THE COMPANIES ACT, 1900

WITH

EXPLANATORY NOTES & FORMS

FRANCIS BEAUFORT PALMER

SECOND EDITION

Third Edition. Royal 8vo. 1901. Cloth, price 12s. 6d.

PALMER'S COMPANY LAW

A PRACTICAL HANDBOOK FOR LAWYERS AND BUSINESS MEN.

WITH AN

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By FRANCIS BEAUFORT PALMER, Esq.,

Barrister-at-Law, Author of "Company Precedents," &c.

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THE COMPANIES ACT, 1900,

WITH EXPLANATORY NOTES

AND APPENDIX CONTAINING

PRESCRIBED AND OTHER FORMS,

TOGETHER WITH

ADDENDA TO "COMPANY PRECEDENTS."

BY

(Sir) FRANCIS BEAUFORT PALMER,

OF THE INNER TEMPLE, ESQ., BARRISTER-AT-LAW,

Author of "Company Precedents," &c.

SECOND EDITION.

LONDON:
STEVENS AND SONS, LIMITED,
119 & 120, CHANCERY LANE,
Law Publishers.
1901.

LONDON :

PRINTED BY C. F. ROWORTH, GREAT NEW STREET, FETTER LANE, E.C.

INTRODUCTION.

Origin of the Act of 1900.

The Companies Act, 1900, is the outcome of a long-pending movement for the amendment of the Companies Acts, 1862 to 1890. That there was room for amendment was very generally admitted, but there were wide divergencies of opinion as to the character of the amendments required, and although Bills for effecting various amendments were from time to time brought before Parliament they never made much progress. At last, however, in November, 1894, the Board of Trade (the Right Honourable James Bryce, M.P., being President) appointed a Departmental Committee, consisting of the Right Honourable Lord Davey, the Hon. Mr. Justice Chitty, the Hon. Mr. Justice Vaughan Williams, Sir William H. Houldsworth, Bart., M.P., Sir Albert K. Rollit, M.P., Mr. Henry Burton Buckley, Q.C., Mr. Francis Beaufort Palmer, Mr. John Smith (Inspector General in Bankruptcy), Mr. Alexander F. Wallace, Mr. John Hollams, Mr. Frank Crisp, Mr. E. Waterhouse, and Mr. Jamieson, "to enquire what amendments are necessary in the Acts relating to Joint Stock Companies incorporated with limited liability with a view to the better prevention of fraud in relation to the formation and management of companies, and to consider and report upon the clauses of a draft Bill which will be laid before them for this purpose."

The Departmental Committee of 1895.

This Committee held frequent meetings, and devoted unstinted time and labour to the questions submitted to it, and ultimately made its report on 27th June, 1895, appending thereto, by way of suggestion, a draft Bill for the amendment of the Acts.

The Bill in Parliament.

In 1896, the Bill thus formulated by the Departmental Committee was, with a few alterations suggested by the Board of

Trade, introduced into the House of Lords as a Government Bill, and was referred to a Select Committee which proceeded to take evidence. The Committee was re-appointed in 1897 and again in 1898 for the purpose of taking further evidence, and a large number of witnesses were examined, including Lord Justice Lindley, Mr. Justice Romer, Mr. Justice [then Mr.] Buckley, the writer, and others.

The Lords Committee.

The evidence given went far to show that many of the most drastic provisions of the Bill should be omitted and that others should be amended.

In 1899 the Select Committee was again appointed, and reported the Bill with extensive amendments which largely improved it. The Bill so amended was, in 1900, introduced into the House of Commons as a Government measure. In its passage through Parliament it was amended in various respects, and on the 8th August, 1900, the Royal Assent was given and the Bill passed into law.

The amended Bill passed in 1900.

Royal Assent.

In the process of evolution many clauses taken from the Bill of the Departmental Committee have been discarded, many have been more or less modified, and the residue thus modified affords, it is hoped, an instance of the survival of the fittest.

The Bill as settled by the Departmental Committee was too drastic, and there can be no question that the amendments made by the Select Committee of the House of Lords in 1899 greatly improved the measure and removed its most objectionable features. These amendments, besides removing many minor blemishes—

Objection to the Departmental Committee's Bill, and improvements by the House of Lords.

(1) Struck out a series of clauses defining the duties and liabilities of directors and promoters in terms going considerably beyond the then existing law, and only too likely to discourage prudent and honest business men from becoming directors and promoters.

(2) Struck out a series of dangerous and objectionable provisions requiring that a prospectus should, *inter alia*, state the dates, parties, and short purport or effect of *every material*

contract and every material fact known to any director or promoter.

(3) Struck out stringent provisions as to auditors, their duties and liabilities.

(4) Struck out objectionable provisions for registering balance sheets with the Registrar of Joint Stock Companies for public inspection; and lastly,

(5) Struck out certain clauses as to winding-up which, if they had passed into law, would have placed it in the discretion of the winding-up Judge to make an order declaring the liability of any one or more of the members of a limited company for the debts or some of the debts of the company to be unlimited, and thus in effect destroy retrospectively the very essence of its being.

The amendments in 1900.

The amendments made in the Bill as introduced in the Session of 1900, though for the most part beneficial, were not comparable in importance to those made by the House of Lords in 1899, and in substance the Bill passed into law in the form in which it was reported by the Select Committee of the House of Lords in 1899. It is to be hoped that the Act, the preparation of which has involved so much labour, will prove a success notwithstanding the obscurity of much of its language.

Principal provisions of the Act.

Prospectus.

Turning now to the provisions of the Act as passed, there can be no question that sect. 10, which specifies a number of matters which must be stated in a prospectus offering shares, debentures, or debenture stock for public subscription, is of paramount importance. This section is applicable not only to the first but to any subsequent prospectuses, save only in the case where it merely invites existing members or debenture or debenture stock holders of a company to subscribe for further shares or debentures or debenture stock, and subject to this, that certain statements may be omitted in the cases specified in sub-sects. 4 and 6. Sect. 10, however, in all cases requires a very large measure of disclosure of material facts to be made in the prospectus. Not only have names of the vendors to be stated, and the amount payable to each, but the prospectus must

also state the amount paid or payable for commission for underwriting, the amount or estimated amount of preliminary expenses, the amount paid or intended to be paid to any promoter, and the consideration for such payment; and full particulars must be given of the nature and extent of the interest (if any) of every director in the promotion of or in the property proposed to be acquired by the company. There must also be stated the date of and parties to every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than three years before the date of the publication of the prospectus. There are also many other matters which have to be set forth; and the ordinary waiver clause in a prospectus is abolished, and directors and others who fail to comply with the section are made responsible in damages. As already indicated, certain qualifications of these provisions are introduced by the section; but the main features are as above.

Minimum subscription.

Next in importance to the prospectus section is sect. 6, whereby, in the case of a company which on its formation offers shares for public subscription, it is required that the memorandum or articles of association and the prospectus shall state what is to be the minimum subscription on which the directors may proceed to allotment, and the company is forbidden to commence business or borrow until that minimum subscription has been obtained.

Registration of mortgages and charges.

Next in importance to the provisions as to minimum subscription comes sect. 14, which provides for the prompt registration with the Registrar of Joint Stock Companies of various kinds of mortgages and charges created by a company, more especially those for securing debentures, those upon uncalled capital, those affecting personal chattels, and those constituting a floating charge on the undertaking or property. This clause should go far to meet the complaint which has been made, that those who deal with a company are unable to discover what its position is as regards mortgages and charges. But to companies the section will probably be found very burdensome.

Statutory meeting.

The next important provision to be considered is sect. 12, which seeks to make the first meeting of the company more of a reality than the one under sect. 39 (now repealed) of the Act of 1867, and to induce shareholders to take an interest in the position of the company.

Subordinate provisions.

There are numerous other clauses of the new Act of more or less importance, and in particular—

Sect. 1, removing any doubts as to the conclusiveness of certificates of incorporation;

Sect. 2, which seeks to prevent the naming of a director in articles of association or in a prospectus unless he is qualified and consents to act;

Sect. 3, which seeks to discourage directors from acting without qualification by imposing on them the obligation to pay to the company 5*l.* a day whilst improperly acting without a qualification;

Sect. 4, which seeks to prevent allotment in the case of share capital offered for public subscription unless the minimum subscription specified in the prospectus has been taken up and the application money has been paid;

Sect. 8, which legalises underwriting and other commissions where shares are offered for public subscription;

Sect. 9, which provides for the filing of prospectuses with the Registrar of Joint Stock Companies;

Sect. 25, which allows a creditor to apply in a winding-up; and

Sect. 33, which repeals Sect. 25 of the Companies Act, 1867.

As to the notes and forms, &c.

In the following pages the sections of the Act are set forth with explanatory Notes and illustrative Forms: these it is hoped may be found useful.

As a member of the Board of Trade Committee, and as the originator of not a few of the provisions contained in the Bill submitted by that committee, and of divers of the amendments made during the passage of the Bill of 1900 through Parliament, the writer is necessarily possessed of knowledge which throws much

light on the intention of the framers of the Act; but in the following pages he has not made reference thereto; for "the Parliamentary history of a statute is wisely inadmissible to explain it," and, as laid down in the House of Lords, one can "only find the true intent and the meaning of the Act from the Act itself," and "what the Legislature intended to be done or not to be done can only be legally ascertained from that which it has chosen to enact, either by express words or by reasonable and necessary implication."

Besides the notes and forms, the writer has added (see pp. 101 to 112 inclusive) Addenda to the several volumes of "Company Precedents," with a view to indicating generally how far the new Act affects the law and practice as set forth in those volumes.

The thanks of the writer are due to his friend Mr. Frank Evans, of the Chancery Bar, for his assistance in passing the work through the press and preliminary thereto.

F. B. P.

5, New Square,
Lincoln's Inn,
November, 1900.

PREFACE TO SECOND EDITION.

The first edition of this Work having been exhausted within a few weeks of its publication, the Author now submits a New Edition, in which he has added to the Notes, and has embodied a number of the Forms prescribed by the Board of Trade with reference to the Companies Act, 1900.

F. B. P.

Lincoln's Inn,
January, 1901.

TABLE OF CASES.

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COMPANIES ACT, 1900.

ARRANGEMENT OF SECTIONS.

[*To face page* 1 *of book.*

THE COMPANIES ACT, 1900

(63 & 64 Vict. c. 48).

An Act to amend the Companies Acts. [8th August, 1900.]

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, as follows:—

The Act of 1900 is, except as otherwise expressed, to apply to every company (*i.e.*, under the Act of 1862) whether formed before or after the 1st of January, 1901 (sect. 31), and it may, therefore, be convenient to note the sections applicable in various cases.

Table showing applicability of the Companies Act, 1900.

Class of Companies.	Sections applicable on and from 1st January, 1901.
Companies registered before 1st January, 1901.	
Limited by shares	All *except* sects. 1 (2), 2, 4, where there has been an allotment before 1st January, 1901, of shares offered for public subscription, and sects. 6, 11, 12, 27.
Limited by guarantee having a capital divided into shares.	All *except* sects. 1 (2), 2, 4, 5, where an allotment to public before 1st January, 1901, sects. 6, 7, 11, 12, 27, 29.
Limited by guarantee and not having a capital divided into shares.	All *except* sects. 1 (2), 2, 3, 4, 5, 6, 7, 8, 10 in part, 11, 12, 13, 19, 26, 27, 29, 33.
Unlimited with a capital divided into shares.	All *except* sects. 1 (2), 4 in part, 6, 7, 11, 12, 27, 29.
Unlimited without a capital divided into shares.	All *except* sects. 1 (2), 2, 4, 5, 6, 7, 8, 11, 12, 19, 27, 29, 33.
Companies registered on and after 1st January, 1901.	
Limited by shares	All the sections *except* 27.
Limited by guarantee and having a capital divided into shares.	All *except* sects. 7, 11, 12, 29.
Limited by guarantee and not having capital divided into shares.	All *except* sects. 2 in part, 3, 4, 5, 6, 7, 8, 12, 13, 19, 29, 33.
Unlimited with capital divided into shares.	All *except* sects. 5, 7, 11, 12, 27, 29.
Unlimited without share capital	All *except* sects. 2 in part, 3, 4, 5, 6, 7, 8, 11, 12, 19, 27, 29, 33.

Incorporation and Objects.

§ 1. Conclusiveness of certificate of incorporation.

1.—(1.) A certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requisitions of the Companies Acts in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under the Companies Acts.

(2.) A statutory declaration by a solicitor of the High Court engaged in the formation of the company or by a person named in the articles of association as a director or secretary of the company of compliance with all or any of the said requisitions shall be produced to the registrar, and the registrar may accept this declaration as sufficient evidence of such compliance.

(3.) The incorporation of a company shall take effect from the date of incorporation mentioned in the certificate of incorporation.

(4.) This section applies to all certificates of incorporation, whether given before or after the passing of this Act.

"A certificate of incorporation," &c. The object of this section is to preclude all questions as to the conclusiveness and operation of a certificate of incorporation.

The Acts prescribe various conditions that must be complied with prior to the issue of the certificate, and as Lord Cairns said in *Peel's Case* (1867), 2 Ch. 674: "When once the memorandum is registered and the company is held out to the world as a company undertaking business, willing to receive shareholders, and ready to contract engagements, then it would be of the most disastrous consequences if, after all that has been done, any person was allowed to go back and enter into an examination (it might be years after the company had commenced trade) of the circumstances attending the original registration, and the regularity of the execution of the document."

The section is a re-enactment with amplifications of the concluding words of sect. 18 of the Companies Act, 1862 (which words are repealed by sect. 33, *infra*). It also takes the place of sect. 192 (also repealed) of the Act of 1862, which applied only to companies registered under Part VII. of that Act. The words of sect. 18 thus repealed are "The certificate of 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." In relation to this enactment it was long since held that the words "the requisitions of this Act in respect of registration" meant "the requisitions and conditions precedent and incidental to registration," and, accordingly, that once the certificate of incorporation was given, the company named therein as incorporated was to be taken to be duly and effectually incorporated, and all reference to prior matters was precluded.

Thus, in *Peel's Case* (1867), 2 Ch. 674, the memorandum of association had, after signature and before registration, been altered without the privity of the signatories so materially that, in the words of Lord

§ 1.

Cairns, "the alteration entirely neutralised and annihilated the original execution and registration of the document." The company was, however, registered, and the registrar gave his certificate of incorporation; subsequently the question arose whether this certificate was conclusive, seeing that according to sect. 6 of the Act the memorandum before registration has to be subscribed "by seven or more persons associated for any lawful purpose," whereas here the signature had been entirely annihilated. Nevertheless, it was held that the registrar's certificate of incorporation was conclusive. "The certificate of incorporation," said Lord Cairns, "is not merely a *primâ facie* answer, but a conclusive answer to such objections, ... when once the certificate of incorporation is given nothing is to be inquired into as to the regularity of the prior proceedings."

And shortly afterwards, Lord Chelmsford, L.C., dealing with the same point in *Oakes* v. *Turquand*, L. R. 2 H. L. 323, said: "I think that the certificate prevents all recurrence to prior matters essential to registration, amongst which is the subscription of a memorandum of association by seven persons, and that it is conclusive that all previous requisitions have been complied with."

See also in *Salomon* v. *Salomon & Co.*, (1897) A. C. 22. The Court of Appeal, whilst holding that the defendant company had been formed "for an illegitimate purpose," and "for objects not authorized by the Act," nevertheless held the certificate of incorporation conclusive, although, as we have seen, sect. 6 requires that the subscribers should be persons associated together for some "lawful purpose." On the other hand, in *Re National Debenture Corporation*, (1891) 2 Ch. 505, a learned judge refused to treat a certificate of incorporation as conclusive where he found as a fact that the memorandum of association had been subscribed by six persons only instead of seven; thus in effect treating the words "conclusive evidence" as meaning "*primâ facie* evidence," although the Legislature had purposely used the words "conclusive evidence" in contradistinction to the words "*primâ facie* evidence" used by it in sects. 31 and 37 of the same Act. This decision, however, was reversed on appeal on the ground that the evidence did not establish the fact so found. Unfortunately, however, the judges of the Court of Appeal let fall some *dicta* to the effect that if the judge below had been right as to the facts, his decision would have been correct in point of law. The Court, however, had no power to overrule *Peel's Case*, and of course these mere *dicta* could in no way derogate from the authority of the decision in that case. With reference to these *dicta*, Vaughan Williams, J., in *Laxon & Co.* (2), (1892) 3 Ch. 555, said that he did not understand how they could be reconciled with the decision and words of the judgment of Lord Cairns in *Peel's Case*, *ubi supra*. And it is to be noted that the Court of Appeal in *Salomon* v. *Salomon & Co.*, as appears above, followed *Peel's Case*. And in *Ladies' Dress Association* v. *Pulbrook*, (1900) 2 Q. B. 376, 381, where these *dicta* were relied on, Romer, L. J., whilst holding them not applicable, significantly added that "if it were not so it might be necessary for us to consider whether these *dicta* could be justified." However, the existence of the *dicta* was considered a sufficient reason for removing any doubts occasioned thereby. Hence this section, which makes it clear beyond all cavil that the certificate of incorporation is conclusive, even as Lord Cairns decided in 1867. So far, therefore, as regards certificates issued prior to the 1st January, 1901, the

§ 1. enactment is in effect declaratory of the law as it stood prior to that date.

"Shall be conclusive," &c. Looking to the above decisions and to the additional words, it is clear that there is no further room for questioning the conclusiveness of certificates of incorporation. Thus, even if the seven signatories to a memorandum were all written by one person, or were all forged, the certificate would be conclusive that the company was duly incorporated. So, too, if the signatories were all infants, the certificate would be conclusive, whether the remarkable decision in *Laxon & Co.* (2), (1892) 3 Ch. 555, that an infant is a "person" within sect. 6, can or cannot be supported.

"A statutory declaration." See Form 1 in Appendix. The production of this is a newly imposed condition. The section is emphatic that it shall be produced to the registrar.

The registrar *may* accept the declaration as sufficient evidence of such compliance. He, therefore, has a discretion, and accordingly if, notwithstanding the declaration, he entertains any doubt or suspicion as to whether the requisitions have really been complied with, he can call for further evidence; but, practically, the only question is whether the document has been subscribed by seven persons, for almost all the other requisitions which have to be complied with are as to the form of the documents and the payment of fees.

It seems advisable to name some one in the articles of association as the secretary of the company, so that the declaration may be made by him. Any question as to the effect of a solicitor admitting that he has been engaged in the formation of the company, or of one director being put forward too prominently will thus be avoided.

"Shall take effect from the date," &c. These words come from sect. 192 of the Act, 1862. The certificates in the past have usually run thus:—

"I hereby certify that —— Co., Limited, is this day incorporated under the Companies Acts, 1862 to ——, and that the company is limited."

It does not seem likely that the form will be altered so as to specify some other date of incorporation.

Appointment and Qualification of Director.

Restrictions on appointment or advertisement of director.

2.—(1.) A person shall not be capable of being appointed director of a company by the articles of association, and shall not be named as a director or proposed director of a company in any prospectus issued by or on behalf of the company, unless, before the registration of the articles or the publication of the prospectus, as the case may be, he has by himself or by his agent authorised in writing—

(i) signed and filed with the registrar a consent in writing to act as such director; and

(ii) either signed the memorandum of association for a number of shares not less than his qualification (if any), or signed and filed with the registrar a contract in writing to take from the company and pay for his qualification shares (if any).

(2.) On the application for registration of the memorandum and articles of association of a company, the applicant shall deliver to the registrar a list of the persons who have consented to be directors of the company, and if this list contains the name of any person who has not so consented the applicant shall be liable to a fine not exceeding fifty pounds.

(3.) Provided that this section shall not apply to a company registered before the commencement of this Act, or to a company which does not issue any invitation to the public to subscribe for its shares, or to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business.

"Shall not be capable of being appointed director of a company by the articles of association . . . . unless," &c. These words deal only with the case specified, namely, actual appointment by the articles. Where, then, it is desired to appoint a person by the articles as a director he must comply with the conditions (i) and (ii).

But without complying with those conditions persons can, it would seem, be named in the articles as "proposed" directors, and a power can be inserted for some one (*e.g.*, the subscribers to the memorandum of association, or the majority of them) to appoint such persons to be directors. If no share qualification is required by the articles a person can be named as a director, subject only to the consent being signed and filed as required by sub-sect. (1) (i).

"Shall not be named as a director or proposed director of a company in any prospectus issued by or on behalf of the company, unless," &c. These words plainly apply to a prospectus issued after the registration of a company, but it seems very doubtful whether they can be held to apply to a prospectus issued before the company's incorporation. Where they apply they cover both persons named as actual directors and persons named as proposed directors.

The words do not extend to a prospectus which merely invites subscriptions for debentures or debenture stock, and not shares. (See sub-sect. (3).)

If no share qualification is required, a director may be named in the prospectus, subject only to the signing and filing of the consent as required by sub-sect. (1) (i).

"Articles of association." These words no doubt refer to the articles in force, whether in their original form or as altered by special resolution.

§ 2. **"Or by his agent authorized in writing."** Where a person is named in the articles as a director the authority under which the agent is authorized to sign must, if required, be produced to the registrar, in order that he may ascertain whether the statutory requisition has been complied with. However, it may be that the statutory declaration referred to in sect. 1 can be framed so as to cover this.

"Consent in writing." This may be a separate document for each director, or several proposed directors may concur in one consent. See forms in Appendix, *infra*, p. 69. If preferred, an agent to sign and file can be appointed thus:—

I, the undersigned, hereby authorize Messrs. ——, of ——, to sign my consent to act as a director of The —— Company, Limited, now about to be registered under the Companies Acts, 1862 to 1900, and to file such consent on my behalf with the Registrar of Joint Stock Companies pursuant to sect. 2 of the Companies Act, 1900. As witness my hand this —— day of ——.

Where the director wishes to postpone as long as possible the filing of his consent, or is about to go abroad, he may in writing authorize his agent not only to *file* the consent, but also to *sign* it.

"Either signed the memorandum of association," &c. If the articles do not contain any clause requiring a qualification in shares, the conditions in (ii) have not to be complied with; but if the articles contain such a clause, (ii) must be complied with.

In subscribing the memorandum of association it must be borne in mind that a firm contract is thereby made as from the moment of incorporation to take and pay in money or money's worth for the shares subscribed for, and that the subscriber will be liable, even though the company should not become entitled to commence business, under sect. 8. Hence, if the directors subscribe the memorandum for their qualifications and then the company does not float, they will, to the extent of their qualifications, be liable to pay up, *e.g.*, to provide for expenses. But if the alternative is adopted, namely, the filing of a contract, the position of the directors is perhaps made easier, for the contract to be filed may, it would seem, be made provisional on the company becoming entitled to commence business.

It is presumed that where such a contract is required as a condition precedent to the naming of a person as a director in the articles, the contract should, as the company will not be in existence at the time, be made with some one as trustee for the company.

The section clearly offers the two alternatives in (ii), where it is proposed to name a person as a director in the articles, so that it can hardly be maintained that one of the alternatives is not available; and as the section does not say with whom the contract is to be made, it is apprehended that a contract with a trustee for the intended company will suffice. See *Hartley's Case*, 10 Ch. 157, in which Lord Cairns, L. C., held in reference to sect. 25 of the Act of 1867 that a contract with a trustee for an intended company, if filed, was sufficient.

But where the contract is to be filed *after* incorporation, *e.g.*, as a condition precedent to naming some person as a director in a prospectus, it should be made with the company itself or with a duly authorized agent of the company.

"Shall deliver to the registrar a list of the persons." This sub-

sect. (2) in terms only operates on the application for registration of a memorandum *and* (*sic*) articles of association, and therefore does not apply to a company which is registered without articles, *e.g.*, where Table A. is to apply. Perhaps, however, the Court will read in the words "if any" after the words "articles of association."

The list is to specify the persons who have consented to be directors, and is therefore not in terms confined to those who are appointed by the articles. It is apprehended that a person cannot be treated as having consented if his consent be merely conditional, *e.g.*, if he has signed a consent in writing to act as a director conditionally on the company being registered with a specified memorandum and articles, or conditionally on a specified board being appointed as the first directors. If, however, the list is to include such persons, it is apprehended that any condition should be stated in it, for otherwise a penalty would be incurred under sub-sect. (3). The consent need not be in writing; a verbal consent brings the consentor within *the words*, unless, as seems possible, the consent mentioned in sub-sect. (2) means the signed consent referred to in paragraph (i) of the preceding sub-section. On the other hand, there does not seem to be much object in filing lists of consenting directors when their written consents are already on the file.

The applicant is to deliver the list to the registrar, and such applicant must perform the statutory duty imposed on him. There is no penalty for not delivering the list, but if the list contain the names of any persons who have not so consented, the applicant is to be liable to the fine specified. See Form 4 in Appendix.

"Provided that this section," &c. This proviso is of great importance. It enacts in effect that the section shall not apply—

(a) To a company registered before 1st January, 1901; or,
(b) To a company which does not issue any invitation to the public to subscribe for its shares; or,
(c) To a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business.

As to (b), it is yet to be determined what is a company which "does not" issue any invitation to the public to subscribe for its shares. The words deal exclusively with a company which is about to be registered; and the question is, how is the registrar to be satisfied that a company which it is thus proposed to register is one which "does not" issue any invitation to the public to subscribe for its shares? It would seem that, in order to make sense, the words "does not" must be taken to mean "is not about." That a company is not about to issue an invitation to the public can be shown by reference to its proposed memorandum or articles of association. Either of them may show that no such invitation is in contemplation, *e.g.*, by expressly declaring that no such issue is to be made, or by making such provision for the issue of the shares as is inconsistent with their being offered to the public for subscription. It appears, however, that a declaration by the subscribers that the company "does not" issue any such invitation will suffice. See Appendix, Form 41.

It is to be noted that a company which "does not" issue any invitation to the public to subscribe for its shares is, by virtue of the proviso, exempt from the provisions of the section notwithstanding that it is

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about to issue an invitation to the public to subscribe for debentures or debenture stock.

Is a company formed for reconstruction purposes—the shares in which are to be offered to the members of the existing company—a company which "does not" issue any invitation to the public to subscribe for its shares? It is apprehended that this question should be answered in the affirmative, even when the reconstruction agreement provides that shares not taken by the members of the old company may be sold by the liquidator, and that he is to send out a circular offering such shares for sale. It would seem that such circular is not an invitation issued by the company within the meaning of the section. And see sect. 10 (4), which tends to confirm this view.

"Entitled to commence business." As to this, see sect. 6.

Qualification of director.

3.—(1.) Without prejudice to the restrictions imposed by the last foregoing section, it shall be the duty of every director who is by the regulations of the company required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the regulations of the company.

(2.) The office of director of a company shall be vacated if the director does not within two months from the date of his appointment, or within such shorter time as may be fixed by the regulations of the company, obtain his qualification, or if after the expiration of such period or shorter time he ceases at any time to hold his qualification: and a person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his qualification.

(3.) If after the expiration of the said period or shorter time any unqualified person acts as director of a company, he shall be liable to pay to the company the sum of five pounds for every day during which he so acts.

Object of section.—The Companies Acts, 1862 to 1900, do not require any qualification shares for a director, or require that the articles of association shall contain any qualification clause, and Table A. in the first schedule to the Companies Acts, 1862, contains no such clause. But articles of association generally contain a clause to the effect that the qualification of a director shall be the holding of so many shares. It has, however, been held that such a clause does not mean that a man cannot be validly appointed unless he possess the qualification, but that it is his duty to obtain it either by allotment or transfer within a reasonable time after appointment. (*Browne's Case*, 9 Ch. 102.) After the expiration of a reasonable time he may be put on the register in respect of his qualification (*Lord Inchiquin's Case*, (1891) 3 Ch. 28); but if the officers of the company do not do this he can continue to act without any practical danger, for there is no implied

obligation to take the shares from the company, and the mere acting as a director without qualification does not, it has been held, render him liable to pay the company any damages, unless, indeed, damage can be proved. (*Coventry and Dixon's Case*, 14 C. D. 660.)

The object of this section is to discourage these breaches of duty and to compel a director who acts without the required qualification to compensate the company by payment of a definite sum by way of liquidated damages.

"The duty of every director who," &c. These words apply only to a person who is duly appointed to be a director, and not to a person whose appointment is invalid. Thus, where the regulations provide that no person shall be eligible as a director unless he holds a specified qualification, the possession of such specified qualification is a condition precedent to a valid election, and the election of a person who does not possess that qualification is void. (*Jenner's Case*, 7 C. D. 132.) The section will not, it is apprehended, apply to a person so elected until by some means he becomes a director *de jure*.

"Who is by the regulations of the company required to hold a specified qualification." These words in effect exclude a great many cases, and in particular—

1. Cases where Table A. applies.
2. Cases in which there are regulations, but without any share qualification clause.
3. Cases in which the qualification required is not a share qualification, *e.g.*, is a debenture or debenture stock qualification, or the possession of an interest or office in some other company.
4. Cases in which there is a qualification clause, but that clause is not applicable to the particular director, *e.g.*, where the clause provides that every director except A. B. shall have a share qualification, or that the qualification of the directors, *other than the first*, shall be the holding of, &c.

"To obtain his qualification." A qualification may, unless the regulations otherwise provide, be properly obtained either by taking the shares from the company or acquiring them by transfer, *e.g.*, by purchasing in the market. (*Browne's Case*, 9 Ch. 102.) In the absence of special provisions in the articles, a director who is the registered holder of the required qualification shares is qualified, even though he holds them merely as trustee for some other person. (*Pulbrook* v. *Richmond Consolidated Co.*, 610; *Bainbridge* v. *Smith*, 41 C. D. 462, and other cases; Company Precedents, Part I. p. 431.) And this is so even where he is by the regulations required to hold the shares "in his own right." And it has been held that a director is duly qualified if he is one of several joint holders of the required qualification. (*Glory Paper Mills; Dunster's Case*, (1894) 3 Ch. 473.)

It is apprehended that upon a reasonable construction of (2), a director who, when appointed, already holds the requisite qualification, has obtained his qualification within the two months.

"Shall be vacated." These words import that the office shall in the specified event *ipso facto* become vacant.

"Any unqualified person acts as a director." The director having vacated office under sub-section (2) ceases to be a director, and becomes "an *unqualified* person."

§ 3. **"Liable to pay to the company."** These words give to the company a right of action for the amount.

"For every day during which he so acts." It would seem that these words refer only to a day on which the unqualified person performs some act as a director, and accordingly if he only acts on one day in each week, the sum payable would be 5*l.* per week. The words are not "whilst he remains a *de facto* director."

The period of limitation would seem to be two years, regard being had to sect. 3 of the Civil Procedure Act, 1833 (3 & 4 Wm. 4, c. 42), which in effect enacts that in "actions for penalties, damages or sums of money given to the party aggrieved by any statute now in force or hereafter to be in force," the action is barred unless brought within two years after the cause of action arises. But see the case of *Thomson* v. *Lord Clanmorris*, (1900) 1 Ch. 718, in which the Court of Appeal put a very forced construction on the words, and, disregarding what appears to be the plain meaning, held in effect that the words only applied to actions for penalties—"that damages or sums of money" were mere surplusage! If the period is not two years, it is, under the same section, twenty years, for the section creates a debt, and a statutory debt is a specialty. (*Cork & Bandon Rail. Co.*, 13 C. B. 826.)

It should be borne in mind that the section applies not only to all companies, whenever registered, in which a share qualification is required, but to all directors who have to so qualify, whether they are the first or other directors of the company. To remind companies and directors of this, articles of association should be so framed as to incorporate or refer to sect. 3.

Allotment.

Restriction as to allotment.

4.—(1.) No allotment shall be made of any share capital of a company offered to the public for subscription, unless the following conditions have been complied with, namely,—

(*a*) the amount (if any) fixed by the memorandum or articles of association and named in the prospectus as the minimum subscription upon which the directors may proceed to allotment; or

(*b*) if no amount is so fixed and named, then the whole amount of the share capital so offered for subscription,

has been subscribed, and the sum payable on application for the amount so fixed and named, or for the whole amount offered for subscription, has been paid to and received by the company.

"No allotment," &c. In the past it has been a very common thing for unscrupulous directors to go to allotment on a totally inadequate subscription. Cases have occurred in which the public has been invited to subscribe for 20,000*l.*, 50,000*l.*, or 100,000*l.* of shares, and upon a wretched subscription of a few thousands, or less, the directors have gone to allotment. Not infrequently the result has been that the money thus subscribed has soon been swallowed up in preliminary expenses or litigation, and the concern, doomed to failure for want of

capital, has, after dragging out a miserable existence, gone very soon into liquidation in an insolvent condition, to the great detriment not only of the subscribers, but of the unfortunate persons who have been induced to become its creditors.

The dominant object of this clause is to stop this mischievous practice by insisting on the fixing of a minimum subscription (which is to be stated in the memorandum or articles and in the prospectus) and preventing the company from going to allotment unless this subscription is obtained; and, further, providing that if no amount is named as the minimum subscription, the amount to be subscribed is to be the whole amount offered for *cash* subscription.

The following points must be borne in mind:—

(1) The section does not apply unless share capital is offered for public subscription, and therefore it does not apply to a private company which makes no offer of shares for public subscription, or to a company which only offers debentures or debenture stock for public subscription, or to a case in which the offer is not to the public, but to a select class of persons, *e.g.*, to members of a reconstructing company.

(2) It does not apply at all to a company which before 1st January, 1901, has made an allotment of any of its shares offered for public subscription.

(3) Where it has once applied, and the company has proceeded to allotment, it will not apply a second time should the company make a second or subsequent offer of shares.

(4) The section prohibits allotment unless the minimum subscription has been subscribed for, and the sum payable on application for the sum fixed (which must not be less than 5 per cent. of the nominal amount of the shares) has been paid. But "subscribed" here means *applied* for—not taken; and as long, therefore, as the *applications* are sufficient, the directors can make as small an allotment as they choose, so far as this section is concerned; but, having regard to sect. 6, the company cannot commence business until the minimum subscription is allotted, and until the company is entitled to commence business it is apprehended that the contract constituted by the application and allotment so made must be regarded as provisional only. (See sub-sect. (3) of sect. 6.)

(5) The section leaves it to the parties to fix the amount of the minimum subscription upon which the directors may proceed to allotment. They may fix a large or small amount; but it must be borne in mind that the prospectus (see sect. 10, sub-sect. (d), *infra*) has to specify the minimum subscription, and if a small minimum subscription is fixed, subscribers may not improbably be deterred, especially if the public press call attention to the fact and comment thereon unfavourably.

Nevertheless it seems not unlikely that the stringent character of some of the provisions of the section will induce the fixing, in many cases, of a very moderate minimum subscription; for where shares are offered for public subscription it is always more or less problematical whether the response will or will not be full or liberal. Experience has shown that the public is easily scared and not very discriminating. It sometimes neglects a concern of substantial merit whilst rushing

§ 4. impetuously to take up the shares of a mere speculation. Failure to obtain the minimum subscription may render the whole expense of formation and floating of the company useless. Thus, if a company offers 100,000*l.* for subscription, and fixes 60,000*l.* as the minimum subscription, it may not go to allotment until 60,000*l.* is subscribed. It may be that 50,000*l.* has actually been subscribed, and that by a slight modification of the scheme 50,000*l.* would be amply sufficient; but, having fixed 60,000*l.*, the company is by the section in effect precluded from taking advantage of the large number of subscriptions obtained. Of course the difficulty could be met by the promoters taking up the balance, but they might not be prepared to discharge that burden. The conclusion, then, seems to be that the minimum subscription should be fixed at the lowest possible figure. Where this is done the prospectus will probably seek to justify the fixing of such a figure, or endeavour to meet adverse criticism, *e.g.*, by some such statements as follows:—

"The minimum subscription is fixed by the articles of association at —— per cent. of the shares offered, but the directors reserve power to decline to allot unless what they consider to be a sufficient subscription is obtained."

"Having regard to the stringent provisions of sect. 4 of the Companies Act, 1900, the minimum subscription has by the articles of association been fixed at a nominal amount, namely, —— per cent. of the shares offered; but, having regard to the amount underwritten [or to the magnitude of the undertaking], the directors have resolved that a considerably larger subscription is required, and will exercise their discretion accordingly."

"Has been subscribed," &c. As no allotment is to be made until the specified amount has been subscribed, it follows that subscribed here means applied for, and does not mean applied for and taken up.

If, then, 50,000 1*l.* shares is fixed as the minimum subscription, and 50,000 shares are applied for and 1*s.* per share (*i.e.*, 5 per cent.) has been paid up on application, the company may proceed to allotment of the whole or any part of the shares applied for. The section does not preclude allotment unless and until the allotment comprises the minimum subscription: it contains nothing to prevent the directors from going to allotment on less than the minimum subscription, if only the minimum subscription has been applied for and the application money has been paid up. Thus, supposing that the minimum subscription is 50,000, and that 50,000*l.* of shares have been applied for. The directors can at once, if they choose, go to allotment as regards the 50,000*l.* shares, or any part thereof; but of course they must bear in mind, regard being had to sect. 6, that they will not be able to commence business until the full amount of the minimum subscription has been *allotted;* and, what is more, that the contracts for the taking of the shares actually allotted will be provisional only. (See sect. 6 (3).)

(2.) The amount so fixed and named and the whole amount aforesaid shall be reckoned exclusively of any amount payable

otherwise than in cash, and is in this Act referred to as the minimum subscription.

"Exclusively of any amount payable otherwise than in cash." Considering that by the words at the commencement of the section its operation is limited to shares "offered to the public for subscription," it is not easy to understand the above words. It is not allowable to go into the history of the section in committee, or to refer to the discussion in Parliament. The intention must be gathered from the words of the section. Perhaps this can best be ascertained by reading into paragraphs (a) and (b) of sub-sect. (1), after the concluding word, the words "such amount to be reckoned exclusively of any amount payable otherwise than in cash." In the result the words probably refer to shares to be issued to vendors and to shares which are to be made payable otherwise than in cash, *e.g.*, by the transfer of shares in or securities of another company.

(3.) The amount payable on application on each share shall not be less than five per cent. of the nominal amount of the share.

Thus, upon a 1*l.* share, the amount payable on application must be at least 1*s.* (whereas before the Act it was very commonly 2*s.*), and so upon a 10*l.* share the amount payable on application must be 10*s.*, whereas it is very commonly 1*l.*, or more, per share.

(4.) If the conditions aforesaid have not been complied with on the expiration of forty days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to the applicants without interest, and, if any such money is not so repaid within forty-eight days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per centum per annum from the expiration of the forty-eight days: Provided that a director shall not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part.

Looking to the very onerous provisions of this paragraph, directors will no doubt take the utmost care to preclude any danger to themselves; thus—

They may fix the minimum subscription so low that there will be a practical certainty of its subscription, regard being had to underwriting and to what they themselves will be prepared to do towards making up any deficiency.

They will take care that the application money is paid into a sound bank and that it cannot be drawn out without their privity and consent.

They will take care that until the minimum subscription is made

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and the application money is paid in, no part of the application money is paid out.

If within forty-eight days the minimum subscription is not made, and the application money satisfied, they will at once repay the application moneys.

The period of forty days runs from the "*first issue* of the prospectus," which is apparently, unless the contrary be proved, *the date on the prospectus*. See sect. 9 (2), and see the notes on that section, *infra*.

Looking to this sub-section, it is apprehended that the application money is specifically appropriated for return in the event mentioned, and, until that event, does not become the absolute property of the company. Accordingly, *Moseley* v. *Cressey's Co.* (1 Eq. 403) will not apply.

(5.) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

"**Any condition requiring**," &c. These words probably refer to a condition in the prospectus or in the form of application, but the words would not appear to preclude a fresh *contract* by the application, for, although the words at the commencement of sect. 4—"no allotment shall be made"—are very emphatic, it is clear from sect. 5 that they do not make an allotment in contravention *illegal*, for sect. 5 expressly provides that such an allotment is only to be "voidable at the instance of the applicant within one month after the statutory meeting." Suppose then that the minimum subscription is not reached, the directors can send out a circular stating the fact, and proposing a modification of the scheme which would render a much smaller subscription sufficient, and ask applicants to sign a fresh application for shares, and agreeing to waive paragraph (4) of sect. 4, and paragraph (1) of sect. 5; or, in the alternative, the directors might send out a circular stating the fact, and proposing a modification in their scheme and the adoption, by special resolution, of a reduced minimum subscription, and enclosing a fresh prospectus altered accordingly, and then ask the parties to sign and send in fresh applications with reference to that prospectus.

(6.) This section, except sub-sect. (3) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

Effect of irregular allotment.

5.—(1.) An allotment made by a company to an applicant in contravention of the foregoing provisions of this Act shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2.) If any director of a company knowingly contravenes or permits or authorises the contravention of any of the foregoing provisions of this Act with respect to allotment he shall be liable to compensate the company and the allottee respectively for any loss, damages, or costs which the company or the allottee may have sustained or incurred thereby: Provided that proceedings to recover such loss, damages, or costs shall not be commenced after the expiration of two years from the date of the allotment. § 5.

"Voidable at the instance of the applicant." These words indicate an intention that an allotment in contravention of sect. 4 shall not be void, but merely voidable. The distinction between void and voidable contracts is well recognized.

Where the contract is void there is no contract in existence; but in the case of a voidable contract there is a contract, and although that contract is capable of being avoided, it is binding until effectually avoided. See *Oakes* v. *Turquand* (L. R. 2 H. L. 325, 346), in which Lord Chelmsford, L. C., said: "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 Mr. Justice Crompton said in *Clarke* v. *Dickson* (E. B. & E. 148), '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 of the company." Hence if an applicant entitled to avoid on the ground that the allotment was made in contravention of sect. 14 does not in fact avoid the contract within one month after the holding of the statutory meeting of the company, he loses his right to make it void *on that ground;* and further, it is apprehended that if before the expiration of the month he elects definitively to affirm the contract, he will be estopped from subsequently avoiding it on such ground, for that is the general rule as to voidable contracts. See Company Precedents, Part I., p. 104. Thus, if the allottee, after discovery that an allotment has been made in contravention of sect. 4, treats the contract as subsisting, *e.g.*, by endeavouring to sell the shares (*Ex parte Briggs*, 1 Eq. 482), by executing a transfer of the shares (*Crawley's Case*, 4 Ch. 322), by paying calls or instalments or receiving dividends (*Scholey* v. *Central Rail. Co.*, 9 Eq. 266; and *Kent* v. *Freehold Land Co.*, 4 Eq. 588; *Shearman's Case*, 75 L. T. 385), or by attending and voting at a general meeting in person or by proxy (*Sharpley* v. *Louth, &c. Co.*, 2 C. D. 663), he may lose his right to avoid the allotment. See, further, Company Precedents, Part I., p. 105.

The statutory meeting.—See as to this sect. 12, *infra.*

This meeting is to be held within a period of not less than one month, nor more than three months, from the date at which the company is entitled to commence business. See sect. 6.

But the only company which is required by sect. 12 to hold the statutory meeting thus referred to is a company "limited by shares,

§ 5. and registered after the commencement of the Act," and therefore sect. 5, sub-sect. (1) would appear to be inapplicable in other cases, *e.g.*, guarantee companies or unlimited companies having, in either case, a share capital.

"**And shall be so voidable notwithstanding that the company is in course of being wound up.**" This is a notable provision for the protection of the allottee, for apart from this provision it would no doubt have been held that the principle of *Oakes* v. *Turquand* (L. R. 2 H. L. 325) was applicable, namely, that a voidable contract of membership cannot be avoided after the commencement of a winding-up.

How to be avoided.—In order to effectually avoid, the applicant should notify to the company that he avoids the contract and demands repayment of his money and the removal of his name from the register of members. If the company complies with this request he will be free (*Wright's Case*, 7 Ch. 55; *Reese River Co.* v. *Smith*, L. R 4 H. L. 64 and 74); but if the company refuses to assent to the avoidance the allottee should, by action or by motion or summons under sect. 35 of the Companies Act, 1862, proceed to enforce his repudiation. See, further, Company Precedents, Part I., pp. 103, 104.

If a winding-up has commenced, the notice should be addressed not only to the company, but also to the liquidator, and proceedings should be taken in the Court having jurisdiction to wind up the company, the actual form of proceeding depending on whether the applicant has or has not been placed on the list of contributories. See Company Precedents, Part II.

"**Knowingly contravenes,**" &c. The word "knowingly," it is apprehended, means neither more nor less than making or concurring in the making of an allotment knowing that the same is made in contravention of sect. 4. See *Twycross* v. *Grant*, 2 C. P. Div. 542. If the director knows the facts he cannot, it is conceived, excuse himself on the ground that he *bonâ fide* believed the allotment to be justified. *S. C.*

"**Compensate the company and the allottee respectively.**" This is a heavy burden to cast on the directors, and the provision emphasises the necessity for making the minimum subscription small, or absolutely ensuring the subscription thereof, or else taking care in all respects to comply with the provisions of sect. 4.

As to the company's "loss, damages and costs," these would appear to include all expenses incurred by reason of the allotment having been made in contravention; but it is apprehended that the words do not include damage occasioned by reason of the loss of membership, for the contravention would be the allotment, and it can scarcely be held that the company is entitled to damages for the avoidance by the allottee of an allotment which ought not to have been made.

As to the loss, damages and costs of the allottee, these should include all his legal expenses of enforcing the repudiation and obtaining repayment of the money paid by him with interest, but should not include damages for loss of the shares. But if the allottee has elected to affirm the contract and keep the shares, or if the time has passed for exercising the right to avoid, it would seem that the measure of

damages, if any, must be regulated with reference to the value of the shares. *Peek* v. *Derry*, 37 C. D. 592. § 5.

"**Two years from the date of allotment.**" These words preclude any question as to the period of limitation. The commencement of proceedings is to be reckoned from the issue of the writ.

6.—(1.) A company shall not commence any business or exercise any borrowing powers unless— Restrictions on commencement of business.

(*a*) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; and

(*b*) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and

(*c*) there has been filed with the registrar a statutory declaration by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with.

(2.) The registrar shall, on the filing of this statutory declaration, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled.

(3.) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

(4.) Nothing in this section shall prevent the simultaneous offer for subscription of any shares and debentures or the receipt of any application.

(5.) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding fifty pounds for every day during which the contravention continues.

(6.) Nothing in this section shall apply to a company registered before the commencement of this Act.

§ 6. (7.) This section shall not apply to any company where there is no invitation to the public to subscribe for its shares.

This section (see paragraphs (6) and (7)) does not apply (1) to a company registered before 1st January, 1901; or (2) to a company where there is no invitation to the public to subscribe for its shares, *i.e.*, before it commences business; or (3) to any company which has not a capital divided into shares.

"**Commence any business.**" These words are very wide, but they evidently do not include the issue of prospectuses or the making of provisional contracts, or the allotment of shares. See sub-sect. 1 (*a*) and sub-sect. 4.

"**Exercise any borrowing powers.**" Borrowing would seem to be included in the words "commence any business," but the presence of the additional words emphasises the intention that borrowing is not to be allowed. Nothing is said about raising money on perpetual debenture stock. That is not borrowing; it would, however, seem to fall within the words "commence business."

Under sect. 4 there can be no allotment unless the minimum subscription has been applied for, and under sect. 6 (1), paragraph (*a*), the company is paralysed unless the minimum subscription, at least, is allotted; that is to say, until then it cannot commence business. Nevertheless, neither section prevents the company from making an allotment which comprises less than the minimum subscription. See note, *supra*, p. 12. But, of course, if the allotment comprises less than the minimum subscription, this section prevents the company from commencing business until the minimum subscription has been allotted, and the allotments made in the interim are provisional only.

"**Every director of the company has paid.**" These words place it in the power of any director to preclude the company from commencing business by abstaining from paying up the allotment money on his shares. In view of this provision it would be well to provide in the articles that a director shall *ipso facto* vacate office if he does not pay up in accordance with sub-sect. 1 (*b*) on every share, whether forming part of his qualification or not, which is taken by him within a specified period.

"**A statutory declaration.**" It is to be noted that, although the filing of the declaration is made a condition precedent to commencing business or borrowing (see sub-sect. 1 (*c*)), the obtaining of the certificate is not a condition precedent to either of such acts. It is, of course, desirable to obtain the certificate, for that certificate is conclusive evidence that the company is entitled to commence business; but the company is not bound to obtain it before commencing business. When the conditions (*a*), (*b*) and (*c*) have, in fact, been satisfied, it may at once proceed to business, and obtain the certificate subsequently in due course.

The registrar is not given any discretion as to the issue of the certificate; his duty is purely ministerial: the section enacts that on the filing of the declaration the registrar *shall* certify that the company is entitled to commence business.

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"**Conclusive**" evidence. As to the meaning of "conclusive," see the cases cited in the notes to sect. 1, and see also Company Precedents, Part II., p. 681, and *Hadleigh Castle Gold Mines*, (1900) 2 Ch. 419.

"**Any contract,**" &c. These words are very wide and appear to include every contract, including contracts of membership. It would seem, therefore, that even where the company has allotted not less than the whole of the minimum subscription, and has given notice thereof to the allottees, and so completed contracts with them, each such contract still remains provisional, and will not become absolutely binding until the conditions (*b*) and (*c*) have been satisfied.

"**Shall be provisional only.**" The meaning of these words appears to be that the contract is conditional on the company becoming entitled to commence business. It is apprehended that there is no need to insert an express condition to that effect in each contract, for the statute implies it. Nevertheless, it may be convenient to set out the condition in the contract in some cases.

"**And on that date shall become binding.**" These words are remarkable; they apparently enact that every such provisional contract shall on that date become binding, and thus to confirm by statute every such provisional contract; but it is conceived that the true construction is that the words merely operate to terminate the provisional status of the contract and to make it absolute, and therefore that any right to repudiate or rescind—*e.g.*, for misrepresentation—will remain undisturbed.

"**Nothing in this section shall,**" &c. Under this sub-section a company is left at liberty to issue a prospectus offering simultaneously shares or debentures or debenture stock for subscription.

"**If any company commences.**" This stringent provision will, no doubt, discourage those who are aware of it from acting in contravention of the section, but it seems not unlikely that the section will be overlooked in a good many cases.

"**Every person who is responsible for the contravention.**" These words appear to include the directors, managers and other executive officers who take part in any contravention of the section, and, having regard to sub-sect. (1) (*c*), the secretary will in many cases be hit by the clause.

"**This section shall not apply,**" &c. This, of course, means no invitation *upon its formation* to subscribe for its shares. Hence, if a company on its formation merely issues a prospectus inviting public subscriptions for debentures or debenture stock, the section does not apply. So, too, if the company is a mere reconstruction, and only notifies the shareholders in the old company to subscribe, the section would not apply.

And once the company has commenced business without breach of the section, it is exempt for the future from the provisions of the section. Thus, if a company makes arrangements to purchase a business, and to issue its shares or part of them credited as paid up

§ 6. in payment for that business, and determines not to invite the public to subscribe for shares, it can commence business without complying with the conditions of the section, and then later on it can offer shares or debentures or debenture stock for public subscription.

Return as to allotments.

7.—(1.) Whenever a company limited by shares makes any allotment of its shares, the company shall within one month thereafter file with the registrar—

(*a*) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptions of the allottees, and the amount (if any) paid or due and payable on each share; and

(*b*) in the case of shares allotted in whole or in part for a consideration other than cash, a contract in writing constituting the title of the allottee to such allotment, together with any contract of sale, or for services or other consideration in respect of which such allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

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

The object of this section is to afford those who deal or propose to deal with a company the means of ascertaining approximately the position of the company as regards its issued shares. Under the law as it stood before this Act (sect. 26 of the Act of 1862) a company was only bound once a year to make a return showing its capital issue, and, accordingly, a search at the registrar's office in many cases afforded very little information, for the filed return very commonly showed only the position six or eight months before the search. This was supplemented by sect. 25 of the Companies Act, 1867, which provided for the filing of contracts as to shares issued for a consideration other than cash; but even after compliance with both sections the information disclosed was not up to date. The section now under consideration brings matters up very nearly to the date of search.

The first sub-section is divided into two parts, (*a*) and (*b*).

Part (*a*) requires "a return of the allotments," stating certain particulars, including "the amounts (if any) paid, or due and payable on each share"; and a question arises whether this return, having regard

to the return required by part (*b*), is to include *all* shares allotted, including those which are allotted in whole or part for a consideration other than cash, or only those which are to be paid for in cash. Probably the latter construction is the correct one; for otherwise, in the case of shares allotted in whole or part for a consideration other than cash, they must be mentioned in two returns, viz., that under (*a*) and that under (*b*), which might lead to confusion.

(*b*) This paragraph is in substitution for sect. 25 of the Companies Act, 1867, which is repealed by sect. 33, *infra*. It is peculiarly framed, for in the case specified it requires the filing—

(1) of a contract in writing constituting the title of the allottee to such allotment, and

(2) of any contract of sale or for services, or for other consideration in respect of which such allotment was made, and

(3) of a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

It is clear that in every case the contract (1) and the report (3) must be filed, but as to (2) it is apprehended that, the word being "any" as distinguished from "a," there is no need to file such a contract when there is none—or, in other words, that it is not necessary to manufacture such a contract in order to comply with the section.

It is apprehended that the object is to meet the case of a principal contract for sale followed by a sub-contract conferring title on the allottee, as in *Kharaskhoma, &c. Syndicate*, (1897) 2 Ch. 451, 456, and to compel the filing of both in order to furnish the fullest information.

Very commonly, however, the allottee's title is constituted by the sale contract, and it is submitted that where this is the case it is sufficient to file the sale contract: in filing that, everything required by the section is in fact filed.

This sub-section only deals with shares allotted for a consideration other than cash; it does not cover the case of shares allotted on a cash basis and afterwards paid up wholly or in part by making over to the company property or rendering to it services which it is willing to accept in satisfaction of the amount of the shares or some part thereof.

Sect. 25 of the Act of 1867 having been repealed (see *infra*, sect. 33), the law, as it stood under the Act of 1862, stands; and under that law shares, whether subscribed in the memorandum or otherwise taken up, have to be paid up in cash or otherwise. "If a man contracts to take shares he must pay either in money or money's worth, and payment in either will be a satisfaction." Per Giffard, L. J., in *Baglan Hall Colliery Co.*, 5 Ch. 346, 355. And in the same case he says (p. 354) that he does not see that "payment in kind according to a subsequent contract with the company is inconsistent with such a memorandum. If there be a contract of such a nature that on a bill filed by the company it could not be set aside, a payment for shares in kind according to that contract is legal."

Hence, if shares are issued to A. on a cash basis there is nothing to prevent a subsequent contract that the amount or part thereof shall be satisfied by making over to the company property or rendering it services which the company is willing to accept in satisfaction.

Moreover, the section in no way interferes with *Spargo's Case*, 8 Ch.

§ 7. 407, and accordingly any *bonâ fide* transaction between a company and a shareholder which in an action for calls would support a plea of payment is, *à fortiori*, sufficient.

Penalty.—The penalty is very onerous, namely, 50*l.* per day; but it is only to be enforced against a director, manager, secretary or other officer who is knowingly a party to the default. "Knowingly" means "knowing the facts," and a man commits the offence if he knows of the allotment or knows of the contract and does not procure compliance with the section; and it is apprehended that the mere fact that he erroneously believed that he had complied with the section would not afford a defence. *Twycross* v. *Grant*, 2 C. P. D. 469.

Commissions, discounts, &c.

8.—(1.) Upon any offer of shares to the public for subscription, it shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if the payment of the commission and the amount or rate per cent. of the commission paid or agreed to be paid are respectively authorised by the articles of association and disclosed in the prospectus, and the commission paid or agreed to be paid does not exceed the amount or rate so authorised.

(2.) Save as aforesaid no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3.) But nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay.

"To the public for subscription." This sub-section only applies where there is an offer of shares to the public for subscription. It is not, therefore, available in the case of a strictly private company or where the shares are only offered *privately* for subscription; but it is conceived that an offer made by circular to the public or some section thereof will be an offer "to the public for subscription" even though

there be no advertisement in the press. But it is to be noted that if shares are offered to the public for subscription the sub-section applies even though none of the shares so offered be allotted to the public. Hence, if the directors and their friends want to take up the shares themselves and yet to obtain a commission, they can, it would seem, agree to pay a commission for underwriting, and then offer the shares to the public for subscription, and then in allotment give to themselves and their friends as members of the public a preference.

"**Whether absolutely or conditionally.**" These words appear amply sufficient to cover both the case of a man who subscribes absolutely and the case of a man who only underwrites, that is to say, subscribes conditionally.

"**If the payment of the commission,**" &c. It is to be noted that payment of the commission must be authorised by the *articles*. It is not sufficient to authorise the payments by the memorandum of association unless the articles vest in the directors generally or specifically the power to exercise that authority.

"**And the amount or rate per cent.**" Looking to these words, it will be sufficient if the articles provide that a specified sum may be applied in paying the commission, or a sum not exceeding a specified amount, or that a particular rate per cent. may be paid, or a payment not exceeding a particular rate per cent. It seems sufficient if the articles state the maximum amount or rate per cent. which is to be paid, and then the prospectus discloses the actual amount paid or agreed to be paid. See sect. 10, sub-sect. (*h*).

"**Does not exceed.**" Looking to these words, it is essential that the capital payments shall be kept within the limits fixed by the articles of association.

"**Save as aforesaid no company shall apply any of its shares or capital money either directly or indirectly,**" &c. These words leave a company, even where not offering shares to the public for subscription, at liberty to apply any of its profits, including premiums on shares, in paying commissions in accordance with the existing practice; but they prohibit the company from applying any of its shares or capital money to the payment of commissions, except in a case coming within sub-sect. 1.

"**Either directly or indirectly.**" What may be the meaning of these words has yet to be determined. The word "directly" is clear enough. It is apprehended that the word "indirectly" is intended to point to a transaction by which the company by some device provides for the prohibited payment, *e.g.*, by making it one of the terms of the contract with the vendor that he shall pay the required commission. See *James* v. *Eve*, L. R., 6 H. L. 385.

"**Added to the purchase money.**" If, as a matter of fact, it can be made out that there has been an addition to the purchase money in order to cover the commission, the section will have been contravened.

§ 8.

"Or the money be paid out of the nominal purchase money or contract price." These words probably point to a case in which it cannot be said that the amount has been added to the purchase money, but in which the purchase money has been fixed with reference to the fact that the vendor or contractor will pay such commission, and does in fact pay the same.

"Or otherwise." These words must, no doubt, be construed as *ejusdem generis*, and they include any other like device under which the company in substance gives shares or capital money for payment of the commission.

"Such brokerage." It was decided in *Metropolitan, &c. Ltd.* v. *Scrimgeour*, (1895) 2 Q. B. 604, that an ordinary brokerage paid to a broker for his services in relation to the issue of capital is legal. There the commission was at the rate of 2½ per cent. on the shares placed. Sub-sect. (3) gives a statutory sanction to the decision of a Court, some of the rulings of which have in late years occasionally caused surprise.

Prospectus.

Filing of prospectus.

9.—(1.) Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated, and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus.

(2.) A copy of every such prospectus shall be signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing, and shall be filed with the registrar on or before the date of its publication.

(3.) The registrar shall not register any prospectus unless it is so dated and signed. No prospectus shall be issued until so filed for registration, and every prospectus shall state on the face of it that it has been so filed.

"Every prospectus," &c. That is, every "prospectus, notice, circular, advertisement, or other invitation, *offering to the public for subscription or purchase* any shares or debentures" or "debenture stock" "of a company." See sect. 30. Hence a prospectus which only conveys information and makes no offer is not within the words. See Appendix, Form 24a.

"By or on behalf of a company or in relation to any intended company." This applies the section to every company registered under the Companies Acts—*i.e.*, the Act of 1862 and the Acts amending the same. See sect. 30. It also extends to every prospectus issued before the company is registered.

Moreover, it is not confined to prospectuses of a company or notices inviting persons to *subscribe* for shares, as was the now repealed sect. 38 of the Act of 1867. It applies also to a prospectus which offers

shares, debentures, or debenture stock for sale, *e.g.*, where they are taken by vendors or financiers and then offered for sale. § 9.

"**Date of prospectus.**" The prospectus must be dated, and the date is of importance, as, unless the contrary is proved, it is to be taken as the date of publication of the prospectus. See sect. 2 (1) and sect. 4 (4).

A copy of the prospectus must be filed on or before the date of its publication, and unless "so signed and dated" it is not to be *registered*, which probably means that a copy must not be accepted for filing unless it is "so dated and signed." Apparently, therefore, it may bear a date posterior to that of the filing. On the other hand, it must, before it is issued, state on the face of it that it has been filed before being issued—which must mean that a copy of it has been filed—but the date of filing need not be mentioned. Presumably, as a copy must be filed, that copy also must state that the prospectus has been filed, although when the prospectus is signed—and it must be signed before filing—it has not been filed. To make sense, the words "proposed to be issued" should be read into sub-sect. (2) after the word "prospectus."

"**No prospectus shall be issued until,**" &c. This makes compliance with the section a condition precedent to the issue of a prospectus as defined by sect. 30. If a prospectus not duly dated and signed is submitted for filing the registrar will reject it.

The section extends not merely to the first prospectus, but to all subsequent prospectuses. If a prospectus is issued before it has been filed the issue is illegal, and those who make it are criminally liable (*Reg.* v. *Tyler*, (1891) 2 Q. B. 594); and, further, any one who subscribes on the faith of a prospectus so issued is entitled to repudiate his contract, for an application for shares induced by an illegal prospectus cannot, it is apprehended, be held binding.

A fortiori, if the prospectus thus wrongfully issued states, in apparent compliance with the section, that it has been filed, this false statement entitles any subscriber to repudiate his contract and to take proceedings under the Directors' Liability Act, 1890.

10.—(1.) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must state— Specific requirements as to particulars of prospectus.

The object of this section is to compel the disclosure in a prospectus of a series of facts which the legislature considers it material to have disclosed to subscribers.

"**Prospectus**" means "any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures [or debenture stock] of a company." See section 30.

"**Issued by or on behalf of the company.**" The words "or in relation to any intended company," which occur in section 9, do not appear

§ 10. here, but the words "or by or on behalf of any person who *is* or has been engaged or interested in the formation of the company" appear to be wide enough to cover a prospectus issued by the promoters before the registration of a company—especially having regard to the words of sub-sect. (4)—"subject, &c., this section shall apply to any prospectus, whether issued on or with reference to the *formation* of a company or subsequently."

Section 31 makes the section apply to every company registered under the Companies Acts, whether formed before or after the commencement of the Act (1st January, 1901), although sub-sect. (4) exempts companies, in certain circumstances, from complying with certain parts of the section.

(*a*) the contents of the memorandum of association, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them respectively; and the number of founders or management shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company; and

"The contents," &c. Everything in the memorandum except the signatures of the witnesses is to be set out. As the practice is to sign the names in full the whole memorandum is practically required to be copied into the prospectus. There seems to be no objection to the method now adopted of printing the contents of the memorandum in the fold of the prospectus, and referring to it in the body of the document. See sub-sects. (4) (a) and (6) as to not setting out the memorandum in certain cases.

Subscribed—*i. e.*, in the memorandum.

"Founders' or management shares." The memorandum itself usually states all that is required by the section as to the founders' and management shares (if any), but sometimes those shares are merely mentioned there without specifying the nature and extent of the interest of the holders in the property and profits of the company, and in such case these particulars must be added in the prospectus.

Sub-sects. (4) (a) and (6), whilst permitting the omission of the memorandum from a prospectus issued more than a year after the company is entitled to commence business, or an advertisement, do not extend this provision to the particulars as to the founders' or management shares.

(*b*) the number of shares, if any, fixed by the articles of association as the qualification of a director, and any provision in the articles of association as to the remuneration of the directors; and

"Articles of association." This expression must mean the articles in force when the prospectus is issued, including any alterations that

may have been made by special resolution. That this is the true construction is obvious when one considers that the section applies not only to new companies but to companies formed before 1st January, 1901, many of which may have altered their articles again and again before they issue a prospectus under this section. The section does not say the original articles.

Suppose that a company was registered under Table A, and afterwards adopted new regulations; these are not strictly articles of association, but probably the words would be held to cover them.

Qualification.—There is no obligation to insert in the articles any qualification clause, but if such a clause be inserted and provide for a *share* qualification, the number of shares must be stated in the prospectus. A debenture or debenture-stock qualification need not be mentioned in the prospectus.

(*c*) the names descriptions and addresses of the directors or proposed directors; and

Where sect. 2 is applicable, the provisions of that section must be borne in mind, as it restricts in certain cases the naming of directors in a prospectus.

(*d*) the minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share; and in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment, and the amount actually allotted; and the amount, if any, paid on such shares; and

"**Minimum subscription.**" As regards shares, the minimum subscription is dealt with by sect. 4, *supra*. The Act, however, does not contain any similar provision as regards debentures or debenture stock, and accordingly it is open to argument that this section (10) only requires the minimum subscription as regards shares to be stated. But the words are wide enough to cover both. The expression "the minimum subscription on which the directors may proceed to allotment" is perfectly sensible, whether applied to shares or debentures or debenture stock, and may, consistently with reason, be read as referring, in regard to shares, to the minimum subscription mentioned in clause 4, and as regards debentures or debenture stock, to such minimum subscription as may be fixed in the prospectus. But when the whole of sub-sect. (d) is read, and note is taken of the fact that the clause is silent as to debentures and debenture stock, whereas shares are expressly mentioned, and when the clause is read with sect. 4 (1) and (2), wherein the new expression "minimum subscription" is defined, there can be little doubt that sect. 10 (d) applies to shares, and shares only.

§ 10. **"And in the case of a second or subsequent offer."** This is a most onerous provision, as the company may in the course of time have made a number of issues of shares.

(*e*) the number and amount of shares and debentures issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which such shares or debentures have been issued or are proposed or intended to be issued; and

"The consideration." It is apprehended that it will be sufficient to state the general nature of the consideration, and that it will not be necessary in each case to set out all the details of the consideration. *Re S. Frost & Co.*, (1899) 2 Ch. 207.

(*f*) the names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of publication of the prospectus, and the amount payable in cash, shares, or debentures, to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor; and

"Of the Vendors," &c. This stringent provision must be read in conjunction with sub-sect. (2) of sect. 10, *infra*. The object is to strip off the mask which in the past was too often used to conceal the real vendor. But the wording of the sub-section is very general, and covers many cases which can scarcely have been contemplated. Take, for example, the case of a manufacturing company carrying on a going business, in the course of which it always has in hand a considerable amount of materials supplied on credit, and paid for periodically or by instalments. Does the sub-section apply to every such case, and render it necessary to specify the name of each vendor and the amount payable to him? If the property "is to be paid for wholly or partly out of the proceeds of the issue," it is apprehended that the sub-section applies; but when goods have been sold on credit, so that the property has passed and the company has obtained possession, it may be that such goods do not fall within the words "the purchase or acquisition of which has not been completed at the date of the publication of the prospectus." The acquisition in such case has been completed.

There is no proviso here like that in (*k*).

(*g*) the amount (if any) paid or payable as purchase money in

cash, shares, or debentures, of any such property as aforesaid, specifying the amount payable for good-will; and

The concluding words will render it necessary or expedient to specify the amount payable for goodwill separately in the contract, for where it is not so stated difficulty will or may arise as to the apportionment.

(*h*) the amount (if any) paid or payable as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in the company, or the rate of any such commission; and

See sect. 8, which legalises such payment.

It would seem that underwriting and placing contracts are not material contracts, the dates and parties to which must, under paragraph (*k*), *infra*, be stated in the prospectus, but it is safer to specify them.

(*i*) the amount or estimated amount of preliminary expenses; and

If the amount is stated, as by this paragraph required, the dates and parties to the contracts can scarcely be material to subscribers.

Perhaps, too, such contracts come within the proviso to paragraph (*k*).

It is not to be necessary to disclose the amount or estimated amount of preliminary expenses in a prospectus published more than one year after the date at which the company became entitled to commence business. See sub-sect. (4) (a).

(*j*) the amount paid or intended to be paid to any promoter and the consideration for any such payment; and

See as to what persons are promoters, Company Precedents, Part I., p. 54; also *Lagunas Nitrate Co.* v. *Lagunas Syndicate*, (1899) 2 Ch. 392; *Gluckstein* v. *Barnes*, (1900) A. C. 240.

(*k*) the dates of and parties to every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected: Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract entered into more than three years before the date of publication of the prospectus; and

"Dates and parties." This provision is in substitution for sect. 38 of the Companies Act, 1867, repealed by sect. 33, *infra*. There is no definition in the Act of the term "material contract." The expression,

§ 10. no doubt, means any contract material to the subscriber in deciding whether he will or will not subscribe in response to the prospectus.

It would seem, therefore, that, subject to the proviso, every contract which throws light on the value of the company's shares, debentures or debenture stock, is material.

As the sub-sect. provides for inspection, it apparently only applies to contracts in writing.

Where the prospectus is published more than *one* year after the company is entitled to commence business, the obligation to disclose material contracts is limited to a period of *two* years prior to the prospectus. Sub-sect. (4) (b), *infra*. But this is not much of a concession.

"Provided that," &c. This proviso is of the highest importance, for it alleviates, to some extent, the almost intolerable burden which the preceding words impose.

Whether a particular contract has been entered into in the ordinary course of the business carried on, or intended to be carried on, by the company is a question of fact.

Contracts made before the incorporation of the company (*e.g.*, by the vendors) may be regarded as contracts entered into in the ordinary course of the business "intended to be carried on by the company."

"More than three years before," &c. Thus a company is relieved from the necessity of going back for an indefinite period. The material contracts which have to be specified are only those entered into within three years before the date of publication of the prospectus. And see the possibly shorter time in the case mentioned in sub-sect. (4) (b).

(*l*) the names and addresses of the auditors (if any) of the company; and

(*m*) full particulars of the nature and extent of the interest (if any) of every director in the promotion of or in the property proposed to be acquired by the company, with a statement of all sums paid or agreed to be paid to him in cash or shares by any person either to qualify him as a director or otherwise for services rendered by him in connection with the formation of the company.

"Full particulars." The object of this is to enable subscribers to judge how far the directors who invite subscriptions are independent and trustworthy. A., B. and C. named in a prospectus may constitute an apparently independent and trustworthy board, but if the fact be disclosed that they are all in the pay or under the control of the vendors or promoters the subscriber will be placed on his guard.

(2.) For the purposes of this section every person shall be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of pur-

chase, of any property to be acquired by the company, in any case where—

(*a*) the purchase money is not fully paid at the date of publication of the prospectus; or

"For the purpose," &c. This sub-section must be read in connection with sub-sect. (1) (f), *supra*.

"Deemed to be a vendor," &c. See note to sub-sect. (1) (f), *supra*.

(*b*) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or

(*c*) the contract depends for its validity or fulfilment on the result of such issue.

(3.) Where any of the property to be acquired by the company is to be taken on lease, this section shall apply as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

(4.) This section shall not apply to a circular or notice inviting existing members or debenture holders of a company to subscribe for further shares or debentures, but, subject as aforesaid, this section shall apply to any prospectus whether issued on or with reference to the formation of a company or subsequently: Provided that—

"Shall not apply," &c. These words afford much needed relief in certain cases.

"Subject as aforesaid," &c. These words make it clear that the section is not confined to the first issue, except in the cases expressly mentioned.

(*a*) the requirements as to the memorandum of association, and the qualification, remuneration, and interest of directors, the names, descriptions, and addresses of directors or proposed directors, and the amount or estimated amount of preliminary expenses, shall not apply in the case of a prospectus published more than one year after the date at which the company is entitled to commence business; and

(*b*) in the case of a prospectus published more than one year after the date at which the company is entitled to commence business, the obligation to disclose all material

§ 10.

contracts shall be limited to a period of two years immediately preceding the publication of the prospectus.

"**The requirements,**" &c. These requirements are those set forth in sub-sect. (1) in the earlier part of clause (a) and in clauses (b), (c), (i) and (m).

"**Entitled to commence business.**" See sect. 6.

"**Shall be limited,**" &c. This limitation to two years immediately preceding the publication of the prospectus is of great importance.

(5.) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

"**Any condition,**" &c. Sect. 38 of the Companies Act, 1867, did not prohibit a condition for waiver, and it has for many years been customary to insert waiver clauses in prospectuses so as to protect the directors and promoters from the dangers of the enactment, although the exact effect of waiver clauses has never been precisely ascertained. See *Greenwood* v. *Leather-shod Wheel Co.*, (1900) 1 Ch. 421; Company Precedents, Part I., p. 125. But this sub-section invalidates any such condition in the case of a prospectus issued after 31st December, 1900. The section goes further, for it invalidates any condition binding any applicant to waive or purporting to affect the subscribers with notice of any contract, document or matter not specifically referred to in the prospectus. Thus it is useless to say in a prospectus to which the section applies that applicants will be deemed to have notice of contracts not specifically referred to.

The words "specifically referred to" will probably be held to mean referred to by dates and names of parties.

(6.) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary to specify the contents of the memorandum of association or the signatories thereto, and the number of shares subscribed for by them.

This sub-section affords only a small measure of relief. It is therefore material to consider whether an advertisement cannot be so framed as to avoid the necessity of setting out the mass of detail which the section requires in a prospectus. As to this it is apprehended that if the advertisement is not a prospectus "offering to the public for subscription or purchase shares or debentures or debenture stock," it is not touched by the section. Thus an advertisement which does not actually offer for subscription but states that the company is issuing a prospectus whereby it offers for subscription certain shares, debentures or debenture stock, and that the prospectus states so and so, and that copies may be obtained at specified places, appears not to be a prospectus within the section.

§ 10.

(7.) In the event of non-compliance with any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance, if he proves that—

(*a*) as regards any matter not disclosed, he was not cognisant thereof; or

(*b*) the non-compliance arose from an honest mistake of fact on his part.

Provided that in the event of non-compliance with the requirements contained in paragraph (*m*) of sub-sect. (1) of this section no director or other person shall incur any liability in respect of such non-compliance unless it be proved that he had knowledge of the matters not disclosed.

"In the event of non-compliance," &c. It is material to consider whether the breach of the provisions of this section will give to persons who subscribe on the faith of a prospectus to which the section applies and are prejudiced, a right of action for damages against the directors and others responsible for the prospectus. In *Crouch* v. *Steel*, 3 E. & B. 402, the broad principle was laid down that whenever a statutory duty is created, any person who can show that he has sustained injury from the non-performance of that duty, can bring an action for damages against the person on whom the duty is imposed; but in *Atkinson* v. *Newcastle and Gateshead Waterworks Co.* (1877), 2 Ex. Div. 441, it was decided that this proposition could not be supported—that it was too widely stated—and that in determining whether a person prejudiced by the non-performance of a statutory duty was entitled to bring an action for damages, regard must be had to the purview of the legislature in the particular Act, and the language employed therein. See also *Cowley* v. *Newmarket Local Board*, (1892) A. C. 345, and *Municipality of Pictou* v. *Geldert*, (1893) A. C. 524, and *Saunders* v. *Holborn District Board of Works*, (1895) 1 Q. B. 64; *Johnston* v. *Consumers' Gas Co. of Toronto*, (1898) A. C. 447, 454 (in which last case the observations of Lord Cairns, in *Atkinson* v. *Newcastle Waterworks Co.*, are cited, with approval, by Lord Macnaghten in delivering the judgment of the Privy Council).

These decisions also go to show that the fact that there is a penalty imposed for a breach of the statutory duty, affords cogent evidence that it was not intended that individuals prejudiced should be entitled to a right of action. Now sect. 10 of the Act of 1900 imposes no penalty for breach of the duties thereby imposed. Further, the section is substituted in part for sect. 38 of the Companies Act, 1867, and under that section the subscriber had a right of action against the directors and promoters for breach of the statutory duty thereby created; and it is absurd to suppose that Parliament can have intended, in substituting sect. 10 of the Act of 1900, to give subscribers a less effective remedy. Assuming, then, that the subscriber has an implied right of action for damages sustained by means of a breach of the statutory duty, this sub-section limits the liability of the directors in important particulars.

§ 10.

"He was not cognisant thereof." These words it is apprehended mean merely that he did not know of the matter disclosed. The section does not impose on the director the duty to search for and obtain information as to facts not within his own knowledge.

Thus, a director only has to consider what contracts he personally is cognisant of, and which of them he has to disclose, but is not bound to investigate the whole position and history, so as to find out every material contract.

"Honest mistake of fact." This relates to facts which by the section have to be stated; thus, if by an honest mistake the directors state that A. B. is the vendor, whereas C. D. is the vendor, the directors will be absolved.

Whether a particular contract is or is not material within paragraph (*k*) of sub-sect. (1) is a question of fact, and if by an honest mistake the directors hold that it is not material, they will be absolved. The fact that they have taken legal advice, and have acted thereon, will afford some evidence of honesty.

In this respect the section improves the law as it stood under sect. 38 of the Companies Act, 1867. Under that section a mistake as to the materiality of a contract afforded no defence to an action. (*Twycross* v. *Grant*, 2 C. P. D. 469.)

The onus probandi.—If the plaintiff in an action proves a breach of the sub-section, he is not bound to go further and prove that the director or other person sued was cognisant of the matter not disclosed, or that he acted dishonestly. It is for the defendant to set up and establish, if he can, one of the defences allowed by this sub-section. In this respect the enactment follows the analogy of the Directors Liability Act, 1890.

(8.) Nothing in this section shall limit or diminish any liability which any person may incur under the general law apart from this section.

Hence any action which would lie, apart from this section, will still be available. Thus, even if the prospectus complies with the section, it may by reason of untrue or misleading statements give a subscriber the right to take legal proceedings for rescission of his contract, or for compensation or damages, under the Directors Liability Act, 1890, or in an action of deceit. See, further, Company Precedents, Part I., pp. 106 *et seq.*

Restriction on alteration of terms mentioned in prospectus.

11. A company shall not prior to the statutory meeting vary the terms of a contract referred to in the prospectus, except subject to the approval of the statutory meeting.

This singular provision must be borne in mind in framing contracts. The section implies that the contract referred to therein is a contract to which the company is a party, or is a contract made after the company's incorporation with some person acting on behalf of the company, for obviously the company cannot vary the terms of a contract to which it is not a party.

It is to be noted that there is no limitation or restriction. The prospectus is to specify every material contract with the exceptions therein mentioned, and, therefore, by this section the company is deprived of any power to assent to a variation of any such contract until the statutory meeting, except subject to the approval of the statutory meeting.

Looking to the peculiar terms of this section, it will be desirable in framing preliminary contracts to allow and provide for various alternative modes of carrying them out, so as to avoid the necessity for variation. For example, if a contract is made for the sale to the company of property for 100,000*l.*, payable as to 80,000*l.* in cash and 20,000*l.* in paid-up shares, it may be desirable to insert a provision to the effect that if the subscription does not amount to a specified sum the company shall have the option of satisfying part of the cash by the allotment of further paid-up shares, or debentures, or other securities, or of excluding some of the properties sold and reducing the purchase-money proportionately. The exercise of an option thus given by the contract will not, of course, be a variation of the contract.

The statutory meeting is to be held within a period of not less than one month, nor more than three months, from the date at which the company is "entitled to commence business." See sect. 12 (1).

As to when a company is so entitled, see sect. 6, *supra*. It should be noted that that section does not apply to a company where there is no invitation to the public to subscribe for its shares. The section can only refer to companies which are required by the Act of 1900 to hold "the statutory meeting," that is to say, the statutory meeting required by sect. 12. As to the companies to which sect. 12 applies, see notes thereto, *infra*.

Statutory Meeting.

12.—(1.) Every company limited by shares and registered after the commencement of this Act [*i.e.*, 1st January, 1901] shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called the statutory meeting.

First statutory meeting of company.

The object of this section (sect. 12) is to give a reality to the first meeting under sect. 39 of the Companies Act, 1867, which is repealed by sect. 33 of the Act of 1900, and, before its repeal, applied to every company formed under the Act of 1862 after the 31st August, 1867. A meeting was to be held within four months from the incorporation of the company, but such meetings were in general of little or no practical utility, for the meeting was usually called without the specification of any particular purposes, and thus when the shareholders came together there was nothing to do. The usual practice was for the chairman to make a speech stating that the meeting was held in compliance with the statute, that there was no business to transact, and that the board hoped in due course to be able to give a satisfactory account of the progress of the company. If questions were asked, it rested with the chairman to answer them or not as he chose, and if resolutions were

§ 12. proposed other than votes of thanks he usually ruled them out of order.

Few persons attended such meetings, and the holding of them had become to a great extent a farce. The dominant notion of this section is that by providing for a report to the meeting as to the position of the company, and by giving to the meeting considerable powers, shareholders will be induced to attend and look after their own interests. If this hope should prove well founded, there can be no doubt that the section may operate beneficially.

"**Limited by shares and registered after the commencement of this Act.**" Hence the section does not apply to unlimited companies, or to companies limited by guarantee (even where these companies have a capital *divided* into shares), or to companies registered before 1st January, 1901.

"**Entitled to commence business.**" These words must be read in conjunction with sect. 6, but in the case of a company where there is no invitation to the public to subscribe for its shares it is entitled to commence business immediately on its incorporation, for sect. 18 of the Act of 1862 declares that it shall "be capable forthwith of exercising all the powers of an incorporated company"; and, as Lord Macnaghten said in a recent case, "The company attains maturity on its birth. There is no period of minority, no interval of incapacity." And the words of this section must be read accordingly.

"**General meeting.**" Under sect. 39 of the Companies Act, 1867, a general meeting was required to be held within four months of the registration of a company, but that section is repealed by the Act of 1900, s. 33.

(2.) The directors shall, at least seven days before the day on which the meeting is held, forward to every member of the company a report certified by not less than two directors of the company, or, where there are less than two directors, by the sole director and manager, stating :—

(*a*) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted ;

(*b*) the total amount of cash received by the company in respect of such shares, distinguished as aforesaid ;

(*c*) an abstract of the receipts and payments of the company on capital account to the date of the report, and an account or estimate of the preliminary expenses of the company ;

(*d*) the names, addresses, and descriptions of the directors,

auditors (if any), manager (if any), and secretary of the company; and

(*e*) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

See sect. 11, *supra*.

(3.) The report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors (if any) of the company.

(4.) The directors shall cause a copy of the report, certified as by this section required, to be filed with the registrar forthwith after the sending thereof to the members of the company.

(5.) The directors shall cause a list showing the names, descriptions, and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

(6.) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles of association may be passed.

(7.) The meeting may adjourn from time to time, and at any such adjourned meeting any resolution of which notice has been given in accordance with the articles of association, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

"**Any resolution of which notice has been given.**" If notice has been given, a resolution in accordance with it may be passed at the statutory meeting, and if the notice is insufficient to cover what is desired, the meeting can be adjourned and a further notice can be given.

"**Articles of association**" (sub-sect. 7). These words should, it is submitted, be treated as including Table A., where applicable. See sect. 15 of the Act of 1862.

"**Of which notice,**" &c. The notice, to be effective, must be given

§ 12. in accordance with the articles. Hence, unless they are in exceptional terms, it must be given by the directors, for as a rule members cannot give notice of additional business.

(8.) If default is made in filing such report as aforesaid or in holding the statutory meeting, then, at the expiration of fourteen days after the last day on which the meeting ought to have been held, any shareholder may petition the Court for the winding up of the company, and upon the hearing of the petition the Court may either direct that the company be wound up, or give directions for the report being filed or a meeting being held, or make such other order as may be just, and may order that the costs of the petition be paid by any persons who in the opinion of the Court are responsible for the default.

"**Petition the Court for winding up.**" This provision makes a new ground for the presentation of a winding-up petition. The discretion given to the Court is wide, but there would not be much use in ordering the report to be filed unless a meeting to discuss it were also at the same time directed to be held. The order as to the report, and probably as to the meeting also, would have to be against the directors, who probably would be ordered to pay the costs, even if no winding-up order were made.

Extra-ordinary general meeting.

13.—(1.) Notwithstanding anything in any regulations of a company, the directors of a company shall, on the requisition of the holders of not less than one-tenth of the issued capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to convene an extraordinary general meeting of the company.

(2.) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.

(3.) If the directors of the company do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists, or a majority of them in value, may themselves convene the meeting, but any meeting so convened shall not be held after three months from the date of such deposit.

(4.) If at any such meeting a resolution requiring confirmation at another meeting is passed, the directors shall forthwith convene a further extraordinary general meeting for the purpose of con-

sidering the resolution and, if thought fit, of confirming it as a special resolution; and, if the directors do not convene the meeting within seven days from the date of the passing of the first resolution, the requisitionists, or a majority of them in value, may themselves convene the meeting.

(5.) Any meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

The above section in effect renders applicable certain clauses which are usually inserted in honestly framed articles of association, and nullifies the restrictions sometimes inserted by thoughtless draftsmen or unscrupulous promoters, in the latter case in order to place obstacles in the way of shareholders who press for a general meeting. By means of this section the control of a company is really placed in the hands of the shareholders.

Mortgages and Charges.

Registration of mortgages and charges.

14.—(1.) Every mortgage or charge created by a company after the commencement of this Act and being either—

[It is to be noted that this section only applies to certain kinds of mortgages and charges, and not generally to all mortgages and charges. Thus a specific mortgage or charge of land, or of a concession or patent or copyright, is not within the section unless it is to secure any issue of debentures or debenture stock. So, too, a mortgage by deposit of dock warrants, bills of exchange, and other mercantile documents is not within the section unless it is to secure an issue of debentures or debenture stock. The question for consideration in each case is, whether the particular security comes under (*a*), (*b*), (*c*), or (*d*) below; if not, it is exempt from registration under this section.]

(*a*) a mortgage or charge for the purpose of securing any issue of debentures; or

"**Debentures.**" This expression includes debenture stock. See sect. 30.

(*b*) a mortgage or charge on uncalled capital of the company; or

As to the validity of such securities, see Company Precedents, Part I., p. 786.

(*c*) a mortgage or charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale; or

See note as to bills of sale, *infra*, p. 43.

§ 14. (*d*) a floating charge on the undertaking or property of the company,

A floating charge on the undertaking or property of a company is a security which takes effect as a present effective charge on the property, both present and future, of a company, but with power for the company, save so far as its powers are restricted by the terms of the charge, to sell, exchange, mortgage or deal with its property for the time being in the ordinary course of its business as if the debentures did not exist until a receiver is appointed, or a winding up commences, or the company stops business. See, further, Company Precedents, Part III., pp. 65 *et seq.*

In some cases the company's power thus to deal with its property is restricted by the terms of the security, *e. g.*, by prohibiting the creation of prior mortgages; but the existence of such restrictions does not deprive the charge of its character as a floating charge unless, indeed, the restriction go so far as to negative all incidents of a floating charge.

shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless filed with the registrar for registration in manner required by this Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured.

"**So far as any security.**" Thus, whilst the security on the property is avoided, the company's obligation to pay the money secured is not avoided: it may therefore be expedient to insert a provision enabling the lender to call in his loan at once if the security is not duly registered within the twenty-one days.

"**Any creditor.**" These words, it is conceived, include any creditor present or future, and whether secured or not secured. The words used are quite general, and there seems no sufficient reason to confine them to creditors existing at the date of the mortgage or charge, or at the date when it ought to have been registered, or to treat the word "creditor" as meaning unsecured creditor exclusively. If, then, a company gives a mortgage or charge to A. which should be registered within the section, but is not in fact registered, and afterwards the company gives another mortgage to B. to secure money lent or owing, and B registers his mortgage, the mortgage to A. will be void as against B.

"**Filed with the registrar.**" Does the section apply to oral mortgages and charges or only to those expressed in writing? It is not easy to answer this question. It is true that paragraph (1) of the section says that the various securities therein mentioned shall be void unless "*filed* with the registrar for registration in manner required by this Act within twenty-one days" after creation; but it is not easy to treat this as meaning that the instrument must physically be placed on the file. It cannot be supposed that all mortgages and charges,

including thousands of debentures from time to time issued, are, instead of being left in the hands of the mortgagees, to be placed on the file at Somerset House. Sub-sect. (7), which merely provides that the company shall "supply the registrar with the particulars required for registration," is an indication that the instrument itself is not to be placed on the file. And, moreover, that sub-section speaks of a mortgage or charge "requiring registration," thereby showing that filing and registration are synonymous. The fact that the right to inspect the copy of the instrument kept by the company is given by sub-sect. (9) to members and creditors only points in the same direction; for if the instrument is to be placed on the file at Somerset House and thereby open to inspection by the public, there can be no reason why the copy kept by the company should not also be open to the public. Further, the registrar is by sect. 16 empowered to enter a memorandum of satisfaction on the *register*, but he is not empowered to hand over any filed document or required to make any indorsement on it. And it is perfectly clear that debentures, whether secured by a trust deed or not, need not be physically filed. Where they create a *pari passu* charge sub-sect. (4) points out what manner of "registration" shall be "sufficient"; and sub-sect. (6) and sect. 18 show that debentures are to be "issued" or "delivered," and that before delivery they are to bear copies of the registrar's certificate. Sub-sect. (6) shows that this certificate is not to be given till after registration, and if registration meant leaving permanently with the registrar there could be no subsequent delivery. Upon the whole it would seem only reasonable to construe the words "filed with the registrar for registration in manner required" as meaning filed temporarily, *i.e.*, in order to give the registrar an opportunity of registering the same, and the writer understands that the registrar acts accordingly. Whether this be the meaning or whether the words "filed with the registrar" mean that the document is to be physically placed and retained on the file, it would seem to follow that the section cannot apply to a mortgage or charge which is created orally, and that in this respect the enactment follows the lines of the Bills of Sales Act, 1878, and deals with instruments, not transactions. See *infra*, p. 45, and Form 36 in Appendix.

(2.) Where the mortgage or charge comprises property outside the United Kingdom, it shall, so far as that property is concerned, be sufficient compliance with the requirements of this section if a deed purporting to specifically charge such property be registered notwithstanding that further proceedings may be necessary to make such mortgage or charge valid or effectual according to the law of the country in which such property is situate.

As to mortgaging property which is abroad, see Company Precedents, Part I., p. 780, and Part III., pp. 56 *et seq.*, 114, 353.

(3.) The registrar shall keep, with respect to each company, a register in the prescribed form of all such mortgages and charges created by the company after the commencement of this Act [*i.e.*, 1st January, 1901], and requiring registration under this section,

§ 14. and shall, on payment of the prescribed fee, enter in the register, with respect to every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge.

"**Prescribed,**" *i.e.*, by the Board of Trade. See sect. 30.

(4.) Provided that where a series of debentures containing any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it shall be sufficient to enter on the register—

(*a*) the total amount secured by the whole series; and

(*b*) the dates of the resolutions creating the series and of the covering deed, if any, by which the security is created or defined; and

(*c*) a general description of the property charged; and

(*d*) the names of the trustees (if any) for the debenture holders.

"**Series of debentures containing any charge.**" By sect. 30 the expression debenture includes debenture stock *unless the context otherwise requires*. The above words are appropriate in relation to debentures, but not in relation to debenture stock. A "series" of debenture stock is an incongruous expression. Debenture stock certificates do not contain any charge. See Forms 36 and 37 in Appendix.

It is said that the registrar requires production of the debentures.

(5.) Where more than one issue is made of debentures in the same series, the company may require the registrar to enter on the register the date and amount of any particular issue, but an omission to do this shall not affect the validity of the debentures issued.

"**Same series.**" This means the "series of debentures containing any charge to the benefit of which the debenture holders of that series are entitled *pari passu*" mentioned in sub-sect. (4), and sub-sect. (5) means that, although some of the debentures are issued at one time and others at other times, one registration under sub-sect. (5) shall be sufficient.

(6.) The registrar shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of this section, stating the amount thereby secured (which certificate shall be conclusive evidence that the requirements of this section as to registration have been complied with), and the company shall cause a copy of the certificate so given to be endorsed on every debenture or certificate of debenture stock which is issued by the

company, and the payment of which is secured by the mortgage or charge so registered. § 14.

"Conclusive." As to the meaning of this word, see the cases cited in the notes to sect. 1.

(7.) It shall be the duty of the company to register every mortgage or charge created by the company and requiring registration under this section, and for that purpose to supply the registrar with the particulars required for registration; but any such mortgage or charge may be registered on the application of any person interested therein.

"It shall be the duty," &c. Thus a statutory duty is imposed on the company, and a company which omits to do that which the law requires it to do is a criminal offender. *Per* Bowen, L. J., *Reg.* v. *Tyler and International Commercial Co.*, (1891) 2 Q. B. 588, 596.

Penalties were in that case imposed for the defaults to which the case relates, and penalties for a breach of duty under sub-sect. (7) are imposed by sect. 18.

(8.) The register kept, in pursuance of this section, of the mortgages and charges of each company shall be open to inspection by any person on payment of the prescribed fee, not exceeding one shilling for each inspection.

(9.) Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under this section to be kept at the registered office of the company, and to be open to inspection by the members and creditors of the company on payment of such fee, not exceeding one shilling for each inspection, as may be fixed by the regulations of the company. Provided that in the case of a series of uniform debentures a copy of one such debenture shall be sufficient.

Bills of sale.—(Sub-sect. (1) (c).) The above section requires registration of "A mortgage or charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale."

Definitions.—These words in effect refer to the Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), and to the Bills of Sale Act, 1878, Amendment Act, 1882 (45 & 46 Vict. c. 43), which, with certain exceptions, require the registration of all bills of sale, whereby the holder or grantee has power, either with or without notice, and either immediately or at any future time, to seize or take possession of any personal chattels comprised in or made subject to such bill of sale (sect. 3 of

§ 14. 1878). The expressions "bill of sale" and "personal chattels" are defined in sect. 4 of the Act of 1878 as follows:—

"The expression 'bill of sale' shall include bills of sale, assignments, transfers, declarations of trust without transfer, inventories of goods with receipt thereto attached, or receipts for purchase moneys of goods and other assurances of personal chattels, and also powers of attorney, authorities, or licences to take possession of personal chattels as security for any debt, and also any agreement whether intended or not to be followed by the execution of any other instrument by which a right in equity to any personal chattels, or to any charge or security thereon, shall be conferred, but shall not include the following documents: that is to say, assignments for the benefit of the creditors of the person making or giving the same, marriage settlements, transfers or assignments of any ship or vessel or any share thereof, transfers of goods in the ordinary course of business of any trade or calling, bills of sale of goods in foreign parts or at sea, bills of lading, India warrants, warehouse keepers' certificates, warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by indorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented."

To this definition must be added an exception introduced by the Bills of Sale Acts, 1890 and 1891 (53 & 54 Vict. c. 53 and 54 & 55 Vict. c. 35), namely, that "An instrument charging or creating any security on or declaring trusts of imported goods given or executed at any time prior to their deposit in a warehouse, factory or store, or to their being reshipped for export, or delivered to a purchaser not being the person giving or executing such instrument, shall not be deemed a bill of sale within the meaning of the Bills of Sale Acts, 1878 and 1882."

"**Personal chattels.**" The Act of 1878 declares that—"The expression 'personal chattels' shall mean goods, furniture, and other articles capable of complete transfer by delivery, and (when separately assigned or charged) fixtures and growing crops; but shall not include chattel interests in real estate, nor fixtures (except trade machinery as hereinafter defined) when assigned together with a freehold or leasehold interest in any land or building to which they are affixed; nor growing crops when assigned together with any interest in the lands on which they grow; nor shares or interests in the stock, funds, or securities of any government, or in the capital or property of incorporated or joint stock companies; nor choses in action; nor any stock or produce upon any farm or lands which by virtue of any covenant or agreement, or of the custom of the country, ought not to be removed from any farm where the same are at the time of making or giving such bill of sale."

"**Trade machinery.**" Sect. 5 of the Act of 1878 provides as follows:—"From and after the commencement of this Act trade machinery shall, for the purposes of this Act, be deemed to be personal chattels, and any mode of disposition of trade machinery by the owner thereof which would be a bill of sale as to any other personal chattels shall be deemed to be a bill of sale within the meaning of this Act. For the

purposes of this Act:—'Trade machinery' means the machinery used in or attached to any factory or workshop: § 14.

1st. Exclusive of the fixed motive powers, such as the water wheels and steam engines, and the steam boilers, donkey engines, and other fixed appurtenances of the said motive powers; and

2nd. Exclusive of the fixed power machinery, such as the shafts, wheels, drums, and their fixed appurtenances, which transmit the action of the motive powers to the other machinery, fixed and loose, and

3rd. Exclusive of the pipes for steam, gas, and water in the factory or workshop.

The machinery or effects excluded by this section from the definition of trade machinery shall not be deemed to be personal chattels within the meaning of this Act.

'Factory or workshop' means any premises on which any manual labour is exercised by way of trade, or for purposes of gain, in or incidental to the following purposes or any of them; that is to say,

(*a*) In or incidental to the making any article or part of an article; or,

(*b*) In or incidental to the altering, repairing, ornamenting, finishing, of any article; or

(*c*) In or incidental to the adapting for sale any article."

Attornments, &c.—By sect. 6 of the Act of 1878, it is provided that "Every attornment, instrument, or agreement, not being a mining lease, whereby a power of distress is given or agreed to be given by any person to any other person by way of security for any present, future, or contingent debt or advance, and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance, or otherwise for the purpose of such security only, shall be deemed to be a bill of sale, within the meaning of this Act, of any personal chattels which may be seized or taken under such power of distress. Provided that nothing in this section shall extend to any mortgage of any estate or interest in any land, tenement, or hereditament which the mortgagee, being in possession, shall have demised to the mortgagor as his tenant at a fair and reasonable rent."

Separate assignment.—By sect. 7 of the Act of 1878, it is provided that "No fixtures or growing crops shall be deemed, under this Act, to be separately assigned or charged by reason only that they are assigned by separate words, or that power is given to sever them from the land or building to which they are affixed, or from the land on which they grow, without otherwise taking possession of or dealing with such land or building, or land, if by the same instrument any freehold or leasehold interest in the land or building to which such fixtures are affixed, or in the land on which such crops grow, is also conveyed or assigned to the same persons or person."

With reference to the above it may be convenient here to refer to a few leading decisions on the Acts.

The Acts deal with the registration of *instruments*, not of transactions. "It is to be borne in mind," said Fry, L. J., in *United Forty-pound Loan Club* v. *Bexton*, (1891) 1 Q. B. 28, n., "that these statutes do not require that any transaction shall be put into writing; they only

§ 14. require that if a transaction be put into writing and be of a particular character, then that it shall be registered: otherwise it shall be void."

Pledges.—Thus where goods are pledged as security for a loan and *delivered to the pledgee*, a document signed by the pledgor recording the transaction and regulating the rights of the pledgee as to the sale, is not a bill of sale. *Ex parte Hubbard*, (1896) 17 Q. B. D. 690.

Possession before instrument.—So, too, an oral agreement giving security followed by possession is not a bill of sale, even though afterwards, or simultaneously therewith, a document is drawn up and signed recording the arrangement. *Charlesworth* v. *Mills*, (1892) A. C. 231; *Ramsay* v. *Margrett*, (1894) 2 Q. B. 18.

When *Charlesworth* v. *Mills* was before the Court of Appeal (25 Q. B. D. 425), Lord Esher considered that such a record must be a bill of sale, because where the terms of an agreement are reduced to writing, the written document must be adduced in evidence in order to prove the title; but on appeal this notion was held to be erroneous, and Lord Halsbury, L. C., said that it appeared to him that there had been a confusion, both in the argument and in one of the judgments, between what it was necessary to establish in a court of law where you are proving a transaction and the operative part of a transaction already completed.

Inventories and receipts.—"Inventories of goods with receipt attached thereto" are not bills of sale unless it is made out that they are instruments on which the title of the transferee depends. Hence, if the transferee obtains title by an oral contract and payment, an inventory and receipt subsequently given do not constitute a bill of sale. *Marsden* v. *Meadows*, 7 Q. B. D. 80; *Ramsay* v. *Margrett*, (1894) 2 Q. B. 18.

Licences to take possession.—The expression "Authorities and licences to take possession of personal chattels as security for any debt," means a licence to take possession against the will of the licensor—a licence to a person not in a position to take possession when he chooses. If the real transaction does not depend on the power of one party to take possession against the will of the other, but on the one voluntarily giving and the other receiving possession, that is not an authority or licence to take possession of personal chattels. *Per* Lord Esher, M. R., in *Ex parte Hubbard* (1886), 17 Q. B. D. 697; and see *Charlesworth* v. *Mills*, (1892) A. C. 231.

A licence to sell chattels implies a licence to seize. *Per* Romer, J., *Johns* v. *Ware*, (1899) 1 Ch. 363. Hence an oral charge, coupled with a written power to sell, is a bill of sale.

"Right in equity." This expression means a right in equity as distinguished from a legal right. *Reeves* v. *Barlow*, 12 Q. B. D. 439; *Ex parte Hubbard*, 17 Q. B. D. 700. Accordingly the words do not cover a document which only regulates the exercise of a legal right. *Per* Bowen, L. J., in the case last mentioned.

Agreement for bill of sale.—An agreement to give a bill of sale need not be registered as a bill of sale; that is to say, non-registration

does not render it void, and accordingly the Court can without registration make an order for specific performance of such an agreement, or give damages for the breach thereof. *Ex parte Homan, Re Broadbent*, 12 Eq. 598; *Ex parte Hauxwell*, 23 C. D. 627.

But an instrument which only gives a right in equity is clearly within the words of the statute, "by which a right in equity to any personal chattels or any charge or security thereon shall be conferred." In this respect the Act of 1878 precludes the contention on the Act of 1854 advanced, though without success, in *Ex parte Mackay*, 8 Ch. 643.

Sale and hiring agreement.—Sometimes parties desiring to raise money prefer to carry the thing through by a sale of property coupled with a right of repurchase. This, if done *bonâ fide*, is not an evasion of the Act, for "there is all the difference in the world between a mortgage and a sale with a right of repurchase; but if the transaction is completed by redemption or repurchase, as the case may require, there is no difference in the actual result." *Per* Lord Macnaghten, *North Central Waggon Co.* v. *Manchester, &c. Rail. Co*, 13 App. Cas. 544.

In the case last mentioned a sale and purchase was made, and was followed by a hiring agreement. The sale and purchase was oral and the hiring agreement in writing, and it was held that the latter was not a bill of sale, inasmuch as the transaction of sale and purchase was complete without any assurance of any kind.

Where, however, it is found as a fact that there is no real sale and purchase, and that the object is to create a security for money, the documents may be held to be a bill of sale. *Re Walton*, 25 Q. B. D. 27.

An attornment clause in a mortgage of land, whereby in effect a power of distress arises, is a bill of sale. *Ex parte Kennedy*, 21 Q. B. D. 384, C. A.

Mortgage conveying trade machinery.—Where a deed conveys landed property on which there is trade machinery, without any express words dealing with the trade machinery, it is not a bill of sale, and the trade machinery will pass as fixtures (*Re Yates; Batchelor* v. *Yates*, 38 C. D. 112), and it has been held that the same rule applies even where the instrument purports to convey the land together with the fixed trade machinery thereon, for it is considered that this is a mere expression of what is otherwise implied, and the rule is that *expressio eorum quæ tacitè insunt nihil operatur*. *Brooke* v. *Brooke*, (1894) 2 Ch. 600.

On the other hand, it has been held that if the conveyance purports to convey the land together with all and singular the fixed and moveable plant, machinery and fixtures, it may be a bill of sale even as to the fixtures. *Small* v. *National Provincial Bank of England*, (1894) 1 Ch. 686.

The test whether a mortgage of a building and fixtures requires registration under the Bills of Sale Act as respects the fixtures, laid down by *Ex parte Barclay* (1874), L. R. 9 Ch. 576, namely, that it depends on whether the deed gives power to the mortgagee to sell or take possession of the fixtures separately from the building, is not limited to leaseholds, but is equally applicable to a mortgage of freeholds, notwithstanding that in the latter case fixtures might be deemed to pass as part of the fee simple. *Johns* v. *Ware*, (1899) 1 Ch. 359.

§ 14.

Debentures of a company charging its undertaking and all its property, both present and future, were held not to require registration under the Bills of Sale Act, 1878. *Standard Manufacturing Co.*, (1891) 1 Ch. 627. But they clearly come under paragraphs (a) and (d) of sub-sect. (1) of this section.

Renewable bills of sale.—Under the Act of 1854, it was held that if a bill of sale was given by A. to B., it was open to the parties to make an arrangement for renewal of that and any succeeding bills within the twenty-one days allowed for registration, and thus avoid or postpone the necessity for registration. It was contended that such an arrangement was an evasion of the Act, but the contrary was held. *Ramsden* v. *Lupton*, 9 Q. B. 17. By sect. 9 of the Bills of Sale Act, 1878, such arrangements were invalidated. The Companies Act, 1900, however, contains no corresponding provision, and accordingly it would seem that the scheme of successive bills of sale will be open for adoption.

Power of attorney to give bill of sale.—Where the giving of an immediate bill of sale is undesirable, the company can give the lender a power of attorney to execute in certain events a bill of sale on the company's behalf. *Furnivall* v. *Hudson*, (1893) 1 Ch. 335.

Rectification of register.

15. A judge of the High Court, on being satisfied that the omission to register a mortgage or charge within the time required by this Act, or the omission or misstatement of any particular with respect to any such mortgage or charge, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief may, on the application of the company or any person interested, and on such terms and conditions as seem to the judge just and expedient, order that the time for registration be extended, or, as the case may be, that the omission or misstatement be rectified.

"**A Judge of the High Court.**" The application, in default of rule, may be made by motion or summons.

"**Inadvertence**" has been defined judicially as meaning negligence or carelessness where the circumstances show an absence of bad faith. *Per* Huddleston, B., *Ex parte Lenanton* (1889), 53 J. P. 262; see also *Re Jackson & Co.*, (1897) 1 Ch. 348, where ignorance of law was held "inadvertence," and other cases in Company Precedents, Part II., p. 676.

"**Just and equitable.**" These words are very wide: they give the Court the fullest judicial discretion, and no doubt will be held to include a case in which the company has wilfully omitted to register and the application is made by the party prejudiced.

The corresponding power to rectify, available under the Bills of Sales Act, 1878 (s. 14), is more limited: it only gives power where the omission was accidental or due to inadvertence, and it has been held that the Court will not exercise the power to rectify where the non-registration was due to inadvertence if the rights of third parties have become vested, *e.g.*, where the grantor has become bankrupt, and the right of his trustee in bankruptcy has therefore become vested. *Ex parte Farber*, (1893) 2 Q. B. 122.

"**On the application of the company or any person interested.**" The company may make the application, but "any person interested" may also apply. This expression means, it is apprehended, any person who is interested under the mortgage or charge.

"**On such terms and conditions.**" Hence the Court may impose conditions, *e.g.*, that *notice* should be given of the order.

Entry of satisfaction.

16. The registrar may, on evidence being given to his satisfaction that the debt for which any registered mortgage or charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall if required furnish the company with a copy thereof.

Index to registers of mortgages and charges.

17. The registrar shall keep a chronological index, in the prescribed form and with the prescribed particulars, to the mortgages or charges registered under this Act.

Penalties.

18. If any company makes default in complying with the requirements of this Act as to the registration of any mortgage or charge created by the company, the company and every director, manager, and other officer of the company, who knowingly and wilfully authorised or permitted such default shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding one hundred pounds; and if any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock required by this Act to be registered, without a copy of the certificate of the registrar being endorsed upon it, he shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding one hundred pounds.

This section imposes a penalty, not exceeding 100*l.*, for the breach of the latter part of sub-sect. 6 of sect. 14, which applies in the case of a series of debentures registered under sub-sect. 4.

But the drafting of sect. 18 is defective, for it speaks of a "certificate of debenture stock required by this Act to be registered." But

§ 18. the Act does not require such a *certificate* to be registered; it only requires the mortgage or charge by which payment is secured to be registered.

"'Wilfully,' means that the act is done deliberately and intentionally, not by accident or inadvertence, but so that the mind of the person who does the act goes with it." *Per* Lord Russell, C. J., *Reg.* v. *Senior*, (1899) 1 Q. B. 283, 290.

Enforcement of penalties. This Act imposes a number of penalties, and as it is (sect. 32) to have effect as part of the Act of 1862, it follows that the provisions of that Act as to the recovery of penalties are applicable. Those provisions are contained in sects. 65 and 66, which in effect provide that all offences under the Act made punishable by any penalty may be prosecuted summarily before one or more justices, and that the justices may direct the whole or any part of any penalty imposed to be applied in or towards payment of the costs of the proceedings, or in or towards rewarding the persons upon whose information or at whose suit such penalty has been recovered.

By virtue of sect. 29 of the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), it is in effect provided that any of the stipendiary magistrates of the Metropolitan Police Courts, or any stipendiary magistrate for any county, borough, or place, shall have power to do alone whatever is authorized to be done by one or more justice or justices; and under sect. 30 of the same Act the Lord Mayor of London and any alderman sitting at the Mansion House or Guildhall is empowered to do any act allowed to be done by any one justice.

Proceedings for the recovery of penalties may therefore be taken by any one, including a common informer.

Annual Summary.

Annual Summary. 25 & 26 Vict. c. 89.

19.—(1.) The summary mentioned in sect. 26 of the Companies Act, 1862, shall be so framed as to distinguish between the shares issued for cash and the shares issued otherwise than for cash or only partly for cash, and shall, in addition to the particulars required by that section to be specified, also specify—

(*a*) the total amount of debt due from the company in respect of all mortgages and charges which require registration under this Act, or which would require such registration if created after the commencement of this Act; and

(*b*) the names and addresses of the persons who are the directors of the company at the date of the summary.

(2.) The list and summary mentioned in the said sect. 26 must be signed by the manager or by the secretary of the company.

Section 26 of the Companies Act, 1862, is as follows:—

26. Every company under this Act, and having a capital divided

§ 19.

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.

"The total amount of debt," &c. This is an entirely new departure. It will render the annual summary much more enlightening as to the company's position; but it is obvious that the particulars required will not necessarily disclose the whole of the company's mortgages or charges, inasmuch as there are, or may be, mortgages or charges not requiring registration.

See Form 40 in Appendix.

20. Sections 45 and 46 of the Companies Act, 1862, shall apply to companies having a capital divided into shares, and the words "and not having a capital divided into shares" in those sections shall be repealed. Amendment of 25 & 26 Vict. c. 89, ss. 45, 46.

The sections here referred to are in the terms following:—

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 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.

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

§ 20. any change that takes place in such directors or managers, such delinquent company shall incur a penalty not exceeding 5*l.* for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur a like penalty.

Audit.

Appointment of auditors.

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

(2.) If an appointment of auditors is not made at an annual general meeting, the Board of Trade may, on the application of any member of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid to him by the company for his services.

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

(4.) The first auditors of the company may be appointed by the directors before the statutory meeting, and if so appointed shall hold office until the first annual general meeting, unless previously removed by a resolution of the shareholders in general meeting, in which case the shareholders at such meeting may appoint auditors.

(5.) The directors of a company may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors (if any) may act.

This and the two following sections depart, to some extent, from the provisions usually inserted in articles of association, and from those in Table A. In future, it seems desirable to frame the articles in accordance with the sections, for they must have effect.

Whether these sections apply to banking companies, in regard to which special provisions are made by the Companies Act, 1879, is, perhaps, not quite clear, but it is apprehended that the general enactment should not be held to interfere with the special legislation of the Act of 1879. *Generalia specialibus non derogant.*

"**Every company.**" That is to say, every company "registered under the Companies Acts." See sect. 30.

Remuneration of auditors.

22. The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting, or to fill any casual vacancy, may be fixed by the directors.

"**Except that,**" &c. If the statutory meeting referred to in the section means the meeting referred to in sect. 12, as it is submitted it does, it should be observed that that section only applies in the cases of companies limited by shares, and registered after the 31st December, 1900. Except, therefore, in the case of such a company, the articles ought to expressly authorise the directors to fix the remuneration of the first auditors.

23. Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors, and the auditors shall sign a certificate at the foot of the balance sheet stating whether or not all their requirements as auditors have been complied with, and shall make a report to the shareholders on the accounts examined by them, and on every balance sheet laid before the company in general meeting during their tenure of office; and in every such report shall state whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs as shown by the books of the company; and such report shall be read before the company in general meeting.

Rights and duties of auditors.

Where applicable. It would seem that the provisions contained in sections 21, 22 and 23 of the Companies Act, 1900, are supplemental to, and not in substitution for, provisions as to audit contained in the Companies Act, 1879 (where applicable), and in articles of association or regulations of a company, and, accordingly, that the Act of 1900 does not relieve an auditor from the necessity of complying with such provisions, even though the latter impose obligations beyond those imposed by the Act of 1900. In so far, however, as the Act of 1900 is inconsistent with the earlier provisions, the Act must, of course, prevail.

And it may be that sections 21, 22 and 23 of the Act of 1900 should be held in no way to apply to banking companies subject to the Act of 1879. *Generalia specialibus non derogant.* See *Garnett* v. *Bradley*, 3 App. Cas. 944, 952.

"**Books and accounts and vouchers.**" These words, it is apprehended, mean all the books, not merely the books of account of the company. Hence they include the minute book and letter books.

"**Requirements.**" This word appears to be used in its popular sense and not so as to refer merely to what the auditor is entitled to require under the preceding words of the section.

§ 23. Where the auditor's requirements are not complied with the auditor should specify in his certificate in what respects they have not been complied with; and if there is no balance-sheet on which to place the certificate then the auditor should so specify in his report. But if the specification of the instances of non-compliance be lengthy there seems no objection to the certificate stating that all the requirements have not been complied with without specification of details, provided that it refers to the report for the details.

"**Sign a certificate . . . . and shall make a report.**" The certificate and report referred to in sect. 23 must be separate and separately signed, even though both be placed on the balance-sheet. There would, however, be no objection, if it be desired, to connect the certificate with the report by inserting in the certificate a reference to the "subjoined" or "accompanying" report; and, as an alternative, where thought expedient, the certificate might set out the report verbatim, thus:—I certify, &c., and I report to the shareholders that, &c. Signed A. B. If, however, this course be adopted, it will still be necessary that the auditor should make and sign the report separately, and send it in to the directors to be placed before the shareholders.

As regards the form of certificate, it may run thus:—

"AUDITOR'S CERTIFICATE.

"In accordance with the provisions of the Companies Act, 1900, I certify that all my requirements as auditor have been complied with."

And the report might run thus:—

"To the Shareholders of the —— Company, Limited.

"AUDITOR'S REPORT.

"I have audited the above balance-sheet [*or*, the company's balance-sheet, dated the —— day of ——], and in my opinion such balance-sheet is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs as shown by the books of the company."

"**As shown by the books.**" These words do not, it is apprehended, limit the auditor's duties to a comparison of the figures. No doubt he has to examine the books; but, as Lord Justice Lindley said, *In re The London and General Bank*, (1895) 2 Ch. 683: "He does not discharge his duty by doing this without inquiry, and without taking any trouble to see that the books themselves show the company's true position. He must take reasonable care to ascertain that they do so."

Winding-up.

Application of 33 & 34

24. The provisions of sect. 2 of the Joint Stock Companies Arrangement Act, 1870, shall apply not only as between the com-

pany and the creditors, or any class thereof, but as between the company and the members, or any class thereof. § 24. Vict. c. 104, s. 2.

This alteration is an improvement on the law as it stood before the Act, for, although under the Act of 1870 it was long since held that an arrangement or compromise where there were several classes of creditors could modify the rights of such classes *inter se*, there was no power where there were several classes of members to modify their rights *inter se*. This section, however, gives the requisite power, and no doubt it will be useful in some cases.

Thus, if in a winding-up there are preference shares entitling their holders to a preference as regards capital, and ordinary shares, it will be possible to adopt a scheme under which the holders of both classes of shares will be bound to take paid-up shares in a new company in specified proportions, but of the same class.

25. In a voluntary winding-up an application under sect. 138 of the Companies Act, 1862, may be made by any creditor of the company. Amendment of 25 & 26 Vict. c. 89, s. 138, as to applications.

This section distinctly improves the Act of 1862 and removes what in practice has been found a serious defect. Section 138 of the Act of 1862 only gives power to the liquidator or any contributory of the company to apply to Court in a voluntary winding-up, hence it was long since held that a creditor could not apply.

He might see the winding-up mismanaged and delayed, but he had no right to apply to the Court having jurisdiction to order the company to be wound up for directions to the liquidator; his remedy was to apply for a winding-up order. (See *Poole Fire Brick and Blue Clay Company* (1873), 17 Eq. 268.)

In all cases the unpaid creditors of a company which is being wound up voluntarily are interested, and where the company is insolvent are exclusively interested in the winding-up thereof, and it certainly seemed unreasonable that those who were so interested had no *locus standi* to apply to the Court for directions, especially as any contributory, however small or remote his interest, was in a position at once to apply.

Under this section a creditor will be able amongst other things to apply for an order on the liquidator to admit his claim, or for directions to the liquidator as to the conduct of the winding-up in any specified particular, or for an order that the liquidator shall do or abstain from doing some particular thing, or for an order that the liquidator shall bring in and pass his accounts; and there will be many other cases in which applications will be available. The alteration made by this section would seem in a great measure to render supervision orders needless in future. The special features of a supervision order were that creditors could apply, and that actions, &c. against the company were *ipso facto* stayed, but now, without a supervision order,

§ 25. creditors can apply, and the Court can make an order to restrain or stay actions and other proceedings.

Defunct Companies.

Amendment of law as to striking names of defunct companies off register.

26.—(1.) Where a company is being wound up and the registrar has reasonable cause to believe that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months after notice by the registrar demanding the returns has been sent by post to the registered address of the company, or to the liquidator at his last known place of business, the provisions of sect. 7 of the Companies Act, 1880, shall apply in like manner as if the registrar had not within one month after sending the second letter therein mentioned received any answer thereto.

43 Vict. c. 19.

(2.) In sub-sect. (5) of the said sect. 7, after the words "or member," in each place where they occur, shall be inserted the words "or creditor," and in the same sub-section, after the word "operation," the words "or otherwise" shall be substituted for the word "and."

As amended, sect. 7 of the Act of 1880 appears to run as follows:—

(1.)—(a) Where the registrar of joint stock companies has reasonable cause to believe that a company, whether registered before or after the passing of this Act, is not carrying on business or in operation, or (b) where a company is being wound up and the registrar has reasonable cause to believe that no liquidator is acting, or that the affairs of the company are fully wound up [in the case of (a)] he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation [and he may, in the case of (b) send by post to the registered address of the company, or to the liquidator at his last-known place of business, a notice demanding the returns required to be made by the liquidator].

(2.) If [in the case of (a)] the registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received by the registrars and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the *Gazette* with a view to striking the name of the company off the register.

(3.) If [in the case of (a)] the registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer thereto, [or, if in the case of (b)] the returns required to be made by the liquidator have not been made for a period of six consecutive months after notice by the registrar demanding the

returns has been sent by post to the registered address of the company, or to the liquidator at his last-known place of business, [then, in either the case of (a) or (b)] the registrar may publish in the *Gazette* and send to the company a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register, and the company will be dissolved.

(4.) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by such company, strike the name of such company off the register, and shall publish notice thereof in the *Gazette*, and on the publication in the *Gazette* of such last-mentioned notice the company whose name is so struck off shall be dissolved: Provided that the liability (if any) of every director, managing officer, and member of the company shall continue and may be enforced as if the company had not been dissolved.

(5.) If any company or member *or creditor* thereof feels aggrieved by the name of such company having been struck off the register in pursuance of this section, the company or member *or creditor* may apply to the Superior Court in which the company is liable to be wound up; and such Court, if satisfied that the company was at the time of the striking off carrying on business or in operation, *or otherwise* that it is just so to do, may order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if the name thereof had never been struck off; and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had never been struck off.

(6.) A letter or notice authorized or required for the purposes of this section to be sent to a company may be sent by post addressed to the company at its registered office, or, if no office has been registered, addressed to the care of some director or officer of the company, or if there be no director or officer of the company whose name and address are known to the registrar, the letter or notice (in identical form) may be sent to each of the persons who subscribed the memorandum of association, addressed to him at the address mentioned in that memorandum.

(7.) In the execution of his duties under this section the registrar shall conform to any regulations which may be from time to time made by the Board of Trade.

(8.) In this section the *Gazette* means, as respects companies whose registered office is in England, the *London Gazette;* as respects companies whose registered office is in Scotland, the *Edinburgh Gazette;* and as respects companies whose registered office is in Ireland, the *Dublin Gazette.*

But it must be admitted that sect. 26 of 1900 is open to another construction, and that the enactment therein, that "the provisions of sect. 7 of the Companies Act, 1880, shall apply [in like manner as if the registrar had not within one month after sending the second letter therein mentioned received any answer thereto]," in case of the liquidator's return not being made, may mean that where the returns "have not been made for a period of six consecutive months" before the registrar demands them, and then after his demand the returns

§ 26. are not sent within a month the registrar may proceed to publish in the *Gazette*, &c.

As to the returns, see Part II., 8th ed., pp. 737, 738; and also pp. 274 *et seq.*

Companies limited by Guarantee.

Provisions as to companies limited by guarantee.

27.—(1.) A company limited by guarantee shall not be capable of having a capital divided into shares, unless the memorandum of association so provides, and specifies the amount of its capital (subject to increase or reduction in accordance with the Companies Acts) and the number of shares into which the capital is divided.

Under sect. 9 of the Companies Act, 1862, it was *not* necessary, in the case of a company limited by guarantee, to specify the capital in the memorandum of association; it was sufficient, as appears by sect. 14 of the Act and Form C in the second schedule, to specify the capital in the articles of association, and that capital (being a regulation, not a condition) could be altered from time to time by special resolution. Hence the power to increase and reduce capital, conferred by sect. 12 of the Act of 1862 and sect. 9 of the Act of 1867, and by the Act of 1877 was only given to a "company limited by shares," and not to a company limited by guarantee with a capital divided into shares. But this sub-section renders it necessary henceforth to specify the capital in the memorandum. In the result, the capital becomes a "condition" of the memorandum, which can only be altered (see sect. 12 of the Act of 1862) in the manner permitted by the Acts. Nevertheless, the words "subject to increase or reduction in accordance with the Companies Acts" indicate, it is submitted, an intention that the provisions of the Acts of 1862, 1867 and 1877, as to increase and reduction, shall apply, although those provisions are in terms only applicable to companies limited by shares. None of the other powers by the Acts expressed to be given exclusively to companies limited by shares are, by this section, made applicable to companies limited by guarantee, *e.g.*, power to consolidate shares, and to convert shares into stock, sect. 12 of the Act of 1862; power to sub-divide shares, sect. 21 of the Act of 1867; power to issue share warrants, sect. 27 of the Act of 1867.

The special feature of companies limited by guarantee, with a share capital, was that the hard and fast rules as to capital applicable in the case of a company limited by shares were relaxed, and the shareholders could, by special resolution, deal with the capital as they chose. The destruction of this feature takes away the principal inducement to register this form of company instead of a company limited by shares. Nevertheless, it may still be desirable, in some cases, to form companies limited by guarantee with a nominal capital divided into shares, for it will be possible in such a company to have two classes of members—namely, those who hold shares and those who are members without holding shares, *e.g.*, a class of persons who may be called the founders, and to whom a share of the profits may be given. This would not be in contravention of sub-section (3). Moreover, companies of this kind are exempt from sects. 7 and 12 of the Act of 1900 as to returns of allotments and the statutory meeting.

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(2.) Every provision in any memorandum or articles of association or resolution of a company (whether limited by guarantee or otherwise) purporting to divide the undertaking of the company into shares or interests shall for the purposes of this section be treated as a provision for a capital divided into shares, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

This sub-section is curiously expressed. It does not apparently make void any such provision, for the language is very different to that used in sub-sect. (3). It appears to recognise that a memorandum may contain a provision dividing the undertaking into shares and yet not specifying the nominal amount or number of the shares, and it declares that such a provision shall, for the purposes of this section, be treated as a provision for a capital divided into shares. Perhaps the true construction is that the Legislature is here dealing, not with registered documents, but with documents proposed to be registered; so that if a memorandum proposed to be registered states that the undertaking is divided into (say) 10,000 shares, it cannot, looking to paragraph (1), be registered unless it goes on to state the amount and number of the shares. If this be the true construction, the sub-section goes far to abolish a very convenient mode of constitution which has been occasionally adopted, *e.g.*, in the case of the Beira Railway Company, Limited. According to that mode the company was registered as a company limited by guarantee, and the articles stated that the undertaking was to be deemed to be divided into so many (say 100,000) shares [of no nominal value or amount], and the members became holders of those shares. There was no liability beyond the guarantee in respect of the shares unless the regulations imposed a liability, but of course, every member in the winding-up was liable for the amount guaranteed, say 10*l.* per member. Thus it was rendered possible to avoid the grave difficulty that sometimes arises in fixing the capital value of a speculative undertaking, and there were various other advantages incident to the mode of incorporation—a mode which borrowed its special features from the cost book mining company for centuries prevalent in Cornwall and Devon. Unfortunately, however, this mode incidentally enabled the parties to escape from the capital duty payable on a nominal capital, and obstacles were placed in the way of those who desired to register companies in accordance with this mode. Subsequently it was held by the High Court (*Malleson* v. *General Mineral Patent Syndicate, Limited*, 1894, 3 Ch. 538) that a company limited by guarantee could, by special resolution, adopt regulations dividing its undertaking into a number of shares as above; and this of course made it clear that these obstacles were unjustifiable, for it is well settled that a company cannot legally adopt by special resolution regulations which could not legally have been embodied in its original articles of association. Hence this sub-section.

There is, however, nothing in the section to prevent the adoption of the common expedient of vesting shares in trustees and declaring that the beneficial interest in such shares shall be regarded as a joint stock, and be deemed to be divided into a number of shares of no nominal amount, *e.g.*, 100,000, transferable either by the delivery of the

§ 27. certificates or by transfer registered in books kept by either trustees or other nominees. Moreover, the section does not appear to cover every mode of providing for a division of the undertaking into shares.

(3.) In the case of a company limited by guarantee and not having a capital divided into shares, every provision in the memorandum or articles of association or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

(4.) This section shall apply only to companies registered after the commencement of this Act.

False Statements.

Penalty for false statement.

28. If any person in any return, report, certificate, balance sheet, or other document, required by or for the purposes of this Act, wilfully makes a statement false in any material particular, knowing it to be false, he shall be guilty of a misdemeanor, and shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, with or without hard labour, and on summary conviction to imprisonment for a term not exceeding four months, with or without hard labour, and in either case to a fine in lieu of or in addition to such imprisonment as aforesaid: Provided that the fine imposed on summary conviction shall not exceed one hundred pounds.

"**Required by or for the purposes of this Act.**" The documents thus referred to are:—

The certificate of incorporation mentioned in sect. 1.
The statutory declaration referred to in sect. 1.
The list of persons who consented to be directors referred to in paragraph 2 of sect. 2.
The statutory declaration referred to in sect. 6, paragraph 1 (*c*).
The certificate mentioned in sect. 6 (2).
The returns referred to in sect. 7, paragraph (*a*) and in paragraph (*b*).
The report referred to in sect. 12.
The certificates mentioned in sect. 12 (3) and in sect. 14 (6).
The particulars required for registration under sect. 14.
The returns referred to in sect. 19.
The notices referred to in sect. 45 of the Companies Act, 1862, as modified by sect. 20 of the Act.
The certificate and report and balance sheet referred to in sect. 23.

"**Wilfully.**" This word means that the act is done deliberately and intentionally, not by accident or inadvertence, but so that the

mind of the person who does the act goes with it. (*Per* Lord Russell, C. J., *Reg.* v. *Senior*, (1899) 1 Q. B. 291.) § 28.

Conversion of Stock into Shares.

Conversion of stock into shares. 25 & 26 Vict. c. 89.

29. Every company limited by shares, and which has in pursuance of the Companies Act, 1862, converted any portion of its shares into stock, may so far modify the conditions in its memorandum of association, if authorised to do so by its articles as originally framed or as altered by special resolution in manner provided in the Companies Act, 1862, as to reconvert such stock into paid-up shares of any denomination.

This is a useful addition to the Acts. The section is not framed like sect. 9 of the Act of 1867. It does not say that the company, if authorised by its regulations, may *by special resolution* so far modify, but merely that a company may do it if authorised by its regulations. Hence, if the articles contain the requisite power to reconvert stock into paid-up shares, that power can be exercised in the manner therein specified, *e.g.*, by the directors or by the company in general meeting, or by special resolution. And if the articles do not contain the requisite power the reconversion can nevertheless be effected by a single special resolution (see *Campbell's Case*, 9 Ch. 1), or the special resolution can insert the power in the articles and at the same time vest that power in the directors, so that they can, the moment the resolution is passed, effect the reconversion.

When the reconversion is effected otherwise than by special resolution, there is no such provision for giving notice to the registrar as there is in the case of a conversion of shares into stock. (See sect. 28 of 1862.)

Supplemental.

Definitions.

30. In this Act, unless the context otherwise requires,—

The expression "Companies Acts" means the Companies Act, 1862, and the Acts amending the same;

The expression "company" means a company registered under the Companies Acts;

The expression "director" includes any person occupying the position of director, by whatever name called;

The expression "registered" means registered under the Companies Acts;

The expression "prescribed" means prescribed by the Board of Trade;

The expression "prospectus" means any prospectus, notice, circular, advertisement, or other invitation, offering to the

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public for subscription or purchase any shares or debentures of a company;

The expression "debenture" includes debenture stock;

Other expressions have the same meanings as in the Companies Act, 1862.

"The expression 'prospectus,'" &c. The definition of the term prospectus, which is to have effect unless the context otherwise requires, is very material, and must steadily be borne in mind in relation to the foregoing sections of the Act.

In sect. 2 the expression is applicable subject to the qualification that the prospectus is one issued "by or on behalf of the company." In sect. 4 the definition applies without qualification, except that it only applies to a prospectus offering *shares for public subscription*. Sect. 8 only refers to prospectuses of companies offering *shares for public subscription*. In sect. 9 the definition is qualified by the presence of the words, "issued by or on behalf of a company or in relation to any intended company." In sect. 10 the definition is qualified by the words, "issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company."

Application of Act.

31. This Act shall, except as otherwise expressed, apply to every company, whether formed before or after the commencement of this Act [*i.e.*, 1st January, 1901].

The sections which affect companies registered before, as well as companies registered after, the commencement of this Act, are the following:—Ss. 1, 3, 4, 5, 7, 8, 9, 10, 13, 14 to 18, 19, 20, 21 to 23, 24, 25, 26, 28, 29, and 33 (2).

Construction of 53 & 54 Vict. c. 63, and of Act.

32. The Companies (Winding-up) Act, 1890, and this Act, shall have effect as part of the Companies Act, 1862; but nothing in this section shall be construed as extending the Companies (Winding-up) Act, 1890, to Scotland or Ireland.

Repeal.

33.—(1.) Sect. 25 of the Companies Act, 1867, and the other enactments mentioned in the schedule to this Act, to the extent specified in the third column of that schedule, are hereby repealed.

(2.) No proceedings under sect. 25 of the Companies Act, 1867, shall be commenced after the commencement of this Act.

"Section twenty-five," &c. The section is as follows:—"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 a

contract duly made in writing and filed with the Registrar of Joint Stock Companies at or before the issue of such shares."

This section is repealed, that is to say, as from January 1st, 1901, and in the result the provisions by the section superadded to those of the Act of 1862 are abrogated, and the provisions of the Act of 1862 in regard to payment for shares stand as originally framed and in force before the Act of 1867.

Under the Act of 1862 a shareholder is liable for the full amount of his shares save so far as the amount may have been paid up by a preceding holder of the same shares. This obligation is not very clearly expressed in the Act, but that it exists is clearly settled by many important decisions. The payment may be made either in cash, or by making over to the company property which it has power to acquire, or rendering it services, which it is willing to accept in satisfaction of the amount of the share or any specified portion thereof. See, further, Company Precedents, Part I., p. 183.

"No proceedings," &c. This is a very singular enactment. It merely prohibits proceedings under sect. 25 of the Act of 1867. It does not retrospectively repeal that section. It does not provide that shares intended to have been issued as paid up for a consideration other than cash, but by the operation of sect. 25 rendered payable in cash, are to be considered paid-up shares, or that the liability thereon is to be extinguished. It merely says that no proceedings shall be taken. Hence, if shares for a consideration other than cash have been issued as paid up between 1st September, 1867, and 1st January, 1900, and no sufficient contract was filed pursuant to sect. 25, the shares are to be taken to be payable in cash, and in a winding-up therefore they cannot be treated as paid-up shares for they were not validly issued as paid-up shares. Accordingly, in distributing the assets the other shareholders must first be paid off, and the holders of the so-called paid-up shares can only participate in the surplus. It will, however, be open to the holders of the so-called paid-up shares to apply for relief under the Companies Act, 1898, either before or after the winding-up.

Proceedings under sect. 25.—This means proceedings to enforce the liability to pay in cash imposed by section 25, that is to say, by bringing actions for calls while a company is a going concern, or by placing shareholders on the list of contributories and obtaining balance orders against them when the company is being wound up. Whether the sub-section precludes the company from making calls, setting off, or claiming a lien, or proceeding under the Act of 1862, is not clear.

Operation of repeals.—It must be borne in mind that sect. 38 of the Interpretation Act, 1889, provides that "Where this Act, or any Act passed *after* the commencement of this Act, repeals any other enactment, then, unless the contrary intention appears, the repeal shall not—

(*a*) Affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed, or

(*b*) Affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed, or

(*c*) Affect any investigation, legal proceeding or remedy in respect

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of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act had not been passed.

Application to Scotland.

34. This Act shall apply to Scotland, subject to the following provisions and modifications:—

(1.) "Solicitor of the High Court" shall mean enrolled law agent [see s. 1 (2)];

(2.) The provisions of this Act with respect to the registration of mortgages and charges shall not apply to companies registered in Scotland [see ss. 14—18];

(3.) All prosecutions for offences or fines shall be at the instance of the Lord Advocate or a procurator fiscal as the Lord Advocate may direct.

Commencement.

35. This Act shall, except as otherwise expressed, come into operation on the first day of January one thousand nine hundred and one.

Short title.

36. This Act may be cited as the Companies Act, 1900, and may be cited with the Companies Acts, 1862 to 1898.

See sect. 33.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
25 & 26 Vict. c. 89 ..	The Companies Act, 1862.	Section eighteen, from "A certificate" to the end of the section. In sections forty-five and forty-six, the words "and not having a capital divided into shares." Section one hundred and ninety-two.
30 & 31 Vict. c. 131..	The Companies Act, 1867.	Sections twenty-five, thirty-eight, and thirty-nine.

APPENDIX.

TABLE OF FORMS.

PARTICULARS.

APPENDIX.

FORMS.

The Companies Acts, 1862 to 1900.

[5*s*. registration stamp.]

Form 1.

Statutory declaration on registration of company.

DECLARATION OF COMPLIANCE with the requisitions of the Companies Acts, made pursuant to sect. 1 (2) of the Companies Act, 1900 (63 & 64 Vict. c. 48) on behalf of a company proposed to be registered as

The ——, Limited.

Presented for filing by ——.

I, —— of ——, solemnly and sincerely declare that I am [*state qualification*, as :—

a solicitor of the High Court engaged in the formation of the said company; *or*,

a person named as a director of the said company in the articles of association of the said company; *or*,

a person named as the secretary of the said company in the articles of association of the said company]

and that all the requisitions of the Companies Acts, 1862 to 1900, in respect of matters precedent to the registration of the said company and incidental thereto have been complied with [save only the payment of the fees and sums payable on registration].

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act, 1835.

A declaration to the above effect must be produced to the Registrar of Joint Stock Companies on presenting the memorandum and articles for registration, and may be accepted by him as sufficient evidence of compliance with the Acts. See Companies Act, 1900, sect. 1.

The declaration must be made before a justice of the peace, notary

Form 1. public, or commissioner to administer oaths in the Supreme Court of Judicature.

The words "save only," &c. do not appear in the official form, but unless some such exception is introduced it will be difficult to make the declaration otherwise than at the registration office, after payment of the fees.

Form 2.

Contract to take qualification in proposed company. Sect. 2 of Act of 1900.

AN AGREEMENT made the —— day of ——, between A. of ——, B. of ——, C. of ——, and D. of —— (hereinafter called the proposed directors), of the one part, and M. as trustee for the company proposed to be formed as hereinafter mentioned, of the other part. Whereas it is proposed forthwith to register under the Companies Acts, 1862 to 1900, a company limited by shares, to be called the —— Company, Limited, with a capital of ——*l.* divided into —— shares of ——*l.* each. And whereas the articles of association of the said company have been prepared and have been approved by the parties hereto, and by the said articles the said A., B., C., and D. are named as the first directors, and by such articles it is declared that the qualification of a director is to be the holding of shares in the company of the nominal value of ——*l.*

Now therefore it is agreed as follows:—

1. Each of the proposed directors shall take from the company and pay for his qualification shares aforesaid, and the company shall be at liberty to allot the same to him.

2. If the company shall not within —— weeks from the date hereof become entitled to commence business, either of the parties hereto may by notice in writing to the other rescind this agreement, and after adopting this agreement the company shall for the purpose of this clause stand in the place of the said M.

3. The said M. shall use his best endeavours to procure the adoption hereof by the company.

4. Upon the adoption hereof by the company in such manner as to render the same binding on the company, the said M. shall stand discharged from all liability hereunder.

As witness, &c.

This agreement should be signed, if possible, before the articles of association are *signed*. It will not, however, be required where the directors have signed the memorandum of association for their qualification shares. See Companies Act, 1900, sect. 2.

No. of Certificate ——.

Form 3.

Consent to act as director.

The Companies Acts, 1862 to 1900.

[5*s*. registration stamp.]

CONSENT TO ACT AS DIRECTOR of The ——, Limited, to be signed and filed pursuant to sect. 2 (1) (i) of the Companies Act, 1900 (63 & 64 Vict. c. 48).

Presented for filing by ——.

To the Registrar of Joint Stock Companies.

I [we] the undersigned hereby testify my [our] consent to act as director[s] of The ——, Limited, pursuant to sect. 2 (1) (i) of the Companies Act, 1900.

[Tabular form in three columns:—(1) signature, (2) address, (3) description. If a director signs by "his agent authorized in writing," the authority must be produced and a copy filed.]

Dated, &c.

No. of Certificate ——, &c.

Form 3a.

Consent to act and be named in prospectus as director.

I [we] the undersigned hereby testify my [our] consent to act as a director [directors] of The ——, Limited, pursuant to s. 2 (1) of the Companies Act, 1900, and to my [our] name[s] being inserted as a director [directors] in the prospectus of the above company which it is proposed to issue, and I [we] authorize Messrs. —— of —— to file this consent with the Registrar of Joint Stock Companies, pursuant to section 2 of the Companies Act, 1900.

As witness my [our] hands this —— day of ——.

The consent is to be signed by the proposed director, or "by his agent authorized in writing." See sect. 2 of the Act of 1900.

If the consent is signed by an agent, add after the signature the words "by N. of ——, the duly authorized agent of the said A. B."

The document should be filed before or along with the articles and before the prospectus is published. See sect. 2 of the Act of 1900, *supra*, p. 4,

Form 3b.

Consent to naming in prospectus merely.

I [we] the undersigned hereby testify my [our] consent to my [our] name[s] being inserted as a director [directors] of The ——, Limited, and in the prospectus thereof which it is proposed to issue, and I [we] authorize Messrs. —— of ——, to file, &c. [as in Form 4].

The above form will be used where, after registration of the company, it is proposed to issue a prospectus offering shares for subscription and no such consent has previously been filed. See sect. 2 of the Act of 1900.

Form 4

List of persons consenting to be directors.

No. of Certificate ——.

The Companies Acts, 1862 to 1900.

[5*s*. registration stamp.]

List of the Persons who have consented to be Directors of The ——, Limited, to be delivered to the Registrar pursuant to sect. 2 (2) of the Companies Act, 1900 (63 & 64 Vict. c. 48).

Presented for filing by ——.

To the Registrar of Joint Stock Companies.

I [we] the undersigned hereby give you notice pursuant to sect. 2 (2) of the Companies Act, 1900, that the following persons have consented to be directors of The ——, Limited.

[Name, address, and description in tabular form under such three headings.]

Signature, address, and description of applicant for registration } ——

Dated, &c.

This list must be delivered to the registrar by the applicant for registration on making his application. See sect. 2 (2) of the Companies Act, 1900.

Form 5.

Memorandum of association.

The Companies Acts, 1862 to 1900.

Company limited by shares.

Memorandum of Association of The —— Company, Limited.

1. The name of the company is The —— Company, Limited.

2. The registered office of the company will be situate in England [*or* Scotland or Ireland, *as the case may be*].

3. The objects for which the company is established are:—

(1) To acquire, etc.

(2) To carry on, etc.

(3) Etc., etc.

4. The liability of the members is limited.

5. The capital of the company is ——*l.* divided into —— shares of ——*l.* each.

[6. The minimum subscription on which the directors may proceed to allotment is —— shares.]

Sect. 4 of the Companies Act, 1900, allows the specification of the minimum subscription to be in the memorandum *or* articles of association. But as a general rule it seems preferable to insert it in the articles of association.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names:—

Names, Addresses, and Descriptions of Subscribers.	No. of Shares taken by each Subscriber.

Dated the —— day of ——.

Witness to the above signatures:—

Where an agent signs, the proper plan is to sign thus:—"A. B., of ——, his duly authorized agent." And, to satisfy sect. 2 (1) (ii) of the Act of 1900, it should be stated that the agent is "duly authorized *in writing*." That the signature may be by an agent, see *Whitley Partners*, 32 C. D. 337.

Form 5.

In subscribing the memorandum, particulars should be taken that the signatures are legible. Not uncommonly one or more signatures are quite undecipherable. Where there can be any doubt, it is desirable to bring with the memorandum a clearly written list showing the names, addresses, and descriptions of the subscribers. As to descriptions, care should be taken to make these clear, especially where a subscriber has no profession. If needs be, insert the words "no occupation." In the case of a clerk, state what sort of position he holds, as, for instance, clerk to a merchant, or secretary to a public company.

There must be at least seven subscribers, but there may be as many more as the promoters choose. Each subscriber must take at least one share, and must write opposite to his name the number of shares he takes. Where the shares are of different classes, the class of shares should be stated, *e.g.*, "one preference," or "one ordinary."

By subscribing a person becomes bound to take from the company the shares set opposite his name, and to pay for them either in money or money's worth, and unless otherwise agreed he is bound to pay in money.

A subscriber becomes entitled to his shares without any further allotment. (*London and Provincial, &c. Co.*, 5 C. D. 525.) If, however, all the shares in the company are allotted to other persons, he will not be bound to take up the shares he has subscribed in the memorandum. (*Mackley's case*, 1 C. D. 247.)

By the joint operation of section 112 of the Stamp Act, 1891, and section 7 of the Finance Act, 1899, a statement of the amount which is to form the nominal share capital of any company to be registered with limited liability is to be delivered to the Registrar of Joint Stock Companies in England, Scotland, or Ireland, and a statement of any amount of increase of capital of any company, now registered or to be registered with limited liability, shall be delivered to the said registrar, and every such statement shall be charged with an *ad valorem* duty of 5*s.* for every 100*l.* and any fraction of 100*l.* over any multiple of 100*l.* of the amount of such capital, or increase of capital, as the case may be. Following are a few examples of the amount payable on the registration of the memorandum and articles of association of a company limited by shares:—

Nominal Capital.		*Amount Payable.*		
£		£	*s.*	*d.*
1,000	.....	5	15	0
5,000	.....	18	15	0
10,000	.....	32	10	0
20,000	.....	60	0	0
30,000	.....	87	10	0
50,000	.....	142	10	0
80,000	.....	225	0	0
100,000	.....	280	0	0
200,000	.....	535	0	0
500,000	.....	1,300	0	0
1,000,000	.....	2,551	5	0

Form 5.

REGISTRATION on and after 1st January, 1901.

The following directions as to procedure may be useful:—

(1) Prepare the memorandum of association. This, as provided by section 8 of the Companies Act, 1862, must specify—

(a) The name of the company, with the addition of the word "limited" as the last word of such name.

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

(c) The objects for which the proposed company is to be established.

(d) A declaration that the liability of the members is limited.

(e) The amount of capital with which the company proposes to be registered, divided into shares of a certain fixed amount.

There must be at least seven subscribers, and no subscriber is to take less than one share; and each subscriber must write opposite to his name his address and description and the number of shares he takes.

Anyone may be a subscriber, including a woman, whether married or not, and a foreigner, and, perhaps, even an infant. (See p. 4, *supra*.)

(2) The memorandum must bear a 10*s*. stamp; and must be signed by each subscriber in the presence of, and be attested by, one witness at the least.

(3) Prepare, also, the articles of association, unless the inconvenient course of registering without articles is to be adopted; and let those articles be framed with due regard to the Companies Act, 1900. (See Forms 6 to 21, *infra*.) And take particular care, if the company is to issue an invitation to the public to subscribe for shares, that the articles specify the minimum subscription, as provided for in sects. 4 and 6 of the Act of 1900.

(4) The articles of association should be expressed in separate paragraphs, and numbered arithmetically. They may adopt all or any of the provisions contained in Table A. to the first schedule to the Companies Act, 1862. They must be signed by the subscribers to the memorandum of association.

(5) Let the articles of association be printed and bear a 10*s*. stamp; and let them be signed by each subscriber in the presence of, and be attested by, one witness at the least.

(6) If any person is appointed by the articles a director, take care that he either subscribes the memorandum for his qualification, if any, or enters into an agreement to take up such qualification. (See Form 2, and sect. 2 of the Act of 1900.)

(7) Let all the persons who have consented to be directors sign a consent in writing, to be filed with the registrar. (See Form 3, and sect. 2 of the Act of 1900.)

(8) Prepare a list of persons who have consented to be directors, as by sect. 2 (3) required. (See Form 4.)

Form 5.

(9) Let a statutory declaration be made by a solicitor of the High Court engaged in the formation of the company, or by a person named in the articles of association as a director or secretary of the company, of compliance with the requisitions of the Acts in respect of registration and of matters precedent and incidental thereto. See Form 1.

(10) Take the memorandum and articles of association and the consents (Form 3), and the consent list (Form 4), and declaration, and any agreement to take qualification shares, to the Registrar of Joint Stock Companies, Somerset House, Strand, for registration, together with an authority in writing by the director to file his consent to act, and to file his contract to take qualification shares, and pay to the registrar the requisite fees on registration, namely, those fixed by Table B in the first schedule to the Companies Act, 1862, and the additional fee of 5*s.* per 100*l.* of capital imposed by the Finance Act, 1899.

(11) In the case of a private company let the application for registration be in the terms of Form 41 in Appendix.

(12) In due course the registrar will issue his certificate of incorporation.

Articles of Association.

Clauses in Relation to the Act of 1900.

In settling articles of association of a company, whether to be registered before or after the Companies Act, 1900, comes into operation (1st January, 1901), care should be taken to frame them in accord with that Act, and to provide for the various matters which under its enactments may or must be provided for. And it seems desirable, looking to the heavy penalties with which the Act bristles, to insert reminders of the directors' obligations under the Act—reminders which may perchance save them from some of the many pitfalls which the Legislature has prepared for them. No one may plead ignorance of law, but it takes, nevertheless, a long time before the provisions of an Act of Parliament are brought home to the mind of the average director. So, too, where an opportunity occurs of altering the articles of a company registered before the new Act comes into operation, it is desirable to alter them as above suggested.

Forms 6 to 21, *infra*, will afford an indication of what seems expedient.

Form 6.

Return of allotments.

As regards all allotments from time to time made, the directors shall comply with sect. 7 of the Companies Act, 1900.

The section referred to provides for returns to the registrar of allotments and contracts as to paid-up shares. Penalty for default, 50*l.* per day. (See *supra*, p. 20.)

The above clause should be inserted early in the articles.

Omit the words in brackets if the company is registered after 31st December, 1900.

Form 7.

Restrictions on allotments.

If the company shall offer any of its shares to the public for subscription :—

(a) The directors shall not make any allotment thereof unless and until at least —— per cent. of the shares so offered shall have been subscribed, and the sums payable on application shall have been paid to and received by the company; but this provision is no longer to apply after the first allotment of shares offered to the public for subscription has been made.

(b) The amount payable on application on each share so offered shall not be less than 5 per cent. of the nominal amount of the share.

The above clause embodies the leading provision of sect. 4 of the Companies Act, 1900. See *supra*, p. 10.
It may be useful as a reminder.

Form 8.

Underwriting and other commissions.

If the company at any time shall offer any of its shares to the public for subscription, the directors may exercise the powers conferred on the company by sect. 8 of the Companies Act, 1900, but so that the commission shall not exceed 10 per cent. on the shares in each case offered.

See as to these provisions, sect. 8, *supra*, p. 22, and the note to Form 29, *infra*.
In some cases it may be desirable to substitute the words "underwritten or placed" for the word "offered."

Form 9.

Commencement of business.

The directors shall not commence any business or exercise any of its borrowing powers until the company has become entitled to commence business within the meaning of sect. 6 of the Companies Act, 1900.

This clause will only be inserted where the company is registered after 31st December, 1900, and invites the public to subscribe for shares.

Form 10.

Register of mortgages and charges.

The directors shall duly comply with the requirements of sect. 14 of the Companies Act, 1900, in regard to its registration of mortgages and charges therein specified and otherwise.

Considering the serious liabilities which directors and others may incur by not complying with this section, it seems desirable to insert a reminder.

The clause can be inserted in the article relating to borrowing.

Form 11.

The statutory meeting.

The statutory meeting of the company shall, as required by sect. 12 of the Companies Act, 1900, be held within a period of not less than one month or more than three months from the date at which the company shall be entitled to commence business, and the directors shall comply with the other requirements of that section as to the report to be submitted and otherwise.

The above clause is a reminder of sect. 12 of the Act of 1900. See *supra*, p. 35.

Form 12.

Requisition for general meetings.

The directors may, when they think fit, and shall, on the requisition of the holders of not less than one tenth of the issued capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to convene an extraordinary general meeting of the company, and in the case of such requisition the following provisions shall have effect:—

(1) The requisition must state the objects of the meeting and must be signed by the requisitionists and deposited at the office and may consist of several documents in like form each signed by one or more requisitionists.

(2) If the directors of the company do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists or a majority of them in value may themselves convene the meeting, but any meeting so convened shall not be held after three months from the date of such deposit.

(3) If at any such meeting a resolution requiring confirmation at another meeting is passed, the directors shall forthwith convene a further extraordinary general meeting for the purpose of considering the resolution and if thought fit of confirming it as a special resolution, and if the directors do

not convene the meeting within seven days from the date of the passing of the first resolution, the requisitionists or a majority of them in value may themselves convene the meeting.

(4) Any meeting convened under this clause by the requisitionists shall be convened in the same manner as nearly as possible as that in which meetings are to be convened by directors.

The above clauses follow very closely the wording of sect. 13 of the Act of 1900. It is usual to provide in articles of association for meetings on requisition, and it seems desirable to adopt the statutory provision exclusively.

Qualification of Directors.

The Act of 1900 to some extent alters the law as regards qualification of directors, but it does not attempt to enact that the regulations of the company must in any case provide for a share qualification. On the contrary, it leaves it entirely to the company and its promoters to say whether the directors are to be bound to hold any qualification whatever; and apart from the Act there is no obligation to make in the regulations any provisions for such qualification, and in the absence of any such provision a person who does not hold any shares or any interest in the company can, nevertheless, be appointed to be a director. Table A to the Companies Act, 1862, contains no provision for qualification of directors.

This being so, it is for those who form a company to determine whether it is or is not desirable to impose a qualification. If a qualification is fixed by the articles of association sect. 2 of the Act of 1900 at once comes into operation and restricts the right in such case of a company inviting the public to subscribe for its shares to appoint a person as a director, or to name him in a prospectus, unless he complies with the conditions set out in that section—conditions which directors may not be very ready to comply with.

If in any case it is deemed inexpedient to impose these conditions, it is open to the subscribers to the memorandum and articles to omit any share qualification clause or to confine it to directors other than the first directors, or to provide that the qualification of the directors shall be fixed by resolution of the statutory meeting to be held pursuant to section 12 of the Companies Act, 1900. If any one of these alternatives be adopted the provisions of paragraphs 1 and 2 of section 2 of the Act of 1900 become inapplicable, at any rate until the time comes for issuing a prospectus. Besides section 2 of the Act of 1900, attention must be drawn to section 3 of the same Act. This section, although it is not confined to companies inviting subscriptions from the public for shares, again does not attempt to impose a qualification. All it provides in effect is that if there be a share qualification, and a director

Form 12. does not obtain his qualification within a limited time, he is to pay the company 5*l.* for every day during which he acts as an unqualified person. This provision will probably discourage directors from acting without qualification.

Form 13.
Appointment of first directors by articles.

The first directors shall be A. of ——, B. of ——, C. of ——, D. of ——, and E. of ——.

Where a clause as above is inserted and the company is about to issue a prospectus inviting public subscriptions for shares in its capital, sect. 2 of the Act of 1900 in regard to directors' qualifications must carefully be borne in mind. See *supra*, p. 4.

Form 14.
Subscribers to appoint first directors.

The first directors shall be appointed by instrument in writing signed by the subscribers to the company's memorandum of association or the majority of them.

When this form is adopted the company avoids the complications of sect. 2 of the Companies Act, 1900, in regard to the qualification of directors. See *supra*, p. 4.

Form 15.
Qualification of directors.

The qualification of a director shall be the holding of —— shares in the company; and if not already qualified he shall acquire the same within two months after his appointment.

Where a clause as above is inserted, sect. 2 of the Act of 1900 as to the qualification of the first directors must be borne in mind. If it is desired that they should not be bound to qualify, the words "unless he be one of the first directors" can be inserted after the word "director."

If preferred the following clause can be adopted :—

Form 16.
Another.

The qualification of the directors shall be the holding of such number of shares as shall be fixed by the statutory meeting, and a director then in office shall, if not already qualified, be bound to acquire his qualification within two months after that meeting.

A clause as above postpones the obligation to qualify until it is seen whether the company passes through the ordeal of the statutory meeting.

Form 17.

Vacating office.

A director who ceases to hold his qualification, or does not obtain the same within two months after his appointment, shall, *ipso facto*, vacate office, and a person vacating office under the foregoing circumstances shall be incapable of being re-appointed until he has obtained his qualification.

It seems desirable to so provide. See sect. 3 of the Companies Act, 1900.

Form 18.

Register of directors and notification of changes to registrar.

The company is to keep at its office a register containing the names and addresses and occupations of its directors and managers, and is to 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 and managers.

The above clause is in the terms of sect. 45 of the Companies Act, 1862, as modified by sect. 20 of the Act of 1900. It seems desirable to insert such a clause by way of reminder, but if preferred the clause can easily provide that the directors shall comply with sect. 45 of the Companies Act, 1862, as modified by sect. 20 of the Companies Act, 1900, in regard to keeping a register of directors and managers, and notifying changes to the registrar.

Form 19.

Audit provision.

The company at each ordinary general meeting shall appoint an auditor or auditors to hold office until the next ordinary general meeting, and the following provisions shall have effect, that is to say:—

(1) If an appointment of auditors is not made at an annual general meeting, the Board of Trade may, on the application of any member of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid to him by the company for his services.

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

(3) The first auditors of the company may be appointed by the directors before the statutory meeting, and if so appointed shall hold office until the first annual general meeting unless previously removed by a resolution of the shareholders in general meeting, in which case the shareholders at such meeting may appoint auditors.

(4) The directors of the company may fill any casual vacancy in the office of auditor, but while any such vacancy continues

Form 19.

the surviving or continuing auditor or auditors (if any) may act.

Remuneration of auditors.

(5) The remuneration of the auditors of the company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting or to fill any vacancy may be fixed by the directors.

Rights and duties of auditors.

(6) Every auditor of the company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors, and the auditors shall sign a certificate at the foot of the balance sheet stating whether or not all their requirements as auditors have been complied with, and shall make a report to the shareholders on the accounts examined by them and on every balance sheet laid before the company in general meeting during their tenure of office, and in every such report shall state whether in their opinion the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs as shown by the books of the company, and such report shall be read before the company in general meeting.

The above clause follows closely the provisions of sect. 21 of the Companies Act, 1900. (See *supra*, p. 52.) Audit clauses are usually inserted in articles, and it would be inconvenient if the articles made one set of provisions in regard to the matter whilst the statute made other provisions. No doubt the articles might be silent about audit, thus causing the statute to operate, but it has been customary to insert audit clauses, and it is convenient to set them out.

Form 20.

Re-conversion of stock into shares.

The company may re-convert stock into fully paid shares of any denomination.

An express power to do this must be inserted in the articles. (See sect. 29 of the Companies Act, 1900.)

Form 21.

Secretary.

The first secretary of the company shall be Mr. A. B., of &c., clerk [*or whatever he may be*].

Having regard to the fact that the secretary of the company is frequently mentioned in the Companies Act, 1900 (see especially sect. 1 (2)), it seems desirable to name him in the articles.

Form 21.

Directors.

The following points should be noted :—

1. If they are to be appointed by the articles of association and the company is to issue a prospectus inviting subscription for shares, they should see that sect. 2 is duly complied with.

2. They should bear in mind sect. 3, imposing a fine for acting without qualification.

3. They should bear in mind sect. 4 and the serious danger of personal liability for the return of subscriptions if the company allots shares in violation of sect. 4 of the Act of 1900.

4. They should remember their liability to pay damages for breach of sect. 4.

5. They should avoid, by complying with the Act of 1900, their liability to heavy fines under sect. 6 if the company commence business before it is entitled.

6. They should remember their power to pay underwriting and other commissions under sect. 8, and their liability for payments not authorized by paragraph (1) of that section.

7. They should bear in mind their duty as to filing prospectuses. (Sect. 9 of the Act of 1900.)

8. They should study under proper advice the elaborate and burdensome provisions of sect. 10 as to prospectuses and the disclosure to be made thereby, and should remember the liabilities of the directors for non-compliance.

9. They should have due regard to sect. 11 as to variation of contracts.

10. They should not forget their duties under sect. 12 of the Act as to statutory meetings.

11. They should not forget sect. 12 as to convening general meetings.

12. They should bear in remembrance sects. 14 to 19 as to registration of mortgages and charges and the penalties imposed on the directors.

13. They should not forget sect. 19 as to annual summaries, and sect. 20 as to keeping a register of directors and filing copy with the Registrar of Joint Stock Companies.

14. They should see that the provisions of sect. 23 as to audit are carried out, and above all that they do not subject themselves to the penalties of misdemeanour under sect. 28 as to false statements.

Finally, they should read the Act of 1900 most carefully and endeavour to understand it.

Form 22.

Agreement to take qualification shares by director

AN AGREEMENT made the —— day of——, between A. of ——, B. of ——, C. of ——, and D. of ——, of the one part, and the —— Company, Limited (hereinafter called "the company"), of the other part.

Form 22.

not appointed by articles but named in prospectus.

Whereas the said A., B., C., and D. have been duly appointed by the subscribers to the memorandum of association of the company to be directors thereof;

And whereas by the articles of association of the company the qualification of a director is declared to be the holding of —— shares;

And whereas the company is about to issue a prospectus inviting subscriptions for part of the said shares;

Now therefore it is agreed as follows:—

1. Each of them the said A., B., C., and D. shall take from the company and pay for his qualification shares aforesaid.

2. The company shall allot the said shares when and so soon as the shares taken up on the footing of cash payment plus the shares hereby subscribed shall together amount to the minimum subscription on which the directors may proceed to allotment, and not before that time.

3. The proposed directors shall pay for their said shares as to ——*l.* per share on allotment, and as to the balance by the instalments following, that is to say,

4. This agreement is provisional, and shall not be binding on the company unless and until the company shall be entitled to commence business.

As witness, &c.

This agreement must be filed before the publication of the prospectus. (Companies Act, 1900, sect. 2.)

Form 23.

Provisional contract by company.

AN AGREEMENT made the —— day of ——, between A. B. of the one part, and the —— Company, Limited (hereinafter called "the company"), of the other part, whereby it is agreed as follows:—

1. The said A. B. shall, &c.

2. The said A. B. shall, &c.

3. There shall, &c.

4. The company shall, &c.

5. This agreement is to be provisional only, and is not to be binding on the company until the date at which it becomes entitled to commence business under sect. 6 of the Companies Act, 1900.

As witness, &c.

Form 24.

Skeleton prospectus (*a*).

The subscription list will open on ——day the —— day of —— and close on or before ——day the —— day of ——.

A., B., C. & Co., Limited.

Incorporated under the Companies Acts, 1862 to 1900.

Capital ——*l.*, divided into £

—— 5 per cent. cumulative preference shares of ——*l.* each -

—— ordinary shares of ——*l.* each - - - - -

—— management shares of ——*l.* each - - - -

Total - - - - £

The preference shares carry a fixed cumulative preferential dividend at the rate of —— per cent. per annum on the capital for the time being paid up thereon, and rank, both as regards dividend and capital, in priority to the ordinary shares, but without any further right to participate in the profits or assets.

(*a*) **What is a Prospectus.**—Unless the context of the Act of 1900 otherwise requires, "the expression 'prospectus' means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company"; and "the expression 'debenture' includes debenture stock." (Companies Act, 1900, sect. 30.)

The annexed form of prospectus is framed with a view to illustrating the practical operation of sect. 10 of the Act, which applies to "every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company." (Sect. 10, sub-s. 1.)

See also sect. 10, sub-s. (4), which provides—"This section shall not apply to a circular or notice inviting existing members or debenture holders of a company to subscribe for further shares or debentures, but, subject as aforesaid, this section shall apply to any prospectus whether issued on or with reference to the formation of a company or subsequently."

Note, also, that by the same sub-section certain requirements of this section are dispensed with or qualified in particular cases. (See *infra*, p. 31.)

Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void. (Companies Act, 1900, sect. 10 (5).)

See as to this *supra*, p. 32, and sub-s. (7).

Form 24.

(*b*) The founders [*or* management] shares carry the right [*state the rights either directly or by inserting extracts from the memorandum or articles of association. State also who is to get the shares, e.g.*, The founders [*or* management] shares have been subscribed by the vendors and the principal employees in the business, and will be paid up in cash].

Of the above shares, —— ordinary shares and —— preference shares equal to ——*l.* are to be issued and credited as paid up, and as below mentioned the remaining shares are now offered for public subscription, payable as follows:—

10*s.* 0*d.* per share on application,
1*l.* 10*s.* 0*d.* per share on allotment,
1*l.* 10*s.* 0*d.* per share on the —— of ——,
1*l.* 10*s.* 0*d.* per share on the —— of ——.

The shares may be paid up in full on allotment on or before the —— day of ——, interest at the rate of 5 per cent. per annum being allowed in respect of the prepayment of instalments. Applications have already been received from employees of the firm and relations of the late partners for —— shares equal to ——*l.*

Directors (*c*).
[*Names, Addresses, and Descriptions.*]

Bankers.
[*Names and Addresses.*]

Auditors (*c*).
[*Names, Addresses, and Descriptions.*]

Solicitors.
[*Names and Addresses.*]

Brokers.
[*Names and Addresses.*]

Secretary in office.
[*Names, Addresses, and Descriptions.*]

(*b*) **Founders Shares.**—The prospectus must state the number of founders or management shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company. (Sect. 10 (1) (a) of the Act of 1900.)

(*c*) **Directors and Auditors.**—The prospectus must state the names, descriptions, and addresses of the directors or proposed directors (sect. 10 (1) (c) of the Act of 1900) and of the auditors. (Sect. 10 (1) (b).) But

Form 24.

PROSPECTUS.

The well-known business of A., B. & C., ——, manufacturers of ——, which this company has been formed to acquire and carry on, was founded upwards of sixty years ago by the predecessors of the present vendors, and has continually grown until it has reached its present magnitude. The business, which comprises both wholesale and retail departments, is carried on upon extensive, well-built, and commodious leasehold premises situate at ——, comprising, &c., the whole forming a compact block of warehouses, factories, shops and offices, held at very low rents amounting in the aggregate to ——*l.* per annum. Large sums have been spent on these premises to adapt them to the purposes of the business.

The leases, with trifling and unimportant exceptions, have still upwards of —— years to run.

The remarkable developments of the last five years have so largely increased the magnitude of the undertaking that the vendors consider the time has arrived for converting the business into a joint stock company.

The employees of the business number about ——, and the customers many thousands, the wholesale accounts alone on the books of the firm amounting to upwards of ——*l.* It is proposed to make a liberal allotment of shares to applicants connected with or contributing to the business.

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it must be borne in mind that, having regard to sect. 2 of the Act of 1900, subject to the following proviso, a person is not to be named as a director or proposed director in any prospectus unless he has by himself or by his agent authorized in writing—

(i) signed and filed with the registrar a consent in writing to act as such director; and

(ii) either signed the memorandum of association for a number of shares not less than his qualification (if any), or signed and filed with the registrar a contract in writing to take from the company and pay for his qualification shares (if any).

Provided that these conditions are not applicable where the company was registered before 1st January, 1901, or where the prospectus is issued one year after the date at which the company is entitled to commence business.

Form 24. The business will be taken over by the company as a going concern as from the —— day of ——, the date of the last annual stock-taking, and the company will have the benefit of all profits realized from that date after allowing interest on purchase-money down to the time of the completion of the purchase at the rate of 5 per cent. per annum.

The property to be transferred to the company will comprise, in addition to the goodwill (*d*) of the business (for which last-named item ——*l.* is to be paid), the following items, constituting the whole capital of the business at the above-mentioned date :—

	£	£
Stock at cost or under - - - -		
Book debts (wholesale) - - £		
Less trade discounts, —— per cent. £		
Book debts (retail) after allowing for bad and doubtful - - - - - -		
Cash in hand and at bank, and bills not discounted - - - - - -		
Advances on security, &c. - - - -		
Goodwill - - - - - - - -		
Leasehold premises - - - - -		
Buildings, fixtures, fittings, furniture, plant, horses, vans, carts, &c. - - - -		
	£	
Less trade liabilities - - - - -		
	£	

The stock was taken strictly at cost price or under, and the vendors are satisfied that it has been realized at the usual trade profit. The greater proportion of the book debts has already been got in, and the vendors guarantee that those outstanding, plus what has been so got in, will produce the amount above stated.

As regards working capital, it is considered that the working capital in the business, together with a sum of ——*l.* to be provided

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(*d*) **Goodwill.**—The amount payable for goodwill is to be specified. Sect. 10 (1) (g) of the Act of 1900.

out of the proceeds of the shares now offered for subscription, will amply suffice for the company's wants. Form 24.

The books of the firm have for the past —— years been audited by Messrs. ——, of ——, Chartered Accountants, who have recently made a special investigation of them, and have given the following certificate :—

Messrs. A., B. & C.

Gentlemen,

We have acted as your accountants for many years, and have recently made a special examination of your books, and we hereby certify that the net profits of your business for the five years ending the —— day of January, 1900, have been as follows :—

	£
Year ending January, 1896 - - -	
Year ending January, 1897 - - -	
Year ending January, 1898 - - -	
Year ending January, 1899 - - -	
Year ending January, 1900 - - -	
Average for the five years - -	£

In arriving at these figures we have not debited profit and loss accounts with interest on borrowed capital, or loans, nor with income tax.

Sufficient provision has in our judgment been made for depreciation of the leasehold premises, fixtures, furniture, horses, vans, &c.

Yours faithfully,

————,

(Chartered Accountants).

	£
The average annual profits of the business on the basis of the last five years is - -	
The annual dividend on ——*l.* 5 per cent. preference shares is - - - -	
A dividend of say —— per cent. on present ordinary shares would require ——*l.* -	
Leaving a surplus of - - - - -	

It is proposed to continue the business without break or interrup-

Form 24.

tion upon the lines which have proved so successful in the past, retaining the services of the present managers and staff who have so largely contributed to that success.

(*e*) The vendors, Mr. —— and Mr. ——, will act as managing directors for the period of five years, and during such period will retain an interest of at least ——*l.* in the capital of the company.

(*f*) The purchase price for the sale of the above property has been fixed by the vendors, who are the promoters of the company, at the sum of ——*l.* Of this sum one half will be payable to Mr. ——, and the other half to Mr. ——. Each sum of ——*l.* will be paid and satisfied as follows: that is to say, as to ——*l.* in cash, as to ——*l.* by debentures, and as to the balance of ——*l.* by the allotment of —— ordinary shares credited as fully paid up.

The business will be taken over subject to all existing trade contracts. These are of the ordinary trade character.

The difference between the purchase price and the capital when paid up will also provide the company with nearly ——*l.* cash, the vendor discharging all liabilities and the whole of the expenses attending the formation of the company, the transfer of the properties, and issue of capital. A sum of ——*l.* ordinary shares is reserved for future issue if and when required.

(*g*) The minimum subscription on which the directors may proceed to allotment is —— shares.

(*e*) **Vendors' Names, etc.**—The names and addresses of the vendors must be stated. Sect. 10 (1) (f) of the Companies Act, 1900.

(*f*) The prospectus must state the amount (if any) paid or payable as purchase-money in cash, shares, or debentures of any such property as aforesaid, specifying the amount payable for goodwill. Sect. 10 (1) (g) of the Act of 1900.

See also sect. 10 (1) (f).

(*g*) **Minimum Subscription and Allotment.**—The prospectus must state the minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share; and in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment, and the amount actually allotted, and the amount (if any) paid on such shares. Sect. 10 (1) (d) of the Companies Act of 1900.

In relation to the minimum subscription, sect. 4 of the Act of 1900 must be borne in mind. That section provides as follows:—

4.—(1.) No allotment shall be made of any share capital of a company offered to the public for subscription, unless the following conditions have been complied with, namely—

(a) the amount (if any) fixed by the memorandum or articles of

In addition to the shares and debentures which are to be issued to the vendors as above mentioned, the company is to issue to —— (*h*) —— fully paid-up ordinary shares in the company, and ——*l.* debentures, in consideration of his selling to the company the reversionary fee simple of the leasehold factory, No. ——, —— Street, E.C., expectant on the lease thereof to be acquired by the company from the vendors. **Form 24.**

(*i*) The shares now offered for subscription have been underwritten

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association and named in the prospectus as the minimum subscription upon which the directors may proceed to allotment; or

(b) if no amount is so fixed and named, then the whole amount of the share capital so offered for subscription,

has been subscribed, and the sum payable on application for the amount so fixed and named, or for the whole amount offered for subscription, has been paid to and received by the company.

(2.) The amount so fixed and named and the whole amount aforesaid shall be reckoned exclusively of any amount payable otherwise than in cash, and is in this Act referred to as the minimum subscription.

(3.) The amount payable on application on each share shall not be less than five per cent. of the nominal amount of the share.

(4.) If the conditions aforesaid have not been complied with on the expiration of forty days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to the applicants without interest, and, if any such money is not so repaid within forty-eight days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per centum per annum from the expiration of the forty-eight days: Provided that a director shall not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part.

(5.) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(6.) This section, except sub-section (3) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription. (See pp. 10—14, *supra*.)

As to the effect of making an allotment in contravention of sect. 4, see sect. 5 of the Act of 1900.

(*h*) **Fully Paid Shares, etc.**—The prospectus must state the number and amount of shares and debentures issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which such shares or debentures have been issued or are proposed or intended to be issued. Sect. 10 (1) (e) of the Companies Act, 1900.

(*i*) **Underwriting.**—The prospectus must state the amount (if any) paid or payable as commission for subscribing or agreeing to sub-

Form 24. for a commission at the rate of —— per cent. on the amount thereof, and such commission is payable by the company.

(*k*) The vendors are to pay the preliminary expenses of and incident to the formation and floating of the company down to the time when it becomes entitled to commence business, including the underwriting commission above mentioned, and the estimated amount thereof is ——*l.*

(*l*) The sum of ——*l.* in cash is to be paid by the vendors to

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scribe, or procuring or agreeing to procure subscriptions, for any shares in the company, or the rate of any such commission. See sect. 10 (1) (h) of the Companies Act, 1900; see also sect. 8.

(*k*) **Preliminary Expenses.**—The prospectus must state the amount or estimated amount of preliminary expenses. Sect. 10 (1) (i) of the Companies Act, 1900.

(*l*) **Promoters and Vendors.**—The prospectus must state the amount paid or intended to be paid to any promoter, and the consideration for any such payment. Sect. 10 (1) (j) of the Companies Act, 1900.

It must also state full particulars of the nature and extent of the interest (if any) of every director in the promotion of or in the property proposed to be acquired by the company, with a statement of all sums paid, or agreed to be paid, to him in cash or shares by any person, either to qualify him as a director or otherwise for services rendered by him in connection with the formation of the company. Sect. 10 (1) (m) of the Companies Act, 1900.

The prospectus must state the names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of publication of the prospectus, and the amount payable in cash, shares, or debentures, to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor. Sect. 10 (1) (f) of the Companies Act, 1900.

For the purposes of this section (10) every person shall be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

(a) the purchase-money is not fully paid at the date of publication of the prospectus; or

(b) the purchase-money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or

(c) the contract depends for its validity or fulfilment on the result of such issue. Sect. 10 (2) of the Companies Act, 1900.

Where any of the property to be acquired by the company is to be taken on lease, this section shall apply as if the expression "vendor"

Mr. —— for his services to them in the promotion of the company, and Mr. ——, who has joined the directorate at the request of the vendors, is to receive from them a sum sufficient to enable him to pay for his qualification shares. Form 24.

(*m*) The contract for the sale of the business is dated the —— day of ——, and made between A., B. and C. of the one part, and the company of the other part. The contract includes certain property situate at ——, which has recently been purchased by the said A., B. and C. under contract dated the —— day of ——, and made between the —— Syndicate and A., B. and C.

(*n*) The articles of association provide that the qualification of a director is to be the holding of —— shares in the company, and that the remuneration of the directors is to be ——*l.* per annum, and such further sum as the company in general meeting may grant, and that such remuneration is to be divided among them in such proportions as the directors may determine.

The certificate of Messrs. ——, and copies of the memorandum and articles of association of the company and of the above contracts can be inspected at the office of the solicitors to the company at any time during business hours.

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included the lessor, and the expression "purchase-money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee. Sect. 10 (3) of the same Act.

(*m*) **Contracts.**—The prospectus must also state the dates of and parties to every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected: Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract entered into more than three years before the date of publication of the prospectus. Sect. 10 (1) (k) of the Companies Act, 1900.

In the case of a prospectus published more than one year after the date at which the company is entitled to commence business, the obligation to disclose all material contracts shall be limited to a period of two years immediately preceding the publication of the prospectus. Sect. 10 (4) (b).

A company shall not prior to the statutory meeting vary the terms of a contract referred to in the prospectus, except subject to the approval of the statutory meeting. Sect. 11 of Act of 1900.

(*n*) **Qualification and Remuneration of Directors.**—The prospectus must state the number of shares (if any) fixed by the articles of association as the qualification of a director, and any provision in the articles of association as to the remuneration of the directors. Sect. 10 (1) (b).

Form 24.

(*o*) A copy of the company's memorandum of association is printed in the fold of the prospectus [*or* at the foot], and is part of this prospectus.

Application will be made to the Committee of the London Stock Exchange in due course for a settlement and quotation for both classes of shares.

Application for shares should be made upon the form accompanying the prospectus, and sent to the company's bankers, —— Bank, Limited, ——, E.C., or to one of the branches, together with a remittance of the amount of the deposit.

Where no allotment is made the deposit will be returned in full, and where the number of shares allotted is less than the number applied for, the balance of the deposit will be applied towards the remaining payments.

Failure to pay any future instalment on shares allotted when due will render previous payments liable to forfeiture.

Prospectuses and forms of application can be obtained at the office of the company, or from the solicitors or brokers, London.

This prospectus has been duly filed with the Registrar of Joint Stock Companies (*p*).

Dated, ——.

[*Here add in the copy filed signatures of directors*] (*q*).

(*o*) **Memorandum of Association.**—The prospectus must state the contents of the memorandum of association, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them respectively. Sect. 10 (1) (a) of the Act of 1900. Not so in an advertisement. See sect. 10 (6).

(*p*) As to application of Act, see below.

(*q*) **Signing and Filing.**—Under sect. 9 of the Act of 1900, a prospectus is to be filed with the Registrar of Joint Stock Companies, and is to be dated and signed by every person who is named therein as a director, or proposed director, or by his agent authorized in writing, and no prospectus is to be issued until so filed; and every prospectus shall state on the face of it that it has been so filed.

How far Act applies.—The application of sect. 10 of the Act of 1900 is qualified to some extent by the sub-sections following:—

(4.) This section shall not apply to a circular or notice inviting existing members or debenture holders of a company to subscribe for further shares or debentures, but, subject as aforesaid, this section

Form 24a.

Advertisement as to prospectus.

The —— Company, Limited.

Notice is hereby given that the above-named company is issuing a prospectus [dated the —— day of ——] inviting subscriptions at par for —— 5 per cent. cumulative preference shares of ——*l.* each, and —— ordinary shares of 5*l.* The said prospectus states, among other things, that [*here give extracts*].

Copies of the said prospectus can be obtained at the office of the company or from the company's solicitors or brokers.

This notice is not to be regarded as an invitation to the public to subscribe for shares.

Dated ——.

No. —, —— Street, E.C.

See *supra*, p. 32, note to sub-sect. 6 of sect. 10.

Form 25.

Resolution to sign and file prospectus.

That the form of prospectus submitted to this meeting, and dated the —— day of ——, by which —— shares of ——*l.* each in the capital of the company are to be offered to the public for subscription, be and the same is hereby approved, and that the copy of such prospectus also submitted to this meeting be forthwith signed by all the directors and filed with the Registrar of Joint Stock Companies, as required by sect. 9 of the Companies Act, 1900.

See the stringent provisions of sect. 9, *supra*, p. 24.

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shall apply to any prospectus whether issued on or with reference to the formation of a company or subsequently: Provided that—

(a) the requirements as to the memorandum of association, and the qualification, remuneration, and interest of directors, the names, descriptions, and addresses of directors or proposed directors, and the amount or estimated amount of preliminary expenses, shall not apply in the case of a prospectus published more than one year after the date at which the company is entitled to commence business; and

(b) in the case of a prospectus published more than one year after the date at which the company is entitled to commence business, the obligation to disclose all material contracts shall be limited to a period of two years immediately preceding the publication of the prospectus.

(5.) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(6.) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary to specify the contents of the memorandum of association or the signatories thereto and the number of shares subscribed for by them.

Form 26.

Resolution for allotment.

That —— shares in the capital of the company of ——*l.* each be allotted to the several persons in that behalf named in the application and allotment sheets submitted to this meeting, and for the purpose of identification subscribed by the chairman thereof, and so that each allottee shall receive an allotment of the number of shares set opposite his or her name in the —— column of the sheet in which his name appears, and that notice of allotment be given to the respective allottees, and that in each case where in the —— column of the said sheet the words "no allotment" appear the deposit paid by the corresponding applicant be returned, and that when the application money paid by an allottee exceeds the amount payable on application and allotment in respect of the shares allotted to him, the excess be returned to such applicant.

Allotment: Minimum Subscription.

Where, on or after the 1st January, 1901, share capital of a company is offered to the public for subscription (except in the case of a company which, prior to *that date*, has made an allotment of shares offered to the public for subscription), sect. 4 of the Act of 1900 provides that no allotment shall be made of capital so offered unless certain conditions have been complied with, namely:—

First:

(a) The *amount*, if any, fixed by the memorandum *or* articles of association and named in the prospectus as the minimum subscription upon which the directors may proceed to allotment; or

(b) If no amount is so fixed and named, then the *whole amount* of the share capital so offered for subscription has been SUBSCRIBED.

(The "amount" and "whole amount" above named are to be reckoned exclusively of any amount payable otherwise than in cash, either term being called the "minimum subscription." See sub-s. 2.)

Secondly:

The sum payable on application (being not less than five per cent. of the nominal amount of a share) for the amount so fixed and named, or for the whole amount offered for subscription, has been PAID to and RECEIVED BY THE COMPANY. (See further the provisions of sect. 4, *supra*, p. 10.)

Having regard to these provisions, it is highly desirable in the articles of association to specify the minimum subscription upon which the directors may proceed to allotment, for otherwise, even though the subscription be very large, the company cannot proceed to allotment

Form 26.

unless and until the whole capital offered for subscription has been subscribed. What should be the amount specified must depend on the circumstances of the case. (See *supra*, p. 10.) But looking to the terms of the section, it will generally be prudent to specify a small amount as the minimum subscription.

Return of application moneys.

Sect. 4 (4) provides that if the above conditions have not been complied with on the expiration of forty days after the first issue of the prospectus, the moneys received from applicants are to be returned, and if forty-eight days expire the directors become liable to repay the amount with interest.

Voidable allotments. Damages.

Moreover, sect. 5 makes an allotment in contravention of sect. 4 voidable (see note to the next form), and makes directors liable in damages.

See further, as to what allotments must be made before the company can commence business or borrow money, the notes to Form 30, *infra*.

Form 27.

To —— Company, Limited, and the directors thereof.

Notice avoiding allotment in contravention of sect. 4 of the Act of 1900.

GENTLEMEN,

Take notice that I, the undersigned, do hereby avoid, pursuant to sect. 5 of the Companies Act, 1900, the allotment of —— shares of ——*l.* each in your capital made to me in the month of ——, 1900, and request you to remove my name from the register of members in respect of such shares, and to repay to me the sums, amounting to ——*l.*, paid by me in respect of such shares, with interest at the rate of *four* per cent. per annum thereon as from the *time when I paid the same respectively to you.* And take notice, that unless within seven days from the date hereof you notify to me your assent to such avoidance and comply with my request aforesaid, I shall take such proceedings against you as I may be advised.

Dated the —— day of ——.

Signature of allottee ——.
Name in full ——.
Address ——.
Description ——.

Sect. 5 (1) of the Companies Act, 1900, provides that "an allotment made by a company to an applicant in contravention of the foregoing provisions of this Act shall be voidable at the instance of the applicant within *one month* after the holding of the statutory meeting of the company and not later, and shall be so voidable notwithstanding that the company is in course of being wound up."

Form 28.

Agreement for allotment of paid-up shares.

AN AGREEMENT made the —— day of ——, between A. B. of ——, of the one part, and The —— Company, Limited (hereinafter called "the company"), of the other part, whereby it is agreed as follows:—

1. The said A. B. shall sell, and the company shall purchase

[*state what*]

2. As the consideration for the said sale, the company shall allot to the said A. B., or his nominees ——, fully paid-up shares in the capital of the company of ——*l.* each, and such shares shall be numbered —— to —— inclusive.

3. [As to title.]

4. [As to completion.]

[*If the company is not yet entitled to commence business add*

5. This agreement is provisional, and is not to be binding on the company until it becomes entitled to commence business, and if it does not become so entitled within —— weeks from the date hereof, the said A. B. may by notice in writing to the company annul this agreement.]

As witness, &c.

As to a company being entitled to commence business, and its contracts being in the meantime provisional, see Companies Act, 1900, s. 6.

Paid-up Shares.

Sect. 25 of the Companies Act, 1867, in effect rendered it necessary, where it was desired to issue shares credited as fully or partly paid up for a consideration other than cash (*e. g.*, in consideration of property to be made over to the company or services to be rendered), to embody the arrangement in a contract in writing, and to file that contract with the Registrar of Joint Stock Companies before the issue of the shares, and in default the shares were not effectually credited. This section, however, is repealed by sect. 33 of the Companies Act, 1900, and

Form 28.

instead thereof there are certain provisions in sect. 7 of the Act of 1900 which will have to be attended to. According to those provisions, where any shares credited as fully or partly paid up are allotted for a consideration other than cash, a contract in regard thereto and a return stating the number and nominal amount, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted is to be filed with the registrar within one month after the allotment, and the proper stamp duty must be paid thereon. Default in compliance renders every director, manager, secretary, or other officer of the company who is knowingly a party to the default liable to a heavy penalty for every day during which the default continues; but the credit on the shares will not, by reason of any such default, be invalidated. Thus the great hardships which unfortunate allottees have been under will be avoided; but directors and officials may incur serious liabilities under this section, and should be very careful to comply with its provisions.

Form 29.

Underwriting letter.

The ——, Limited.

Capital, ——*l.*, divided into —— shares of 1*l.* each.

The proposed issue of —— shares of —— each.

To the above-named company.

GENTLEMEN,

With reference to the draft prospectus dated the —— of ——, and marked "draft subject to revision," which, when finally settled, you propose to issue, and for the consideration below mentioned I, the undersigned, hereby underwrite —— of the shares so to be offered, and I now hand in an application for the same together with cheque for ——*l.* for payment of the deposit of ——*l.* per share payable on the shares underwritten by me, which is to be applied accordingly.

My subscription is to be on the terms of your prospectus as finally settled and issued, and you are to be at liberty to insert the date of such prospectus in my application. If —— [*or* the whole] of the said —— shares in your capital shall be applied for by, and allotted to the public, I am not to be allotted any shares in respect of my application; but if [the whole] of such —— shares be not so applied for and allotted, then all applications made by the public on which allotments are made are to be applied in relief of the underwriters, including myself, rateably in proportion to the amount of the shares underwritten by them respectively, and only my rateable proportion of the shares not so applied for and allotted to the public shall be allotted to me.

Form 29.

All applications initialled by me, and approved by you, sent in by me prior to the time fixed by the prospectus for closing the list of subscribers are to be applied in further relief of my obligation to subscribe hereunder, and shall not be considered subscriptions by the public. If I withdraw or do not hand you the above-mentioned application, you are to be at liberty to authorise any one of your officers in my name or on my behalf to sign and put in an application in the form referred to in the prospectus as published for the number of shares underwritten by me, or any less number, and to take an allotment in respect thereof, and I will pay the allotment money immediately after receiving notice of allotment.

You are, within —— days after you shall have become entitled to commence business, to pay me a commission of —— per cent. in cash on the nominal amount of the shares underwritten by me, such commission to be paid whether I am required to accept an allotment of shares or not; but if an allotment be made to me, no commission is to be payable until the allotment moneys payable by me have been paid, and you may apply the commission in or towards payment of such moneys.

I am not to be bound to subscribe unless at least —— of the said shares are underwritten prior to the publication of the prospectus, and any allotment to me must be made before the —— day of ——.

My obligation hereunder is to hold good notwithstanding any variation between the draft prospectus submitted to me, as above referred to, and the prospectus as finally settled and published, provided that the amount of the capital of the company, namely ——*l.* divided into —— shares of 1*l.* each, is not altered.

Any notice to me may be served by sending the same by post addressed to me at the subjoined address, and shall be deemed to be served on the day following that on which it is posted. Be so good as to notify to me your acceptance of this proposal.

Dated this —— day of ——.

[*Signature of Underwriter.*]

Address.

I acknowledge notice of your acceptance of the above proposal for shares.

[*Signature of Underwriter.*]

To —— of ——.

SIR,

Form 29a.

Acceptance of underwriting proposal.

With reference to your underwriting proposal of the —— of ——, a copy of which is set forth above, the company hereby accepts the same for —— shares, and acknowledges the receipt of the cheque for ——*l.*, being the deposit thereon.

Dated ——.

[*Signature.*]
Address.

Underwriting and other Commissions.

Prior to the Companies Act, 1900, it was considered that underwriting commissions could not safely be paid by the company for underwriting its own shares—at any rate, out of capital; and accordingly underwriting commissions were usually paid by vendors and promoters. Moreover, it was well settled that shares could not be issued at a discount, and accordingly it was not allowable to pay a person who subscribed for shares a commission or discount for subscribing the same or for placing shares. The Act of 1900 materially alters the law in these respects, for "upon any offer of shares to the public for subscription" it permits (sect. 8) a company "to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company." But this permission is only granted on condition that the payment of the commission and the amount or rate per cent. of the commission paid or agreed to be paid are authorized by the articles of association and disclosed in the prospectus, and the commission or amount paid or agreed to be paid does not exceed the amount or rate so authorized. Hence, subject to the conditions above mentioned, an underwriting commission to be paid by the company is allowable, and, what is more, the company may, by the prospectus, in effect offer to issue its shares at a discount; that is to say, may offer to pay a specified commission to those who, in response thereto, subscribe for shares; and, as appears from the wording, there are various other bargains which will thus be legalised.

There is no limit to the commission so allowed, except as above mentioned. Hence, if the articles of association say that commission may be paid at a rate not exceeding, say, twenty to thirty per cent., and the prospectus discloses this fact, the company may pay a commission not exceeding the rate so specified.

Except as allowed by sub-s. (1), commissions, discounts, &c., in relation to the taking of shares are prohibited, but the section is not to affect the power of the company to pay lawful brokerage, as heretofore.

It is to be noted that if some shares are offered for subscription the company may pay commission whether in respect of shares so offered or of shares not so offered.

Form 30.

Statutory declaration before commencing business. Sect. 6 of 1900. See sect. 6 (6).

Companies Acts, 1862 to 1900.

[5*s*. registration stamp.]

DECLARATION made on behalf of ——, Limited, that the conditions of sect. 6 (1) of the Companies Act, 1900 (63 & 64 Vict. c. 48), have been complied with.

Presented for filing by ——.

I ——, of ——, &c., being [the secretary *or* ——] of The ——, Limited, do solemnly and sincerely declare :—

That the amount of the share capital of the company offered to the public for subscription is ——*l.*

That the amount fixed by the memorandum or articles of association, and named in the prospectus as the minimum subscription upon which the company may proceed to allotment, is ——*l.*

That shares held subject to the payment of the whole amount thereof in cash have been allotted to the amount of ——*l.*

That every director of the said company has paid to the company on each of the shares taken, or contracted to be taken, by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered by the company for public subscription.

And I make this solemn declaration conscientiously believing the same to be true and pursuant to the Statutory Declarations Act, 1835.

Commencement of Business and Exercise of Borrowing Powers.

Under the Companies Act, 1862, a company could commence business immediately after its incorporation (see *supra*, p. 36); but section 6 of the Act of 1900 alters the law in this respect so far as regards companies registered after the 31st December, 1900, where there is an invitation to the public to subscribe for their shares, and prohibits such companies from commencing any business or exercising any borrowing powers unless certain specified conditions are complied with. These are set out in sect. 6, *supra*, and the most important is that shares held subject to the payment of the whole amount thereof in cash have been *allotted* to an amount not less in the whole than "the minimum subscription," as to which see *supra*, p. 10. Not only is a company which is within the section (see sub-sects. (6) and (7)) prohibited from commencing business or exercising its borrowing powers until these conditions have been complied with, but any contract made before the date at which the company is entitled to commence business is to be provisional only. (See sub-s. 3 of sect. 6.)

Form 30.

Moreover, penalties are imposed if the company does commence business and exercise borrowing powers in contravention of the section. (See sub-s. 5.)

Note, however, that sub-s. (4) provides that "nothing in this section shall prevent the simultaneous offer for subscription of any shares and debentures or the receipt of any application."

Form 31.

Return of allotments.

No. of Certificate ——.

Companies Acts, 1862 to 1900.

[5*s.* registration stamp.]

RETURN OF ALLOTMENTS from the —— day of —— to the —— day of —— of The ——, Limited, made pursuant to sect. 7 (1) of the Companies Act, 1900.

(To be filed with the registrar within one month after the allotment is made.)

* Number of the shares allotted payable in cash ——.

Nominal amount of the shares so allotted ——.

Amount paid or due and payable on each such share ——*l.*

* Number of shares allotted for a consideration other than cash ——.

Nominal amount of the shares so allotted ——*l.*

Amount to be treated as paid on each such share ——*l.*

The consideration for which such shares have been allotted is as follows:—

* * * * *

Presented for filing by ——.

Names, addresses, and descriptions of the allottees.

[Tabular form with five columns, under heads of surname, Christian name, address, description, and number of shares allotted.]

Signature ——.

Sect. 7 of the Act of 1900 provides that whenever a company limited by shares makes any allotment of its shares the company shall within one month thereafter file with the registrar a return as above, together with contracts in the case of shares allotted for a consideration other than cash, and there are onerous penalties for default. See *supra*, p. 20.

Form 32.

Requisition for extraordinary general meeting. Sect. 13 of Act of 1900.

The —— Company, Limited.

To the directors of the above-named company.

Take notice, that we, the undersigned persons, holding not less than one-tenth of the issued capital of the above-named company, upon which all calls or other sums due have been paid, hereby

* Distinguish between preference, ordinary, &c.

Form 32.

require you to convene an extraordinary general meeting of the above-named company for the purpose of considering, and if thought fit passing, a resolution altering the articles of association of the said company as follows; that is to say:—

(a) By substituting the word "seven" for the word "five" in clause ——.

(b) By cancelling clause —— [*or as the case may be*].

Signatures of requisitionists.

—— ——
—— ——
—— ——
—— ——

Dated the —— day of ——, 19—.

Form 33.

Notice of general meeting by requisitionists. Sect. 13 of Act of 1900 (sub-s. 3).

The —— Company, Limited.

NOTICE is hereby given, that an extraordinary general meeting of the above-named company will be held at ——, on ——day, the —— day of ——, at —— o'clock in the afternoon, for the purpose of considering, and if thought fit passing, the subjoined resolution, which, if passed by the requisite majority, will be submitted for confirmation as a special resolution to a further general meeting which will be subsequently convened; that is to say:—

That, &c.

This notice is given by the persons [*or*, a majority in value of the persons] who signed a requisition dated, &c., pursuant to sect. 13, sub-sect. 3, of the Companies Act, 1900, the directors having failed to comply with the said requisition which was deposited at the company's office on the —— day of ——.

(3.) If the directors of the company do not proceed to cause a meeting to be held within *twenty-one days* from the date of the requisition being so deposited, the requisitionists, or a majority of them in value, may themselves convene the meeting, but any meeting so convened shall not be held after three months from the date of such deposit. (Sect. 13 (3) of Companies Act, 1900.)

Form 34.

Report to be submitted to statutory meeting. Sect. 12 of Act of 1900.

The —— Company, Limited.

Report of the Directors of the Company

(in compliance with Section 12 of the Companies Act, 1900).

The directors report to the members as follows:—

1. The total number of shares allotted is ——.

Form 34.

2. Of the shares so allotted —— have been allotted on the footing that they are to be paid up in cash as stated in the prospectus, namely:—

on application, —— per share,
on allotment, —— per share,
on the —— day of ——, —— per share.

and the residue, viz., —— shares, have been allotted, credited as fully paid up, in part consideration for the goodwill, lands, buildings, stock-in-trade, and other assets of Messrs. ——, purchased by the company as in the company's prospectus mentioned.

3. The total amount of cash received by the company in respect of the said —— shares is ——*l.*, and it has received no cash in respect of the said —— shares.

4. The following is an abstract of the receipts and payments of the company on capital account to the date of this report:—

Receipts.	£ s. d.	Payments.	£ s. d.

5. The preliminary expenses of the company are estimated at ——*l.*

6. The names, addresses, and descriptions of the directors, auditors, managers (if any), and secretary of the company are as follows:—

A. of —— ——
B. of —— —— } Directors.
C. of —— ——

L. of —— ——
M. of —— —— } Auditors.
N. of —— ——
(carrying on business at ——.)

R. of —— —— Manager.
T. of —— —— Secretary.

Form 34.

7. By an agreement dated the —— day of ——, and made between K. and L. of the one part, and the company of the other part, the said K. and L. agreed to sell to the company and the company agreed to purchase certain patents belonging to the said K. and L., and the consideration was to be ——*l.* in cash and ——*l.* in fully paid-up shares. The said K. and L. have signified their willingness to accept 5,000*l.* in fully paid-up shares in satisfaction of 5,000*l.* part of the said ——*l.* cash, and it is proposed to modify the said agreement accordingly, and the proposal will be submitted to the statutory meeting for its approval.

Dated, ——.

We, the undersigned directors of the above-named company, certify that the above report is correct.

Dated, &c.

——
——
} Directors.

The report must be signed by not less than two directors, or where there are less than two by the sole director and manager. (See sect. 12 (2) of the Act of 1900.)

We, the undersigned, being the auditors of the above-named company, hereby certify that the above report is correct as to the shares allotted by the company and as to the cash received in respect of such shares, and as to the receipts and payments of the company on capital account.

——
——
} Auditors of the company.

The auditors (if any) must certify as above. (See sect. 12 (3) of the Companies Act, 1900.)

The directors shall cause a copy of the report, certified as by this section required, to be filed with the registrar forthwith after the sending thereof to the members of the company. (Sect. 12 (4).)

The —— Company, Limited.

Form 35.

List of members to be submitted to statutory meeting. Sect. 12 (5) of Act of 1900.

List of members to be submitted to the statutory meeting of the company :—

Names of Members.	Addresses.	Descriptions.	Number of Shares held by each Member.

——, Secretary.

The directors shall cause a list showing the names, descriptions, and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting. (Sect. 12 (5) of Companies Act, 1900.)

No. of Certificate ——.

Form 36.

Particulars of mortgages and charges.

Companies Acts, 1862 to 1900.

[5*s.* registration stamp.]

Particulars to be supplied to the registrar pursuant to sect. 14 (7) of the Companies Act, 1900 (63 & 64 Vict. c. 48) of a mortgage or charge created by The ——, Limited, and being :—

* (a) A mortgage or charge for the purpose of securing any issue of debentures ; *or*,

* (b) A mortgage or charge on uncalled capital of the company ; *or*,

* (c) A mortgage or charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale ; *or*,

* (d) A floating charge on the undertaking or property of the company.

Note.—The original instrument evidencing the mortgage or

* Strike out the sub-heads (a), (b), (c), or (d), which do not apply.

Form 36.

charge must be presented with this return within twenty-one days after the date of its creation (sect. 14 (1)), accompanied by the particulars set out in this form.

Presented for filing by ——.

Particulars of a mortgage or charge created by The ——, Limited:—

[Tabular form with five columns under headings—(1) Date of creation of the mortgage or charge; or in the case of a series of debentures the date of the covering deed by which the security is created or defined: (2) Amount secured by the mortgage or charge; or in the case of a series of debentures, where the holders of the series are entitled *pari passu*, the total amount secured by the whole series: (3) Dates of resolutions creating the series of debentures: (4) Short particulars of the property mortgaged or charged; or in the case of a series of debentures a general description of the property charged: (5) Names of the mortgagees or persons entitled to the mortgage or charge; or in the case of a series of debentures the names of the trustees (if any) for the debenture holders: (6) Where more than one issue of debentures in the same series (*sub-columns*)—(a) Date of present issue; (b) Amount of present issue; (c) Total amount previously issued by [*qu.* of] the series.]

Signature ——.

The fees will be as follows:—

For registering any mortgage or charge created by a company—

Where the amount of the mortgage or charge or debenture does not exceed 200*l.*	£0 10 0
Where the amount of the mortgage or charge or debenture exceeds 200*l.*	1 0 0

Provided that in the case of a series of debentures the fee or registration of each debenture of the same series after the first shall be sixpence.

Form 37.

Particulars of an issue of debentures.

No. of Certificate ——.

Companies Acts, 1862 to 1900.

[5*s.* registration stamp.]

Particulars to be entered on the register pursuant to sect. 14 (5) of the Companies Act, 1900 (63 & 64 Vict. c. 48), of an issue of debentures, being one of several issues of the same series issued by The ——, Limited.

Presented for filing by ——.

Particulars to be entered on the register pursuant to sect. 14 (5) of the Companies Act, 1900, of an issue of debentures of the same series as other issues of The ——, Limited :— **Form 37.**

[Tabular form with seven columns under headings—(1) Date of resolution and deed (if any) creating the series of debentures or debenture stock: (2) Total amount secured by the whole series of debentures or debenture stock: (3) General description of property charged: (4) Names, addresses, and descriptions of trustees for holders of debentures or debenture stock: (5) Date of present issue: (6) Amount of present issue: (7) Total amount previously issued of this series (if any).

Signature ——.

The writer understands that the above form has been abandoned in favour of Form 36.

No. of Certificate ——. **Form 38.**

Memorandum of satisfaction.

Companies Acts, 1862 to 1900.

[5*s*. registration stamp.]

MEMORANDUM OF SATISFACTION of mortgage or charge created by The ——, Limited, to be entered on the register pursuant to sect. 16 of the Companies Act, 1900 (63 & 64 Vict. c. 48).

Presented for filing by ——.

To the Registrar of Joint Stock Companies.

The ——, Limited, hereby gives notice that the [mortgage, *or* charge, *or* debentures, *or* debenture stock, *as the case may be*], dated the —— day of ——, and created by the company for securing the sum of ——*l*., was satisfied to the extent of ——*l*. on the —— day of ——.

In witness whereof the common seal of the company was hereunto affixed the —— day of —— in the presence of

—— } Directors.
——

—— Secretary.

Form 39. Copy of register of directors or managers.

No. of Certificate ——.

Companies Acts, 1862 to 1900.

[5*s.* registration stamp.]

COPY OF REGISTER of Directors or Managers of The ——, Limited, pursuant to sects. 45 and 46 of 25 & 26 Vict. c. 89, and sect. 20 of 63 & 64 Vict. c. 48.

This notice should be signed by the secretary of the company.

Presented for filing by ——.

Copy of the register of directors or managers of The —— Company, Limited, and of any changes therein:—

[This will be in tabular form:—(1) Names, (2) addresses, (3) occupations, (4) changes. As to (4): A complete list of the existing directors or managers should always be given. A note of the changes since the last list was filed should be made in this column, *e.g.*, by placing against a new director's name the words "in place of ——," and by writing against any former director's name the words "dead," "resigned," or as the case may be.]

Signature of Secretary ——.

See as to this return, *supra*, p. 79.

Form 40. Annual summary and list.

No. of Certificate ——.

The Companies Acts, 1862 to 1900.

[5*s.* registration stamp.]

FORM E. as altered by the Board of Trade, by notices in the London Gazette, pursuant to sect. 71 of the Companies Act, 1862, and sect. 19 of the Companies Act, 1900.

Summary of capital and shares of the —— Company, Limited, made up to the —— day of —— 190— (being the fourteenth day succeeding the date of the first ordinary general meeting in the year).

Nominal capital ——*l.* Divided into * —— shares of ——*l.** each.

Total number of shares taken up to the —— day of —— 190— (which number must agree with the total shewn in the list, as held by existing members) * ——.

* Where there are shares of different kinds or amounts (*e.g.*, Preference and Ordinary, or 10*l.* and 5*l.*), state the numbers and nominal values separately.

Form 40.

Number to be paid for wholly in cash ——.

Number issued as partly paid up to the extent of —— per share otherwise than for cash ——.

Number issued as fully paid up otherwise than for cash ——.

‡ There has been called up on each of —— shares ——*l.*
" " " —— " ——*l.*
" " " —— " ——*l.*

§ Total amount of calls received, including payments on application and allotment ——*l.*

Total amount (if any) agreed to be considered as paid on —— shares which have been issued as fully paid (otherwise than in cash) ——*l.*

Total amount (if any) agreed to be considered as paid on —— shares which have been issued as partly paid up to the extent of —— per share ——*l.*

Total amount of *calls* unpaid ——*l.*

Total amount (if any) paid on ‖ —— shares forfeited ——*l.*

Total amount of debt due from the company in respect of mortgages and charges which require registration under the Companies Act, 1900 (*a*), at the date to which this summary is made up ——*l.*

[(*a*) When requisite insert at (*a*) the words "or which would require such registration if created after the commencement of the said Act." See as to this, *supra*, p. 50] (*b*).

Note.—A list of the names and addresses of the Directors must follow the list of members. Banking companies must also add a list of all their places of business.

The return must be signed, *at the end*, by the manager or secretary of the company.

Presented for filing by ——.

---

‡ Where various amounts have been called, or there are shares of different kinds, state them separately.

§ Include what has been received on forfeited, as well as on existing, shares.

‖ State the aggregate number of shares forfeited (if any).

(*b*) This note is not in the official form.

Form 40. List of Persons holding Shares in the —— Company, Limited, on the —— day of —— 190 , and of Persons who have held Shares therein at any time since the date of the last Return, showing their Names and Addresses, and an Account of the Shares so held.

Folio in Register Ledger, containing Particulars.	NAMES, ADDRESSES, AND OCCUPATIONS.			
	Surname.	Christian Name.	Address.	Occupation.

ACCOUNT OF SHARES.					REMARKS.
* Number of Shares held by existing Members at date of Return.†	‡ Particulars of Shares Transferred since the date of the last Return by persons who are still Members.		‡ Particulars of Shares Transferred since the date of the last Return by persons who have ceased to be Members.		
	Number.†	Date of Registration of Transfer.	Number.†	Date of Registration of Transfer.	

(*Signature*)_____

(*Officer*)_____

* The aggregate Number of Shares held and not the Distinctive Numbers is to be stated, and the column must be added up throughout, so as to make one total to agree with that stated in the Summary to have been taken up.

† When the Shares are of different classes these columns may be sub-divided so that the number of each class held, or transferred, may be shewn separately.

‡ The date of Registration of each Transfer should be given as well as the Number of Shares transferred on each date. The Particulars should be placed opposite the name of the Transferor, and not opposite that of the Transferee, but the name of the Transferee may be inserted in the "*Remarks*" column, immediately opposite the particulars of each Transfer.

No. of Certificate ——.

Form 40a.

Names and addresses of directors.

NAMES AND ADDRESSES of the persons who are the Directors of The ——, Limited, on the —— day of —— 19—.

(*Pursuant to s.* 19 (1) (*b*) *of* 63 *&* 64 *Vict., ch.* 48.)

Names.	Addresses.

Signature ——

Description ——

(*i.e.*, Manager or Secretary).

NOTE.—This list should be annexed to the annual return, immediately after the list of members.

Form 41. Certificate No. ——.

Application for registration of private company.

The Companies Acts, 1862 to 1900.

The —— Company, limited by shares.

[5*s.* registration stamp.]

Application for certificate of incorporation to be filed by a company which does not issue any invitation to the public to subscribe for its shares. (Sect. 2 (3) of the Companies Act, 1900.)

[Name of proposed Company] —— Limited.

Presented for filing by ——.

Company limited by shares.

Application by the subscribers to the memorandum of association of —— Company, Limited (being a company such as is specified in sect. 2 (3) of the Companies Act, 1900, and which does not issue any invitation to the public to subscribe for its shares), for a certificate of incorporation as a limited company under the Companies Acts, 1862 to 1900.

We, the several persons whose names are subscribed, hereby declare that The —— Company, Limited, whose memorandum of association is delivered herewith, does not issue any invitation to the public to subscribe for its shares.

[Names, addresses, and descriptions of subscribers.]

Dated this —— day of ——.

[Witness to the above signatures.]

The above form indicates the mode of satisfying the registrar that the company is exempt from sect. 2 of the Act of 1900 on the ground that it "does not" invite the public to subscribe.

LONDON GAZETTE, January 1st, 1901.

The Companies Acts, 1862 to 1900.

WHEREAS by sect. 14 of the Companies Act, 1900, it is provided that the Registrar of Joint Stock Companies shall, on payment of the prescribed fee, enter in the register certain particulars with respect to every mortgage or charge created by any company after the commencement of the said Act and requiring registration under the said section, and that the register shall be open to inspection by any person on payment of the prescribed fee, not exceeding 1*s.* for each inspection:

AND WHEREAS by sect. 30 of the said Act the expression "prescribed" means prescribed by the Board of Trade:

NOW THEREFORE THE BOARD OF TRADE do hereby order, that the fees payable on the registration of mortgages and charges created by any company on and after the 1st January, 1901, and requiring registration under sect. 14 of the Companies Act, 1900, and on the inspection of the register of such mortgages and charges, shall be as follows:—

For registering any mortgage or charge created by a company:—

Where the amount of the mortgage or charge does not exceed 200*l.*..10*s.*

Where it does exceed 200*l.*..1*l.*

Provided that, in the case of a series of debentures, registered in accordance with sub-sects. 4 and 5 of sect. 14 of the said Act, the above fees shall be charged on the first debenture of such series, and a further fee of 6*d.* on each subsequent debenture of the series.

For inspecting the register of mortgages and charges:—

For each inspection..1*s.*

The Board of Trade further direct, in pursuance of sect. 71 of the Companies Act, 1862, and Table B of Schedule I. of the said Act, that a fee of 5*s*. shall be payable on each of the following documents presented for registration to or given out by the Registrar in pursuance of the Companies Act, 1900 :—

Declaration of compliance with the requisitions of the Companies Acts.

Consent to act as director of a company.

List of persons who have consented to be directors of a company.

Declaration made on behalf of a company that the conditions of sect. 6 (1) of the Companies Act, 1900, have been complied with.

Return of allotments made by a company.

Report pursuant to sect. 12 of the Companies Act, 1900.

Memorandum of satisfaction of mortgage or charge.

Application for certificate of incorporation when no prospectus is issued.

Any contract filed with the Registrar pursuant to sect. 2 (1) (ii) or sect. 7 (1) (b) of the Companies Act, 1900.

Copy of prospectus filed with the Registrar pursuant to sect. 9 (2) of the Companies Act, 1900.

Certificate of registration of any mortgage or charge after the first certificate.

Copy of any memorandum of satisfaction given pursuant to sect. 16 of the Companies Act, 1900.

COURTENAY BOYLE.

Board of Trade,
28th December, 1900.

The Companies Acts, 1862 to 1900.

WHEREAS by sect. 71 of the Companies Act, 1862, it is provided that the forms set forth in the Second Schedule thereto, as circumstances admit, shall be used in all matters to which such forms refer, and that the Board of Trade may from time to time make such alterations in or additions to the forms contained in the said Second Schedule as it deems requisite:

AND WHEREAS the Form E in the said schedule was altered by the Board of Trade by notice appearing in the *London Gazette* of the 14th April, 1885:

NOW THEREFORE THE BOARD OF TRADE do hereby make the alterations in and additions to Form E in the said Second Schedule, and in the said *London Gazette* of the 14th April, 1885, which appear in the Form E hereinafter set forth, and such form, or a form as near thereto as circumstances admit, is the form to be used in making the list and summary of members and capital prescribed by sect. 26 of the Companies Act, 1862.

The Board of Trade further direct that the other forms hereinafter set forth shall be used for the purposes of the Companies Act, 1900.

COURTENAY BOYLE.

Board of Trade,
28th December, 1900.

[FORMS.

Then follow the FORMS—

(1) Form No. 6A, of which Form 40, *supra*, p. 108, is a copy.
(2) Form No. 6B, of which Form 40A, *supra*, p. 111, is a copy.
(3) Form No. 9, of which Form 39, *supra*, p. 108, is a copy.
(4) Form No. 41, of which Form 1, *supra*, p. 67, is a copy.
(5) Form No. 42, of which Form 3, *supra*, p. 69, is a copy.
(6) Form No. 43, of which Form 4, *supra*, p. 70, is a copy.
(7) Form No. 44, of which Form 30, *supra*, p. 100, is a copy.
(8) Form No. 45, of which Form 31, *supra*, p. 101, is a copy.
(9) Form No. 46, which is much on the lines of Form 34, *supra*, p. 102. It contains a note stating that "This form has been provided for the purpose of indicating the nature of what is required; but as the report to be filed must be a copy of that sent to the shareholders, all that is contained in that report must appear in this."
(10) Form No. 47, of which Form 36, *supra*, p. 105, is a copy.
(11) Form No. 49, of which Form 38, *supra*, p. 107, is a copy.
(12) Form No. 50, of which Form 41, *supra*, p. 112, is a copy.

NOTE.—Each of the forms thus approved is to have indorsed thereon the appropriate sections of the Act as set out in the *London Gazette*.

COLLECTION OF FEES UNDER THE COMPANIES ACTS, 1862—1900.

WHEREAS by Treasury Orders, dated respectively the 1st Dec., 1866, and 28th March, 1878, certain regulations were made for the collection of fees payable to the Companies Registration Office.

And whereas it is expedient to amend such regulations:

Now we, being two of the Lords Commissioners of His Majesty's Treasury, in pursuance of the powers vested in us by the Public Offices Fees Act, 1879, do hereby revoke the above-named regulations, and we do hereby direct that all the fees payable to the Registrar of Joint Stock Companies shall be collected by means of stamps.

Impressed stamps, of such design and character as may from time to time be adopted by the Commissioners of Inland Revenue, shall be used in all cases except those stated below.

Adhesive stamps, of the description heretofore in use, bearing the imprint of the words "Companies Registration," shall be affixed to copies of registered documents supplied to the public.

The adhesive stamps shall be cancelled by an overprint, with a hand stamp, bearing the word "cancelled," together with the date of such cancelling; or in such manner as the Commissioners of Inland Revenue may from time to time direct.

Given under our hands this 31st day of Jan., 1901.

W. H. FISHER.

Treasury Chambers, Whitehall. H. T. ANSTRUTHER.

ADDENDA

TO

COMPANY PRECEDENTS

PART I. (7th Edit.)

PAGE

14 As to conclusiveness of certificates of incorporation:
See now sect. 1 of the Companies Act, 1900.

20 As to subscribers to the memorandum:
The observation must be read subject to the changes effected by the repeal of sect. 25 of the Companies Act, 1867, by sect. 33 of the Act of 1900.

22 As to allotment of shares:
See now sect. 4 of the Companies Act, 1900, as to restrictions on allotments in certain cases.

29 Liability on shares and sect. 25 of the Companies Act, 1867:
See now sects. 7 and 33 of the Companies Act, 1900.

39 Sect. 7 of the Companies Act, 1880, is amended by sect. 26 of the Companies Act, 1900.

54 The terms "promoter" and "promotion" are also used in sect. 10 of the Companies Act, 1900.

61 Remuneration of promoters:
See now sect. 8 of the Companies Act, 1900, under which promoters may in some cases take an underwriting or other commission.

61 Fiduciary position of promoters:
See now sect. 10 of the Act of 1900 as to disclosure in prospectus.

68 Disclosure:
See now sect. 10 of the Companies Act, 1900.

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71 As to preliminary contracts:

See now sect. 6, sub-sect. (3) of the Companies Act, 1900, rendering all preliminary contracts of certain companies provisional; also sect. 11 as to varying contracts.

88 As to prospectuses:

See now sects. 9 and 10 of the Companies Act, 1900; also sects. 2, 4, 5 and 6 of the same Act.

123 As to sect. 38 of the Companies Act, 1867:

See now sect. 33 of the Companies Act, 1900, repealing the above section, and sect. 10, sub-sect. (1) (k), introducing substituted provisions.

125 Waiver clauses:

See now sect. 10, sub-sect. (5) of the Companies Act, 1900, abolishing waiver clauses so far as regards the matter by that section required to be stated. See also sect. 4, sub-sect. (5).

135 As to how disclosure should be made:

See now sub-sect. 5 of sect. 10, restricting disclosure by reference to documents.

141 Waiver clauses:

See now sect. 10, sub-sect. (5), and sect. 4, sub-sect. (5) of the Companies Act, 1900.

146 Underwriting contracts:

See now sect. 8 of the Companies Act, 1900, which in fact legalises underwriting where shares are offered for public subscription, but subject to the conditions therein mentioned. See also sect. 10, sub-sect. (1) (h).

175 As to agreements. Note that all contracts made before a company is entitled to commence business are to be provisional only:

See sect. 6, sub-sect. (3) of the Companies Act, 1900, but this section is not to apply to any company registered before January 1st, 1901, or where there is no invitation to the public to subscribe for its shares.

179 As to sect. 25 of the Companies Act, 1867:

See now sect. 33 of the Companies Act, 1900, repealing the above section as from 31st December, 1900, and providing that, as regards the past, no proceedings are to be taken under the section after that date. See also sect. 7 of the

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Act of 1900, which, in substitution for sect. 25 of the Act of 1867, provides for a return to the Registrar of allotments, and for the filing with him of copies of contracts for the issue of shares for a consideration other than cash.

211 Agreements for sale:

Where there is to be an invitation to the public to subscribe for shares, a contract like the above should contain a new clause to the effect that—

17. This agreement is provisional only, and is not to become absolute unless and until the company has become entitled to commence business in accordance with sect. 6 of the Companies Act, 1870; and if it does not become so entitled within —— months from the date hereof, either of the parties hereto may by notice in writing to the other annul this agreement.

216 As to adoption of contracts:

See now sect. 6, sub-sect. (3) of the Companies Act, 1900. Having regard to this section, if the adoption takes place before the company has become entitled to commence business, and there has been, or is to be, an appeal to the public to subscribe for shares, a clause should be inserted as in the note to p. 211, *supra*.

218 As to adoption of contracts:

See note to p. 216.

222 See note, *supra*, to p. 211.

225 See note, *supra*, to p. 211.

226 See note, *supra*, to p. 211.

228 See note, *supra*, to p. 211.

229 See note, *supra*, to p. 211.

263 Memoranda of association:

As to the declaration required before registration:

See sect. 1, sub-sect. (2) of the Companies Act, 1900.

As to signing the memorandum for qualification shares:

See sect. 2, sub-sect. (1) of the Act of 1900.

As to filing lists of directors on applying to register memorandum:

See sect. 2, sub-sect. (2) of the same Act.

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As to the memorandum fixing the minimum subscription:
See sect. 4 of 1900.
As to stating the contents of the memorandum in prospectuses:
See sect. 10 of the same Act.

274 Line 3 from bottom. Add reference to sect. 8 of the Companies Act, 1900.

294 Form 68. Add reference to sect. 27 of the Companies Act, 1900.

384 Clause 5:
But see now sect. 6 of the Companies Act, 1900.

410 At end of clause 48 add the words, "or re-convert any stock into paid-up shares of any denomination."

411 Clause 49:
But see now sects. 14 to 18 of the Companies Act, 1900, as to registration of mortgages and charges.

413 Last line. Add reference to sect. 12 of the Companies Act, 1900, and to sect. 6 of the same Act, and to the repeal of sect. 39 of the Companies Act, 1867, by sect. 33 of the Act of 1900.

415 Clauses 59 and 60:
See now sect. 13 of the Act of 1900, providing for extraordinary meetings on a requisition signed by shareholders.

429 Clause 84:
See now sect. 2 of the Companies Act, 1900, as to conditions to be fulfilled before a person can be named as a director in the articles, where there is to be an invitation to the public to subscribe.

429 Clause 87:
See sect. 3 of the Companies Act, 1900.

430 Clause 88:
See sect. 3 of the Companies Act, 1900.

434 Clause 92:
See sect. 3 of the Companies Act, 1900.

453 As to the secretary, add a reference to sect. 1, sub-sect. (2), sect. 7, sect. 12, sub-sect. (2) (d), sect. 18 and sect. 19 of the Companies Act, 1900.

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461 Audit clauses:
See now sects. 21, 22 and 23 of the Companies Act, 1900.

473 Clause 16:
See now sect. 2 of the Companies Act, 1900, as to naming directors.

476 Form 214. This form cannot be adopted in the case of any company registered after 31st December, 1900:
See sect. 27 of the Companies Act, 1900.

601 Forms 313 and 314. Add reference to sects. 21—23 of the Companies Act, 1900.

746 See now sect. 6 of the Companies Act, 1900, which restricts the exercise of the borrowing powers in certain cases, and see sects. 14 to 18 of the same Act as to registration of mortgages and charges.

749 See note to p. 746.

783 Line 20 from top:
See sects. 14 and 18 of the Companies Act, 1900, as to registration of mortgages and charges.

792 These observations must be taken subject to the provisions of sect. 14 of the Companies Act, 1900. Having regard to that section, an agreement for a charge, if relied on as a charge in equity, must be registered within the time limited.

795 Line 19 from top:
See now sects. 14 to 18 of the Companies Act, 1900.

797 Last line:
See now sects. 14 to 18 of the Companies Act, 1900.

811 Prospectuses:
See now sect. 10 of the Companies Act, 1900.

819 Forms 504, 507, 522, 524, 527, 528:
See now sect. 14 of the Companies Act, 1900, as to registering debentures and indorsing copy of certificate of registration.

934 Last line:
See also, as to registration of mortgages and charges, sects. 14 to 18 of the Companies Act, 1900.

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950 Forms 580, 581, 582:
See now sects. 14 to 18 of the Companies Act, 1900.

956 Form 584:
See now sects. 14 to 18 of the Companies Act, 1900.

960 Form 587:
See now sects. 14 to 18 of the Companies Act, 1900.

969 Form 590:
See now sects. 14 to 18 of the Companies Act, 1900.

1022 As to Form 634:
Insert, if necessary, before the word "defendants," the words, "and for damages for breach of the provisions of sect. 11 of the Companies Act, 1900."

1040 Form 657:
This can readily be converted into a statement of claim under the Companies Act, 1900. The pleadings should show that the defendants had committed a breach of sect. 11 of that Act, *e.g.*, by omitting to state some fact which, under that section, ought to have been stated.

PART II. (EIGHTH EDITION).

PAGE

13 As to certificates of incorporation:
See now sect. 1 of the Companies Act, 1900.

37 Grounds for winding-up:
See now sect. 12, sub-sect. (8) of the Companies Act, 1900, which establishes an additional ground for winding-up.

54 Contributories' petition:
See shareholders' right to petition under sect. 12, sub-sect (8) of the Companies Act, 1900.

95 Supervision order:
Add a reference to sect. 25 of the Companies Act, 1900.

461 Contributories, and p. 467, Table I.:
See now sect. 5 of the Companies Act, 1900, as to allotments made in contravention of sect. 4 of the same Act.

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472 *et seq.*
See now sect. 33 of the Companies Act, 1900, repealing sect. 25 of the Companies Act, 1867, and prohibiting further proceedings.

646 Restoration of company's name:
Add a reference to sect. 26 of the Companies Act, 1900.

687 Application to the Court in voluntary winding-up:
See now sect. 25 of the Companies Act, 1900, which amends sect. 138 of the Companies Act, 1862, by enabling a creditor to apply.

689 See note to p. 687.

784 Joint Stock Companies Arrangement Act, 1870:
Add a reference to sect. 24 of the Companies Act, 1900.

PART III. (EIGHTH EDITION).

PAGE

129 After line 3 from bottom of page, insert:
(3) The provisions of the Companies Act, 1900, must be borne in mind, especially sects. 9 and 10 and 14 to 18 inclusive.

146 As to waiver clauses:
See now sect. 10 of the Companies Act, 1900, which in effect abolishes waiver clauses as regards the matters required by that section to be set forth in a prospectus.

148 At the bottom insert:
See now, as to actions for damages, sect. 10 of the Companies Act, 1900.

153 At foot add:
The above must now be read in conjunction with sects. 14 to 18 inclusive of the Companies Act, 1900, as to registration of mortgages and charges.

157 Add at foot:
See now sects. 14 to 18 of the Companies Act, 1900, as to registration of mortgages and charges, including debentures and debenture stock.

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186 to **206** These observations must be read subject to the provisions of the Companies Act, 1900:
See sects. 9 and 10 as to prospectuses.

211 Note that debentures and debenture stock certificates require special indorsement of copy of certificate of registration:
See sect. 14, sub-sect. (6), and sect. 18 of the Companies Act, 1900.

215 Note provisions of sects. 14 and 18 of the Companies Act, 1900, as to registration and as to indorsement of copy of Registrar's certificate.

224 Note provisions of sects. 14 and 18 of the Companies Act, 1900, as to registration and as to indorsement of copy of Registrar's certificate.

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237 Note provisions of sects. 14 and 18 of the Companies Act, 1900, as to registration and as to indorsement of copy of Registrar's certificate.

239 Note provisions of sects. 14 and 18 of the Companies Act, 1900, as to registration and as to indorsement of copy of Registrar's certificate.

246 See now sects. 14 to 18 of the Companies Act, 1900, as to the registration of mortgages and charges, including debentures and debenture stock.

316 See now sects. 14 to 18 of the Companies Act, 1900, as to the registration of mortgages and charges, including debentures and debenture stock.

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