlanger* v. *New Sombrero Phosphate Co.* (1), (I quote the head-note), is that "Persons who purchase property and then create a company to purchase from them the property they possess, stand in a fiduciary position towards that company, and must faithfully state to the company the facts which apply to the property, and would influence the company in deciding on the reasonableness of acquiring it." But if every member of the company—every shareholder—knows exactly what is the true state of the facts (which for this purpose must be assumed to be the case here), Vaughan Williams J.'s conclusion seems to me to be inevitable that no case of fraud upon the company could here be established. If there was no fraud and no agency, and if the company was a real one and not a fiction or a myth, every one of the grounds upon which it is sought to support the judgment is disposed of.

My Lords, the truth is that the learned judges have never allowed in their own minds the proposition that the company

(1) 3 App. Cas. 1218.

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has a real existence. They have been struck by what they have considered the inexpediency of permitting one man to be in influence and authority the whole company; and, assuming that such a thing could not have been intended by the Legislature, they have sought various grounds upon which they might insert into the Act some prohibition of such a result. Whether such a result be right or wrong, politic or impolitic, I say, with the utmost deference to the learned judges, that we have nothing to do with that question if this company has been duly constituted by law; and, whatever may be the motives of those who constitute it, I must decline to insert into that Act of Parliament limitations which are not to be found there.

I have dealt with this matter upon the narrow hypothesis propounded by the learned judges below; but it is, I think, only justice to the appellant to say that I see nothing whatever to justify the imputations which are implied in some of the observations made by more than one of the learned judges. The appellant, in my opinion, is not shewn to have done or to have intended to do anything dishonest or unworthy, but to have suffered a great misfortune without any fault of his own.

The result is that I move your Lordships that the judgment appealed from be reversed, but as this is a pauper case, I regret to say it can only be with such costs in this House as are appropriate to that condition of things, and that the cross-appeal be dismissed with costs to the same extent.

LORD WATSON. My Lords, this appeal raises some questions of practical importance, depending upon the construction of the Companies Acts, which do not appear to have been settled by previous decisions. As I am not prepared to accept without reservation all the conclusions of fact which found favour with the Courts below, I shall, before adverting to the law, state what I conceive to be the material facts established by the evidence before us. [His Lordship stated the facts above set out.]

The allegations of the company, in so far as they have any relation to the amended claim, their pith consisting in the aver-

ments made on amendment, were meant to convey a charge of fraud; and it is unfortunate that they are framed in such loose and general terms. A relevant charge of fraud ought to disclose facts necessitating the inference that a fraud was perpetrated upon some person specified. Whether it was a fraud upon the company and its members, or upon persons who had dealings with the company, is not indicated, although there may be very different considerations applicable to those two cases. The res gestæ which might imply that it was the appellant, and not the company, who actually carried on its business, are not set forth. Any person who holds a preponderating share in the stock of a limited company has necessarily the intention of taking the lion's share of its profits without any risk beyond loss of the money which he has paid for, or is liable to pay upon his shares; and the fact of his acquiring and holding debentures secured upon the assets of the company does not diminish the risk of that loss. What is meant by the assertion that the company "was the mere nominee or agent" of the appellant I cannot gather from the record; and I am not sure that I understand precisely in what sense it was interpreted by the learned judges whose decisions we have to consider.

No additional proof was led after the amendment of the counter-claim. The oral testimony has very little, if any, bearing upon the second claim; and any material facts relating to the fraudulent objects which the appellant is said to have had in view, and the alleged position of the company as his nominee or agent, must be mere matter of inference derived from the agreements of July 20 and August 2, 1892, the memorandum and articles of association, and the minute-book of the company.

On rehearing the case Vaughan Williams J., without disposing of the original claim, gave the company decree of indemnity in terms of their amended claim. I do not profess my ability to follow accurately the whole chain of reasoning by which the learned judge arrived at that conclusion; but he appears to have proceeded mainly upon the ground that the appellant was in truth the company, the other members being either his trustees or mere "dummies," and consequently that

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the appellant carried on what was truly his own business under cover of the name of the company, which was nothing more than an alias for Aron Salomon. On appeal from his decision, the Court of Appeal, consisting of Lindley, Lopes, and Kay L.JJ., made an order finding it unnecessary to deal with the original claim, and dismissing the appeal in so far as it related to the amended claim. The ratio upon which that affirmance proceeded, as embodied in the order, was: "This Court being of opinion that the formation of the company, the agreement of August, 1892, and the issue of debentures to Aron Salomon pursuant to such agreement, were a mere scheme to enable him to carry on business in the name of the company, with limited liability, contrary to the true intent and meaning of the Companies Act, 1862, and further to enable him to obtain a preference over other creditors of the company by procuring a first charge on the assets of the company by means of such debentures." The opinions delivered by the Lords Justices are strictly in keeping with the reasons assigned in their order. Lindley L.J., observing "that the incorporation of the company cannot be disputed," refers to the scheme for the formation of the company, and says (1): "the object of the whole arrangement is to do the very thing which the Legislature intended not to be done"; and he adds that "Mr. Salomon's scheme is a device to defraud creditors."

Assuming that the company was well incorporated in terms of the Act of 1862, an assumption upon which the decisions appealed from appear to me to throw considerable doubt, I think it expedient, before considering the amended claim, to deal with the original claim for rescission, which was strongly pressed upon us by counsel for the company, under their cross-appeal. Upon that branch of the case there does not appear to me to be much room for doubt. With this exception, that the word "exorbitant" appears to me to be too strong an epithet, I entirely agree with Vaughan Williams J. when he says: "I do not think that where you have a private company, and all the shareholders in the company are perfectly cognisant of the conditions under which the company is formed, and the conditions

(1) [1895] 2 Ch. 337, 339.

of the purchase by the company, you can possibly say that purchasing at an exorbitant price (and I have no doubt whatever that the purchase here was at an exorbitant price) is a fraud upon those shareholders or upon the company." The learned judge goes on to say that the circumstances might have amounted to fraud if there had been an intention on the part of the original shareholders "to allot further shares at a later period to future allottees." Upon that point I do not find it necessary to express any opinion, because it is not raised by the facts of the case, and, in any view, these considerations are of no relevancy in a question as to rescission between the company and the appellant.

Mr. Farwell argued that the agreement of August 2 ought to be set aside upon the principle followed by this House in *Erlanger* v. *New Sombrero Phosphate Co.* (1) In that case the vendor, who got up the company, with the view of selling his adventure to it, attracted shareholders by a prospectus which was essentially false. The directors, who were virtually his nominees, purchased from him without being aware of the real facts; and on their assurance that, in so far as they knew, all was right, the shareholders sanctioned the transaction. The fraud by which the company and its shareholders had been misled was directly traceable to the vendor; and it was set aside at the instance of the liquidator, the Lord Chancellor (Earl Cairns) expressing a doubt whether, even in those circumstances, the remedy was not too late after a liquidation order. But in this case the agreement of July 20 was, in the full knowledge of the facts, approved and adopted by the company itself, if there was a company, and by all the shareholders who ever were, or were likely to be, members of the company. In my opinion, therefore, *Erlanger* v. *New Sombrero Phosphate Co.* (1) has no application, and the original claim of the liquidator is not maintainable.

The Lords Justices of Appeal, in disposing of the amended claim, have expressly found that the formation of the company, with limited liability, and the issue of 10,000*l.* worth of its debentures to the appellant, were "contrary to the true intent

(1) 3 App. Cas. 1218.

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and meaning of the Companies Act, 1862." I have had great difficulty in endeavouring to interpret that finding. I am unable to comprehend how a company, which has been formed contrary to the true intent and meaning of a statute, and (in the language of Lindley L.J.) does the very thing which the Legislature intended not to be done, can yet be held to have been legally incorporated in terms of the statute. "Intention of the Legislature" is a common but very slippery phrase, which, popularly understood, may signify anything from intention embodied in positive enactment to speculative opinion as to what the Legislature probably would have meant, although there has been an omission to enact it. In a Court of Law or Equity, what the Legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication. Accordingly, if the words "intent and meaning," as they occur in the finding of the Appeal Court, are used in their proper legal sense, it follows, in my opinion, that the company has not been well incorporated; that, there being no legal corporation, there can be no liquidation under the Companies Acts, and that the counter-claim preferred by its liquidator must fail. In that case its creditors would not be left without a remedy, because its members, as joint traders without limitation of their liability, would be jointly and severally responsible for the debts incurred by them in the name of the company.

The provisions of the Act of 1862 which seem to me to have any bearing upon this point lie within a very narrow compass. Sect. 6 provides that any seven or more persons, associated for a lawful purpose, such as the manufacture and sale of boots, may, by subscribing their names to a memorandum of association and otherwise complying with the provisions of the Act in respect of registration, form a company with or without limited liability; and s. 8, which prescribes the essentials of the memorandum in the case of a company limited by shares, inter alia, enacts that "no subscriber shall take less than one share." The first of these enactments does not require that the persons subscribing shall not be related to each other; and the second

plainly imports that the holding of a single share affords a sufficient qualification for membership; and I can find no other rule laid down or even suggested in the Act. Nor does the statute, either expressly or by implication, impose any limit upon the number of shares which a single member may subscribe for or take by allotment. At the date of registration all the requirements of the Act had been complied with; and, as matters then stood, there does not appear to have been any room for the pleas now advanced by the liquidator. The company was still free to modify or reject the agreement of July 20; and the fraud of which the appellant has been held guilty by the Court of Appeal, though it may have existed in animo, had not been carried into execution by the acceptance of the agreement, the issue of debentures to the appellant in terms of it, and by his receiving an allotment of shares which increased his interest in the company to $\frac{20001}{20007}$ of its actual capital. I have already intimated my opinion that the acceptance of the agreement is binding on the company; and neither that acceptance, nor the preponderating share of the appellant, nor his payment in debentures, being forbidden by the Act, I do not think that any one of these things could subsequently render the registration of the company invalid. But I am willing to assume that proceedings which are permitted by the Act may be so used by the members of a limited company as to constitute a fraud upon others, to whom they in consequence incur personal liability. In this case the fraud is found to have been committed by the appellant against the creditors of the company; but it is clear that if so, though he may have been its originator and the only person who took benefit from it, he could not have done any one of those things, which taken together are said to constitute his fraud, without the consent and privity of the other shareholders. It seems doubtful whether a liquidator as representing and in the name of the company can sue its members for redress against a fraud which was committed by the company itself and by all its shareholders. However, I do not think it necessary to dwell upon that point, because I am not satisfied that the charge of fraud against creditors has any foundation in fact.

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The memorandum of association gave notice that the main object for which the company was formed was to adopt and carry into effect, with or without modifications, the agreement of July, 1892, in terms of which the debentures for 10,000*l.* were subsequently given to the appellant in part payment of the price. By the articles of association (art. 62 (*e*)) the directors were empowered to issue mortgage or other debentures or bonds for any debts due, or to become due, from the company; and it is not alleged or proved that there was any failure to comply with s. 43 or the other clauses (Part III. of the Act) which relate to the protection of creditors. The unpaid creditors of the company, whose unfortunate position has been attributed to the fraud of the appellant, if they had thought fit to avail themselves of the means of protecting their interests which the Act provides, could have informed themselves of the terms of purchase by the company, of the issue of debentures to the appellant, and of the amount of shares held by each member. In my opinion, the statute casts upon them the duty of making inquiry in regard to these matters. Whatever may be the moral duty of a limited company and its shareholders, when the trade of the company is not thriving, the law does not lay any obligation upon them to warn those members of the public who deal with them on credit that they run the risk of not being paid. One of the learned judges asserts, and I see no reason to question the accuracy of his statement, that creditors never think of examining the register of debentures. But the apathy of a creditor cannot justify an imputation of fraud against a limited company or its members, who have provided all the means of information which the Act of 1862 requires; and, in my opinion, a creditor who will not take the trouble to use the means which the statute provides for enabling him to protect himself must bear the consequences of his own negligence.

For these reasons I have come to the conclusion that the orders appealed from ought to be reversed, with costs to the appellant here and in both Courts below. His costs in this House must, of course, be taxed in accordance with the rule applicable to pauper litigants.

LORD HERSCHELL. My Lords, by an order of the High Court, which was affirmed by the Court of Appeal, it was declared that the respondent company, or the liquidator of that company was entitled to be indemnified by the appellant against the sum of 7733*l.* 8*s.* 3*d.*, and it was ordered that the respondent company should recover that sum against the appellant.

On July 28, 1892, the respondent company was incorporated with a capital of 40,000*l.* divided into 40,000 shares of 1*l.* each. One of the objects for which the company was incorporated was to carry out an agreement, with such modifications therein as might be agreed to, of July 20, 1892, which had been entered into between the appellant and a trustee for a company intended to be formed, for the acquisition by the company of the business then carried on by the appellant. The company was, in fact, formed for the purpose of taking over the appellant's business of leather merchant and boot manufacturer, which he had carried on for many years. The business had been a prosperous one, and, as the learned judge who tried the action found, was solvent at the time when the company was incorporated. The memorandum of association of the company was subscribed by the appellant, his wife and daughter, and his four sons, each subscribing for one share. The appellant afterwards had 20,000 shares allotted to him. For these he paid 1*l.* per share out of the purchase-money which by agreement he was to receive for the transfer of his business to the company. The company afterwards became insolvent and went into liquidation.

In an action brought by a debenture-holder on behalf of himself and all the other debenture-holders, including the appellant, the respondent company set up by way of counter-claim that the company was formed by Aron Salomon, and the debentures were issued in order that he might carry on the said business, and take all the profits without risk to himself; that the company was the mere nominee and agent of Aron Salomon; and that the company or the liquidator thereof was entitled to be indemnified by Aron Salomon against all the debts owing by the company to creditors other than Aron Salomon. This counter-claim was not in the pleading as

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originally delivered; it was inserted by way of amendment at the suggestion of Vaughan Williams J., before whom the action came on for trial. The learned judge thought the liquidator entitled to the relief asked for, and made the order complained of. He was of opinion that the company was only an "alias" for Salomon; that, the intention being that he should take the profits without running the risk of the debts, the company was merely an agent for him, and, having incurred liabilities at his instance, was, like any other agent under such circumstances, entitled to be indemnified by him against them. On appeal the judgment of Vaughan Williams J. was affirmed by the Court of Appeal, that Court "being of opinion that the formation of the company, the agreement of August, 1892, and the issue of debentures to Aron Salomon pursuant to such agreement were a mere scheme to enable him to carry on business in the name of the company with limited liability contrary to the true intent and meaning of the Companies Act, 1862, and further to enable him to obtain a preference over other creditors of the company by procuring a first charge on the assets of the company by means of such debentures."

The learned judges in the Court of Appeal dissented from the view taken by Vaughan Williams J., that the company was to be regarded as the agent of the appellant. They considered the relation between them to be that of trustee and cestui que trust; but this difference of view, of course, did not affect the conclusion that the right to the indemnity claimed had been established.

It is to be observed that both Courts treated the company as a legal entity distinct from Salomon and the then members who composed it, and therefore as a validly constituted corporation. This is, indeed, necessarily involved in the judgment which declared that the company was entitled to certain rights as against Salomon. Under these circumstances, I am at a loss to understand what is meant by saying that A. Salomon & Co., Limited, is but an "alias" for A. Salomon. It is not another name for the same person; the company is ex hypothesi a distinct legal persona. As little am I able to adopt the view

that the company was the agent of Salomon to carry on his business for him. In a popular sense, a company may in every case be said to carry on business for and on behalf of its shareholders; but this certainly does not in point of law constitute the relation of principal and agent between them or render the shareholders liable to indemnify the company against the debts which it incurs. Here, it is true, Salomon owned all the shares except six, so that if the business were profitable he would be entitled, substantially, to the whole of the profits. The other shareholders, too, are said to have been "dummies," the nominees of Salomon. But when once it is conceded that they were individual members of the company distinct from Salomon, and sufficiently so to bring into existence in conjunction with him a validly constituted corporation, I am unable to see how the facts to which I have just referred can affect the legal position of the company, or give it rights as against its members which it would not otherwise possess.

The Court of Appeal based their judgment on the proposition that the formation of the company and all that followed on it were a mere scheme to enable the appellant to carry on business in the name of the company, with limited liability, contrary to the true intent and meaning of the Companies Act, 1862. The conclusion which they drew from this premiss was, that the company was a trustee and Salomon their cestui que trust. I cannot think that the conclusion follows even if the premiss be sound. It seems to me that the logical result would be that the company had not been validly constituted, and therefore had no legal existence. But, apart from this, it is necessary to examine the proposition on which the Court have rested their judgment, as its effect would be far reaching. Many industrial and banking concerns of the highest standing and credit have, in recent years, been, to use a common expression, converted into joint stock companies, and often into what are called "private" companies, where the whole of the shares are held by the former partners. It appears to me that all these might be pronounced "schemes to enable" them "to carry on business in the name of the company, with limited liability," in the very sense in which those words are used in

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the judgment of the Court of Appeal. The profits of the concern carried on by the company will go to the persons whose business it was before the transfer, and in the same proportions as before, the only difference being that the liability of those who take the profits will no longer be unlimited. The very object of the creation of the company and the transfer to it of the business is, that whereas the liability of the partners for debts incurred was without limit, the liability of the members for the debts incurred by the company shall be limited. In no other respect is it intended that there shall be any difference: the conduct of the business and the division of the profits are intended to be the same as before. If the judgment of the Court of Appeal be pushed to its logical conclusion, all these companies must, I think, be held to be trustees for the partners who transferred the business to them, and those partners must be declared liable without limit to discharge the debts of the company. For this is the effect of the judgment as regards the respondent company. The position of the members of a company is just the same whether they are declared liable to pay the debts incurred by the company, or by way of indemnity to furnish the company with the means of paying them. I do not think the learned judges in the Court below have contemplated the application of their judgment to such cases as I have been considering; but I can see no solid distinction between those cases and the present one.

It is said that the respondent company is a "one man" company, and that in this respect it differs from such companies as those to which I have alluded. But it has often happened that a business transferred to a joint stock company has been the property of three or four persons only, and that the other subscribers of the memorandum have been clerks or other persons who possessed little or no interest in the concern. I am unable to see how it can be lawful for three or four or six persons to form a company for the purpose of employing their capital in trading, with the benefit of limited liability, and not for one person to do so, provided, in each case, the requirements of the statute have been complied with and the company has been validly constituted. How does it concern the creditor

whether the capital of the company is owned by seven persons in equal shares, with the right to an equal share of the profits, or whether it is almost entirely owned by one person, who practically takes the whole of the profits? The creditor has notice that he is dealing with a company the liability of the members of which is limited, and the register of shareholders informs him how the shares are held, and that they are substantially in the hands of one person, if this be the fact. The creditors in the present case gave credit to and contracted with a limited company; the effect of the decision is to give them the benefit, as regards one of the shareholders, of unlimited liability. I have said that the liability of persons carrying on business can only be limited provided the requirements of the statute be complied with; and this leads naturally to the inquiry, What are those requirements?

The Court of Appeal has declared that the formation of the respondent company and the agreement to take over the business of the appellant were a scheme "contrary to the true intent and meaning of the Companies Act." I know of no means of ascertaining what is the intent and meaning of the Companies Act except by examining its provisions and finding what regulations it has imposed as a condition of trading with limited liability. The memorandum must state the amount of the capital of the company and the number of shares into which it is divided, and no subscriber is to take less than one share. The shares may, however, be of as small a nominal value as those who form the company please: the statute prescribes no minimum; and though there must be seven shareholders, it is enough if each of them holds one share, however small its denomination. The Legislature, therefore, clearly sanctions a scheme by which all the shares except six are owned by a single individual, and these six are of a value little more than nominal.

It was said that in the present case the six shareholders other than the appellant were mere dummies, his nominees, and held their shares in trust for him. I will assume that this was so. In my opinion, it makes no difference. The statute forbids the entry in the register of any trust; and it certainly

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contains no enactment that each of the seven persons subscribing the memorandum must be beneficially entitled to the share or shares for which he subscribes. The persons who subscribe the memorandum, or who have agreed to become members of the company and whose names are on the register, are alone regarded as, and in fact are, the shareholders. They are subject to all the liability which attaches to the holding of the share. They can be compelled to make any payment which the ownership of a share involves. Whether they are beneficial owners or bare trustees is a matter with which neither the company nor creditors have anything to do: it concerns only them and their cestuis que trust if they have any. If, then, in the present case all the requirements of the statute were complied with, and a company was effectually constituted, and this is the hypothesis of the judgment appealed from, what warrant is there for saying that what was done was contrary to the true intent and meaning of the Companies Act?

It may be that a company constituted like that under consideration was not in the contemplation of the Legislature at the time when the Act authorizing limited liability was passed; that if what is possible under the enactments as they stand had been foreseen a minimum sum would have been fixed as the least denomination of share permissible; and that it would have been made a condition that each of the seven persons should have a substantial interest in the company. But we have to interpret the law, not to make it; and it must be remembered that no one need trust a limited liability company unless he so please, and that before he does so he can ascertain, if he so please, what is the capital of the company and how it is held.

I have hitherto made no reference to the debentures which the appellant received in part-payment of the purchase-money of the business which he transferred to the company. These are referred to in the judgment as part of the scheme which is pronounced contrary to the true intent and meaning of the Companies Act. But if apart from this the conclusion that the appellant is bound to indemnify the company against its debts cannot be sustained, I do not see how the circumstance

that he received these debentures can avail the respondent company. The issue of debentures to the vendor of a business as part of the price is certainly open to great abuse, and has often worked grave mischief. It may well be that some check should be placed upon the practice, and that, at all events, ample notice to all who may have dealings with the company should be secured. But as the law at present stands, there is certainly nothing unlawful in the creation of such debentures. For these reasons I have come to the conclusion that the appeal should be allowed.

It was contended on behalf of the company that the agreement between them and the appellant ought, at all events, to be set aside on the ground of fraud. In my opinion, no such case has been made out, and I do not think the respondent company are entitled to any such relief.

LORD MACNAGHTEN. My Lords, I cannot help thinking that the appellant, Aron Salomon, has been dealt with somewhat hardly in this case.

Mr. Salomon, who is now suing as a pauper, was a wealthy man in July, 1892. He was a boot and shoe manufacturer trading on his own sole account under the firm of "A. Salomon & Co.," in High Street, Whitechapel, where he had extensive warehouses and a large establishment. He had been in the trade over thirty years. He had lived in the same neighbourhood all along, and for many years past he had occupied the same premises. So far things had gone very well with him. Beginning with little or no capital, he had gradually built up a thriving business, and he was undoubtedly in good credit and repute.

It is impossible to say exactly what the value of the business was. But there was a substantial surplus of assets over liabilities. And it seems to me to be pretty clear that if Mr. Salomon had been minded to dispose of his business in the market as a going concern he might fairly have counted upon retiring with at least 10,000*l.* in his pocket.

Mr. Salomon, however, did not want to part with the business. He had a wife and a family consisting of five sons and a

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daughter. Four of the sons were working with their father. The eldest, who was about thirty years of age, was practically the manager. But the sons were not partners: they were only servants. Not unnaturally, perhaps, they were dissatisfied with their position. They kept pressing their father to give them a share in the concern. "They troubled me," says Mr. Salomon, "all the while." So at length Mr. Salomon did what hundreds of others have done under similar circumstances. He turned his business into a limited company. He wanted, he says, to extend the business and make provision for his family. In those words, I think, he fairly describes the principal motives which influenced his action.

All the usual formalities were gone through; all the requirements of the Companies Act, 1862, were duly observed. There was a contract with a trustee in the usual form for the sale of the business to a company about to be formed. There was a memorandum of association duly signed and registered, stating that the company was formed to carry that contract into effect, and fixing the capital at 40,000*l.* in 40,000 shares of 1*l.* each. There were articles of association providing the usual machinery for conducting the business. The first directors were to be nominated by the majority of the subscribers to the memorandum of association. The directors, when appointed, were authorized to exercise all such powers of the company as were not by statute or by the articles required to be exercised in general meeting; and there was express power to borrow on debentures, with the limitation that the borrowing was not to exceed 10,000*l.* without the sanction of a general meeting.

The company was intended from the first to be a private company; it remained a private company to the end. No prospectus was issued; no invitation to take shares was ever addressed to the public.

The subscribers to the memorandum were Mr. Salomon, his wife, and five of his children who were grown up. The subscribers met and appointed Mr. Salomon and his two elder sons directors. The directors then proceeded to carry out the proposed transfer. By an agreement dated August 2, 1892, the company adopted the preliminary contract, and in accord-

ance with it the business was taken over by the company as from June 1, 1892. The price fixed by the contract was duly paid. The price on paper was extravagant. It amounted to over 39,000*l.*—a sum which represented the sanguine expectations of a fond owner rather than anything that can be called a businesslike or reasonable estimate of value. That, no doubt, is a circumstance which at first sight calls for observation; but when the facts of the case and the position of the parties are considered, it is difficult to see what bearing it has on the question before your Lordships. The purchase-money was paid in this way: as money came in, sums amounting in all to 30,000*l.* were paid to Mr. Salomon, and then immediately returned to the company in exchange for fully-paid shares. The sum of 10,000*l.* was paid in debentures for the like amount. The balance, with the exception of about 1000*l.* which Mr. Salomon seems to have received and retained, went in discharge of the debts and liabilities of the business at the time of the transfer, which were thus entirely wiped off. In the result, therefore, Mr. Salomon received for his business about 1000*l.* in cash, 10,000*l.* in debentures, and half the nominal capital of the company in fully paid shares for what they were worth. No other shares were issued except the seven shares taken by the subscribers to the memorandum, who, of course, knew all the circumstances, and had therefore no ground for complaint on the score of overvaluation.

The company had a brief career: it fell upon evil days. Shortly after it was started there seems to have come a period of great depression in the boot and shoe trade. There were strikes of workmen too; and in view of that danger contracts with public bodies, which were the principal source of Mr. Salomon's profit, were split up and divided between different firms. The attempts made to push the business on behalf of the new company crammed its warehouses with unsaleable stock. Mr. Salomon seems to have done what he could: both he and his wife lent the company money; and then he got his debentures cancelled and reissued to a Mr. Broderip, who advanced him 5000*l.*, which he immediately handed over to the company on loan. The temporary relief only hastened

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ruin. Mr. Broderip's interest was not paid when it became due. He took proceedings at once and got a receiver appointed. Then, of course, came liquidation and a forced sale of the company's assets. They realized enough to pay Mr. Broderip, but not enough to pay the debentures in full; and the unsecured creditors were consequently left out in the cold.

In this state of things the liquidator met Mr. Broderip's claim by a counter-claim, to which he made Mr. Salomon a defendant. He disputed the validity of the debentures on the ground of fraud. On the same ground he claimed rescission of the agreement for the transfer of the business, cancellation of the debentures, and repayment by Mr. Salomon of the balance of the purchase-money. In the alternative, he claimed payment of 20,000*l.* on Mr. Salomon's shares, alleging that nothing had been paid on them.

When the trial came on before Vaughan Williams J., the validity of Mr. Broderip's claim was admitted, and it was not disputed that the 20,000 shares were fully paid up. The case presented by the liquidator broke down completely; but the learned judge suggested that the company had a right of indemnity against Mr. Salomon. The signatories of the memorandum of association were, he said, mere nominees of Mr. Salomon—mere dummies. The company was Mr. Salomon in another form. He used the name of the company as an alias. He employed the company as his agent; so the company, he thought, was entitled to indemnity against its principal. The counter-claim was accordingly amended to raise this point; and on the amendment being made the learned judge pronounced an order in accordance with the view he had expressed.

The order of the learned judge appears to me to be founded on a misconception of the scope and effect of the Companies Act, 1862. In order to form a company limited by shares, the Act requires that a memorandum of association should be signed by seven persons, who are each to take one share at least. If those conditions are complied with, what can it matter whether the signatories are relations or strangers? There is nothing in the Act requiring that the subscribers to the memorandum should be independent or unconnected, or

that they or any one of them should take a substantial interest in the undertaking, or that they should have a mind and will of their own, as one of the learned Lords Justices seems to think, or that there should be anything like a balance of power in the constitution of the company. In almost every company that is formed the statutory number is eked out by clerks or friends, who sign their names at the request of the promoter or promoters without intending to take any further part or interest in the matter.

When the memorandum is duly signed and registered, though there be only seven shares taken, the subscribers are a body corporate "capable forthwith," to use the words of the enactment, "of exercising all the functions of an incorporated company." Those are strong words. The company attains maturity on its birth. There is no period of minority—no interval of incapacity. I cannot understand how a body corporate thus made "capable" by statute can lose its individuality by issuing the bulk of its capital to one person, whether he be a subscriber to the memorandum or not. The company is at law a different person altogether from the subscribers to the memorandum; and, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them. Nor are the subscribers as members liable, in any shape or form, except to the extent and in the manner provided by the Act. That is, I think, the declared intention of the enactment. If the view of the learned judge were sound, it would follow that no common law partnership could register as a company limited by shares without remaining subject to unlimited liability.

Mr. Salomon appealed; but his appeal was dismissed with costs, though the Appellate Court did not entirely accept the view of the Court below. The decision of the Court of Appeal proceeds on a declaration of opinion embodied in the order which has been already read.

I must say that I, too, have great difficulty in understanding this declaration. If it only means that Mr. Salomon availed

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himself to the full of the advantages offered by the Act of 1862, what is there wrong in that? Leave out the words "contrary to the true intent and meaning of the Companies Act, 1862," and bear in mind that "the creditors of the company" are not the creditors of Mr. Salomon, and the declaration is perfectly innocent: it has no sting in it.

In an early case, which in some of its aspects is not unlike the present, the owners of a colliery (to quote the language of Giffard L.J. in the Court of Appeal) "went on working the colliery not very successfully, and then determined to form a limited company in order to avoid incurring further personal liability." "It was," adds the Lord Justice, "the policy of the Companies Act to enable this to be done." And so he reversed the decision of Malins V.-C., who had expressed an opinion that if the laws of the country sanctioned such a proceeding they were "in a most lamentable state," and had fixed the former owners with liability for the amount of the shares they took in exchange for their property: *In re Baglan Hall Colliery Co.* (1)

Among the principal reasons which induce persons to form private companies, as is stated very clearly by Mr. Palmer in his treatise on the subject, are the desire to avoid the risk of bankruptcy, and the increased facility afforded for borrowing money. By means of a private company, as Mr. Palmer observes, a trade can be carried on with limited liability, and without exposing the persons interested in it in the event of failure to the harsh provisions of the bankruptcy law. A company, too, can raise money on debentures, which an ordinary trader cannot do. Any member of a company, acting in good faith, is as much entitled to take and hold the company's debentures as any outside creditor. Every creditor is entitled to get and to hold the best security the law allows him to take.

If, however, the declaration of the Court of Appeal means that Mr. Salomon acted fraudulently or dishonestly, I must say I can find nothing in the evidence to support such an imputation. The purpose for which Mr. Salomon and the other

(1) L. R. 5 Ch. 346.

subscribers to the memorandum were associated was "lawful." The fact that Mr. Salomon raised 5000*l.* for the company on debentures that belonged to him seems to me strong evidence of his good faith and of his confidence in the company. The unsecured creditors of A. Salomon and Company, Limited, may be entitled to sympathy, but they have only themselves to blame for their misfortunes. They trusted the company, I suppose, because they had long dealt with Mr. Salomon, and he had always paid his way; but they had full notice that they were no longer dealing with an individual, and they must be taken to have been cognisant of the memorandum and of the articles of association. For such a catastrophe as has occurred in this case some would blame the law that allows the creation of a floating charge. But a floating charge is too convenient a form of security to be lightly abolished. I have long thought, and I believe some of your Lordships also think, that the ordinary trade creditors of a trading company ought to have a preferential claim on the assets in liquidation in respect of debts incurred within a certain limited time before the winding-up. But that is not the law at present. Everybody knows that when there is a winding-up debenture-holders generally step in and sweep off everything; and a great scandal it is.

It has become the fashion to call companies of this class "one man companies." That is a taking nickname, but it does not help one much in the way of argument. If it is intended to convey the meaning that a company which is under the absolute control of one person is not a company legally incorporated, although the requirements of the Act of 1862 may have been complied with, it is inaccurate and misleading: if it merely means that there is a predominant partner possessing an overwhelming influence and entitled practically to the whole of the profits, there is nothing in that that I can see contrary to the true intention of the Act of 1862, or against public policy, or detrimental to the interests of creditors. If the shares are fully paid up, it cannot matter whether they are in the hands of one or many. If the shares are not fully paid, it is as easy to gauge the solvency of an individual as to estimate the financial ability of a crowd.

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One argument was addressed to your Lordships which ought perhaps to be noticed, although it was not the ground of decision in either of the Courts below. It was argued that the agreement for the transfer of the business to the company ought to be set aside, because there was no independent board of directors, and the property was transferred at an overvalue. There are, it seems to me, two answers to that argument. In the first place, the directors did just what they were authorized to do by the memorandum of association. There was no fraud or misrepresentation, and there was nobody deceived. In the second place, the company have put it out of their power to restore the property which was transferred to them. It was said that the assets were sold by an order made in the presence of Mr. Salomon, though not with his consent, which declared that the sale was to be without prejudice to the rights claimed by the company by their counter-claim. I cannot see what difference that makes. The reservation in the order seems to me to be simply nugatory.

I am of opinion that the appeal ought to be allowed, and the counter-claim of the company dismissed with costs, both here and below.

LORD MORRIS. My Lords, I quite concur in the judgment which has been announced, and in the reasons which have been so fully given for it.

LORD DAVEY. My Lords, it is possible, and (I think) probable, that the conclusion to which I feel constrained to come in this case may not have been contemplated by the Legislature, and may be due to some defect in the machinery of the Act. But, after all, the intention of the Legislature must be collected from the language of its enactments; and I do not see my way to holding that if there are seven registered members the association is not a company formed in compliance with the provisions of the Act and capable of carrying on business with limited liability, either because the bulk of the shares are held by some only, or even one of the members, and the others are what is called "dummies," holding, it may be, only one share

of 1*l.* each, or because there are less than seven persons who are beneficially entitled to the shares.

I think that this result follows from the absence of any provision fixing a minimum nominal amount of a share—the provision in s. 8 that no subscriber shall take less than one share, and the provision in s. 30 that no notice of any trust shall be entered on the register. With regard to the latter provision, it would, in my opinion, be impossible to work the machinery of the Act on any other principle, and to attempt to do so would lead only to confusion and uncertainty. The learned counsel for the respondents (wisely, as I think) did not lay any stress on the members, other than the appellant, being trustees for him of their shares. Their argument was that they were "dummies," and did not hold a substantial interest in the company, i.e., what a jury would say is a substantial interest. In the language of some of the judges in the Court below, any jury, if asked the question, would say the business was Aron Salomon's and no one else's.

It was not argued in this case that there was no association of seven persons to be registered, and the registration therefore operated nothing, or that the so-called company was a sham and might be disregarded; and, indeed, it would have been difficult for the learned counsel for the respondents, appearing, as they did, at your Lordships' Bar for the company, who had been permitted to litigate in the Courts below as actors (on their counter-claim), to contend that their clients were non-existent. I do not say that such an argument ought to or would prevail; I only observe that, having regard to the decisions, it is not certain that s. 18, making the certificate of the registrar conclusive evidence that all the requisitions of the Act in respect of registration had been complied with, would be an answer to it.

We start, then, with the assumption that the respondents have a corporate existence with power to sue and be sued, to incur debts and be wound up, and to act as agents or as trustees, and I suppose, therefore, to hold property. Both the Courts below have, however, held that the appellant is liable to indemnify the company against all its debts and liabilities.

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Vaughan Williams J. held that the company was an "alias" for the appellant, who carried on his business through the company as his agent, and that he was bound to indemnify his own agent; and he arrived at this conclusion on the ground that the other members of the company had no substantial interest in it, and the business in substance was the appellant's. The Court of Appeal thought the relation of the company to the appellant was that of trustee to cestui que trust.

The ground on which the learned judges seem to have chiefly relied was that it was an attempt by an individual to carry on his business with limited liability, which was forbidden by the Act and unlawful. I observe, in passing, that nothing turns upon there being only one person interested. The argument would have been just as good if there had been six members holding the bulk of the shares and one member with a very small interest, say, one share. I am at a loss to see how in either view taken in the Courts below the conclusion follows from the premises, or in what way the company became an agent or trustee for the appellant, except in the sense in which every company may loosely and inaccurately be said to be an agent for earning profits for its members, or a trustee of its profits for the members amongst whom they are to be divided. There was certainly no express trust for the appellant; and an implied or constructive trust can only be raised by virtue of some equity. I took the liberty of asking the learned counsel what the equity was, but got no answer. By an "alias" is usually understood a second name for one individual; but here, as one of your Lordships has already observed, we have, ex hypothesi, a duly formed legal persona, with corporate attributes and capable of incurring legal liabilities. Nor do I think it legitimate to inquire whether the interest of any member is substantial when the Act has declared that no member need hold more than one share, and has not prescribed any minimum amount of a share. If, as was said in the Court of Appeal, the company was formed for an unlawful purpose, or in order to achieve an object not permitted by the provisions of the Act, the appropriate remedy (if any) would seem to be to set aside the certificate of incorporation, or to treat the company as a

nullity, or, if the appellant has committed a fraud or misdemeanour (which I do not think he has), he may be proceeded against civilly or criminally; but how either of those states of circumstances creates the relation of cestui que trust and trustee, or principal and agent, between the appellant and respondents, is not apparent to my understanding.

I am, therefore, of opinion that the order appealed from cannot be supported on the grounds stated by the learned judges.

But Mr. Farwell also relied on the alternative relief claimed by his pleadings, which was quite open to him here, namely, that the contract for purchase of the appellant's business ought to be set aside for fraud. The fraud seems to consist in the alleged exorbitance of the price and the fact that there was no independent board of directors with whom the appellant could contract. I am of opinion that the fraud was not made out. I do not think the price of the appellant's business (which seems to have been a genuine one, and for some time a prosperous business) was so excessive as to afford grounds for rescission; and as regards the cash portion of the price, it must be observed that, as the appellant held the bulk of the shares, or (the respondents say) was the only shareholder, the money required for the payment of it came from himself in the form either of calls on his shares or profits which would otherwise be divisible. Nor was the absence of any independent board material in a case like the present. I think it an inevitable inference from the circumstances of the case that every member of the company assented to the purchase, and the company is bound in a matter intra vires by the unanimous agreement of its members. In fact, it is impossible to say who was defrauded.

Mr. Farwell relied on some dicta in *Erlanger* v. *New Sombrero Phosphate Co.* (1), a case which is often quoted and not infrequently misunderstood. Of course, Lord Cairns' observations were directed only to a case such as he had before him, where it was attempted to bind a large body of shareholders by a contract which purported to have been made between the vendor and

(1) 3 App. Cas. 1218, 1236.

H. L. (E.) 1896 SALOMON v. SALOMON & Co. SALOMON & Co. v. SALOMON. Lord Davey.

directors before the shares were offered for subscription; whereas it appeared that the directors were only the nominees of the vendor, who had accepted his bidding and exercised no judgment of their own. It has nothing to do with the present case. That a company may contract with the holder of the bulk of its shares, and such contract will be binding though carried by the votes of that shareholder, was decided in *North-West Transportation Co.* v. *Beatty*. (1)

For these reasons, I am of opinion that the appellant's appeal should be allowed and the cross-appeal should be dismissed. I agree to the proposed order as to costs.

Order of the Court of Appeal reversed and cross-appeal dismissed with costs here and below; the costs in this House to be taxed in the manner usual when the appellant sues in formâ pauperis; cause remitted to the Chancery Division.

Lords' Journals, November 16, 1896.

Solicitors for appellant: *Ralph Raphael & Co.*
Solicitors for respondents: *S. M. & J. B. Benson.*

(1) 12 App. Cas. 589.

Oakes v Turquand and others; Peek v Same

[1861-73] All ER Rep 738

Also reported LR 2 HL 325; 36 LJ Ch 949; 10 LT 808; 15 WR 1201

HOUSE OF LORDS

Lord Chelmsford LC, Lord Cranworth and Lord Colonsay

22, 23, 25, 26, 29 July 1867

15 August 1867

Contract - Avoidance - Contract induced by fraud - Contract effective until avoided by party defrauded.

Company - Winding-up - Contributory - Liability of shareholder induced to buy shares by fraud.

Company - Winding-up - Voluntary winding-up - Liqiridafor - Appointment at meeting passing winding-up resolution.

A contract induced by fraud is not void, but only voidable at the option of the party defrauded. The consent of the will which constitutes the agreement is one thing; the inducement to give that consent is another and different thing.

Accordingly, where a shareholder in a company had been induced to buy his shares by false and fraudulent representations in the prospectus, hold, that on the winding-up of the company the agreement by which he became a shareholder remained binding on him and he was liable to be placed on the list of contributories and to contribute to the assets of the company.

Per LORD CHELTENHAM, LC: The necessary consequence of a voluntary winding-up being the appointment of liquidators, I am disposed to think that they may be appointed at the same general meeting as that at which the resolution for voluntary winding-up is passed without special notice.

Notes

The present Statute regulating the conduct of companies is the Companies Act, 1948: 3 HALSBURY'S STATUTES (2nd Edn) 452. The sections in this Act which correspond with the sections of

the Companies Act, 1862, referred to in their Lordships' opinions (infra) are specified where the sections of the earlier Act are mentioned.

Applied: *Re Cleveland Iron Co, Ex parte Stevenson* (1867) 16 WR 95, Considered: *Ogilvie v Currie* (1868) 37 LJ Ch 541. Followed: *Kent v Freehold*

Land and Brickmaking Co (1868) 3 Ch App 493; *Re London and County General Agency Association, Hare's Case* (1889) 4 Ch App 503. Considered: *Reese River Silver Mining Co v Smith* (1869) LR 4 HL 64. Distinguished: *Re Warren's Blacking Co, Pentelow's Case* (1869) 4 Ch App 178. Considered: *Overend, Gurney & Co v Gurney* (1869) 4 Ch App 701; *Re Estates Investment Co, Pawle's Case* (1869) 4 Ch App 497. Distinguished: *Waterhouse v Jamieson* (1870) LR 2 Sc & Div 29. Applied: *Re General Provincial Life Assurance, Ex parte Daintree* (1870) 18 WR 396. Considered: *Re Imperial Land Co of Marseilles, Ex parte Jeaffreson* (1870) LR 11 Eq 109; *Peek v Gurney* (1871) LR 13 Eq 79; *Re London and Mediterranean Bank, Wright's Case* (1871) 7 Ch App 55. Applied: *Re Empire Assurance Corpn, Challis's Case, Somerville's Case* (1871) 6 Ch App 266. Considered: *Re Paraguassu Steam Tramroad Co, Black's Case* (1872) 8 Ch App 254. Applied: *Re Welsh Flannel and Tweed Co* (1875) LR 20 Eq 360; *Stone v City and County Bank, Collins v City and County Bank* (1877) 3 CPD 282; *Cree v Somervail* (1879) 4 AC 648. Considered: *Tennent v City of Glasgow Bank* (1879) 4 App Cas 615; *Re Hull and County Bank, Burgess's Case* (1880) 15 Ch D 507. Applied.: *Re Ystalyfera Co* (1886) 2 TLR 900. Followed: *Re Lennox Publishing Co, Ex parte Storey* (1890) 62 LT 791; *Westmoreland Green and Blue Slate Co v Feilden* (1891) 7 TLR 585. Considered: *Re National Debenture and Assets Corpn*, [1891] 2 Ch 505; *Cocksedge v Metropolitan Coal Consumers Association* (1891) 64 LT 826; *Re Trench and Tubeless Tyre Co, Bethell v Trench and Tubeless Tyre Co* (1899) 69 LJ Ch 97; *First National Reinsurance v Greenfield*, [1921] 2 KB 260. Referred to: *Henderson v Lacon* (1867) LR 5 Eq 249; *Re Overend, Gurney & Co, Ex parte Musgrave* (1867) 37 LJ Ch 161; *Re Universal Banking Corpn, Gunn's Case* (1867) 3 Ch App 40; *Re Oriental Commercial Bank, Alabaster's Case* (1868) LR 7 Eq 273; *Downes v Ship* (1868) LR 3 HL 343; *Re Aberaman Ironworks, Peek's Case* (1869) 4 Ch App 532; *Re London and Northern Insurance Corpn, Stace and Worth's Case* (1869) 4 Ch App 682; *Re Contract Corpn, Hudson's Case* (1871) LR 12 Eq 1; *McEven v West London Wharves and Warehouses Co* (1871) 6 Ch App 655; *Re Hercules Insurance, Pugh and Charman's Case* (1872) LR 13 Eq 566; *Re Blakely, Ordnance Co, Brett's Case, Re Oriental Commercial Bank, Morris' Case* (1873) 8 Ch App 800; *Twycross v Grant* (1877) 46 LJQB 636; *Re Nassau Phosphate Co* (1876) 2 Ch D 610; *Re Scottish Petroleum Co* (1883) 23 Ch D 413; *Re London and Leeds Bank, Ex parte Carling, Carling v London and Leeds Bank* (1887) 56 LJ Ch 321; *Re British Burmah Land Co* (1888) 4 TLR 631; *Re London Celluloid Co, Bayley and Hanbury's Case* (1888) 36 WR 673; *Re Laxon* [1892] 3 Ch 555; *Boaler v Brodhurst* (1892) 8 TLR 398; *East Broken Hill Consols v Mallaby-Deeley* (1895) 11 TLR 465; *Re Hemp, Yarn and Cordage Co*; *Hindley's Case*, [1896] 2 Ch 121; *Re Yolland, Hasson and Birkett, Leicester v Yolland, Husson and Birkett* (1907) 77 LJ Ch 43; *Moosa Goolam Ariff v Ebrahim Goolam Ariff* (1912) 28 TLR 505; *Abram Steamship Co v Westville Shipping Co*, [1923] All ER Rep 645.

As to contributories, see 6 HALSBURY'S LAWS (3rd Edn) 630-650; and for cases see 10 DIGEST (Repl) 953 et seq, 1055-1057, 1066-1075.

Cases referred to:

(1) *Central Rail Co of Venezuela (Directors, etc) v Kisch* (1867) LR 2 HL 99; 36 LJ Ch 849; 16 LT 500; 15 WR 821 HL; 35 Digest (Repl) 63, 578.

(2) *Bwlch-y-Plwm Lead Mining Co v Baynes* (1867) LR 2 Exch 324; 36 LJ Ex 183; 16 LT 597; 15 WR 1108; 9 Digest (Repl) 265, 1675.

(3) *Western Bank of Scotland v Addie, Addie v Western Bank of Scotland* (1867) LR 1 Sc & Div 145, HL; 9 Digest (Repl) 119, 617.

(4) *Clarke v Dickson* (1858) EB & E 148; 27 LJQB 223; 31 LTOS 97; 4 Jur NS 832; 120 ER 463; 12 Digest (Repl) 633, 4891.

[1861-73] All ER Rep 738 at 740

(5) *Smith v Reese River Co* (1866) LR 2 Eq 264; subsequent proceedings sub nom. *Re Reese River Silver Mining Co, Smith's Case* (1867) 2 Ch App 604; 36 LJ Ch 618; 16 LT 549; 15 WR 882, LJJ; affirmed sub nom. *Reese River Silver Mining Co v Smith* (1869) LR 4 HL 64; 39 LJ Ch 849; 17 WR 1042, HL; 9 Digest (Repl) 135, 770.

(6) *Henderson v Royal British Bank* (1857) 7 E & B 356; 28 LTOS 286; 3 Jur NS 111; 5 WR 286; 119 ER 1279; 3 Digest (Repl) 159, 210.

(7) *Dosset v Harding (Royal British Bank Official Receiver)* (1857) 1 CBNS 524; 26 LJCP 110; 3 Jur NS 140; 140 ER 214; 3 Digest (Repl) 159, 207.

(8) *Daniell v Royal British Bank (Official Manager)* (1857) 1 H & N 681; 3 Jur NS 119; 156 ER 1375; 3 Digest (Repl) 159, 208.

(9) *Re Imperial Mercantile Credit Association, Chapman and Barker's Case* (1867) LR 3 Eq 361; 15 LT 528; 15 WR 334; 9 Digest (Repl) 206, 1309.

(10) *Re Scottish and Universal Finance Bank, Ltd, Ship's Case* (1865) 2 De GJ & Sm 544; 13 WR 599, LJJ; affirmed sub nom. *Downes v Ship* (1868) LR 3 HL 343; 37 LJ Ch 642; 17 WR 34; sub nom. *Downes a v Ship, Re Scottish and Universal Finance Bank, Ltd*, 19 LT 74, HL; 9 Digest (Repl) 142, 822.

(11) *Re Russian (Vyksounsky) Iron Works Co, Webster's Case* (1866) LR 2 Eq 741; 14 LT 728; 9 Digest (Repl) 144, 831.

(12) *Re Russian (Vyksounsky) Iron Works Co, Stewart's Case* (1866) 1 Ch App 574; 35 LJ Ch 738; 14 LT 817; 12 Jur NS 755; 14 WR 943; 9 Digest (Repl) 142, 821.

(13) *Re Cachar Co, Lawrence's Case, Re Russian (Vyksounsky) Iron Works Co, Kincaid's Case* (1867) 2 Ch App 412; 36 LJ Ch 490, 499; 16 LT 222; 15 WR 571; 9 Digest (Repl) 144, 832.

(14) *Re Madrid Bank, Wilkinson's Case* (1867) 2 Ch App 536; 36 LJ Ch 489; 15 WR 499; 9 Digest (Repl) 144, 833.

(15) *Re Barned's Banking Co, Peel's Case* (1867) 2 Ch App 674; 36 LJ Ch 757; 16 LT 780; 15 WR 1100; 9 Digest (Repl) 79, 319.

Appeals against decisions of MALINS, V-C, reported LR 3 Eq 576, dismissing motions, one by the appellant Oakes and the other by the appellant Peek, asking that their names should be struck off the register of members and the list of contributories of Overend, Gurney & Co, Ltd, a company which was being wound-up.

The facts of the case are fully stated in the opinions of their Lordships (infra).

Giffard, QC, and Swanston for the appellants.

Sir Roundell Palmer, QC, Mellish, QC, and Roxburgh, QC, for the respondents.

LORD CHELMSFORD LC:

These are appeals from orders of MALINS, V-C, refusing to remove the names of the appellants from the register of members of the company of Overend, Gurney & Co, Ltd, and from the list of contributories of the company, and to rectify the register accordingly. The cases are of the greatest importance, and the decision of this House upon them will determine for the future the rights and liabilities of creditors and shareholders of a limited liability company upon its winding-up under the Companies Act, 1862.

The appellants dispute their liability to be placed upon the list of contributories on the ground that they were induced to take shares in the company by false and fraudulent representations made by the directors in a prospectus issued to them on its formation; that, consequently, their agreements to become shareholders in the company were not binding upon them, and that they never, by any subsequent act, affirmed them or acquiesced in their validity. The appellant Oakes was an original allottee of his shares; the appellant Peek purchased his in the market,

either from an allottee or from a purchaser from an allottee. In considering the case I shall look at it throughout as if Oakes was the only appellant, because if he fails to establish his right to be relieved from liability, Peek cannot possibly succeed. The prospectus of the company was dated on 12 July 1865. Oakes on July 15 applied for 100 shares, but twenty-five only were allotted to him. There can be no doubt that Oakes was induced by the prospectus to take his shares and, therefore, the first question to be considered is whether, as he alleges, the representations it contained were false and fraudulent. The company was formed, as the prospectus states, "for the purpose of carrying into effect an arrangement for the purchase from Overend, Gurney NC Co of their longestablished business of bill-brokers and money-dealers."

In order to form an opinion of the true character of the statements made in the prospectus, it is necessary to know what was the state of the firm of Overend, Gurney & Co, at the time when it was proposed to convert. that partnership into a joint-stock company. At this period they stood high in the commercial world. Their dealings and transactions were known to be of a moo extensive description, and they were supposed to be carrying on their business upon a safe and sure basis. But it appears from the affirmation of Mr John henry Gurney, one of the firm, that for some time previously the partners managing the business had been making considerable advances of an exceptional character to various parties and companies upon securities of a speculative and uncertain nature, and that "on a close examination which was undertaken prior to the transfer of the business to the company of Overend, Gurney & Co, Ltd, it was found that the doubtful advances amounted to 4,199,000 pounds, of which sum it was estimated that 1,082,000 pounds only would be realised, leaving the sum of 3,117,000 pounds to be provided." From the same source of information we learn that from the year 1860 the total result of all the operations of the firm had been the loss of about 500,000 pounds a year. Mr Gurney described the business carried on by Overend, Gurney & Co to be of an exceedingly extensive and profitable nature, and stated that for the five years ending on 31 December 1860, after allowing interest upon capital and upon the balance to the credit of the partners, the profits divided among the several partners averaged upwards of 190,000 pounds per annum, but that subsequent to that period the actual net profits had not been ascertained or appropriated, but were reserved to meet the losses consequent. upon the exceptional business before mentioned. From this statement it might be supposed that a different course was adopted with respect to the profits of the business after 1860 from that which had been pursued previously. But upon the cross-examination of Mr Gurney, he proved that in 1855 and every succeeding year down to 1860 portions of the business had always been employed in writing off losses.

Such was the condition of the partnership of Overend, Gurney & Co at the time when it was proposed to turn it into a joint-stock company. The partners in the firm who were to become directors of the new company were, of course, acquainted with all these particulars, and the other persons whose names appear on the prospectus as directors must have been fully informed of them. Under these circumstances the prospectus which the appellant alleges to be false and fraudulent was issued. It is headed in very large characters with a name likely to attract attention and inspire confidence, "Overend, Gurney & Co, Ltd", and describes the intended capital of the company to be 5,000,000 pounds in 100,000 shares of 50 pounds each, but, it is said, it is not intended to call up more than 15 pounds per share. After describing the purposes for which the company was formed the prospectus proceeds:

"the consideration for the goodwill being 500,000 pounds, one-half to be paid in cash, and the remainder in shares in the company, with 15 pounds per share credited thereon, terms which, in the opinion of the directors, cannot fail to ensure a highly remunerative return to the shareholders."

[1861-73] All ER Rep 738 at 742

It is said that everything that is stated in the prospectus is literally true, and so it is; but the objection to it is, not that it does not state the truth as far as it goes, but that it conceals most material facts with which the public ought to have been made acquainted, the very concealment of which gives to the truth which is told the character of falsehood. If the real circumstances of the firm of Overend, Gurney & Co had been disclosed, it is not very probable that any company founded upon it could have been formed. It was said in the course of the argument that if the true position of the affairs of Overend, Gurney & Co had been published it would have entailed the ruin of the old firm, and would have been utterly prohibitory of the formation of the new. To which the only answer to be given is, then, no company ought ever to have been attempted, because it was only possible to entice persons to become shareholders by improper concealment of facts.

From the memorandum and articles of association and deed of covenant in relation to the business, to which applicants for shares were referred in the prospectus, nothing unfavourable to the prospects of the new company can be gathered; but from the terms of a deed of arrangement contemporaneous with the deed of covenant, the existence of which was not made known in the prospectus, the real conditions of the transfer of the business of Overend, Gurney & Co would have appeared. It is true the prospectus states that the vendors guaranteed the company against any loss on the assets and liabilities transferred, which, it is said, was sufficient to inform, or, at least, to caution, persons disposed to take shares that there might be unsatisfied liabilities of Overend, Gurney & Co, to be provided for. But, without dwelling on the postponement of the full effect of the guarantee for three years by the private deed of arrangement, the statement of the consideration for the goodwill being 500,000 pounds was calculated not to lull suspicion merely of the state of the affairs of Overend, Gurney & Co, but to attract persons to join the company. No one can for a moment suppose that, if it had been possible to take the goodwill of Overend, Gurney & Co's business into the market with a disclosure of all the circumstances attending the business, it would have realised a single shilling; but the parties, some of whom were both vendors and purchasers, arranged among themselves for the payment of a sum for this unmarketable goodwill, the half of which was to have come out of the moneys of the shareholders.

[para6] It is said that the directors believed bona fide that the company would be a profitable concern, and upon the strength of that opinion they took shares themselves, and never parted with them, although at one time they were at a premium. With respect to this proof of the sincerity of their belief, it must be observed that they were each of them compelled to have 200 shares, as the qualification of a director under the articles of association. I entertain no doubt, however, that the directors were bonestly and sincerely of opinion that if they could procure additional capital, and could carry on some of the business of Overend, Gurney & Co on a healthier system, the company would suc-

ceed; but as the experiment was to be made with other people's money, as well as with their own, I think they were bound to furnish to others the information which they possessed themselves, and to enable them to form a competent judgment as to the prudence of embarking in the concern. If this could not be done without making it impossible to form a company, in my opinion, the attempt ought never to have been made, which could only be successful by suppressing facts material to be known.

If this had been a case between Oakes and the company, in which he sought to be relieved from his contract, as in *Central Rail Co of Venezuela (Directors, etc) v Kisch* (1) or the company had been suing him for calls, as in *Bwlch-y-Plym Lead Mining Co v Baynes* (2) he would have succeeded in the one case and the company would have failed in the other, on the ground which, I venture to think, was correctly laid down in *Western Bank of Scotland v Addie* (3) in this House, that

[1861-73] All ER Rep 738 at 743

> "where a person has been drawn into a contract to purchase shares belonging to a company by fraudulent misrepresentations (and, I would here add, by fraudulent concealment) by the directors, and the directors seek to enforce that contract, or the person who has been deceived institutes a suit against the company to rescind the contract on the ground of fraud, the purchaser cannot be held to his contract, because a company cannot retain any benefit which they have obtained through the fraud of their agent."

It is quite clear, therefore, that Oakes might originally have disaffirmed the contract and divested himself of his shares, and that he never did any act to affirm it, nor was he aware of the true state of the firm of Overtrid, Gurney & Co at the time of the formation of the new company until after the failure. No dividend was paid to the shareholders, and a general meeting was called, the articles of association prescribing that the first general meeting should be held not more than twelve nor less than ten months from the day of incorporation, and the company having come to an end before the twelve months had expired. Such was the position of Oakes when the order for winding-up the company was made on 22 June 1866. His name being on the register of shareholders was placed, as a matter of course, by the liquidators upon the list of contributories. A motion was made before MALINS, V-C, to remove his name from the list, when his Honour refused to make any order, and from that refusal the present appeal is brought.

The question is one of the highest importance, involving present pecuniary interests to an enormous extent, and calling for a final decision upon the relation to each other of creditors and shareholders of limited companies in every case of a winding-up under the Companies Act, 1862. On the part of the creditors it is said that every person whose name is found upon the register at the time when the order for winding-up is made is a shareholder, and liable to contribute to the payment of the debts of the company to the extent of the sums due upon his shares, unless he can prove that his name was put upon the register without his consent. On the part of the shareholders it is contended that a person who has been induced by fraud to enter into a contract to take shares, and whose name is afterwards placed upon the register, never becomes a shareholder, because his agreement, being obtained by fraud, is of no validity. In support of this proposition the words of my noble and learned

friend, LORD CRANWORTH, in *Central Rail Co of Venezuela (Directors, etc) v Kisch* (1) were cited, where he said (LR 2 HL at p 123):

> "The case of the respondent is that he never was liable, for that he was induced to take shares by fraudulent representations, which entitle him to repudiate and treat as mill all which he was induced to do."

My noble and learned friend never meant to draw a distinction between void and voidable contracts, or to say that an agreement obtained by fraud is no agreement at all. The language of my noble and learned friend must be understood in its application to the case before him, in which the respondent, seeking relief from the contract into which he had been drawn by fraud, was entitled, if he chose to repudiate it, to treat it as null, and to say that he never was a member.

The distinction between void and voidable contracts is one which will be found very necessary to be borne in mind when we come to consider the words of the Companies Act, 1862, upon which the question of Oakes's liability will ultimately turn. It is a settled rule of law, as CROMPTON, J, said in *Clarke v Dickson* (4) "that a contract induced by fraud is not void, but voidable only at the option of the party defrauded." If it were otherwise, if a contract induced by fraud were void, there would be an end of the question in this case, because a contract void in itself can have no valid beginning. and Oakes never would have become a shareholder in the company.

Before considering the provisions of the Companies Act, 1862, it will be necessary to advert to some of the previous Acts in pari materia, because it was

pressed upon us in argument that, whatever may have been the decisions under former Acts, they are inapplicable to the case of companies with limited liability. A distinction between the Companies Act, 1862, and former Acts was suggested by LORD CAIRNS in *Re Reese Silver Mining Co, Smith's Case* (5) where his Lordship says (2 Ch App at p 616):

> "There is, with regard to companies established under the Act of 1862, no contract whatever between a creditor and a shareholder of a company. The contract is between the creditor and the company, and when the legislature introduced the principle of limited liability, it was absolutely necessary to give effect to that principle by setting up the company, and the company alone, as that with which creditors or third persons could contract."

The first Act which enabled joint-stock companies to limit their liability is the Limited Liability Act, 1855 [repealed by the Statute Law Revision Act, 1875], and that Act, by s 7 gave the same remedy by execution against the shareholders to the extent of the portions of their shares in the capital of the company as creditors could use against shareholders of companies with unlimited liability under the former Acts of 1844, 1848, and 1849 relating to joint-stock companies: all repealed by Companies Act, 1862.] The first Act which enabled a creditor to become a party to the winding-up

of a company, whether with limited or unlimited liability, was the Joint Stock Companies Act, 1856 repealed by Companies Act, 1862], and by s 61 of this Act, in the event of a company being wound-up, the existing shareholders were to be liable to contribute to the assets of the company to an amount sufficient to pay the debts of the company, and the costs, charges, and expenses of winding-up the same, with this qualification, that if the company was limited no contribution should be required from any shareholder exceeding the amount (if any) unpaid on the shares held by him. This Act was followed by the Joint Stock Companies Winding-up Amendment Act, 1857 [repealed by Companies Act, 1862], which by s 1 enacted that where an order was made for the winding-up of a company the judge, in all cases in which it appeared expedient and for the benefit of all parties interested, might call upon the creditors to appoint a person to represent them, and after the appointment of such representative the creditors were to be deemed parties to the winding-up. These and the subsequent Joint. Stock Companies Act, 1858 repealed by Companies Act, 1862 contained all the provisions with respect to the rights of creditors against shareholders prior to the Companies Act, 1862. As I understand these Acts, they merely changed the remedy which the creditor previously possessed of issuing execution against the shareholder (which, as I have shown, was continued to him when companies with limited liability were first established) into a right to obtain satisfaction of his debt by means of forced contributions, either by compelling a winding-up of the company or becoming a party to a winding-up which had been already ordered. They do not appear to me to have changed the right of the creditor, on the one hand, or the liability of the shareholder, on the other; and, therefore, I cannot adopt the argument of the counsel for the appellant that the cases which were decided upon the Acts prior to 1856 must be considered as inapplicable.

Henderson v Royal British Bank (6) upon which, in his judgment, MALINS, V-C, placed so much reliance, seems to me, unless the law has been altered by the Companies Act, 1862, to be an authority of great weight against the appellant. LORD CAMPBELL, in describing the attempt of a shareholder to relieve himself from liability under similar circumstances to those in which the appellant is placed, expressed his opinion in the strongest language. He said (7 E & B at p 364):

> "It would be monstrous to say, he having become a partner and a shareholder, and having held himself out to the world as such, and having so

> remained until the concern stopped payment, could by repudiating the shares on the ground that he had been defrauded, make himself no longer a shareholder, and thus get rid of his liability to the creditors of the bank who had given credit to it on the faith that he was a shareholder."

The decision in this case was considered so satisfactory that it was followed by the Court of Common Pleas in *Dossett v Harding (Royal British Bank Official Receiver)* (7) and by the Court of Exchequer in *Daniell v Royal British Bank (Official Manager)* (8) without anything more being said in either court than an expression of acquiescence in the judgment. *Henderson v Royal British Bank* (6) being supported by such a weight of authority, will greatly influence my opinion upon the present case, unless I can be satisfied that the Companies Act, 1862, has placed creditors and shareholders in a different relation to each other from that in which they previously stood. I have shown

that if it was necessary to give effect to the principle of limited liability by setting up the company alone as that with which third persons could contract, this was done the very year after companies with limited liability were established, by taking away the sci fa of creditors, and enabling them to intervene in the winding-up of a company. This power of petitioning for the winding-up of a company was not first conferred upon, but merely continued to, creditors by s 82 of the Act of 1862.

The real question in this appeal is whether the Companies Act, 1862, has placed a shareholder on such a different footing from that in which he stood at the time of the decision in *Henderson v Royal British Bank* (6) that, his name being upon the register when the order for winding-up is made, it is competent to him to defend himself against his prima facie liability to contribute by alleging; and proving that he was induced by fraud to become a shareholder. There are very few sections of the Act which it will be necessary to consider. By s 18, upon the registration of the memorandum of association and of the articles of association, the registrar shall certify that the company is incorporated, and in the case of a limited company that the company is limited, the subscribers of the memorandum of association, together with such other persons as may from time to time become members of the company, shall thereupon be a body corporate, etc, but with such liability on the part of the members to contribute to the assets of the company in the event of the same being wound- up as is hereafter mentioned [Companies Act, 1948. s 13]. Section 38 is here referred to, which, among the qualifications of the liabilities of contributories, provides that in the case of a company limited by shares no contribution shall be required from any member exceeding the amount (if any) unpaid on the shares in respect of which he is liable as a present or past member [Act of 1918, s 212(1)]. By s 23 every person who has agreed to become a member of the company under this Act, and whose name is entered on the register of members, shall be deemed to be a member of the company [Act of 1948, s 26(2)]. By s 74 the term "contributory" shall mean every person liable to contribute to the assets of a company under this Act in the event of the same being wound-up [Net of 1948, s 213].

The result of these provisions of the Act is that a contributory is a person who has agreed to become a member of the company, and whose name is upon the register. Did the appellant agree to become a member? His counsel answer this question in the negative, because they say that a person who is induced by fraud to enter into an agreement cannot be said to have agreed, the word "agreed" meaning having entered into a binding agreement. But this is a fallacy. The consent of the will which constitutes the agreement is one thing, the motive and inducement to give that consent is another and different thing. An agreement induced by fraud is certainly in one sense not a binding agreement, as it is entirely at the option of the person defrauded whether he will be bound by it or not. In the present case, if the company formed on the basis of the partnership of

Overend, Gurney & Co had realised the expectations held out by the prospectus, the appellant would probably have retained his shares, as he would have had an undoubted right to do. When the order for winding-up came and found him with the shares in his possession, and his name upon the register, the agreement was a subsisting one. How could it then be said that he was not a person who had agreed to become a member? To hold otherwise would be to disregard the established distinction between void and voidable contracts.

But it was said by the counsel for the appellant that the Companies Act, 1862, was to be regarded merely as adjusting the rights of the shareholders inter se, and that, as the liquidators represented the company, the liability of the appellant must be determined as between himself and the company, and not as respects creditors with whom he never contracted. It is true that there was no contract between the creditor and the shareholders, and that the creditor probably never thought of the shareholders in his dealings with the company. But he must be taken to have known what his rights were under the Act, and that he had the security of all the persons whose naives were to be found upon the register, and who had agreed to become shareholders. The liability of these shareholders is not under a contract with the creditors, but it is a statutable liability under which the creditors have a right which attaches upon the shareholders to contribute to the extent of their shares towards the payment of the debts of the company. It is not the mere fact of the name appearing upon the register which makes a person liable as a member of the company. If he has not agreed to become a member, he cannot be made a contributory. This was the ground of decision in some of the cases which were cited to show that the order for winding- up did not preclude the appellant from disputing his liability. As PAGE-WOOD, V-C, said in *Chapman and Barker's Cave* (9) (LR 3 Eq at p 365):

> "If the mere placing upon the register, rightly or wrongly, is to give the creditors a right to proceed against the individual, any one of us now in this court might find himself upon the register of some company, and liable to its creditors. It is an absurdity to say that I am to be liable because directors choose to put me down upon the register as à shareholder."

The want of consent was the ground on which *Ship's Case* (10) was decided. There the prospectus of a proposed company, described as a finance bank, stated several objects, some of which went beyond ordinary banking business. Ship, on the footing of the prospectus, applied in May 1864, for shares, and paid a deposit. On June 1 the company was registered with a memorandum of association defining its objects, which went considerably beyond the objects mentioned in the prospectus, and on the same day the directors sent Ship a letter of allotment of his shares. In the December following the company failed. Upon an application by Ship to have his name removed from the register on the ground that he never had agreed to become a shareholder in a company with these extended objects, and upon his oath that he never had notice of the extension of the objects of the company beyond those named in the prospectus, PAGEWOOD, V-C, removed his name from the register, and his decision was afterwards affirmed by the lords justices. This case was followed by *Webster's Case* (11) and by *Stewart's Case* (12) both of which related to the same company, the Russian (Vylksounsky) Ironworks Co, where the objects of the company, as stated in the memorandum and articles of association, were more extensive than those stated in the prospectus, and in both of which cases the parties who were induced by the prospectus to become shareholders were removed from the list of contributories.

I confess that these decisions are not at all satisfactory to my mind. I think that persons who have taken shares in a company are bound to make themselves acquainted with the memorandum of association, which is the basis upon which the company is established. If they fail to do so, and the objects of the

company are extended beyond those described in the prospectus (a feet which may be easily ascertained) the persons who have so taken shares on the faith of the prospectus ought to be held to be bound by acquiescence. In *Ship's Case* (10) the judges partly proceeded on the oath of the party that he never had notice of the extension of the objects of the company. However true this may be, it depends entirely upon the party's own assertion, and the answer to it is: You might have made yourself acquainted with the proceedings of the company, and ought to have done so. Accordingly, in subsequent cases connected with the *Russian Iron Co: Lawrence's Case* (13) and *Kincaid's Case* (13); and in *Re Madrid Bank, Wilkinson's Case* (14) in which last. case also there was a material variance between the prospectus and the memorandum of association, it was held that persons were bound, within a reasonable time after the allotment of shares, to inform themselves of the nature of the documents of title under which they and the company were proceeding to carry on trade, and in all tbese cases the parties were retained on the list of contributories.

In a still later case, *Re Barned's Banking Co, Peel's Case* (15) LORD CAIRNS expressed an opinion on the subject to which I entirely subscribe. He said (2 Ch App at p 684):

> "It is the bounden duty [of a person] at the earliest practicable moment to ascertain what is the charter or title-deed under which the company in which he has agreed to become a shareholder is carrying on business ... I think he ought to be held bound to look to the memorandum and articles of association before he applies for shares. But where the memorandum and articles of association are not in existence at the time of application, I think that at the very latest when he receives his allotment of shares he ought to satisfy himself that there is nothing in the memorandum or articles of association to which he desires to make any objection."

This appears to me to lay down a clear and precise rule, which will render unnecessary the consideration in each case whether a reasonable time has or has not elapsed from which acquiescence may be assumed, a question which has occasioned some variety, and apparent if not actual discrepancy in the decisions.

These views, thus expressed by LORD CAIRNS, in some degree apply to *Re Reese River Silver Mining Co* (5) which appears to me not to have been well decided upon another ground. There is no doubt that Smith had been led to take shares in the company by the false representations of the flourishing condition of the mines contained in the prospectus. When the order for windingup the company was made his name was upon the register. It is true that he had filed his bill against the company to be relieved of his shares; but he still held them, and the winding-up order found him in the condition of a person who had agreed to become a member, and whose name was upon the register, and who, therefore, exactly answered the description of a contributory contained in the Companies Act, 1862.

In the conclusion at which I have arrived in this case I rely altogether upon the words of the Act. I do not take into consideration the principle which has governed many decisions, as to which of two innocent persons is to suffer; but I cannot help remarking upon the singular state of things which would result from relieving the appellant from his liability. The same right of relief established by

him would belong to all the allottees of shares who had retained them in their possession; and in the winding-up of this company the only contributories to the debts of the company would be the directors and those unfortunate shareholders who had purchased their shares in the market, so that, although the shareholders who had suffered by the fraud of the directors might recover from them the full amount of the damages sustained, the creditors could only make the directors of this limited liability company contribute towards payment of their debts to the extent of their shares.

[1861-73] All ER Rep 738 at 748

Upon the principal and important question in this case I entirely agree with the decision of MALINS, V-C. But after his Honour had given judgment, and even after his decree was enrolled, the appellants made a fresh motion to have their names removed from the list of contributories upon grounds which were clearly open to them upon the original motion. Two of them, indeed, are preliminary objections which, if well founded, would have superseded all further argument. For if there was no valid winding-up order, and no liquidators were duly appointed, there could be no list of contributories upon which the appellants' names could be placed, and the whole of the proceedings must have fallen to the ground. The vice- chancellor, therefore, rightly refused to entertain the motion, but as the objections have been argued before your Lordships, it will be proper to consider them. The first of them strikes at the root of the company's existence, for it asserts that there was no memorandum of association subscribed by seven persons, and consequently, that there never was any incorporated company. This, as I understand, is founded upon an alleged variance between the prospectus and the memorandum of association, which is made the ground of a separate objection. The short answer to this objection is found in the Companies Act, 1862, which in s 6 provides that any seven or more persons may, by subscribing their names to a memorandum of association and otherwise complying with the requisitions of the Act in respect of registration, form an incorporated company [Act of 1948, s 1(1)]; and, by s 18 [Act of 1948, s 13], upon the registration of the memorandum of association, etc, the registrar shall certify under his hand that the company is incorporated, and a certificate of the incorporation of the company given by the registrar shall be conclusive evidence that all the requisitions of the Act in respect of registration have been complied with [Act of 1948, s 15.] I think that the certificate prevents all recurrence to prior matters essential to registration, among which is the subscription of a memorandum of association by seven persons, and that it is conclusive in this case that all previous requisites had been complied with.

The next objection to be considered is that the official liquidators were not duly appointed. The ground of this objection is that in the case of a voluntary winding-up the appointment of liquidators can be made only at an extraordinary general meeting, the notice of which must specify the objects for which it is called, and that the notice issued by the directors omitted all mention of the intention to appoint liquidators. That notice, which was intituled in the matter of the Companies Act, 1862, as well as of Overend, Gurney & Co, Ltd, stated that the meeting would be held "to consider the position of the affairs of the company," and if deemed expedient to pass the following resolution:

> "That the company cannot by reason of its liabilities continue its business, and that it is advisable to wind-up the same voluntarily."

Section 133 of the Companies Act, 1862 (under which the notice was given) enacts that certain consequences shall ensue upon the voluntary winding-up of a company, and among them that "liquidators shall be appointed for the purpose of winding-up the affairs of the company, and distributing the property" [Act of 1948, s 285(1)]. The necessary consequence of a voluntary winding-up being the appointment of liquidators, I am disposed to think that they may be appointed at the same general meeting as that at which the resolution for voluntary winding-up is passed without special notice. But if it is doubtful whether liquidators were duly appointed at the extraordinary general meeting of the company, I think the respondents may rely upon the appointments made by the orders of KINDERSLEY, V-C. On 11 May 1866, the vice-chancellor made an order under s 85 of the Companies Act, 1862, appointing provisionally Messrs. Turquand and Harding to be the official liquidators of the estate and effects of the company. At the extraordinary general meeting held on 11 June 1866, it was

resolved that the same two gentlemen should be appointed liquidators. If this was not a valid appointment then, as by s 141 of the Act,

> "if from any cause whatever there is no liquidator acting in the case of a voluntary winding-up, the court may, on the application of a contributory, appoint a liquidator or liquidators,"

it was competent to KINDERSLEY, V-C, to make an appointment [Act of 1948, s 304]. This he did by his order of 22 June 1866, for although that order is in terms "that Turquand and Harding be continued liquidators," it would be mere trifling to hold that if necessary it may not be held to be an original appointment.

The last objection is founded upon an alleged variance between the prospectus and the memorandum of association. It is said by the appellant that the proposal in the prospectus is limited to carrying on the business of Overend, Gurney & Co, but that the memorandum of association extends to

> "the acquisition whether by way of purchase or amalgamation or otherwise of such other business or businesses of a like character, and upon such terms as the directors shall think expedient."

He contends upon the authority of *Ship's Case* (10) that this variance releases him from the obligation of his contract. His excuse for not bringing this forward upon the original argument is that, until the first order of MALINS, V-C, made on 9 February 1867, he believed that the memorandum and articles of association of the company were strictly confined to the company mentioned in the prospectus. But, although the appellant might have remained ignorant of the variance between the prospectus and the memorandum of association until the time that he mentions, it must have been previously known to his solicitor, and the memorandum of association is actually made an exhibit to an affidavit sworn by the appellant's accountant, on 2 November 1866. There is, therefore, no excuse for keeping back this objection at the time of the original hearing. But the cases which have been

mentioned in the course of my observations upon the principal question in this case will satisfy your Lordships that this objection ought not to prevail. There may be some doubt whether the terms of the memorandum of association are such a departure from the object put forward in the prospectus as to constitute a different company. But, be that as it may, the appellant had an opportunity during ten months of inspecting the memorandum of association of which he was bound to avail himself, and his voluntary ignorance upon the subject, until the winding-up order came, precludes him altogether from raising the objection.

It only remains to observe that all that has been said with respect to Oakes applies with greater force to Peek, even if his situation as a purchaser of shares in the market did not preclude him from most of the objections which have been raised in Oakes's case. The decree of the vice-chancellor must be affirmed, but with a variation as to costs, which must be borne by each of the appellants in respect of his own case. I submit to your Lordship, that the appeal ought to be dismissed with costs.

LORD CRANWORTH:

The appellant, in order to sustain his appeal, must make out two propositions. He must satisfy the House, first, that he was induced to take his shares in Overend, Gurney & Co, Ltd, by the fraud of the company or of those for whom the company became responsible; and, secondly, if that is made out, that he ought not to be retained on the list of contributories. The first question is one of fact, and its determination, however important to the parties concerned, is of no general interest. The other question is of very extensive consequence in the mercantile world. It is of the utmost importance

that persons dealing with joint-stock companies should be in no doubt as to who the persons are to whorn they are entitled to look as liable to perform the obligations and pay the debts of the partnership. I shall proceed at once to consider this second question - to determine what are the relative rights of Mr. Oakes and the creditors, assuming it to be true that he was induced to take shares by the fraud of the company, or of those for whom the company became responsible.

There is no doubt that the direct remedy of a creditor is solely against the incorporated company. He has no dealing with any individual shareholder; and if he is driven to bring an action to enforce, any right he may have acquired, he must sue the company, and not any of the members of whom it is composed. This being so, the argument of the appellant is that it is only to the assets of the company that the creditor can resort, and so the only question is of what those assets consist. This question, he contends, so far as the assets consist of money to be recovered by legal process against other persons, whether shareholders or not, can only be solved by ascertaining what rights the company has against other persons. If in any proceeding by the company instituted for the purpose of recovering money from any person, that person has a valid defence, whether legal or equitable, the appellant contends that the sum claimed from him does not form part of the assets of the company. Those assets, he says, consist solely of property in the actual possession of the company, or which

the company can recover by legal proceedings. He contends that he was induced to become a shareholder by means of a fraud, which entitles him to repudiate the status of shareholder, and to say, as between himself and the company, that he never held a share. If he can say this against the company, he contends he can say it against all the world, for his liability is a liability to the company and to no one else.

But it must be borne in mind that a company formed under the statute of 1862 is not a mere common law corporation. Its rights and liabilities depend in great measure on statutable provisions, and in order fully to understand and interpret them, we must consider not merely the enactments of the Companies Act, 1862, under which Overend, Gurney & Co, Ltd, was incorporated, but also the other Acts previously passed in pari materia. When it became the habit and interest of persons engaged in commerce to unite in great numbers for carrying on any particular trade, it soon became evident that the ordinary provisions of the law of this country were in adapted to the business of such bodies. It is a general principle of mercantile law that when two or more persons are associated in partnership for carrying on a trade, every partner can in general bind his copartners in all contracts made in the ordinary course of the business. But where a hundred persons or upwards are engaged in any particular trade, to be managed by directors acting for the whole body, that principle plainly becomes very inconvenient in its application. So, again, it was a principle of our courts that in any proceeding by or against a partnership all the partners must, either as plaintiffs or defendants, be made parties to the proceeding; but when numerous members of a partnership, to the extent of many hundreds of persons, were concerned as partners, this rule would, if adhered to, have, made litigation practically impossible, and so have often amounted to a denial of justice. To meet these and many other difficulties arising from the same or similar causes, the legislature has from time to time interfered, the last general Act on the subject being the Companies Act, 1862, under which Overend, Gurney & Co, Ltd became incorporated. I have already observed that in order to understand the true effect of that statute it is necessary to understand some of those which preceded it.

The first general statute to which I need refer is the Banking Act of 1826 (1 Geo 4, c 46) [repealed by Statute Law Revision Act, [1958]. Before the passing of that act it was not lawful for more than six persons to be united

together as partners in carrying on the business of bankers. This restriction was removed by that statute as to banking partnerships carrying on business at a distance of more than sixty-five miles from London. The Act provides that the company shall file annually at the Stamp Office a list of all partners, open to general inspection, and in order to make it possible for such companies, the number of whose partners was unlimited, to defend and maintain suits instituted by and against them, they were bound to appoint a public officer, who in all disputes between the company and third persons should represent the company - an officer by whom the company might sue and be sued. Any creditor or other person having a demand on the company might proceed against the public officer, and on recovering judgment against him might issue execution against any member of the company or any person who has ceased for not more than three years to be a member, but who was a member when the contract recovered on was entered into. Companies trading under the provisions of this Act were not incorporated. They were mere associations of individuals trading in partnership, but with several inportant statutable incidents connected with them. This Act was confined to

banking partnerships. No general Act relating to partnerships in any other business was passed until the year 1844, although numerous private Acts had been obtained by persons engaged in speculations requiring capital beyond what could be supplied from private resources, incorporating them, and introducing regulations for the benefit of creditors and other persons dealing with them.

In 1844 the legislature passed the Joint Stock Companies Act, 1844 [repealed by Companies Act, 1862], being the first general joint-stock company Act. The provisions of that Act material for the question now before us were as follows. It was declared to apply with some exception to all companies, the capital of which was divided into shares transferable without the consent of all the other shareholders. The persons intending to become shareholders were obliged to execute a deed stating the nature and particulars of the proposed business. A public office was appointed for keeping a register of, among other things, the name of every projected company, a statement of the nature of every business, the amount of its capital, and the name and address of every subscriber, with the number of the shares to be taken by him. The persons intending to form themselves into a company were obliged to furnish to the registrar these particulars with many others, to which I do not feel it necessary to advert; and on its being certified that this had been done, it is enacted that the shareholders shall thenceforth be incorporated for the purpose of carrying on the business mentioned in the deed, and shall so continue until it is dissolved, and its affairs wound- up; but so, nevertheless, as not to restrict the liability of any shareholder under a judgment recovered against the company, it being expressly declared that every shareholder should continue liable, as if the company had not been incorporated. As the company thus became incorporated for the purpose of its business, it was unnecessary that it should (as in the case of banking companies trading under the Act of 1826 (supra)) appoint a public officer for the purpose of suing and being sued. The company itself was able to bring and defend actions and suits in its own name without any special enactment for the purpose; but the statute provided that any person having recovered judgment against the company may, if he cannot obtain satisfaction against the incorporated body, obtain execution against any shareholder, or against any person who should have ceased for less than three years to be a shareholder, and who was a shareholder when the debt or liability accrued in respect of which the judgment was recovered. I have said that certain companies were excepted from the operation of this Act, and among those so excepted were all banking companies.

Concurrently with this Act another Act was passed (7 & 8 Vict, c 113) entitled, "An Act to regulate joint stock banks in England" [repealed by Companies Acts, 1862 & 1948]. It differed in some important particulars from the

other Act. It did not incorporate any joint-stock banking company, but it enabled persons desirous of forming themselves into such a company, upon complying with certain requisitions, to obtain, under the sanction of the Board of Trade, a royal charter of incorporation, subject to various statutable qualifications, among other things that, notwithstanding the incorporation, the shareholders should be liable as if they were not incorporated. And there is the same provision as in the former Banking Act, and in the general Joint-Stock Companies Act, making former shareholder, liable in certain cases, for a term of years after they have ceased to be shareholders. It thus appears that under the Act of 1814 or the Banking Act of 1826, the provisions in these two statutes, so far as regards the present question, being nearly the same, the course which a creditor was to take in order to

enforce a debt or demand, was to site the incorporated company as his debtor, and, having recovered judgment against that body, he was in the first instance to endeavour to levy his debt by an execution against them, and if that did not produce sufficient to satisfy him, then he was entitled to issue execution against any shareholder, or, within certain limits, against any of those who had been shareholders when his right arose. If the present question had arisen under either of these statutes, the right of the creditor could not have been controverted. It would have been no answer on the part of any person who had agreed that his name should be on the list of shareholders, and against whom a fi fa had been issued out, to say he had been induced by fraud to become a shareholder.

This was decided by LORD CAMPBELL, in the Court of Queen's Bench, in *Henderson v Royal British Bank* (6) and nearly at the same time by the Courts of Common Pleas & 1 exchequer in cages before them, in which the circumstances were similar. LORD CAMPBELL said (7 E & B at p 364):

> "It would be monstrous to say that [the party against whom the application was made] having become a partner and a shareholder, and having held himself out to the world as such and having so remained until the concern stopped payment, could, by repudiating the shares on the ground that he had been defrauded, make himself no longer [liable]."

This observation commends itself so entirely to common sense, that I cannot hesitate at once to accede to it. When this passage was quoted in the argument at the Bar, I doubted whether LORD CAMPBELL had not been wrong in attributing the liability of the person against whom the application was made in any respect to his having held himself out to the world as a partner, for a shareholder never takes any part in managing the joint business. But on further reflection I think the observation was just. The application of the creditor was resided by the shareholder on the ground that he had been induced by fraud to take shares. It is a fair answer by the creditor to such a defence to say: "I know nothing of the circumstances which led you to become a shareholder. All I know is that you in fact allowed yourself to be represented as a shareholder, and on the faith of your being so I trusted the company."

But whether the observation of LORD CAMPBELL was or was not altogether warranted, the decision itself seems to me to be incontrovertible, and the only question, therefore, is whether the same principle ought to govern a case like the present, arising, not under the Act 7 & 8 Vict, c 113, but under the Companies Act, 1862. There are important differences between the provisions of the Act of 1862, and the two Acts of 1844. In the first place all the enactments contained in the previous Acts for enforcing a debt or demand by execution against a shareholder are repealed. The creditor must, as under the former Act, proceed against the company, but if on recovering judgment against the company he is unable to obtain satisfaction, he has no power to proceed against any individual shareholder. He must obtain an order for winding-up the affairs of the company by causing all its assets to be called in and distributed among all the creditors

rateably, as in a bankruptcy. But there is another very material distinction between the two statutes arising from the power given by the Act of 1862 of constituting a company where shareholders shall not, like partners at common law, or like shareholders under the Act of 7 & 8 Vict, c 110, s 113, be indefinitely liable for all obligations of the partnership, but whose liability shall be limited to the extent and in the manner specified in the articles under which the incorporation takes place. Two modes of limiting the responsibility of the shareholders are provided by the Act; but we need not advert to that which is described in the Act as the limitation of shares. Any joint- stock company may adopt such a limitation by making it a part of its constitution that the shareholders shall be liable only to the extent of so much of their shares as shall not have been paid up. This was the principle of limitation on which the firm of Overend, Gurney & Co, Ltd, was formed, and with which alone we have to deal. It may be well to remark that the Act of 1862 (so far as we have to deal with it) is identical with a previous Act passed in 1856, and for convenience, therefore, I will refer only to the Act of 1862. It is obvious that when the legislature sanctioned the principle of limited liability the powers given by the former Acts of taking out execution against individual shareholders necessarily fell to the ground. It would be impossible for a creditor to know to what extent his right to take the shareholder's goods in execution would extend. This difficulty, indeed, would not arise under the Act of 1862 as to the companies formed with unlimited liability; but experience has shown that the system of execution against individual shareholders often operated very unfairly, and the legislature probably thought, and correctly thought, that companies with unlimited liability would be but few in number, and the remedy by winding-up, which was necessarily adopted in the case of limited companies, was equally just and efficacious where there was no limit, and the same course of proceeding was, therefore, prescribed in both cases.

The first question, then, is whether the change in the mode in which a creditor is obliged under the Act of 1862 to seek relief makes any difference as to who are liable to him as shareholders. I think not. In order to bring this question to a test we may consider how the case would have stood if there had been no change effected by the Act of 1862, except in the mode of making a judgment available. Suppose that the statute of 1862 had only said that in case of a judgment recovered against the company the creditor should not levy execution against any individual shareholder, but should proceed to wind-up the affairs of the company in the manner there pointed out, I can discover nothing which would in such circumstances relieve from responsibility any person who, if there had been no change, would have been liable to an execution. The winding-up is but a mode of enforcing payment. It closely resembles a bankruptcy, and a bankruptcy has been called not improperly a statutable execution for the benefit of all creditors. The same description may be given to a winding- up, and, as in the bankruptcy of an ordinary partnership, every person against whom a judgment-creditor of the firm could have levied execution as a partner would be liable to have his estate administered in the bankruptcy, just so must every person against whom a creditor might under the Act of 1844 have levied execution as a shareholder be liable to have his estate dealt with under a winding-up order. The change, therefore, from the right in the creditor to levy execution to a right to wind-up the affairs of the company does not seem to me to affect the question who are liable as shareholders, as according to the principle acted on in *Henderson v Royal British Bank* (6) the appellant would certainly have been liable to have his goods taken in execution, so also he must be liable to be dealt with in a winding-up order. But if this change in the mode in which the creditor is to seek his remedy makes no difference as to the persons liable to him, how is he affected by the introduction of the principle of limited liability? I cannot see that he is at all affected by it. His

remedy is cut down in amount; but as to the persons liable to him the principle of limited liability had no effect. The introduction of that principle

renders necessary, as I leave already stated, some substitute for the remedy by execution again, individual shareholders, but it did no more. It plainly left every shareholder subject to all previous liabilities, except only that a line or boundary was fixed beyond which his obligations could not be extended. I have, therefore, satisfied myself that, if the Act of 1862 had done no more than introduce the principle of limited liability and substitute a winding-up of the affairs of the company for execution against individual shareholders, it left the law just as it stood when *Henderson's case* (6) was decided.

But it was argued that there are provisions in the Act of 1844 expressly declaring the liability of shareholders to be the same as that of ordinary partners, which provisions were not found in the Act of 1862. This difference, it is said, makes the principle of *Henderson's cage* (6) inapplicable. The clause relied on for this purpose is s 28 of the Joint Stock Companies Act, 1844, which after providing that the persons taking shares forming themselves into a company, and complying with the requirements of the Act, shall become incorporated, proceeds to say that such incorporation shall not in any wise restrict the liability of any shareholder under any judgment for payment of money recovered against the company, but every shareholder shall, in respect of such moneys, be and continue liable as if the company had not been incorporated. This is the provision in the Act of 1844; and in the statute relating to joint-stock banks, 7 & 8 Vict, s 113, passed on the same day, there is in s 7 a provision to the same effect. There is no such provision in the Act of 1862, and so it was contended the legislature must be understood to have contemplated a change in this particular. I cannot, however, think that this is a fair inference. The introduction of limited liability made the retention of such a provision as those which existed in the Acts of 1844, to which I have just referred, impossible, and the question is whether we are to suppose that the legislature contemplated any other changes as to the liability of shareholders beyond those which were the natural, indeed, the necessary consequence of limited liability.

I think not. In the first place, the object of legislation on the subject of these companies has been to enable capitalists to carry on commercial speculations in numbers beyond what the ordinary machinery of the law could deal with. Except for the introduction of the principle of limited liability, legislation has been confined to the giving facilities for carrying on businesses differing in no respect from ordinary commercial partnerships, save in the vast extent of capital embarked, and the great number of the partners engaged. I cannot conceive that the legislature intended by the Act of 1862 to introduce any rules or principles as to the acts or conduct whereby a person should render himself liable to be treated as a shareholder different from those which existed previously. The omission of the clauses declaring shareholders to be liable, as if not incorporated, was, as I have pointed out, necessary; but the Act seems to me to contain on the face of it ample proof that the rights of creditors were not intended to be affected, except only by the introduction of the principle of limited liability.

In the first place I will refer to s 49 of the Act of 1844. It is there provided, that the directors of every company shall keep a register of shareholders, containing their names and addresses, showing also the number of shares they respectively held, and the amount paid up [Act of 1948, s 110]; and by s 50 every shareholder is to have liberty to search this register at all reasonable time. Nobody, however, was to be at liberty to search it who was not a shareholder. There is a similar obligation in the Act of 1862 as to keeping a register, but there is an important change. For, by s 32 of that Act, it is provided that the register shall be open to the inspection, not only of shareholders, but on payment of 1s, of all other persons, which would, therefore, include creditors [Act of 1948, s 113]. This seems to me strongly to indicate the intention of the legislature that the creditors were to look to this document as showing them to what extent they might trust flip company. Before the introduction of the principle of limited

liability, such a power of inspection was not necessary, or certainly not at all so necessary. A creditor could hardly fail to know who were some, at least, of the shareholders, and there was no limit to the extent to which he might obtain execution against shareholders of wealth. But when the legislature enabled shareholders to limit their liability, not merely to the amount of their shares, but to so much of the amount as should remain unpaid, it is obvious that no creditor could safely trust the company without having the means of ascertaining, first, who the shareholders might be, and, secondly, to what extent they would be liable. This is obviously the reason why the new statute opened the register to the inspection of all the world, indicating, as I think very clearly, that persons dealing with the company might trust to that register as containing a true exposition of the assets they had to rely on. The permission to all persons not shareholders to inspect the register, and so to ascertain who were shareholders and to what extent they were liable, would have been an unwarrantable exposure of the affairs of the company were it not that all persons have, or may have, an interest in knowing who are liable and to what extent.

This view of the case is strongly confirmed by the language of the statute where it defines contributories. Section 74 defines contributories to be all persons liable to contribute to the assets in the event of the company being wound-up [Act of 1948, s 213]; and s 38 declares that in that event every present and past member shall be liable to contribute, subject to certain qualifications [Act of 1948, s 212(1)]. In order to ascertain who are designated by the word "members" in s 38, we must refer to s 23, which states that every person who has agreed to become a member, and whose name is entered on the register, shall be deemed to be a member [Act of 1948, s 2 6(2)]. The name of Mr. Oakes was certainly entered on the register; if, therefore, he agreed to become a member within the meaning of s 23, he is a contributory. The argument is that he did not so agree, because all which he did was under the influence of fraud and misrepresentation. But, assuming all that to be, and I believe it was, just as Mr. Oakes represents it, still he did agree to become a member, ie, he in fact agreed. He may have full rights against those who deceived him; but with that the outer world can have no concern. The legislature took care to provide the register as the means of enabling persons dealing with the company to know to whom and to what they had to trust. It intended to put the persons whose names are on it in the same position towards creditors (subject of course to the statutable restrictions) as persons engaged in an ordinary partnership, or persons trading formerly under the Acts of 1841. In neither of those cases would it have been any answer to a creditor that the per-

son sought to be charged had been induced by fraud to become a partner or a shareholder, and I see no reason whatever for adopting any other principle here.

It was strongly pressed upon us that a decision against Mr Oakes would be at variance with Central Rail Co of *Venezuela v Kisch* (1). But there is no inconsistency between the two decisions. The question there was not one in which creditors were concerned. It was the case of a person seeking against a company to be relieved from a contract which he had by fraudulent representations of that company been induced to enter into. This House held, conformably with the decision of the lords justices, considering the fraud to be established, that the company could not compel the person thus deceived to retain the shares which he had thus been fraudulently induced to purchase. This decision proceeded upon the grounds of obvious justice and good sense, on which courts, both of law and equity including this House, have of late frequently acted. But it has no bearing on a question between the shareholders and creditors. Great stress was laid on a part of the language which I used in expressing my opinion, and which is supposed to be inconsistent with what I have given as my opinion in the present case. I do not see any such inconsistency. The question there was whether, as between Kisch, the respondent, and the company, he was

to be treated as a shareholder. This House held that he was not. He had been imposed upon by means of a fraudulent concealment of something which the company ought to have disclosed. The company contended that he must be taken to have known the facts which were concealed from him, for that those facts appeared on the face of the articles of association, and the statute provides that the articles of association shall bind every member, whether he seals them or not. Mr Kisch did not seal them, but the company contended that be must be taken according to the statute to have done so, and so to be aware of their contract. I thought that such an argument did not he in the mouth of the company, that they could not by fraudulently concealing what they ought to have disclosed induce him to become a member, and then say: "Your membership gives you by force of the statute knowledge which prevents you from alleging that there was fraudulent concealment." I was then, and am still, of opinion that, as between the parties then in litigation and with reference to the clause in the statute to which I have referred, he was not a member. But such a case has evidently no bearing on the question between a shareholder and a creditor.

The conclusion at which I have thus arrived makes it not absolutely necessary that I should express any opinion on the question of fact. But it must not be supposed that because I do not investigate closely the question of fact, therefore, I doubt the soundness of the opinion expressed by my noble and learned friend. For the honour of the great mercantile community of the city of London, I wish I could have believed that the prospectus was honestly and fairly framed. But I cannot. I must believe that the truth was intentionally concealed, and hopes held out which those who framed the prospectus must have known would deceive those who trusted to it. There was both suggestio falsi and suppressio veri. But for the reasons I have stated this does not, in my view of the case, affect the liability of Mr Oakes.

There were two or three matters of a minor character put forward in a supplemental form to which I may advert, though I think they rest on no solid grounds. It was said that Mr Oakes never agreed to

become a member of the company whose business is indicated by the memorandum of association actually filed. A change was made in that memorandum after he had agreed to take shares and before it was filed. The change was not of any great importance. But I am far from saying that if Mr Oakes had, within a reasonable time after he agreed to take shares, examined the memorandum and found that it differed, in however small a degree, from that on the faith of which he had acted, he might thereupon have repudiated his status as a shareholder. But it is impossible to allow a person who has taken shares, and has gone on for nearly a year taking his chance of profit, to turn round when the speculation has proved a failure, and claimed to be released on the ground that he was ignorant of something with which the least diligence must have made him acquainted. It is the duty of a person taking shares in a company to use all reasonable diligence in ascertaining the terms of the memorandum of association, which is, in fact, his title-deed. It was certainly very wrong to make any change in the language of the memorandum of association. But there is no reason to suppose that it was done otherwise than with honest intentions.

The appellant then contends that in consequence of this change there never was an incorporated company. I think that the section of the Act giving effect to the certificate of the registrar [Act of 1948, s 13] is an answer to this suggestion. But, further, if there never was a company, then there could be no valid winding-up order, and the proper remedy of Mr Oakes would be to get rid of that order, or to take such steps as might be right on the assumption that no. such order exists. The same observation applies to the objection that there was no proper meeting sanctioning the winding-up. I need say nothing as to Mr Peek's appeal, except that he certainly stands in no better position than Mr. Oakes. I entirely concur in the opinion your Lordship has pronounced.

[1861-73] All ER Rep 738 at 757

LORD COLONSAY:

In regard to one important part of the appellant's case, there is, unhappily, no room to doubt. I allude to the deceptive character of the prospectus. The evidence contained in this volume discloses a state of matters to which no court of law, no court of equity, no court administering law and equity, can hesitate to attach the legal character which the vice-chancellor has attached to it. The suggestion and arguments by which it eras attempted to give to these transactions a different complexion may have a legitimate influence on the judgment to be pronounced by a more numerous tribunal out of doors on the morality of some of the actions that have been brought before us; but they were not such as could weigh with this tribunal in dealing as a court with the rights of contending parties.

Upon this part of the case, I do not consider it necessary to say more. But out of the state of matters to which I have been alluding, the fictitious origin and the disastrous termination of this great scheme of Overend, Gurney & Co, Ltd, has arisen the important question we are now called upon to decide. The company was announced as incorporated under the Act of 1862, with limited liability. The prospectus bore date 12 July 1865. The company stopped payment on 11 May 1866. Proceedings were adopted for having the company wound-up under the Act of 1862, and on 22 June 1866, KINDERSLEY, V-C, made an order for winding-up under the supervision of the court. Assuming for the present that the registration and the proceedings for winding-up to which I shall afterwards

advert were regular, and that the company is now properly in course of being wound-up under the supervision of the court, what is the position of the appellant Mr Oakes? On 16 July 1865, he applied for shares, which were allotted to him on July 28; he made the stipulated payments, and his name was placed on the register. After the stoppage of the company in May 1866, some of the shareholders caused investigations to be made which resulted in certain discoveries that have led to the present litigation. It does not distinctly appear whether Mr. Oakes was or was not a party to those investigations; but I think he is entitled to have it assumed in his favour that, if he was not directly a party to those investigations, he was at least watching those proceedings, and intending to avail himself of the results of the investigations. In the meantime, the liquidators had been making up a list of contributories, and had placed the name of Mr Oakes on that list; and on, I think, 20 August 1866 (there seems to be some difference in the statements as to the date, but at any rate it was about that time) they made a call of 10 pounds per share on Mr Oakes and others. On 8 October 1866, the appellant's solicitors gave notice of a motion to have the appellant's name taken off the register, and off the list of contributories, and to stay proceedings for enforcing the call. That application was ultimately refused by MALINS, V-C, and we are now reviewing his judgment.

The ground on which the appellant rested his application was that he had been induced to apply for and accept shares in the company entirely through fraud on the part of the company, the fraudulent character of the prospectus issued by them, and that as soon as he became aware of the fraud, or could have become aware of it, and before he had dealt with the shares in any way, or had derived any benefit from them, he had challenged the transaction and demanded to be relieved. He refers to *Central Raid Co of Venezuela v Kisch* (1) and other cases, as showing that at all events, as in a question with the company, he would be entitled to repudiate the contract, and to have his name removed from the register. Starting from that point he says as to the creditors of the company that there was no privity of contract between him and them; that they did not transact with him or with the shareholders, but only with the company in its corporate capacity; and that they cannot, through the liquidator, subject him to any liability to which the company could not have subjected him; that the liquidator can only take up the rights of the company subject to such equities as could be pleaded against the company; and, consequently, subject to the appellant's

right to be relieved from the contract to which he had been induced by the fraud of the company. This view is rested in some measure on the corporate character of the company and on certain recognised principles of law as to the relative position of the creditors of corporations, and the individual members of such corporations, and it is contended that the Act of 1862 must be read and construed with reference to these principles, giving effect to them in so far as that Act has not expressly, or by necessary implication, displaced them as to companies such as this. The appellant says that certain decisions and dicta that have been founded on by the liquidators are inapplicable, inasmuch as they occurred under a different state of the law, and as companies which were then governed by a different statute, a statute that expressly provided that in regard to such questions they should be dealt with as if the companies were not incorporated. Further, he examines the Act of 1862, and contends that there is nothing in the provisions of that Act, when read according to their true intendment, which can be held to deprive him of the relief he demands. *Re Reese River Silver Mining Co* (5) is referred to as a recent and direct authority in favour of the appellant.

Such is a brief outline of the case that was presented to us on behalf of the appellant, and which was elucidated and enforced in argument with remarkable ability. Up to a certain point the argument for the appellant commanded my assent at the time, and I have not on reflection seen any sufficient reason to withdraw that assent. If this case had been presented to us in circumstances similar to those which exited in *Central Rail Co of Venezuela v Kisch* (1)if, while Overend, Gurney & Co, Ltd, was a going company, it had made a demand on Mr. Oakes for a call, and he had resisted it on the ground of fraud, I think he might have been entitled to succeed in that resistance, and to have his name removed from the register. Whether that would have finally exempted him from any possible contingent demand in the event of an immediate stoppage and winding-up of the company I do not think it necessary to inquire. The case now before us has reference to a company which had stopped payment, and was in course of winding-up, while the appellant's name was still on the register, and before any challenge was made. The cases, therefore, are not the same. It may be that the decision in *Kisch's case* (1) advances the appellant a step in his argument. It may even be that it gives him a resting place for the engines by which he is to endeavour to remove other obstacles. But those other obstacles required to be removed, and the question is whether they have been effectually removed by the power of the argument that was used.

Having given to the case the most careful consideration, I have come to the conclusion that the argument for the appellant ought not to prevail. I think it proceeds on an erroneous view of the nature of these companies, and of the relative positions of the creditors and members of these companies. This company was formed under the provisions of the Act of 1862, which was a comprehensive repealing and consolidating Act, collecting as it were into one code the provisions which were thenceforth to be applicable to such companies. During the immediately preceding period of thirty-seven years there had been a continuous course of legislation on the subject, beginning in 1825, with the statute 6 Geo 4, c 91 [relating to "bubble" companies. After 1825 statute after statute followed in rapid succession, some fifteen or eighteen statutes having been passed on the subject before matters were brought into the position in which they have been placed by the Act of 1862. What was the tendency and scope of that course of legislation? An important part of it - indeed the great object of it - was to give to the formation of joint-stock trading companies facilities and encouragement which had previously been withheld from them. The genius of the law of England, which regarded with disfavour the notion of an unincorporated company having a persons distinguishable from its component members, was very unfavourable, if not an absolute barrier, to the formation of joint-stock companies. Accordingly

the efforts of the legislature were directed to giving to these companies a separate persons without conferring upon them all the attributes of proper corporations without qualification.

That principle pervades the whole of the legislation on the subject. I am not speaking of limited liability companies only. Limited liability is merely a step, and a recent step, in the progress. My observations apply to joint-stock trading companies generally. The course of legislation was to rear up the company into a separate persons with certain powers and privileges, but without conferring on it in an unqualified manner all the attributes of a perfect corporation. They were said to be incorporated, but they were only incorporated to certain effects, they were quasi corporations. In giving this position to joint-stock trading companies provisions were introduced, on the one hand to preserve

the members from unnecessary molestation by creditors of the company, and, on the other hand, to preserve the rights of creditors to ultimate payment out of the estates of the members: Among the most important of these were the provisions as to registration of the companies and of the share-holders, and the right of any one to inspect the register, and the provisions for winding-up. which were some of them embodied in separate statutes, of which there are to o or three. In 1855 came the first Limited Liability Act [repealed by Statute Law Revision Act, 1875]. Beyond giving power to limit the pecuniary amount of the liability of each shareholder it made no important alteration, I think, in law, in the relative position or rights of creditors or members. Indeed, s 16 provides that it is to be taken as part of the Act of 1844, the 7 & 8 Vict, c 110 [relating to joint-stock companies]. In 1856 came an Act of the nature of a consolidating Act. In 1858 the limited liability principle was extended to banking companies. In 1862 camp the Act now in force, which I think must be taken as the code applicable to these companies. It appears in the preamble of it to be intended to consolidate and extend the principles of those companies. It also sets forth the various departments into which it is divided, and seems to be a comprehensive code of law applicable to them.

Such having been the course of legislation, and such the character of the Act of 1862, we may expect to find in it a solution of the question: Who are to be regarded and treated as contributories when such companies come to be wound- up? If we are not to look beyond the words of the Act of 1862 for a solution of that question, it does not appear to me that there would be much difficulty in the case. Section 74 tells us that

> "a 'contributory' shall mean every person liable to contribute to the assets of a company under this Act in the event of the same being wound-up."

[Act of 1948, s 213.] Section 38, which relates to the liability of members, tells us that

> "in the event of a company formed under this Act being wound-up, every present and past member of such company shall be liable to contribute to the assets"

of such company [Act of 1948, s 212(1)]. And s 23, which defines a member, tells its that every

> "person who has agreed to become a member of a company under this Act. and whose name is registered on the register of members, shall he deemed to be a member of the company."

[Act of 1948, s 26(2).] The appellant says that be cannot be held to have agreed to become a member, inasmuch as his application for and acceptance of shares was induced by fraud, and never having done anything to affirm the contract, he is still entitled to disaffirm it. I cannot agree in that. The contract

was not void, it was only voidable. What does that mean? I think that point was well put by counsel for the respondents in the course of his argument. He said:

> "A contract obtained by fraud is voidable, but not void; does it mean void till ratified, or valid till rescinded? The latter is the rule where the rights of third parties intervene."

That I hold to be clearly the import of the doctrine that a contract induced by fraud is not void, but voidable.

I hold that the appellant did agree to become a member of the company. He may have been induced to agree by fraud, but having regard to the language of the statute, what we have to look to is whether he has agreed to become a member or not. It might be a different case, and would be a different case, in regard to a party who had no power, no will, to give an assent, such as an insane person or a pupil. But when the question comes to be as to a party who has the power to act, although he may afterwards recall what he has done upon a certain footing, still in the meantime he has agreed, and what is only voidable and not void cannot be held as invalid until it has been rescinded. I do not very well see how that is to be got over. In this case the appellant says that all this must be read subject to the overruling operation of certain legal principles: First, the principle that in corporations there is no privity of contract between the individual corporators and the creditors of the corporation; secondly, that in such questions there is no room for the doctrine of holding out; and, thirdly, that as the claims or rights of the creditors can only be through the sides of the corporation, they must be subject to any latent equities competent to the incorporator against the incorporation.

These three propositions appear to me to involve several fallacies. First, it is a fallacy to hold that the liability of the partners of these companies must rest entirely on the same principle of contract which was the foundation of the liability of the partners of unincorporated companies prior to the institution of this class of associations. The question is not whether there was any privity of contract between the appellant and the creditors of the company; it is whether, under the constitution of these newly created societies there is a statutory liability imposed on persons in the position of the appellant. Secondly, it is an error to hold that creditors are not supposed to trust to the responsibility of the shareholders. The careful regulations of the registers of shareholders and the publicity to be given to them are a sufficient answer to that view. Indeed, it is plain, from the reason of the thing, that no credit would otherwise be given to the abstraction of a company. It is also a mistake to hold that these companies must to all legal effects and consequences be regarded as unqualified corporations, and in no respect as partnerships. I have already shown that they partake in some respects of both capacities, and I have shown how and why that condition of matters came into existence. Let us for a moment relieve our minds from the trammels imposed by a technical use of words, and look to the substance and reality of the thing. Why are these companies not partnerships? They are associations of individuals for the purpose of trading with the capital they contribute, and of participating in the profits to be derived from that trade. In several of the statutes they are called partnerships, and in one, if not more, of them, provision is made for a deed of partnership. As to their being corporations, I have already shown that they are so, only subject to certain qualifications, and, indeed, in this very statute of 1862, the clause which incorporates them provides that nevertheless they shall be subject to certain qualifications and liabilities, and when we look to the subsequent part of the

statute we find among those liabilities the liability of being contributories in the serve that I have described [Act of 1948, s 212(1)]. I think it would be contrary to the tendency and scope of all the statutes to hold that these companies are stripped of all the characteristics, of mercantile

partnerships and clothed with all the attributes of perfect corporations without qualification.

I am, therefore, inclined to distrust an argument which seeks to subjugate the plain provisions of this code to the rules of law applicable to a state of things when do such companies existed. There is another consideration which leads me to distrust this mode of moulding the provisions of the Act of 1862 into a different shape from that in which the statute presents them. That statute, as I have already observed, professes to consolidate into one code all the laws and rules applicable to these associations or aggregate societies. It prohibits their existence except under the cover and control of its provisions. It is a general statute applicable to all parts of the kingdom, to Scotland as well as to England, which was not the case with several of the statutes which preceded it in the series. In several of them Scotland was excepted; and why? Your Lordships know that the law of Scotland in regard to partnerships was not the same as the law of England; that in Scotland, as in some other countries, the separate persons of unincorporated trading companies was fully recognised, that joint-stock companies for trading existed there at common law, and that the country had derived great advantage from them. There were other differences also. I apprehend that the Act of 1862 was intended to establish a uniform system of law in both ends of the island in regard to such companies. But if, in reference to joint-stock companies in England, the provisions of the statute are not to be read in a literal or obvious sense, but are to be overridden and qualified and controlled by implications and inferences deduced from rules of the law of England applicable to a state of things antecedent to the existence of any such companies, then by parity of reasoning in reference to joint-stock companies in Scotland, the statute would be qualified and controlled by implications and inferences deduced from the different principles that had prevailed in Scotland, and thus there would be again produced a diversity instead of the uniformity which it was the object of the statute to establish. For these reasons, I think that the line of argument which was put forward by the appellant cannot be maintained.

Reference was made to *Re Reese River Silver Mining Co* (5) as being a direct authority in point. I do not think that the decision in that case was necessarily an authority in point, for the circumstances under which that case presented itself for decision, appear from the reports that I have seen of it to have been materially different from the present. It seems that in that case the party had made an application to have his name removed from the register on the ground of fraud, before there had been any proceedings for winding-up the concern; and the import of the decision appears to have been that the case must be dealt with in reference to the state of matters at the time that he made that application and sought to repudiate the contract. Whether that decision was one which would upon a consideration of the law be upheld or not is not a matter that I have occasion to go into now. I receive it with all the respect that is due to the court that pronounced it, but it is in that aspect of it not the same as the present case.

As regards other objections which have been stated and which are of a sort of subsidiary and supplementary character, I shall not add anything to the observations which have been made by my noble and learned friends who have already addressed the House on the subject. I entirely concur in their observations. With reference to some questions that I myself put at the close of the argument as to the effect that would be produced by sustaining the plea of the appellant, whether it would not practically reduce the company to the mere directors who had originally issued the prospectus or not, I wish to explain that in putting those questions I did not form any opinion whatever as to the effect that would be due to that result. I had not at that time considered the whole matter of this case; but I wished to have before me all the facts which I thought might or might not enter as elements into the formation of my opinion. In forming my opinion,

[1861-73] All ER Rep 738 at 762

found it my duty to discharge altogether that element, and to hold that the fact of the appellant being only associated as a dupe along with others would not be a reason why he should not have justice dealt to him in the same manner as if he had been the only dupe. In such a proceeding the number of the dupes does not afect the character of the transaction. The greater number of dupes only shows the greater dexterity of the process of inflating the bubble of these concerns. I, therefore, concur in the judgment which your Lordships have been advised to pronounce.

Appeal dismissed.

In re RAPHAEL.
Ex parte SALOMON.

KEKEWICH J.

1899

Feb. 10, 11, 18.

Practice—Costs—House of Lords—Liability of Pauper Appellant—Solicitor and Client.

Where an impecunious person is allowed to appeal to the House of Lords in formâ pauperis, the rules of the Supreme Court not being applicable, and there being no rules or practice of the House prescribing the assignment of a solicitor to a pauper appellant, or regulating the liability of such appellant for costs as between him and his solicitor, the contract between the pauper appellant and his solicitor must be taken to be the ordinary one, so that from the moment of the retainer of the solicitor by him, so long as the retainer holds good, although he has no means to pay, he is liable to pay costs in the same way as any other impecunious litigant who employed a solicitor would be liable.

Dicta of Sir F. Jeune in *Richardson* v. *Richardson*, [1895] P. 276, affirmed on appeal, [1895] P. 346, adopted.

ADJOURNED SUMMONS on taxation of costs.

The applicant Ralph Raphael was a solicitor and had acted in that capacity for the late Aron Salomon in the case of *Broderip* v. *Salomon* (1), and in the subsequent appeal of Aron Salomon to the House of Lords—*Salomon* v. *Salomon* (2)—in which the House reversed the decision of the Court of Appeal, and held that the company of A. Salomon & Co., Limited, was duly formed and registered and was not the mere "alias" or agent of or trustee for Aron Salomon, and that he was not liable to indemnify the company against the creditors' claims.

The effect of the judgment of the Court of Appeal had been to reduce Aron Salomon to poverty. Acting under the advice of the applicant, he resolved to appeal to the House of Lords, and presented a petition to the House for leave to sue in formâ pauperis, accompanied by the usual affidavit deposing that he was not worth more than 5*l.* in the world except his wearing apparel and the subject-matter of the appeal. The petition was entertained by the Appeal Committee, and an order was made that Aron Salomon "be allowed to prosecute his appeal in formâ pauperis."

(1) [1895] 2 Ch. 323. (2) [1897] A. C. 22.

KEKEWICH J.

1899

RAPHAEL, *In re.* SALOMON, *Ex parte.*

The effect of the reversal of the judgment of the Court of Appeal by the House of Lords was that Aron Salomon ceased to be a pauper. He died intestate in the year 1897, and the respondent Emanuel Salomon was duly appointed administrator of his estate and effects.

The applicant delivered to the respondent a bill of costs, a portion of which comprised items for work done by the applicant as solicitor for Aron Salomon in the prosecution of the appeal to the House of Lords. The bill was taxed on the petition of the respondent, and the taxing master to whom the taxation was referred (Master Alexander) submitted this portion of the bill to Mr. Taylor of the Taxing Department of the House of Lords. The bill was brought in and lodged, and, on the appointment to tax, it was contended on behalf of the respondent that, this being a taxation under an order of the Chancery Division, the solicitor was bound by rule 27 of Order XVI. of the Rules of the Supreme Court, and accordingly was precluded from obtaining "any fee profit or reward" for the conduct of the business. In the result Mr. Taylor declined to tax the bill, on the ground that he had no precedent or ruling to guide him, inasmuch as the Rules of the Supreme Court did not bind the House of Lords, and there did not exist any rules or practice of the House regulating the liability to costs as between solicitor and client in the case of a pauper appellant.

The items having been disallowed, the present summons was taken out to review the taxing master's certificate in this and in other respects. The summons was adjourned into court, and now came on to be heard, and the question was argued whether or not Aron Salomon, having been thus allowed to sue as a pauper, became liable, as between him and his solicitor, to pay costs for the conduct of the business done while he was so suing.

Kenyon Parker, in support of the summons. There being no practice in the House of Lords regulating the liability of a pauper to pay costs as between solicitor and client, and it being admitted that Order XVI., rr. 22–31, of the Rules of the Supreme Court have no application, the case must be governed by the

ordinary principles applicable where a solicitor does work for a client in the absence of any special stipulation. As regards the costs as between party and party of the proceedings in the House of Lords there is a special bargain, because the liability in that respect is regulated by the rules of the House of Lords and by the decision in *Johnson* v. *Lindsay & Co.* (1), where it was laid down that, on taxation of a pauper plaintiff's costs of a successful appeal, the fees of the House and the fees of counsel are to be disallowed, and the solicitor is to have his costs out of pocket with a reasonable allowance to cover office expenses, including clerks, &c. In *Richardson* v. *Richardson* (2) Sir F. Jeune intimated an opinion that a solicitor not assigned by the Court but employed by the pauper could, if he thought it worth while, sue his client on a retainer. (3) It is submitted that the taxation ought to be referred back to the taxing master with a direction that he should tax the costs as between solicitor and client in the ordinary way.

S. O. Buckmaster, for the respondent. The Court has simply to determine what is the meaning and effect of an order that a man should sue in formâ pauperis. There being nothing in the general orders of the House of Lords, or in their directions to agents, making any provision in respect of the status of a man suing as pauper, his status must, it is submitted, be the same in the House of Lords as in the High Court. In *Carson* v. *Pickersgill & Sons* (4) it was held that a successful plaintiff suing as a pauper in an action tried before a judge and jury was entitled upon taxation as against the defendant to costs out of pocket only, and could not be allowed anything for remuneration to his solicitor or fees to counsel. The costs which the Court of Appeal in that case held the pauper to be entitled to are exactly the costs which the House of Lords held the pauper was entitled to in *Johnson* v. *Lindsay & Co.* (1), and therefore the House of Lords has expressly adopted the practice of the High Court that a successful pauper cannot recover from an unsuccessful party such costs as would not be allowed in this

(1) [1892] A. C. 110.
(2) [1895] P. 276.
(3) See also *White* v. *White*, [1898] P. 124.
(4) (1885) 14 Q. B. D. 859.

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Court. If the argument of the other side prevails a successful pauper litigant will be in a worse position than any other litigant, because his solicitor will be able to recover the whole costs from him, and he himself will be unable to recover them from his unsuccessful opponents. The practice of allowing a person to sue in formâ pauperis is designed, not for the protection of the defendant (who is necessarily prejudiced if the plaintiff is impecunious), but in order to confer special rights on the pauper as between him and his solicitor. It is submitted that the words "in formâ pauperis" in the order of the House of Lords ought to have the same meaning as would be attached to them in the High Court.

Kenyon Parker, in reply.

Feb. 18. KEKEWICH J. A novel and interesting point on the important question of costs arises on this application. The order of Vaughan Williams J. and the Court of Appeal in the case of *Broderip* v. *Salomon* (1), known as the "one-man company" case, reduced Mr. Aron Salomon to poverty by depriving him of all he had in the world. He carried his case to the House of Lords, and by the affidavit which he made in support of his petition to the House for leave to sue in formâ pauperis, which was considered by the Appeal Committee, he swore that he was not worth more than 5*l.* in the world, except his wearing apparel and the subject-matter of the appeal. On that he was allowed to appeal in formâ pauperis. He succeeded in his appeal, and, though he was not thereby made a wealthy man, he was rehabilitated, and removed from the list of paupers. That being so, of course he was entitled as a successful appellant to certain costs from the unsuccessful respondents, and those costs were necessarily paid according to the rule laid down in *Johnson* v. *Lindsay & Co.* (2) Their Lordships there laid down the rule that on taxation of a pauper appellant's costs of a successful appeal, the fees of the House and the fees of counsel were to be disallowed, and the solicitor was to have his costs out of pocket, with a reasonable allowance to cover office expenses, including clerks, &c.

(1) [1895] 2 Ch. 323. (2) [1892] A. C. 110.

That is all that Mr. Aron Salomon was entitled to recover from the unsuccessful respondent. An order by the House of Lords on the respondent to pay the pauper appellant's costs would be construed to mean what I have stated. Then Mr. Aron Salomon's solicitor says that he is entitled to receive from Mr. Aron Salomon, or rather to have paid out of his estate, the ordinary costs which a solicitor is entitled to charge, that is to say, costs to be taxed as between solicitor and client, and the question I have to decide is whether he is so entitled. It is strange that there is no direct authority upon the point. The orders of the Supreme Court do not apply to cases in the House of Lords, and I cannot say that, because, if this had been an action in the High Court, Mr. Raphael would not have been entitled to costs, therefore he is not entitled to recover costs incurred in the House of Lords. On that *Johnson* v. *Lindsay & Co.* (1) does not help me in the least, and I do not think I can pay any attention to the allegations in the petition set out in the report of that case. If I could take those as true, they would dispose of this case. "It was urged on behalf of the petitioners that in the case of a pauper appellant in this House the fees of the House are not required from him and he obtains the services of counsel and solicitor without remuneration; that if the appeal is dismissed no costs are given against him; and that if when the appeal is successful the appellant's costs are allowed and are taxed upon the principle hitherto in force in the House the respondent has to pay when he loses and not be paid when he wins, and moreover has to pay the appellant's costs—not of suing as a pauper but of winning as a pauper." It is strange that there is there a statement not only that the fees of the House are not charged, but that the pauper obtains the services of solicitor and counsel without remuneration. If that had been true, it would dispose of this case. But the allegation in the petition is controverted, and I find no proof of it anywhere. For the same or a like reason I cannot find much to guide me in the otherwise instructive case of *Carson* v. *Pickersgill & Sons* (2), because that is a decision respecting the rules of the Supreme Court. It was

(1) [1892] A. C. 110. (2) 14 Q. B. D. 859.

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there held that under Order XVI., rr. 24–27, a successful plaintiff in an action in formâ pauperis tried before a judge and jury is entitled upon taxation as against the defendants to costs out of pocket only, and cannot be allowed anything for remuneration to his solicitor or fees to counsel. The fact there that it was tried by a jury, so that the costs were not in the discretion of the Court, was much discussed. But in truth that decision went entirely on the rules, which were very carefully considered and criticised by more than one learned judge, and does not touch the general principle. But the rules seem to me to be based upon this—that when a man sues in formâ pauperis in the Supreme Court he has a solicitor and counsel assigned to him, and that makes all the difference. They are assigned to him on certain terms, which bind them as much as they bind him. So here I am left without authority and have to decide the matter on general principle. What is the contract? That, on reflection, seems to me to be the real question. What was the contract between Aron Salomon and his solicitor, Raphael, when Raphael accepted the client's retainer to conduct the appeal in the House of Lords? Am I to invent a special contract resting entirely on the fact that the client was suing as a pauper—a contract which substantially would say this, that whereas, but for special contract, the retainer would enable the solicitor to charge the client in the ordinary way, that is to say, to charge costs including profit costs, subject to taxation, yet because he is suing as a pauper, the client is not to be liable in that or any other manner, but only according to a special contract depending on the fact that he sues as a pauper? Why should I invent that contract for the occasion? Here is a man who acts, not as the assigned solicitor of Aron Salomon, but as the solicitor of Aron Salomon's own choice. Why should I not say that his retainer is governed by the ordinary rules? I have said that there is no authority on the point, but there is a very useful case before Sir Francis Jeune in which he expressed an opinion, subject, no doubt, to revision if the actual point ever came before him: *Richardson* v. *Richardson*. (1) There there was a suit in the Divorce Court.

(1) [1895] P. 276; affirmed by C. A. [1895] P. 346.

The petitioner, suing in formâ pauperis, obtained a verdict for 30*l.* damages, and a decree nisi with costs against the co-respondent, and the question there was (as it was in *Johnson* v. *Lindsay & Co.* (1)), not what the solicitor was to obtain from the pauper client, but what the co-respondent was to pay to the pauper petitioner. It was argued, not at great length, but some authorities were cited, and Sir F. Jeune reserved his judgment, and subsequently delivered a very instructive judgment, in which he called attention more than once to the difference between the assignment of a solicitor to a pauper and the retainer of a solicitor by him, and he says (2): "It follows, I think, that there is nothing to prevent counsel or a solicitor being retained by a pauper and receiving from him such fees as he, perhaps by the aid of friends, may be able to pay, and this is the effect of the opinion given by the Attorney-General (Sir Richard Webster) in 1890: see the *Law Times*, vol. xc., p. 79. Whether a solicitor not assigned by the Court, but employed by the pauper, could, if he thought it worth while, sue his client on a retainer, it is not necessary to decide; but my present opinion is that he could." Of course, that opinion is not binding upon me, and it is not really a judicial decision, but it is valuable as being the opinion of the learned judge, not on the particular point before him, but on one connected with a point which involved a large discussion on costs where a man sues in formâ pauperis. That view seems to me to be consonant with justice and common sense. We may trust solicitors in general when they accept a retainer from a pauper not to sue him on the retainer. If a sense of honour would not prevent them from suing and recovering judgment, their own interest would, because if they have got a pauper to deal with it is not likely they would be willing to spend money in recovering judgment against him. But does that prevent the client from employing the solicitor on the footing that the solicitor may make the client pay if he becomes able to do so? I wish it to be perfectly understood that I am not suggesting that the contract between the pauper and his solicitor is that he should not pay unless he succeeds—I do

(1) [1892] A. C. 110.

(2) [1895] P. 278.

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not think that would be a proper contract to infer—or that he will pay the expenses if fortunately he ever has the means so to do, or, as it is expressed in an old book referred to by Sir Francis Jeune, "cum ad uberiores fortunas pervenerit." I do not think that the contract is of that character. The contract is the ordinary one, namely, that the client from the moment of the retainer, so long as the retainer holds good, is bound to pay the costs, although he has not in fact the means to pay. That is in accordance with the ordinary practice. Solicitors often accept retainers for persons who, to their knowledge, are not able to pay, and they do so partly out of kindness and partly because they are content to take the rough with the smooth in the course of business. Because a solicitor happens to know that his client is impecunious, it would be very hard that it should be said that he could not sue his client for his costs if he thought fit to do so; and I do not see, for this purpose, the distinction between the man who is known to be impecunious, though not described in the procedure as such, and the man who is suing in formâ pauperis because he has been allowed to do so by the House of Lords.

Accordingly, I must hold that the solicitor is entitled to his costs, as between solicitor and client, of the appeal to the House of Lords, and the matter must be referred to the taxing master for taxation on that footing.

Solicitors: *Ralph Raphael & Co.; Harris & Chetham.*

C. C. M. D.

Before Rich, J. (Sydney and Melbourne.) } Sept. 5, 6, 7, 17.

ASSOCIATED NEWSPAPERS LTD. v. COMMISSIONER OF TAXATION. SUN NEWSPAPERS LTD. v. SAME.

Revenue—Income tax — Income of two companies—Whether one mere agent of other—Income received by one company from other—Whether income from property—Sum spent to avoid business competition—Whether outgoing of capital—Income Tax Assessment Act 1922-1929 (*Commonwealth*), *secs.* 16 (*b*) (i.), 23 (1) (*a*)—*Income Tax Act* 1933 (*Commonwealth*), *sec.* 5 (i.) (*b*).

The *A Company*, a publisher of newspapers, amalgamated with another to form the *B Company*. After amalgamation the activities of the *A Company* continued. Employees of the Company held a number of its shares and practically all the rest were held by the *B Company*. The personnel of the boards of directors of the *A* and *B* companies were almost identical, and the policy and distribution of newspapers published by the *A Company* was largely controlled by the *B Company*, though the *A Company* acted as proprietor of newspapers published by it, kept separate accounts, made separate returns for taxation purposes, declared dividends on its shares, and continued to conduct its business as on its own behalf.

It was claimed in the returns of the two companies for income tax that the *A Company* was merely the agent of the other for the purpose of conducting the publications, and that all the income derived by the *B Company* from it was income from personal exertion, and did not reach it as dividends.—

Held, that no relation of principal and agent existed, and that the income received by the *B Company* from the *A Company* was taxable as income from property.

The *B Company* made an agreement with the promoters of a proposed newspaper by which, in consideration of £86,500, the latter undertook for three years not to publish a rival newspaper within 300 miles of Sydney. The consideration money was paid by the *A Company*; and, in the profit and loss account of that company the burden of this sum was spread over three years. The companies claimed a deduction of part of this sum in their returns for the income year in question.

Held, that the said sum was an outgoing of capital, and should not be treated as incurred in producing income, and no deduction should be allowed in respect of it.

APPEAL from Commissioner of Taxation.

Sun Newspapers Limited, a publisher of newspapers, amalgamated with another company called S. Bennett Limited, which carried on a similar business. Pursuant to the scheme of amalgamation they entered into an agreement with a trustee for a proposed company to be called Associated Newspapers Ltd., providing for the issue by the new company of a large part of its capital to the shareholders of the two constituent companies in exchange for shares in them. Subsequent to the amalgamation the activities of Sun Newspapers Ltd. continued. A few of its shares were held by one Rose Greenlees, a number by the employees of the Company, and the great majority by Associated Newspapers Ltd. The personnel of the boards of directors of Sun Newspapers Ltd. and Associated Newspapers Ltd. were almost identical, and in the proceedings of these boards practically no distinction was made between the separate individuality of the two companies. The managing editor of Associated Newspapers Ltd., one R. C. Packer, who occupied the position as general manager, had power to employ and dismiss the whole of the staff of the Sun Newspapers Ltd., subject to the approval of the board of directors of Associated Newspapers Ltd., and subject to such approval he controlled the policy and distribution of newspapers published by Sun Newspapers Ltd., but Sun Newspapers Ltd. kept separate accounts, made separate returns for income tax purposes, declared dividends, and otherwise continued, as it originally did, to conduct its business on its own behalf.

In the returns for income tax of the Sun Newspapers Ltd. and Associated Newspapers Ltd. it was claimed that the former Company was a mere agent of the latter for the purpose of conducting its publications, and that all taxable income derived by Associated Newspapers Ltd. from the other Company should be included in its assessment, and none of it in that of Sun Newspapers Ltd., and that such income should be treated by the Commissioner as income from personal exertion and not as dividends taxable as income from property.

A Company called Sydney Newspapers Ltd. having been formed to launch a new evening paper at a lower price than the existing rate for daily newspapers, an agreement was made in the name of Associated Newspapers Ltd. with the promoters of this Company, whereby, in consideration of £86,500, the latter undertook (*inter alia*) for three years not to be associated with the production of a daily newspaper within 300 miles of Sydney. Payments in respect of this sum were debited in the profit and loss account of Sun Newspapers Ltd., and were spread over a period of three years.

It was claimed by the appellant companies that these payments should be treated as incurred in producing income, and that a deduction should be made in respect of them. Both claims were disallowed by the Commissioner.

Upon appeal from the Commissioner,

Dudley Williams, *K.C.* (with him *Kitto*), for the appellant taxpayers.

Weston, *K.C.* (with him *Hooton*), for the Commissioner.

Cur. adv. vult.

RICH, J., read the following judgment:—These are two appeals, heard together, from assessments to income tax for the financial year beginning 1st July, 1933. The assessments are based upon returns by the respective appellants for an accounting period of twelve months ending 24th September, 1933, accepted by the Commissioner under sec. 32 (3) of the Income

Tax Assessment Act 1922-1933. The appellant Sun Newspapers Limited was incorporated on 29th March, 1920. For some years it conducted the Sydney evening newspaper called the *Sun* and the *Sunday Sun*. It also conducted the *Newcastle Sun* and, as part owner, the *Daily Pictorial* and *Sunday Pictorial*. It was conducting these newspapers in the year 1929. Rival newspapers, called the *Evening News* and the *Sunday News*, as well as a weekly paper called the *Woman's Budget*, were at that time conducted by a company called S. Bennett Ltd. The two companies resolved upon an amalgamation of their interests. On 9th August, 1929, they entered into an agreement with a trustee for an intended company to be called Associated Newspapers Limited. This Company, which was registered on 9th September, 1929, is the other appellant. Under the agreement it was to issue a large part of its nominal capital to the shareholders of the two constituent companies in exchange for their shares in those respective companies. The number and proportions are set out in the agreement, but they are not material to the questions raised for determination.

What is material is the fact that at that time 56,000 shares in Sun Newspapers Ltd. of the face value of 10s., half the face value of the remaining shares, but bearing twice the rate of dividend, were held by employees in that Company and upon special terms. These shares were dealt with specially under the agreement and under a supplemental deed dated 31st July, 1930. It is sufficient to say that as a result 22,600 of these employees' shares were outstanding at the beginning of the accounting period upon which the assessments were based, and were not held by the appellant Associated Newspapers Ltd. In the agreement for the merger that Company was described as a holding Company, but it did not rigidly adhere to that character. On 24th December, 1929, it entered into an agreement for the acquisition of two further existing newspapers, the *Daily Guardian* and the *Sunday Guardian*, which under the agreement passed to it on 31st January, 1930. In consequence of this transaction Associated Newspapers Limited took over an overdraft which was maintained in its name for various purposes. The *Daily Guardian* and the *Sunday Guardian* were for a time printed and published at the office of the vendors, and then they were transferred to the offices of S. Bennett Ltd.

On 19th August, 1931, an agreement was executed between Associated Newspapers Limited and Sun Newspapers Limited, the purpose of which was to end the publication by the former of the *Daily Guardian* and by the latter of the *Daily Pictorial* and *Sunday Pictorial*, and to provide for the publication at the *Sun* offices of a daily paper to be named the *Daily Telegraph*, and for the printing and publishing of the *Sunday Guardian* by Sun Newspapers Limited, on behalf of Associated Newspapers Limited. This was quickly followed by an agreement of 14th October, 1931, the purpose of which was to provide for the cessation of the *Sunday Guardian* and the publication of the *Sunday Sun* and *Guardian* in continuation of the *Sunday Sun*. Shortly afterwards, namely, on 10th November, 1931, the two companies entered into a further agreement, by which Sun Newspapers Limited undertook to print and publish the *Daily Telegraph* on certain terms, which included a division of profits with Associated Newspapers Limited. In the meantime, under the authority of Associated Newspapers Limited, the publication of the *Evening News* by S. Bennett Ltd. had ceased. Its last issue was published on 21st March, 1931. But another evening paper came into the field, the *World*. This was published by a company called Labour Papers Limited. By an agreement dated 1st November, 1932, this Company granted an option to an "investor" until 9th November, 1922, for a "lease" of the newspaper, including its premises, machinery and plant, at a rent. The optionee was to form a company. This he did under the name of Sydney Newspapers Limited, and with the co-operation of a journalist who was a son of the managing editor of the appellants' newspapers, he made preparations for launching a new evening paper in succession to the *World*, to be called the *Star*. It was announced that this paper would be sold for 1d. The existing morning and evening papers sold for 1½d. The appellants took alarm, and their managing editor was entrusted with the task of preventing the sale at 1d. of the threatened evening newspaper. Some doubt is cast on the extent of his authority, but however that may be, he made an agreement with Sydney Newspapers Limited and its two sponsors, by which, in consideration of a sum of £86,500, they undertook for three years not to be associated with the production or publication of a daily newspaper within 300 miles of Sydney, and to control for three years the plant, machinery and premises used in the production of the *World*. The agreement contained other stipulations of minor importance. If during the three years Associated Newspapers required it, Sydney Newspapers Limited were to produce a daily or a Sunday paper by means of the plant, and if the plant of the former broke down the latter Company was to produce any of its publications. A place was to be found by Associated Newspapers Limited on its staff for the son of its managing editor, and the same thing was to be done for another journalist who had been employed for the *World*. That newspaper went out of existence on the same day as the agreement was made, 9th November, 1932. The agreement was honoured by the appellant companies' boards.

During the course of the accounting period with which these appeals are concerned, payments amounting to £44,830 were made under the agreement in respect of the £86,500. Under the provisions of the

agreement for taking over the various responsibilities connected with the *World* a further sum was paid during the period, amounting to £2831, which with the former sum made £47,661. Although the agreement was made in the name of Associated Newspapers Limited these payments were all made by Sun Newspapers Limited. In the profit and loss account of that Company the burden of the £86,500 was spread over three years, and for the accounting period under consideration a debit of £24,363 0s. 8d. was made. In the return of the Company for income tax it was shown as a deduction.

The Commissioner of Taxation disallowed the deduction, and one of the grounds of appeal from the assessment is that a deduction either of £47,661, of £44,830, or of £24,363 0s. 8d. should be allowed from the assessable incomes either of Associated Newspapers Limited or of Sun Newspapers Limited. But a more sweeping claim is made in respect of taxation of the income derived from the newspaper undertakings. It is claimed that Sun Newspapers Limited, which is now in liquidation, was a mere agent of Associated Newspapers Limited for the purpose of conducting the publications, and that all the taxable income derived therefrom during the accounting period ended 24th September, 1933, should be included in the assessment of Associated Newspapers Limited, and none of it in the assessment of Sun Newspapers Limited. One consequence which it is sought to attribute to this view is that none of the income reached Associated Newspapers Limited as dividends or in any other guise or form than as income from personal exertion.

Under sec. 5 (1) of the Income Tax Act 1933 (No. 41 of 1933) a further tax of 6 per cent. has been imposed upon a portion of the taxable income of Associated Newspapers Limited as income from property, amounting to £137,842, that is a tax of £8270 10s. 5d. This income from property represents, after the allowance of deductions, the amount paid as dividends by Sun Newspapers Limited to Associated Newspapers Limited.

The objection that it is not liable to the further or special tax of 6 per cent. constitutes the third question for determination in the appeals. The contention that the business is conducted by Sun Newspapers Limited, on behalf of Associated Newspapers Limited, in such a sense that all the profits are assessable as income of the latter Company only, is based on certain authorities decided under the British Income Tax Acts, or at any rate the citation of those decisions was the commencing point of the argument. They are conveniently set out in a note in the article in the second edition of Halsbury's *Laws of England* on income tax, under a part of the text which explains the principle on which they rest—vol. XVII., p. 91, note (*b*). The text is as follows:—"There are "certain examples of English companies holding all or "practically all the shares in foreign companies which "may appear to be exceptions to the rule that mere "shareholding control is not sufficient to establish "control of a business. The explanation of the "decisions is that in each case there is more than "mere shareholding control. The foreign company "has been found not to own or carry on a business, "but the business has been owned and carried on by "the English company, and the foreign company has "merely existed to hold land, &c., to conform to local "law in that respect. The question to be decided is: "Does the foreign company carry on its own business "or is the business in fact carried on by the English "company? Where a company whose shares are "thus held in their entirety, or practically so, by "another company is merely acting as a trustee or "agent for the shareholding company, or where the "company is a mere sham, simulacrum, or cloak, or "is kept in being for the purpose of presenting the "fiction that property is owned by it, it is competent "for the Commissioners to look at the reality part "of the situation and find that the business is carried "on by the shareholding company."

To the cases cited in the note, which I shall refrain from setting out, it is necessary to add a reference to the discussion of the same authorities by Phillimore, J., as he then was, in *Kodak Limited v. Clark*, [1902] 2 K.B. 450, affirmed in the Court of Appeal, [1903] 1 K.B. 505. The recent decision of the Privy Council in *E. B. M. Co. Ltd. v. Dominion Bank*, [1937] 1 All. E.R. 555, marks the limits of the principle invoked by the appellants. There (p. 564), after remarking that one of the Judges below had been misled by some remarks of Cozens-Hardy, M.R., in *Gramophone and Typewriter Limited v. Stanley*, [1908] 2 K.B. 89, which he quotes Lord Russell of Killowen, proceeds—"But this can only mean that, on the facts of a case, "it may appear that the legal entity has not become "the owner of a business, but is merely carrying on, "as agent for another person; just as, on the facts "of a case, it might appear that an individual who "was carrying on a business was not the owner "thereof, but was carrying it on as agent for another "person who was the owner thereof. Sir H. H. "Cozens-Hardy, M.R., did not mean, and, in the face "of the *Salomon Case*, [1897] A.C. 22, could not mean, "that, notwithstanding that a business is in fact and "in law the property of a separate legal entity, a "limited company, it could be held, for taxation pur-"poses, that the business was the property of some "other person, and that the company was carrying "on the business as agent for that other person."

In the present case the great degree of control exercisable and exercised by the board of Associated Newspapers Limited over the conduct of the newspaper business is relied upon. The managing editor was appointed by an agreement of 9th September, 1931, made with Associated Newspapers Limited, and under it he was given wide powers of managing the editing,

production and distribution of newspapers controlled through other companies, as well as newspapers owned by it. During the accounting period, the *Evening Sun*, the *Sunday Sun* and the *Daily Telegraph* were published at the *Sun* office, and also the *Woman's Budget*. S. Bennett Ltd. remained in existence until 1936, but at that time it did not operate. About 98½ per cent. of the shares of Sun Newspapers Limited were held by Associated Newspapers Limited, the rest being in effect employees' shares. In the proceedings of the boards of directors, excepting, perhaps, the matter of remuneration, no practical distinction was made between the separate individuality of the two companies. The personnel of the two boards was not, however, quite identical. But as against all this, Sun Newspapers Limited acted in every way as the proprietor of the newspapers and the publishing business, kept separate accounts, made separate returns for taxation purposes, declared dividends on its shares, and was treated in every way as continuing to be, as it originally was, the Company conducting on its own behalf, that is in the interests of its shareholders, its own extensive enterprise. In the accounts of both companies a moiety of the *Sunday Sun* profits amounting to £15,084 15s. 1d. was shown as a credit of Associated Newspapers Limited against Sun Newspapers Limited.

I am clearly of opinion that there was no relation of principal and agent, but that the property in the whole undertaking conducted by Sun Newspapers Limited was vested in it and vested in it beneficially, that is for its shareholders whoever they might be. In fact, the employees' shares would have made it difficult to ignore the separate personality of that Company even if there had been any resolve to do so. Mr. Weston, for the Commissioner, contended that, even if there had been an agency, yet as Sun Newspapers Limited had declared dividends and Associated Newspapers Limited received the income under that guise, sec. 16 (*b*) (i.) of the Assessment Act and sec. 5 (1) (*b*) of the Tax Act would apply, and this may well be so. But on the facts I think that it is clear that these provisions apply to the sum brought under tax as net dividends, namely, £137,842 (£147,015 gross).

It remains to deal with the claim to a deduction on account of the moneys paid by Sun Newspapers Limited to the optionees over the *World*. It was shown that this transaction, or rather, the extinguishment of the *World* and the removal of the immediate fear of a 1d. paper led to some substantial improvement in the net profits of the *Sun*, and was the occasion of the making of some economies. But the obligation to make the payment was that of Associated Newspapers Limited, and I am not prepared to find that within the meaning of sec. 25 (*e*) the money, so far as it was concerned, was wholly and exclusively laid out or expended for the production of assessable income. So far as Sun Newspapers Limited is concerned the Commissioner contended that the moneys, although actually paid by it, were no more than a voluntary payment made to meet an unfortunate transaction to which the holding Company had committed itself. However this may be, I think that the expenditure could not be deducted by either Company because it is in the nature of an outgoing on account of capital—see sec. 23 (1) (*a*). It is not expenditure of a recurrent nature. It is not an incident, whether normal or unusual, of the regular conduct of the organisation for earning profits. The purpose was to buy out opposition and secure so far as possible a monopoly. The fact that the benefit was not perpetual does not deprive it of its capital attributes. If physical assets of a terminating or wasting description were bought, no one would say on that account that the money was a revenue expenditure. The case may not be so striking as *Ward and Co. v. The Commissioner of Taxes*, [1923] A.C. 145, but it is more like that case and those mentioned on p. 440 of Lord McMillan's opinion in *Van Den Berghs Ltd. v. Clark*, [1935] A.C. 431, than such a case as *Neville v. Commissioner of Taxation*, 56 C.L.R. 290, [1937] A.L.R. 210, upon which the appellants rely. See further *Glenboig Union Fireclay Ltd. v. Inland Revenue Commissioners*, 12 T.C. 427, affirmed [1922] S.C. (H.L.) 112; and *Dott v. Brown*, (1936) 154 L.T. 484; and *Collins v. Joseph Adamson and Co.*, (1937) 54 T.L.R. 64.

I think the appeals should be dismissed, with costs.

Appeals dismissed.

[Solicitors—For the appellants, Minter, Simpson and Co.; for the respondents, H. F. E. Whitlam, Commonwealth Crown Solicitor.] G. E. S.

Supreme Court.

FULL COURT — (Mann, C.J., Lowe and Gavan Duffy, JJ.) } Aug. 3, 5; Sept. 6.

WRIGHT v. THE VICTORIAN RAILWAYS COMMISSIONERS.

Workers' Compensation — Weekly payments—Application to review — Retrospective review — No claim made for—Power of arbitrator — Workers' Compensation Act 1928 (*No.* 3806, *Vict.*), *Second Schedule.*

Under an agreement made and recorded pursuant to the Workers' Compensation Act 1928 an employer contracted to pay to an injured workman a weekly sum by way of compensation during the total or partial incapacity of the worker, or until the same should be ended, diminished, increased or redeemed in accordance with the Act. Subsequently the employer applied for arbitration, seeking an award that the weekly payment then being made should be terminated or the liability therefor redeemed by a lump sum. No claim was made in the application for any retrospective declaration as to the extent of the worker's incapacity.—

[HIGH COURT OF AUSTRALIA.]

THE KING

AGAINST

PORTUS AND ANOTHER; EX PARTE FEDERATED CLERKS UNION OF AUSTRALIA.

H. C. OF A 1949.

MELBOURNE, *Oct.* 7, 10;

SYDNEY, *Nov.* 22.

Latham C.J., Rich, Dixon, McTiernan and Webb JJ.

Industrial Arbitration (Cth.)—Industrial dispute—Existence of inter-State dispute—Majority of employees concerned employed in one State; small number in another State—Organization of employees including as members "employees of any person or corporation employing persons at . . . salary . . . on behalf of" Commonwealth Government—Company incorporated under State law—All shares owned by Commonwealth—Whether organization representative of employees of company as being employed "on behalf of" Commonwealth—Commonwealth Conciliation and Arbitration Act 1904-1949 (*No.* 13 *of* 1904—*No.* 86 *of* 1949), *s.* 4.

The respondent Federation was an organization registered under the *Commonwealth Conciliation and Arbitration Act* 1904-1949. Its rules included as eligible for membership "persons employed at a salary rate in connection with air transport who are salaried officers of the Crown." The phrase "salaried officers of the Crown" was defined as including "employees of any . . . corporation employing persons at an annual salary rate on behalf of the Government of the Commonwealth." Q. Ltd. was a company, incorporated under the law of Queensland, which was engaged in air transport. All the shares in the company had been acquired by the Commonwealth, which caused the articles of association to be altered so that the sole right to appoint directors was vested in the Minister for Air. The Federation admitted to membership 102 persons employed by Q. Ltd., ninety-eight in New South Wales and four in Queensland; and it served on the company a log of demands as to the conditions of employment of such persons.

Held that, on the company's failure to accede to the demands in the log, an "industrial dispute" within the meaning of the definition in s. 4 of the Act existed between the Federation and the company. Within the meaning of the Federation's rules, Q. Ltd. was a corporation which employed the

persons concerned at an annual salary rate "on behalf of" the Commonwealth Government; therefore, they were validly admitted to membership of the Federation, and it could properly represent them in an industrial dispute. The dispute extended beyond the limits of one State because employees in both New South Wales and Queensland were affected; it was immaterial that the number of employees in Queensland was small.

ORDER NISI for prohibition.

The Australian Transport Officers Federation (hereinafter called the Federation), an organization registered under the *Commonwealth Conciliation and Arbitration Act* 1904-1949, served on Qantas Empire Airways Ltd. (hereinafter called Qantas), a log of demands to which Qantas failed to accede. The industrial dispute alleged to arise from such failure came before Mr. J. H. Portus, a conciliation commissioner appointed under the Act. The Federated Clerks Union of Australia (hereinafter called the prosecutor) was also heard in the proceedings. It had served a log on Qantas, and it objected that there was no "industrial dispute" between the Federation and Qantas. The commissioner intimated his intention to hear the proceedings on the basis that there was such a dispute, and the prosecutor obtained from the High Court an order nisi for a writ to prohibit him from so doing. The Federation was joined as a respondent. The facts appear in the judgments hereunder.

P. D. Phillips K.C. (with him *Simon Isaacs*), for the prosecutor. There could not be any real industrial dispute between Qantas and the Federation as to the terms of employment of the employees in question; they were not eligible for membership of the Federation, because they were not—within the meaning of its constitution and rules—persons "employed at a salary rate in connection with air transport who are salaried officers of the Crown." Qantas is not "the Crown," and its officers therefore are not "officers of the Crown." That, in such circumstances, the Federation could not create a cognizable dispute on their behalf, because it did not lawfully represent them, is shown by *R.* v. *Hibble*; *Ex parte Broken Hill Pty. Co. Ltd.* (1). The provision in the Federation's rules to the effect that "salaried officers of the Crown shall mean employees of any . . . corporation employing persons . . . on behalf of the Government of the Commonwealth" does not take the matter any further. Qantas did not employ any persons "on behalf of" the Commonwealth. It is true that the Commonwealth at the relevant time had acquired all the shares in Qantas (see

(1) (1921) 29 C.L.R. 290.

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Qantas Empire Airways Agreement Act 1946; *Qantas Empire Airways Act* 1948), but it was nothing more than a shareholder. Qantas continued to have an independent existence as a body incorporated under the law of Queensland; it was not an agency of the Commonwealth so as to make it possible in any real sense to say that its employees were employed "on behalf of" the Commonwealth. If the prosecutor's argument was not correct, the question would arise: How many shares does the Government have to own in order to make the company a Government concern? The Government's interest in a company may vary to a great degree, and it would be difficult to see where the line was to be drawn. A second ground of objection to the proceedings which it is sought to prohibit is that there is not here any real *inter-State* dispute. It appears that only four of the 102 employees to be affected are working outside New South Wales. This seems scarcely the sort of "inter-State" dispute contemplated by the Constitution. Surely there must be some limit to what can be done in creating a "paper" dispute merely by serving a log of demands. The recognition of "paper" disputes should not be carried to the extent of dispensing with the need for showing that there is a real and genuine dispute extending beyond one State: See *Hibble's Case* (1); *Caledonian Collieries Ltd.* v. *Australasian Coal and Shale Employees' Federation* [*No.* 1] (2); *McWilliam & Boyt* on *Commonwealth Conciliation and Industrial Arbitration Law*, p. 12.

The respondent commissioner did not appear.

G. E. Barwick K.C. (with him *J. J. McKeon*), for the respondent Federation. As to the prosecutor's second argument, the question of the present number of employees in each State is irrelevant (*Metal Trades Employers Association* v. *Amalgamated Engineering Union* (3)). The dispute is not limited to the position as it stands at the moment. In the class of employment now concerned, employees move from State to State, and there could be a considerable and rapid increase in the number in Queensland. Moreover, the Federation has many members qualified to take employment with Qantas if it becomes available. The present Clerks' Award does not cover all the matters raised by our log. As to the first point, the question is simply as to the meaning of the Federation's rule. The inquiry is not whether the employer is the Crown or entitled to Crown immunity; or whether the employer is an

(1) (1921) 29 C.L.R., at p. 292.
(2) (1930) 42 C.L.R. 527.
(3) (1935) 54 C.L.R. 387, at p. 402.

agent in the sense of having capacity to bind the Crown; or whether the employer derives its capacity from Federal Parliament or some other relevant Federal source. It is not possible in the circumstances to give the words "on behalf of" a strictly literal construction. The rule clearly contemplates employment by corporations which have an independent existence in the sense that they are not Crown agencies. The question is: Does employment by Qantas fairly come within the rule as employment by a corporation carrying on an activity on behalf of the Commonwealth? This should be answered in the affirmative.

P. D. Phillips K.C., in reply.

Cur. adv. vult.

Nov. 22.

The following written judgments were delivered:—

LATHAM C.J. Mr. J. H. Portus, a Conciliation Commissioner appointed under the *Commonwealth Conciliation and Arbitration Act* 1904-1949, proposes to make an award in an industrial dispute alleged by the Australasian Transport Officers' Federation, an organization registered under the Act, to exist between it and a company entitled Qantas Empire Airways Limited (hereafter referred to as Qantas). The Federation claims preference in employment for its members. The Federated Clerks' Union of Australia, another organization registered under the Act, has members whose interests would be affected if an award giving preference to the members of the Federation were made. Compulsory conferences were held in March and June 1949 at which representatives of Qantas and of the two organizations were present, and it was then contended for the Clerks' Union that the Conciliation Commissioner had no jurisdiction to make an award as sought by the Federation. The objections were overruled and the union now seeks a writ of prohibition to prevent the commissioner from making an award in the alleged dispute.

There are two objections to jurisdiction upon which the union relies. One objection is that there is no inter-State dispute between the Federation and Qantas. The Federation has a large number of members but of these only ninety-eight in New South Wales and four in Queensland are employees of Qantas. It is therefore said that there cannot be a real inter-State dispute between the Federation and Qantas. The dispute, however, is as to the terms upon which Qantas may employ persons in any State in which Qantas carries on operations. In fact Qantas operates in the States of

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New South Wales, Victoria and Queensland. The dispute exists in New South Wales and Queensland. It may justly be said that the extension of the dispute from New South Wales into Queensland is small and almost minimal in character. But both the Federation and Qantas exist in New South Wales and in Queensland and there is a dispute between them in each State, that dispute being the same dispute. It should be remembered that the Federation speaks on behalf of future as well as present members. This Court would soon find itself in grave difficulties if it were to hold that the jurisdiction of the Arbitration Court depended, not merely upon the extension of an industrial dispute from one State to another State, but also upon the size of the dispute in each or some particular State. I venture to repeat what I said in the case of *Metal Trades Employers Association* v. *Amalgamated Engineering Union* (1):—

"The fact that the Arbitration Court or this Court may consider an industrial claim to be unimportant or trifling or unwise has no bearing upon the actual content of the dispute or upon the jurisdiction of the Arbitration Court to deal with that claim in an award. The Arbitration Court may, because it considers that a claim, though actually made, is not important or really significant, decline to include in an award any provision with respect to it. But if, for reasons satisfactory to the Arbitration Court, such a claim is granted in the award, there can, in my opinion, be no valid objection, upon the ground of jurisdiction, to the Arbitration Court making such an award. The award in such a case would deal directly with an actual part of the dispute."

The second objection is based upon the contention that the present members of the Federation who are employed by Qantas are ineligible for membership so that the Federation cannot represent them in respect of any industrial dispute. It is contended on behalf of the Clerks' Union that employees of Qantas are ineligible for membership of the Federation. Such a person can be eligible only if he is a salaried officer of the Crown within the meaning of the rules. It is contended that employees of Qantas are not and cannot be such officers. If the persons who are now de facto members of the Federation are ineligible for membership and if no employees of Qantas can ever be eligible for membership of the Federation, then, it is contended, there is not and cannot be an industrial dispute between the Federation and Qantas.

The Federation represents all its members and may make demands and create disputes on behalf of any section of its members, actual or potential, even if no members are at the time employed by an

(1) (1935) 54 C.L.R. 387, at p. 410.

employer against whom an award was sought. In *R.* v. *President of the Commonwealth Court of Conciliation and Arbitration and Merchant Service Guild of Australasia*; *Ex parte Holyman & Sons* (1) it was held that in order that there should be an inter-State dispute it was necessary that there should be a dispute between particular employers and particular employees in each of two or more States, those employees being members of the organization which alleged that a dispute existed. Further, in *R.* v. *Hibble*; *Ex parte Broken Hill Pty. Co. Ltd.* (2) it was held that "the only capacity and power possessed by an organization . . . is to put forward claims on behalf of persons who have become members pursuant to its rules." But *Holyman's Case* (1) was overruled in *Burwood Cinema Ltd.* v. *Australian Theatrical & Amusement Employees' Association* (3) where it was held that an industrial dispute might be created by a demand by an organization upon employers even though those employers did not employ any of the members of the organization. Thus *Hibble's Case* (2) is no longer decisive upon this question so far as it arises if at all upon the factual circumstances now existing. The fact (if it is the fact) that Qantas does not employ any members of the Federation at the time when the alleged dispute was asserted to exist does not make it impossible for a dispute between the Federation and Qantas to exist.

But if the conditions of eligibility for membership of the Federation are such that no employee of Qantas can ever be a member of the Federation pursuant to its rules, the question requires further consideration. If this should be the case there could not at any time be an industrial dispute between the Federation and Qantas because no question could ever arise as to industrial matters between Qantas and any members, present or future, of the Federation. It is therefore necessary to consider the conditions of eligibility of membership of the Federation. The Clerks' Union contends that the constitution of the Federation is expressed in such terms that no employee of Qantas can possibly lawfully be a member of the Federation.

This is, in my opinion, a question with which the Commonwealth Court of Conciliation and Arbitration is especially qualified to deal, and it should not be determined in this Court unless the law permits and the interests of justice necessitate a decision upon the matter by this Court. If a registered organization is found to be admitting as members persons who are ineligible, means for the correction of the situation are provided by the Arbitration Act. In this case an

(1) (1914) 18 C.L.R. 273.
(2) (1921) 29 C.L.R. 290.
(3) (1925) 35 C.L.R. 528.

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application was made to the commissioner to submit to the Arbitration Court under s. 16 (2) of the Act the questions which now arise. But the commissioner exercised the discretion given to him under the section by refusing to take advantage of it. Section 16 (2) is a provision the full utilization of which would often make prohibition proceedings in this Court unnecessary. If the commissioner had referred the question whether he had jurisdiction under the Act to the Arbitration Court this Court would not at this stage have considered the application for a prohibition.

The Federation was originally entitled "The Federation of Salaried Officers of Railways Commissioners," and the conditions of eligibility prescribed by rule 2 limited the membership to persons who were officers other than professional officers "employed at an annual salary by the Railways Commissioners of the States and the commissioner for Road Transport and Tramways in New South Wales and the Board of Land and Works, Railway Construction Branch, Victoria." It was required that the persons should be officers having duties of supervision. "Professional officer" was defined. In 1943 the rule was amended and it assumed its present form. At the same time the name of the organization was changed to the Australasian Transport Officers' Federation. The relevant amendment added the following class of persons to those eligible for membership—"persons employed at a salary rate in connection with Air Transport who are salaried officers of the Crown." The rule also provided as follows:—"Salaried Officers of the Crown shall mean: Employees of any person or corporation employing persons at an annual salary rate on behalf of the Government of the Commonwealth or any of the States."

Qantas is a public company incorporated in Queensland. The Commonwealth Government is registered as holder of all the shares except seven, and those seven shares are held by nominees of the Government (see *Qantas Empire Airways Agreement Act* 1946 and *Qantas Empire Airways Act* 1948). The articles of association of the company provide that the Commonwealth Minister of State for Civil Aviation shall have the sole right to appoint the directors of the company and substitutes for them and to appoint successors to them. Accordingly the Commonwealth Government has complete control of the company.

The company, however, is a distinct person from its shareholders. The shareholders are not liable to creditors for the debts of the company. The shareholders do not own the property of the company: see *Aron Salomon* v. *Salomon & Co.* (1) and *Mucaura* v.

(1) (1897) A.C. 22.

Northern Assurance Co. (1). Persons employed by the company are not therefore employed by all or by any of the shareholders.

It is evident that the definition of " salaried officers of the Crown " was intended to define persons who were not actually public servants, but who had some degree of association with the Crown, though the Crown was not their employer from a legal point of view. If it had been intended to limit the membership to public servants in the case of air transport officers, it would have been easy to provide that membership of the Public Service of the Commonwealth or of a State should be a condition of eligibility. But it is clear that the intention was to include persons who, though employed by, and being the employees of, a person or a corporation (not being the Crown itself), could nevertheless be said to be employed by that person or corporation in some sense on behalf of the Crown.

The words " on behalf of the Crown " therefore should not be so interpreted as to produce what plainly would be the unintended result of including public servants and no others. The expression " on behalf of the Crown " is not an expression which has a strict legal meaning. An agent who acts on behalf of a principal can, within the limits of his authority, bind the principal by employing a person on his behalf so that that person becomes the employee of the principal. But the words " on behalf of the Crown " in the rules of the organization evidently mean something less than " as agent for the Crown " in the legal sense.

A corporation created by Parliament for the purposes of performing a function on behalf of the Government (such as a railway commissioner who is made a corporation sole) may be said to employ persons on behalf of the Crown—though only in the sense that the corporation represents the interests of the Crown in relation to the activities of the corporation. But can the same be said of a public company the relation of the Government to which is that the Government is a shareholder? The fact that the Government owned some shares while other persons owned other shares would not show either that the employees of the company were employed on behalf of the Crown or that they were employed on behalf of the other shareholders. But where the Crown holds all the shares the company is really carrying on its business solely in the interests of the Crown in the same way and to the same extent as in the case of the other authorities mentioned in rule 2. The substance of the matter is the same, whether the corporation is a specially created body or a company formed under a *Companies Act*. In my opinion the company may fairly be said in such a case to be acting on behalf

(1) (1925) A.C. 619.

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of the Crown in a commercial and industrial sense, though not in the strictly legal sense in which such an expression would be used in the law of agency. I am therefore of opinion that the objections to the jurisdiction of the commissioner fail and that the order nisi should be discharged.

RICH J. I cannot usefully add anything to what has been stated in the judgments of my colleagues and I agree that the order nisi should be discharged.

DIXON J. The prosecutor, which is an industrial organization, seeks a writ of prohibition directed to a Conciliation Commissioner prohibiting him from determining by award or order an industrial dispute alleged to exist between another industrial organization and Qantas Empire Airways Ltd. The second organization is the Australasian Transport Officers' Federation. The alleged industrial dispute is the result of the delivery by the Federation of a log of demands upon Qantas Empire Airways Ltd. and the refusal or failure of that company to accede to the demands. The prosecutor denies that an industrial dispute extending beyond the limits of a State was thus created. The chief ground for the denial is that the constitution of the Federation is such that no-one in the employment of the company could be a member of the Federation. If no-one in the service of the company would be eligible for membership of the organization, the organization could not represent or stand in the place of the relevant class of employees for the purpose of making demands.

The Federation was formed as an organization of such salaried officers of the railways of the States as have supervision over other employees or are employed in administrative work. It was limited to officers employed at an annual salary by the Railways Commissioners of the States, the Commissioner of Road Transport and Tramways in New South Wales and the Railway Construction Branch of the Board of Land and Works in Victoria. But by an amendment the class eligible was extended to persons employed at a salary rate in connection with air transport who are salaried officers of the Crown, an expression that was defined. "Salaried officers of the Crown" was defined to mean "Employees of any person or corporation employing persons at an annual salary rate on behalf of the Government of the Commonwealth or any of the States." The log of demands covers persons employed by the company at annual salary rates in connection with air transport and there are persons so employed who are de facto members of the Federation. But the prosecutor says that the company does not

employ any one " on behalf of the Government of the Commonwealth or any of the States " and therefore that none of its employees is eligible *de jure* to be members of the Federation. The prosecutor says that consequently, for the purpose of the log of demands, the Federation cannot be considered to represent them or any class who might become employees of the company. The Federation denies this and says that, though incorporated as a trading company, the relation of Qantas Empire Airways Ltd. with the Commonwealth is such that, within the meaning of the constitution of the Federation, the employees of that company are employed " on behalf of the Government of the Commonwealth."

The company is incorporated in Queensland under *The Companies Act* of that State. A large number of shares in the company was held by British Overseas Airways Corporation. These shares were acquired by the Commonwealth in pursuance of the *Qantas Empire Airways Agreement Act* 1946, a statute passed by the Federal Parliament for the purpose of authorizing the purchase of the shares and appropriating the money to pay for them. All the remaining shares in the company were acquired by the Commonwealth under an agreement confirmed by the *Qantas Empire Airways Act* 1948. In a preamble that Act recites the earlier statute and the purchase of shares thereunder. It also recites the acquisition of the remaining shares, the desirability of the Commonwealth subscribing to issues of capital and of the Parliament approving the purchase of the remaining shares. The operative provisions of the Act approve accordingly the purchase, approve the subscription of further capital and appropriate as the price of the shares purchased a sum of £4,550,000 and for subscription to further issues a sum of £2,000,000. The Commonwealth thus became the owner of all the shares in the Company. Doubtless to prevent the reduction of the number of members below the requirement of the company law a few single shares were placed in the names of nominees. As the owner of all the shares, the Commonwealth caused the articles of association of the company to be altered so that the sole right to appoint the directors was vested in the Minister for Air. The former directors went out of office. The directors appointed by the Minister were given by the articles varying terms of office, subject to removal by the Minister for inability, inefficiency or misbehaviour. The Minister was authorized to fix the remuneration of the directors.

The question is whether in these circumstances the relation of the company to the Commonwealth is such as to satisfy the expression in the constitution of the Federation " on behalf of the Government of the Commonwealth." In no small degree the answer depends upon the meaning of the expression in the context in which it

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occurs. As a shareholder, even the sole beneficial shareholder, the Commonwealth has no property legal or equitable in the assets of the company nor is the Commonwealth a principal acting by the company as its agent. But plainly the rule of the Federation when it uses the words "on behalf of" is not contemplating the legal relation of principal and agent. The language as well as the context and subject matter shows that. For the rule speaks of the employees of the person or corporation who employs persons on behalf of the Commonwealth. The person or corporation is the employer, the principal in the contract of service. The employer is not the Crown or Government. The expression "on behalf of" is used in a wider sense. It means for the purposes of, as an instrument of, or for the benefit and in the interest of, the Commonwealth. The reference to the Railways Commissioners and other bodies of the States shows that what is in mind is a corporation set up and used by the Government as an authority in which the undertaking is vested. Perhaps the possibility was not foreseen of a company registered under the *Companies Acts* and controlled by Government by means of the share capital. But I think that the arrangements adopted and the use made of Qantas Empire Airways Ltd. bring the case within the meaning of the constitution of the Federation. It does so because of the combined effect of three considerations. Firstly the two Acts of the Federal Parliament operate as legislative declarations or indications of intention that the company shall be "owned" by the Government which shall furnish the capital for the undertaking by subscribing to further issues. Secondly because the Government does hold all the capital. Thirdly because by making the directors the nominees of the Minister an effective control of the undertaking by the Government of the Commonwealth is established. The result is that by a use of the machinery of the company law made under the sanction of Federal statute substantially the same practical result is produced as if a statutory authority were set up. The difference is in form and in the further fact that the form is such that the Executive Government is left in a position to dispose of the shares or some of them or to issue further shares to strangers without the intervention of the legislature. Unless and until such a course is adopted, the difference does not seem to me to be enough to take the case out of the category which the constitution of the Federation describes. The words "on behalf of" aim at a relation with the Commonwealth in which the corporate employer is an agency or instrument of the Commonwealth acting in the public interest and that I think the company has become.

A second ground was taken in support of the contention that there was no industrial dispute extending beyond the limits of one State. It was that the number of employees of Qantas Empire Airways Ltd., being members of the Federation, stationed outside New South Wales was so insignificant that the inter-Stateness of the dispute was "unreal." The time has gone by when the unreality of paper disputes formed a subject of inquiry or consideration and at this date it would be "unreal" to attempt to insist on a quantitative standard of disputants across the border as a condition of the extension of a dispute beyond a State. The number in this case is small but it is not so small as to be obviously impotent industrially.

In my opinion the order nisi should be discharged.

McTIERNAN J. In my opinion the material before the Court shows that there was an industrial dispute extending beyond the limits of one State between the workers employed by Qantas Empire Airways Ltd., who were members of the respondent organization, on the one hand and that company on the other hand. The dispute arose when the company did not accede to the demand made upon it for an alteration of the rates and conditions upon which the company employed its workers. The demand was made by the organization as the representative of its members employed by the company. There were four of its members in Queensland and ninety-eight in New South Wales, for whom these altered rates and conditions were demanded. These members were employed by the company. The dispute arose between the company and all these workers. A dispute in the ordinary sense may exist if there is only one disputant on either side. One may be sufficient on the employers' side to make an industrial dispute. A minimum number on the workers' side is not necessary to make an industrial dispute with an employer. It is not the number of workers in each State who are parties to an industrial dispute which gives it the character of a dispute extending beyond the limits of a State. The fact that only four workers in Queensland appear to be parties to the present industrial dispute does not permit of the inference that the dispute does not extend beyond the limits of New South Wales. In the absence of any evidence proving that these workers are not parties to the dispute the above-mentioned fact indeed permits the very inference which the applicant says it denies, namely, that the industrial dispute falls within Federal jurisdiction.

The question whether an industrial dispute arose depends upon the authority of the respondent industrial organization to represent any workers employed by the company. It is argued that these

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workers are not eligible to be members of the organization and therefore it has no authority to represent them. The amended rule of the organization under which they become members has been quoted. It provides that any person is eligible for membership who is a salaried officer of the Crown and is employed at a salary rate in connection with air transport. The rule defines salaried officers of the Crown to mean "Employees of any person or corporation employing persons at an annual salary rate on behalf of the Government of the Commonwealth or any of the States." The Constitution and relation of Qantas Empire Airways Ltd. to the Government of the Commonwealth have already been explained.

The Parliament has not expressly said that this corporation should act "on behalf of" the Crown. *Denning* L.J. said in *Tamlin* v. *Hannaford* (1): "In the absence of any such express provision the proper inference in the case at any rate of a commercial corporation is that it acts on its own behalf even though it is controlled by a Government department." But in this case we are not concerned with the interpretation of an Act of Parliament or with the question whether a corporation has the immunities of an agent of the Crown. The rules of the respondent organization are not artificially drafted and are not concerned with distinguishing between persons or corporations who are and are not agents of the Crown. The words "on behalf of" are not used in a limited sense to mean "as agent." In these rules these words are used in the sense of "in the interests of." The words are capable of describing the relationship between Qantas Empire Airways as an operator of air transport and the Government of the Commonwealth. The company was incorporated in the ordinary way with a share capital subscribed by shareholders. But the Commonwealth Government has purchased all the shares but seven and these seven are held by nominees for the Government and it has the sole right to appoint directors. The enterprise conducted by this company is under public ownership, that is Government ownership. The employees of the company are its servants, not the servants of the Government, but they are employed in the interests of the Government. They stand in this general relationship to the Government just as truly as would the employees of a corporation created by statute to conduct a publicly-owned transportation service. The employees of this company employed at an annual salary rate are accordingly eligible for membership of the respondent organization. Consequently it had authority to make demands for those employees upon the company and to represent them before the Conciliation Commissioner. The order nisi should be discharged.

(1) (1949) 65 T.L.R. 422, at p. 423.

WEBB J. I think that the rule nisi should be discharged.

Until 1943 Rule 2 of the Rules and Regulations of the respondent Federation was confined to certain State Railway employees, that is to say to Crown employees in the true sense. In every State the railways, including construction work, have been controlled by corporations created by Parliament for the purpose. But in 1943 the rule was amended to include certain "salaried officers of the Crown," which expression was defined to mean "Employees of every person or corporation employing persons at an annual salary rate on behalf of the Government of the Commonwealth or any of the States." The question arises whether this definition is wide enough to cover employees of Qantas Empire Airways Ltd. with which the respondent Federation claims to have an inter-State industrial dispute. All the shares in Qantas are now owned by the Commonwealth Government and its directors are appointed and removed by a Commonwealth Minister who also fixes their remuneration. In other words Qantas is carrying on an activity on behalf of the Commonwealth Government to the same extent that the railways are being carried on for the State Government by corporations created by Parliament for the purpose. The difference is that Qantas is not a Crown corporation but an ordinary company and so its employees are not Crown employees. However I think that, without doing violence to the language, they may for the purpose of this union rule be regarded as being employed on behalf of the Commonwealth Government.

As to whether there is evidence of a real inter-State dispute between the respondent Federation and Qantas, there is, in addition to the considerations mentioned by the Chief Justice as indicating the existence of a real inter-State dispute, the fact—not contested—that employees in the air transport industry move from State to State and so their numbers may vary from time to time in the different States. Although there were only four employees in Queensland who were members of the respondent Federation when this matter was before the conciliation commissioner there were ninety-eight in New South Wales and a probability that the number in Queensland would increase by transfer from New South Wales.

Order nisi discharged with costs.

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Solicitors for the respondent Federation: *G. W. L. Charker & Co.*, Sydney, by *P. H. Kearney.*

E. F. H.