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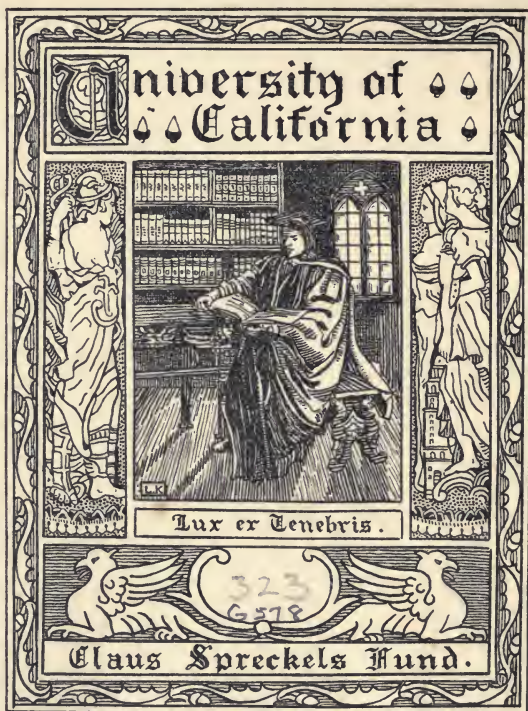
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THE
COMPANIES ACTS
1862-1900

BY
WILLIAM RONDEN LL.B.
Solicitor

1881
STAMFORD HUTTON
BARRISTER-AT-LAW

5/- NN





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THE COMPANIES ACTS

1862-1900.

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1862-1900

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THE COMPANIES ACTS 1862-1900

WITH CROSS REFERENCES
AND
A FULL ANALYTICAL INDEX

COMPRISING THE FULL TEXT OF ALL THE STATUTES WITH ALL
AMENDMENTS AND REPEALS DOWN TO 1900, AND THE
FORMS AND FEES PRESCRIBED BY THE BOARD
OF TRADE UNDER THE ACT OF 1900

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SPRECKELS

PREFACE.

THIS book contains all the Companies Acts, 1862 to 1900, applicable to England and Wales, together with the Forged Transfer Acts and the Forms and Fees prescribed by the Board of Trade for use under the Companies Act, 1900, and is intended to supply for ready reference the full text of the Statutes in a small compass together with a full index.

Sections which have been repealed or amended are distinguished accordingly, and where sections refer to or are affected by other sections cross references are added to facilitate reference to such other sections.

No other comment, annotation, or reference to judicial decisions has been added, as the object of the book is to reproduce all the existing Statute law on the subject in the most portable and handy form for use in the office and at meetings of directors or shareholders.

The analytical index has been made very full, and care has been taken to arrange the subject-matter under every heading under which search

appears likely to be made, in order that any particular portion of the Acts may be found as quickly and easily as possible.

The text of the Acts follows the Queen's Printers' copies, but the authorised marginal notes of the Revised Edition of the Statutes have been substituted for the original marginal notes, which in many cases were misleading.

W. G.

S. H.

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THE COMPANIES ACT, 1862,

(25 & 26 VICTORIA, CHAPTER 89).

An Act for the Incorporation, Regulation, and Winding up of Trading Companies and other Associations.

Preliminary.

1. This Act may be cited for all Purposes as “The Short Title Companies Act, 1862.”

2. *Repealed by the Statute Law Revision Act, 1893.*

3. For the Purposes of this Act a Company that carries on the Business of Insurance in common with any other Business or Businesses shall be deemed to be an Insurance Company.

Definition
of Insurance
Company.

4. No Company, Association, or Partnership consisting of more than Ten Persons shall be formed, after the Commencement of this Act, for the Purpose of carrying on the Business of Banking, unless it is registered as a Company under this Act, or is formed in pursuance of some other Act of Parliament, or of Letters Patent: and no Company, Association, or Partnership consisting of more than Twenty Persons shall be formed, after the Commencement of this Act, for the Purpose of carrying on any other Business that has for its Object the Acquisition of Gain¹ by the Company, Association, or Partnership, or by the individual Members thereof, unless it is registered as a Company under this Act, or is formed in pursuance of some other Act of Parliament, or of Letters Patent,

Prohibition
of Partner-
ships ex-
ceeding
certain
Number.

or is a Company engaged in working Mines within and subject to the Jurisdiction of the Stannaries.

¹ As to Associations not for profit, *see* Companies Act, 1867, Sect. 23, *post* p. 137.

Divisions of
Act.

5. This Act is divided into Nine Parts, relating to the following Subject Matters :

The First Part,—to the Constitution and Incorporation of Companies and Associations under this Act :

The Second Part,—to the Distribution of the Capital and Liability of Members of Companies and Associations under this Act :

The Third Part,—to the Management and Administration of Companies and Associations under this Act :

The Fourth Part,—to the winding up of Companies and Associations under this Act :

The Fifth Part,—to the Registration Office :

The Sixth Part,—to Application of this Act to Companies registered under the Joint Stock Companies Acts :

The Seventh Part,—to Companies authorized to register under this Act :

The Eighth Part,—to Application of this Act to unregistered Companies :

The Ninth Part,—to repeal of Acts, and temporary Provisions.

PART I.

CONSTITUTION AND INCORPORATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Memorandum of Association.

Mode of
forming
Company.

6. Any Seven or more Persons associated for any lawful Purpose may, by subscribing their Names to a Memorandum of Association, and otherwise complying with the Requisitions of this Act in respect of Regis-

tration,¹ form an incorporated Company,² with or without limited Liability.

¹ As to Registration, *see* Sect. 17, *post* p. 8.

² As to Incorporation, *see* Sect. 18, *post* p. 8.

7. The Liability of the Members of a Company formed under this Act, may, according to the Memorandum of Association, be limited either to the Amount, if any, unpaid on the Shares respectively held by them, or to such Amount as the Members may respectively undertake by the Memorandum of Association to contribute to the Assets of the Company in the event of its being wound up.

Mode of
limiting
Liability of
Members.

8. Where a Company is formed on the Principle of having the Liability of its Members limited to the Amount unpaid on their Shares, herein-after referred to as a Company limited by Shares, the Memorandum of Association shall contain the following Things; (that is to say,)

Memo-
randum of
Association
of a Com-
pany
limited by
Shares.

- (1.) The Name of the proposed Company, with the Addition of the Word "Limited"¹ as the last Word in such Name:
- (2.) The Part of the United Kingdom, whether *England, Scotland, or Ireland*, in which the Registered Office² of the Company is proposed to be situate:
- (3.) The Objects for which the proposed Company is to be established:
- (4.) A Declaration that the Liability of the Members is limited:
- (5.) ~~The Amount of Capital with which the Company~~ proposes to be registered divided into Shares of a certain fixed Amount:

Subject to the following Regulations:

- (1.) That no Subscriber shall take less than One Share:
- (2.) That each Subscriber of the Memorandum of Association shall write opposite to his Name the Number of Shares he takes.

¹ Except in the case of Associations not for profit, Companies Act, 1867, Sect. 23, *post* p. 137.

² As to Registered Office, *see* Sect. 39, *post* p. 18.

Memo-
randum of
Association
of a Com-
pany
limited by
Guarantee.

9. Where a Company is formed on the Principle of having the Liability of its Members limited to such Amount as the Members respectively undertake to contribute to the Assets of the Company in the event of the same being wound up, herein-after referred to as a Company limited by Guarantee, the Memorandum of Association shall contain the following Things; (that is to say,)

- (1.) The Name of the proposed Company, with the Addition of the Word "Limited"¹ as the last Word in such Name:
- (2.) The part of the United Kingdom, whether *England, Scotland, or Ireland*, in which the Registered Office² of the Company is proposed to be situate:
- (3.) The Objects for which the proposed Company is to be established:
- (4.) A Declaration that each Member undertakes to contribute to the Assets of the Company, in the event of the same being wound up, during the Time that he is a Member, or within One Year afterwards, for Payment of the Debts and Liabilities of the Company contracted before the Time at which he ceases to be a Member, and of the Costs, Charges, and Expenses of winding up the Company, and for the Adjustment of the Rights of the Contributories amongst themselves, such Amount as may be required, not exceeding a specified Amount.

¹ Except in the case of Associations not for profit, Companies Act, 1867, Sect. 23, *post* p. 137.

² As to Registered Office, *see* Sect. 39, *post* p. 18.

Memo-
randum of
Association
of an
Unlimited
Company.

10. Where a Company is formed on the Principle of having no Limit placed on the Liability of its Members, herein-after referred to as an Unlimited Company, the Memorandum of Association shall contain the following Things; (that is to say,)

- (1.) The Name of the proposed Company:
- (2.) The Part of the United Kingdom, whether *England, Scotland, or Ireland*, in which the

Registered Office¹ of the Company is proposed to be situate :

(3.) The Objects for which the proposed Company is to be established.

¹ As to Registered Office, *see* Sect. 39, *post* p. 18.

11. The Memorandum of Association shall bear the same Stamp as if it were a Deed, and shall be signed by each Subscriber in the Presence of, and be attested by, One Witness at the least, and that Attestation shall be sufficient Attestation in *Scotland* as well as in *England* and *Ireland*: It shall, when registered,¹ bind the Company and the Members thereof to the same Extent as if each Member had subscribed his Name and affixed his Seal thereto, and there were in the Memorandum contained, on the Part of himself, his Heirs, Executors, and Administrators, a Covenant to observe all the Conditions of such Memorandum, subject to the Provisions of this Act.

Stamp,
Signature,
and Effect
of Memo-
randum of
Association.

¹ As to Registration, *see* Sects. 17 and 18, *post* p. 8.

12. Any Company limited by Shares may so far modify the Conditions contained in its Memorandum of Association, if authorized to do so by its Regulations as originally framed, or as altered by special Resolution in manner herein-after mentioned,¹ as to increase its Capital by the Issue of new Shares of such Amount as it thinks expedient, or to consolidate and divide its Capital into Shares of larger Amount than its existing Shares, or to convert its paid-up Shares² into Stock,³ but, save as aforesaid, and save as is herein-after provided⁴ in the Case of a Change of Name, no Alteration shall be made by any Company in the Conditions contained in its Memorandum of Association.⁵

Power of
certain
Companies
to alter
Memo-
randum of
Association.

No Altera-
tions there-
in save as
herein
mentioned.

¹ Sects. 50 and 51, *post* pp. 22, 23.

² As to effect of such Conversion, *see* Sect. 29, *post* p. 13.

³ Or to re-convert Stock into paid-up shares, the Companies Act, 1900, Sect. 29, *post* p. 224.

⁴ *I.e.*, in Sects. 13 and 20, *post* pp. 6 and 9.

⁵ *See*, however, the Companies (Memorandum of Association) Act, 1890, *post* p. 161.

Power of
Companies
to change
Name.

13. Any Company under this Act, with the Sanction of a special Resolution of the Company passed in manner herein-after mentioned,¹ and with the Approval of the Board of Trade testified in Writing under the Hand of One of its Secretaries or Assistant Secretaries, may change its Name, and upon such Change being made the Registrar shall enter the new Name on the Register in the Place of the former Name, and shall issue a Certificate of Incorporation² altered to meet the Circumstances of the Case; but no such Alteration of Name shall affect any Rights or Obligations of the Company, or render defective any legal Proceedings instituted or to be instituted by or against the Company, and any legal Proceedings may be continued or commenced against the Company by its new Name that might have been continued or commenced against the Company by its former Name.

¹Sect. 51, *post* p. 23.

²Sect. 18, *post* p. 8.

Articles of Association.

Regulations
to be pre-
scribed by
Articles of
Association.

14. The Memorandum of Association may, in the Case of a Company limited by Shares, and shall, in the Case of a Company limited by Guarantee¹ or unlimited, be accompanied, when registered by Articles of Association signed by the Subscribers to the Memorandum of Association, and prescribing such Regulations for the Company as the Subscribers to the Memorandum of Association deem expedient: The Articles shall be expressed in separate Paragraphs, numbered arithmetically: They may adopt all or any of the Provisions contained in the Table marked A. in the First Schedule hereto: They shall, in the Case of a Company, whether limited by Guarantee or unlimited, that has a Capital divided into Shares, state the Amount of Capital with which the Company proposes to be registered; and in the Case of a Company, whether limited by Guarantee or unlimited, that has not a Capital divided into Shares, state the

Number of Members with which the Company proposes to be registered, for the Purpose of enabling the Registrar to determine the Fees payable on Registration: In a Company limited by Guarantee or unlimited, and having a Capital divided into Shares, each Subscriber shall take One Share at the least, and shall write opposite to his Name in the Memorandum of Association the Number of Shares he takes.

¹ See also the Companies Act, 1900, Sect. 27, *post* p. 223.

15. In the Case of a Company limited by Shares, if the Memorandum of Association is not accompanied by Articles of Association, or in so far as the Articles do not exclude or modify the Regulations contained in the Table marked A. in the First Schedule hereto, the last-mentioned Regulations shall, so far as the same are applicable, be deemed to be the Regulations of the Company in the same Manner and to the same Extent as if they had been inserted in Articles of Association, and the Articles had been duly registered.

Application
of Table A.

16. The Articles of Association shall be printed, they shall bear the same Stamp as if they were contained in a Deed, and shall be signed by each Subscriber in the Presence of, and be attested by, One Witness at the least, and such Attestation shall be a sufficient Attestation in *Scotland* as well as in *England* and *Ireland*: When registered, they shall bind the Company and the Members thereof to the same Extent as if each Member had subscribed his Name and affixed his Seal thereto, and there were in such Articles contained a Covenant on the Part of himself, his Heirs, Executors, and Administrators to conform to all the Regulations contained in such Articles, subject to the provisions of this Act; and all Monies payable by any Member to the Company, in Pursuance of the Conditions and Regulations of the Company, or any of such Conditions or Regulations, shall be deemed to be a Debt due from such Member to the Company, and in *England* and *Ireland* to be in the Nature of a Specialty Debt.

Stamp, Sig-
nature, and
Effect of
Articles of
Association.

General Provisions.

Registration of Memorandum of Association and Articles of Association, with Fees as in Table B. or Table C.

17. The Memorandum of Association and the Articles of Association, if any, shall be delivered to the Registrar of Joint Stock Companies herein-after mentioned, who shall retain and register the same: There shall be paid to the Registrar by a Company having a Capital divided into Shares, in respect of the several Matters mentioned in the Table marked B. in the First Schedule hereto, the several Fees therein specified or such smaller Fees as the Board of Trade may from Time to Time direct; and by a Company not having a Capital divided into Shares, in respect of the several Matters mentioned in the Table marked C. in the First Schedule hereto, the Several Fees therein specified or such smaller Fees as the Board of Trade may from Time to Time direct: All Fees paid to the said Registrar in pursuance of this Act shall be paid into the Receipt of Her Majesty's Exchequer, and be carried to the Account of the Consolidated Fund of the United Kingdom of *Great Britain and Ireland*.

Effect of Registration.

18. Upon the Registration of the Memorandum of Association, and of the Articles of Association in cases where Articles of Association are required by this Act or by the Desire of the Parties to be registered, the Registrar shall certify under his Hand that the Company is incorporated, and in the Case of a Limited Company that the Company is limited: The Subscribers of the Memorandum of Association, together with such other Persons as may from Time to Time become Members of the Company, shall thereupon be a Body Corporate by the Name contained in the Memorandum of Association, capable forthwith of exercising all the Functions of an Incorporated Company, and having perpetual Succession and a Common Seal¹ with Power to hold Lands,² but with such Liability on the Part of the Members to contribute to the Assets of the Company in the event of the same being wound up as is herein-after mentioned: ³ [A Certificate of the Incorporation of any Company given by the Registrar

shall be conclusive Evidence that all the Requisitions of this Act in respect of Registration have been complied with.^{4]}

¹ As to Seal for use in foreign countries, *see* the Companies Seals Act, 1864, *post* p. 126.

² Unless Company be one not formed for acquisition of gain, as to which *see* Sect. 21, *post* p. 10.

³ Sect. 38, *post* p. 17.

⁴ *Repealed and re-enacted by the Companies Act, 1900, Sect. 1 (1), post* p. 202.

19. A Copy of the Memorandum of Association, having annexed thereto the Articles of Association, if any, shall be forwarded to every Member, at his Request, on Payment of the Sum of One Shilling or such less Sum as may be prescribed by the Company for each Copy ; and if any Company makes Default in forwarding a Copy of the Memorandum of Association and Articles of Association, if any, to a Member, in pursuance of this Section, the Company so making Default shall for each Offence incur a Penalty not exceeding One Pound.

Copies of Memorandum and Articles to be given to Members.

20. No Company shall be registered under a Name identical with that by which a subsisting Company is already registered, or so nearly resembling the same as to be calculated to deceive, except in a case where such subsisting Company is in the course of being dissolved and testifies its Consent in such Manner as the Registrar requires ; and if any Company, through Inadvertence or otherwise, is, without such Consent as aforesaid, registered by a Name identical with that by which a subsisting Company is registered, or so nearly resembling the same as to be calculated to deceive, such first-mentioned Company may, with the Sanction of the Registrar, change its Name, and upon such Change being made the Registrar shall enter the new Name on the Register in the Place of the former Name, and shall issue a Certificate of Incorporation altered to meet the Circumstances of the Case ; but no such Alteration of Name shall affect any Rights or Obligations of the Company, or render defective any legal Proceedings instituted or to be instituted by or against the Com-

Prohibition against Identity of Names in Companies.

pany, and any legal Proceedings may be continued or commenced against the Company by its new Name that might have been continued or commenced against the Company by its former Name.

Prohibition
against cer-
tain Com-
panies hold-
ing Land.

21. No Company formed for the Purpose of promoting Art, Science, Religion, Charity, or any other like Object, not involving the Acquisition of Gain by the Company or by the individual Members thereof, shall, without the Sanction of the Board of Trade, hold more than Two Acres of Land ; but the Board of Trade may, by License under the Hand of One of their Principal Secretaries or Assistant Secretaries, empower any such Company to hold Lands in such Quantity and subject to such Conditions as they think fit.

PART II.

DISTRIBUTION OF CAPITAL AND LIABILITY OF MEMBERS OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Distribution of Capital.

Nature of
Interest in
Company.

22. The Shares or other Interest of any Member in a Company under this Act shall be Personal Estate, capable of being transferred¹ in manner provided by the Regulations of the Company, and shall not be of the Nature of Real Estate, and each Share shall, in the Case of a Company having a Capital divided into Shares, be distinguished by its appropriate Number.²

Shares to be
Numbered.

¹ As to Registration of Transfer, see Sect. 35, *post* p. 15, and Companies Act, 1867, Sect. 26, *post* p. 139.

² *I.e.*, in the Register, Sect. 25 (1), *post* p. 11.

Defini-
tion of
"Member."

23. The Subscribers of the Memorandum of Association of any Company under this Act shall be deemed to have agreed to become Members of the Company whose Memorandum they have subscribed, and upon the Registration of the Company shall be entered as Members

on the Register of Members herein-after mentioned ;¹ and every other Person who has agreed to become a Member of a Company under this Act, and whose Name is entered on the Register of Members, shall be deemed to be a Member of the Company.

¹ Sect. 25, *infra*.

24. Any Transfer of the Share or other Interest of a deceased Member of a Company under this Act,¹ made by his Personal Representative, shall, notwithstanding such Personal Representative may not himself be a Member, be of the same Validity as if he had been a Member at the Time of the Execution of the Instrument of Transfer.

Transfer by
Personal
Representative.

¹ Sect. 22, *ante* p. 10.

25. Every Company under this Act shall cause to be kept in One or more Books a Register of its Members, and there shall be entered therein the following Particulars :

Register of
Members.

- (1.) The Names and Addresses, and the Occupations, if any, of the Members of the Company, with the Addition, in the Case of a Company having a Capital divided into Shares, of a Statement of the Shares¹ held by each Member, distinguishing each Share by its Number ; And of the Amount paid or agreed to be considered as paid on the Shares of each Member :
- (2.) The Date at which the Name of any Person was entered in the Register as a Member :
- (3.) The date at which any Person ceased to be a Member :

And any Company acting in contravention of this Section shall incur a Penalty not exceeding Five Pounds for every Day during which its Default in complying with the Provisions of this Section continues, and every Director or Manager of the Company who shall knowingly and wilfully authorize or permit such Contravention shall incur the like Penalty.

¹ Where Shares have been converted into Stock, *see* Sect. 29, *post* p. 13. Where Share Warrants have been issued, *see* the Companies Act, 1867, Sect. 31, *post* p. 140.

Annual List
of Members.

✓ **26.** Every Company under this Act, and having a Capital¹ divided into Shares, shall make, once at least in every Year, a List of all Persons who, on the Fourteenth Day succeeding the Day on which the Ordinary General Meeting,² 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 Summary³ specifying the following Particulars: ⁴

- (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.

¹ As to Companies not having a Capital divided into Shares, *see* Sect. 45, *post* p. 21.

² Sect. 49, *post* p. 22.

³ Schedule 2, Form E, *post* p. 119.

⁴ Where Shares have been converted into Stock, *see* Sect. 29, *post* p. 13. Where Share Warrants have been issued, *see* the Companies Act, 1867, Sect. 32, *post* p. 141. Where a reduction of Capital has taken place, *see* the Companies Act, 1880, Sect. 6, *post* p. 155., and for further requirements, *see* the Companies Act, 1900, Sect. 19, *post* p. 220.

27. If any Company under this Act, and having a Capital divided into Shares, makes default in complying with the Provisions of this Act with respect to forwarding such List of Members or Summary as is herein-before mentioned ¹ to the Registrar, such Company shall incur a Penalty not exceeding Five Pounds for every Day during which such Default continues, and every Director and Manager of the Company who shall knowingly and wilfully authorize or permit such Default shall incur the like Penalty.

Penalty on Company, etc., not forwarding List of Members, etc., to Registrar

¹ In the previous Sect.

28. Every Company under this Act, having a Capital divided into Shares, that has consolidated ¹ and divided its Capital into Shares of larger Amount than its existing Shares, or converted any Portion of its Capital into Stock, shall give Notice to the Registrar of Joint Stock Companies of such Consolidation, Division, or Conversion, specifying the Shares so consolidated, divided, or converted.

Company to give Notice of Consolidation or of Conversion of Capital into Stock.

¹ As empowered to do by Sect. 12, *ante* p. 5.

29. Where any Company under this Act, and having a Capital divided into shares, has converted ¹ any Portion of its Capital into Stock, and given Notice ² of such Conversion to the Registrar, all the Provisions of this Act which are applicable to Shares only shall cease as to so much of the Capital as is converted into Stock; and the Register of Members hereby required ³ to be kept by the Company, and the List of Members ⁴ to be forwarded to the Registrar, shall show the Amount of Stock held by each Member in the List instead of the Amount of Shares and the Particulars relating to Shares herein-before required.

Effect of Conversion of Shares into Stock.

¹ As empowered to do by Sect. 12, *ante* p. 5.

² As required in preceding Section.

³ Sect. 25, *ante* p. 11.

⁴ Sect. 26, *ante* p. 12.

30. No Notice of any Trust, expressed, implied, or constructive, shall be entered on the Register, or be receivable by the Registrar, in the Case of Com-

No Entry of Trusts on Register.

panies under this Act and registered in *England* or *Ireland*.

Certificate
of Shares
or Stock
Evidence of
Title.

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

Inspection
of Register.

32. The Register of Members, commencing from the Date of the Registration of the Company, shall be kept at the Registered Office of the Company herein-after mentioned :¹ Except when closed as herein-after mentioned,² it shall during Business Hours, but subject to such reasonable Restrictions as the Company in General Meeting may impose, so that not less than Two Hours in each Day be appointed for Inspection, be open to the Inspection of any Member gratis, and to the Inspection of any other Person on the Payment of One Shilling, or such less Sum as the Company may prescribe, for each Inspection ; and every such Member or other Person may require a Copy of such Register, or of any Part thereof, or of such List or Summary of Members as is herein-before mentioned, on Payment of Sixpence for every Hundred Words required to be copied : If such Inspection or Copy is refused, the Company shall incur for each Refusal a Penalty not exceeding Two Pounds, and a further Penalty not exceeding Two Pounds for every Day during which such Refusal continues, and every Director and Manager of the Company who shall knowingly authorize or permit such Refusal shall incur the like Penalty ; and in addition to the above Penalty, as respects Companies registered in *England* and *Ireland*, any Judge sitting in Chambers, or the Vice Warden of the Stannaries, in the Case of Companies subject to his Jurisdiction, may by Order compel an immediate Inspection of the Register.

¹ Sect. 39, *post* p. 18.

² Sect. 33, *infra*.

Power
to close
Register.

33. Any Company under this Act may, upon giving Notice by Advertisement in some Newspaper circu-

lating in the District in which the Registered Office of the Company is situated, close the Register of Members for any Time or Times not exceeding in the whole Thirty Days in each Year.

34. Where a Company has a Capital divided into Shares, whether such Shares may or may not have been converted into Stock, Notice of any Increase in such Capital beyond the registered Capital, and where a Company has not a Capital divided into Shares, Notice of any Increase in the Number of Members beyond the registered Number, shall be given to the Registrar in the Case of an Increase of Capital, within Fifteen Days from the Date of the passing of the Resolution by which such Increase has been authorized, and in the Case of an Increase of Members within Fifteen Days from the Time at which such Increase of Members has been resolved on or has taken place, and the Registrar shall forthwith record the Amount of such Increase of Capital or Members: If such Notice is not given within the Period aforesaid the Company in default shall incur a Penalty not exceeding Five Pounds for every Day during which such Neglect to give Notice continues, and every Director and Manager of the Company who shall knowingly and wilfully authorize or permit such Default shall incur the like Penalty.

Notice of Increase of Capital and of Members to be given to Registrar. ✓

35. If the Name of any Person is, without sufficient Cause, entered in or omitted from the Register of Members of any Company under this Act, or if Default is made or unnecessary Delay takes place in entering on the Register the Fact of any Person having ceased to be a Member of the Company, the Person or Member aggrieved, or any Member of the Company, or the Company itself, may, as respects Companies registered in *England* or *Ireland*, by Motion in any of Her Majesty's Superior Courts of Law or Equity, or by Application to a Judge sitting in Chambers, or to the Vice Warden of the Stannaries in the Case of Companies subject to his Jurisdiction, and as respects Companies registered in *Scotland* by summary Petition

Remedy for improper Entry or Omission of Entry in Register.

to the Court of Sessions, or in such other Manner as the said Courts may direct, apply for an Order of the Court that the Register may be rectified; and the Court¹ may either refuse such Application, with or without Costs, to be paid by the Applicant, or it may, if satisfied of the Justice of the Case, make an Order for the Rectification of the Register, and may direct the Company to pay all the Costs of such Motion, Application, or Petition, and any Damages the Party aggrieved may have sustained: The Court may in any Proceeding under this Section decide on any Question relating to the Title of any Person who is a Party to such Proceeding to have his Name entered in or omitted from the Register, whether such Question arises between Two or more Members or alleged Members, or between any Members or alleged Members, and the Company, and generally the Court may in any such Proceeding decide any Question that it may be necessary or expedient to decide for the Rectification of the Register; provided that the Court, [if a Court of Common Law,²] may direct an Issue to be tried, in which any Question of Law may be raised, [and a Writ of Error or Appeal, in the Manner directed by "The Common Law Procedure Act, 1854," shall lie²].

¹ This jurisdiction is specially preserved by the Companies Act, 1898, Sect. 2, *post* p. 201.

² Repealed by the Statute Law Revision Act, 1881.

Notice to
Registrar of
Rectifica-
tion of
Register.

36. Whenever any Order has been made rectifying the Register, in the Case of a Company hereby required to send a List of its Members to the Registrar, the Court shall, by its Order, direct that due Notice of such Rectification be given to the Registrar.

Register to
be Evidence.

37. The Register of Members shall be *prima facie* Evidence of any Matters by this Act¹ directed or authorized to be inserted therein.

¹ Sect. 25, *ante* p. 11.

Liability of Members.

38.¹ In the event of a Company formed under this Act being wound up, every present and past Member of such Company shall be liable to contribute to the Assets of the Company to an Amount sufficient for Payment of the Debts and Liabilities of the Company, and the Costs, Charges, and Expenses of the Winding up, and for the Payment of such Sums as may be required for the Adjustment of the Rights of the Contributories amongst themselves, with the Qualifications following ; (that is to say,)

Liability
of present
and past
Members of
Company.

- (1.) No past Member shall be liable to contribute to the Assets of the Company if he has ceased to be a Member for a Period of One Year or upwards prior to the Commencement of the Winding up : ²
- (2.) No past Member shall be liable to contribute in respect of any Debt or Liability of the Company contracted after the Time at which he ceased to be a Member :
- (3.) No past Member shall be liable to contribute to the Assets of the Company unless it appears to the Court that the existing Members are unable to satisfy the Contributions required to be made by them in pursuance of this Act :
- (4.) In the Case of a Company limited by Shares, no Contribution shall be required from any Member exceeding the Amount, if any, unpaid on the Shares in respect of which he is liable as a present or past Member :
- (5.) In the Case of a Company limited by Guarantee, no Contribution shall be required from any Member exceeding the Amount of the Undertaking entered into on his Behalf by the Memorandum of Association :
- (6.) Nothing in this Act contained shall invalidate any Provision contained in any Policy of Insurance or other Contract whereby the Liability of Individual Members upon any such Policy

or Contract is restricted, or whereby the Funds of the Company are alone made liable in respect of such Policy or Contract :

- (7.) No Sum due to any Member of a Company, in his Character of a Member, by way of Dividends, Profits, or otherwise, shall be deemed to be a Debt of the Company, payable to such Member in a Case of Competition between himself and any other Creditor not being a Member of the Company ; but any such Sum may be taken into account, for the Purposes of the final Adjustment³ of the Rights of the Contributories amongst themselves.

¹ Modified as to Directors or Managers with Unlimited Liability by the Companies Act, 1867, Sect. 5, *post* p. 130.

² As to Commencement of Winding-up, if by the Court, *see* Sect. 84, *post* p. 37 ; if voluntary, *see* Sect. 130, *post* p. 54.

³ Sect. 109, *post* p. 46.

PART III.

MANAGEMENT AND ADMINISTRATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Provisions for Protection of Creditors.

Registered
Office of
Company.

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

Notice of
Situation of
Registered
Office.

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

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

Publication
of Name by
a Limited
Company.

42. If any Limited Company under this Act does not paint or affix, and keep painted or affixed, its Name in manner directed by this Act, it shall be liable to a Penalty not exceeding Five Pounds for not so painting or affixing its Name, and for every Day during which such Name is not so kept painted or affixed, and every Director and Manager of the Company who shall knowingly and wilfully authorize or permit such Default shall be liable to the like Penalty; and if any Director, Manager, or Officer of such Company, or any Person on its Behalf, uses or authorizes the use of any Seal purporting to be a Seal of the Company whereon its Name is not so engraven as aforesaid, or issues or authorizes the Issue of any Notice, Advertisement, or other official Publication of such Company, or signs or authorizes to be signed on behalf of such Company any Bill of Exchange, Promissory Note, Endorsement, Cheque, Order for Money or Goods, or issues or authorizes to be issued any Bill of Parcels, Invoice, Receipt, or Letter of Credit of the Company, wherein its Name is not mentioned in Manner aforesaid, he shall be liable to a Penalty of Fifty Pounds, and shall further be personally liable to the Holder of any such Bill of Exchange, Promissory Note, Cheque, or Order for Money or Goods, for the Amount thereof, unless the same is duly paid by the Company.

Penalties
on Non-
publication
of Name.

Register of
Mortgages.

43.¹ Every Limited Company under this Act shall keep a Register of all Mortgages and Charges specifically affecting Property of the Company, and shall enter in such Register in respect of each Mortgage or Charge a short Description of the Property mortgaged or charged, the Amount of Charge created, and the Names of the Mortgagees or Persons entitled to such Charge: If any Property of the Company is mortgaged or charged without such Entry as aforesaid being made, every Director, Manager, or other Officer of the Company who knowingly and wilfully authorizes or permits the Omission of such Entry shall incur a Penalty not exceeding Fifty Pounds: The Register of Mortgages required by this Section shall be open to Inspection by any Creditor or Member of the Company at all reasonable Times; and if such Inspection is refused, any Officer of the Company refusing the same, and every Director and Manager of the Company authorizing or knowingly and wilfully permitting such Refusal, shall incur a Penalty not exceeding Five Pounds, and a further Penalty not exceeding Two Pounds for every Day during which such Refusal continues; and in addition to the above Penalty, as respects Companies registered in *England* and *Ireland*, any Judge sitting in Chambers, or the Vice Warden of the Stannaries in the Case of Companies subject to his Jurisdiction, may by Order compel an immediate Inspection of the Register.

Inspection
of Register.

¹ The Companies Act, 1900, Sects. 14 to 18, *post* pp. 216 to 219.

Certain
Companies
to publish
Statement
in Form D.
in Schedule.

44. Every Limited Banking Company and every Insurance Company, and Deposit, Provident, or Benefit Society under this Act shall, before it commences Business, and also on the First *Monday* in *February* and the First *Monday* in *August* in every Year during which it carries on Business, make a Statement in the Form marked D. in the First Schedule hereto, or as near thereto as Circumstances will admit, and a Copy of such Statement shall be put up in a conspicuous Place in the Registered Office of the Company, and in

every Branch Office or Place where the Business of the Company is carried on, and if Default is made in compliance with the Provisions of this Section the Company shall be liable to a Penalty not exceeding Five Pounds for every Day during which such Default continues, and every Director and Manager of the Company who shall knowingly and wilfully authorize or permit such Default shall incur the like Penalty.

Every Member and every Creditor of any Company mentioned in this Section shall be entitled to a Copy of the above-mentioned Statement on Payment of a sum not exceeding Sixpence.

45. Every Company under this Act,¹ [and not having a Capital divided into Shares²], shall keep at its Registered Office a Register containing the Names and Addresses and the Occupations of its Directors or Managers, and shall send to the Registrar of Joint Stock Companies a Copy of such Register, and shall from Time to Time notify to the Registrar any Change that takes place in such Directors or Managers.

List of Directors to be kept and sent to Registrar.

¹ Except those Registered under The Companies Act, 1867, Sect. 23, *post* p. 137.

² Repealed by the Companies Act, 1900, *post* p. 226.

46. If any Company under this Act, [and not having a Capital divided into Shares¹], makes Default in keeping a Register of its Directors or Managers, or in sending a Copy of such Register to the Registrar in compliance with the foregoing Rules, or in notifying to the Registrar any Change that takes place in such Directors or Managers, such delinquent Company shall incur a Penalty not exceeding Five Pounds for every Day during which such Default continues, and every Director and Manager of the Company who shall knowingly and wilfully authorize or permit such Default shall incur the like Penalty.

Penalty on Company not keeping or sending Register of Directors, etc.

¹ Repealed by the Companies Act, 1900, *post* p. 226.

47. A Promissory Note or Bill of Exchange shall be deemed to have been made, accepted, or endorsed on behalf of any Company under this Act, if made,

Promissory Notes and Bills of Exchange.

accepted, or endorsed in the Name of the Company by any Person acting under the Authority of the Company, or if made, accepted, or endorsed by or on behalf or on account of the Company by any Person acting under the Authority of the Company.

Liability of
Members of
a Company
carrying on
Business
with less
than Seven
Members.

48. If any Company under this Act carries on Business when the Number of its Members is less than Seven¹ for a Period of Six Months after the Number has been so reduced, every Person who is a Member of such Company during the Time that it so carries on Business after such Period of Six Months, and is cognizant of the Fact that it is so carrying on Business with fewer than Seven Members, shall be severally liable for the Payment of the whole Debts of the Company contracted during such Time, and may be sued for the same, without the Joinder in the Action or Suit of any other Member.

¹ And the Company may then be wound up by the Court, Sect. 79 (3), *post* p. 34.

Provisions for Protection of Members.

General
Meeting of
Company.

49. A General Meeting¹ of every Company under this Act shall be held once at the least in every Year.²

¹ See the Companies Act, 1900, Sect. 12, *post* p. 213 as to the "Statutory Meeting," which must be held between one and three months from the date at which the company is entitled to commence business in the case of every company limited by shares.

² At which Auditors must be appointed. The Companies Act, 1900, Sect. 21, *post* p. 220.

Power to
alter Regu-
lations by
Special
Resolution.

50. Subject to the Provisions of this Act, and to the Conditions contained in the Memorandum of Association, any Company formed under this Act may, in General Meeting from Time to Time, by passing a Special Resolution in manner herein-after mentioned,¹ alter all or any of the Regulations of the Company contained in the Articles of Association² or in the Table marked A. in the First Schedule, where such Table is applicable to the Company, or make new Regulations

to the Exclusion of or in addition to all or any of the Regulations of the Company; and any Regulations so made by Special Resolution shall be deemed to be Regulations of the Company of the same Validity as if they had been originally contained in the Articles of Association, and shall be subject in like manner to be altered or modified by any subsequent Special Resolution.

¹ Sect. 51, *infra*.

² Sects. 14, 15 and 16, *ante* pp. 6, 7.

51. A Resolution passed by a Company under this Act shall be deemed to be special whenever a Resolution has been passed by a Majority of not less than Three Fourths of such Members of the Company for the Time being entitled, according to the Regulations of the Company, to vote as may be present, in Person or by Proxy (in Cases where by the Regulations of the Company Proxies are allowed), at any General Meeting of which Notice specifying the Intention to propose such Resolution has been duly given, and such Resolution has been confirmed by a Majority of such Members for the Time being entitled, according to the Regulations of the Company, to vote as may be present, in Person or by Proxy, at a subsequent General Meeting, of which Notice has been duly given, and held at an interval of not less than Fourteen Days, nor more than One Month from the Date of the Meeting at which such Resolution was first passed: At any Meeting mentioned in this Section, unless a Poll is demanded by at least Five Members, a Declaration of the Chairman that the Resolution has been carried shall be deemed conclusive Evidence of the Fact, without Proof of the Number or Proportion of the Votes recorded in favour of or against the same: Notice of any Meeting shall, for the Purposes of this Section, be deemed to be duly given and the Meeting to be duly held, whenever such Notice is given and Meeting held in manner prescribed by the Regulations of the Company: In computing the Majority under this Section, when a Poll is de-

Definition
of Special
Resolution.

manded, Reference shall be had to the Number of Votes to which each Member is entitled by the Regulations of the Company.

Provision
where no
Regulations
as to Meet-
ings.

52. In Default of any Regulations as to voting every Member shall have One Vote, and in default of any Regulations as to summoning General Meetings a Meeting shall be held to be duly summoned of which Seven Days' Notice in Writing has been served on every Member in manner in which Notices are required to be served by the Table marked A.¹ in the First Schedule hereto, and in Default of any Regulations as to the Persons to summon Meetings Five Members shall be competent to summon the same, and in Default of any Regulations as to who is to be Chairman of such Meeting, it shall be competent for any Person elected by the Members present to preside.

¹ *Post* pp. 105, 107, clauses 95, 96 and 97. Also Sects. 62 and 63, *post* p. 27.

Registra-
tion of
Special Re-
solutions.

53. A Copy of any Special Resolution that is passed by any Company under this Act shall be printed and forwarded to the Registrar of Joint Stock Companies, and be recorded by him: If such Copy is not so forwarded within Fifteen Days from the Date of the Confirmation of the Resolution, the Company shall incur a Penalty not exceeding Two Pounds for every Day after the Expiration of such Fifteen Days during which such Copy is omitted to be forwarded, and every Director and Manager of the Company who shall knowingly and wilfully authorize or permit such Default shall incur the like Penalty.

Copies of
Special Re-
solutions.

54. Where Articles of Association have been registered, a Copy of every Special Resolution for the time being in force shall be annexed to or embodied in every Copy of the Articles of Association that may be issued after the passing of such Resolution: Where no Articles of Association have been registered, a Copy of any Special Resolution shall be forwarded in Print to any Member requesting the same on Payment of One Shilling, or such less Sum as the Company may direct:

And if any Company makes Default in complying with the Provisions of this Section it shall incur a Penalty not exceeding One Pound for each Copy in respect of which such Default is made; and every Director and Manager of the Company who shall knowingly and wilfully authorize or permit such Default shall incur the like Penalty.

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

Execution
of Deeds
abroad.

¹ See also the Companies Seals Act, 1864, *post* p. 126.

56. The Board of Trade may appoint One or more competent Inspectors to examine into the Affairs of any Company under this Act, and to report thereon, in such Manner as the Board may direct, upon the Applications following; (that is to say,)

Examina-
tion of
Affairs of
Company
by Inspec-
tors ap-
pointed by
the Board
of Trade.

- (1.) In the Case of a Banking Company that has a Capital divided into shares, upon the Application of Members holding not less than One Third Part of the whole Shares of the Company for the Time being issued :
- (2.) In the Case of any other Company that has a Capital divided into Shares, upon the Application of Members holding not less than One Fifth Part of the whole Shares of the Company for the Time being issued :
- (3.) In the Case of any Company not having a Capital divided into Shares, upon the Application of Members being in number not less than One Fifth of the whole Number of Persons for the Time being entered on the Register of the Company as Members.

Application
for Inspec-
tion to be
supported
by Evi-
dence.

57. The Application shall be supported by such Evidence as the Board of Trade may require for the Purpose of showing that the Applicants have good Reason for requiring such Investigation to be made, and that they are not actuated by malicious Motives in instituting the same; the Board of Trade may also require the Applicants to give Security for Payment of the Costs of the Inquiry before appointing any Inspector or Inspectors.

Inspection
of Books
and Ex-
amination
of Officers.

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

Result of
Examina-
tion how
dealt with.

59. Upon the Conclusion of the Examination the Inspectors shall report their Opinion to the Board of Trade: Such Report shall be written or printed, as the Board of Trade directs: A Copy shall be forwarded by the Board of Trade to the Registered Office of the Company, and a further Copy shall, at the Request of the Members upon whose Application the Inspection was made, be delivered to them or to any One or more of them: All Expenses of and incidental to any such Examination as aforesaid shall be defrayed by the Members upon whose Application the Inspectors were appointed, unless the Board of Trade shall direct the same to be paid out of the Assets of the Company, which it is hereby authorized to do.

Power of
Company
to appoint
Inspectors.

60. Any Company under this Act may by Special Resolution appoint Inspectors for the Purpose of examining into the Affairs of the Company: The Inspectors so appointed shall have the same Powers and perform the same Duties as Inspectors appointed by the Board of Trade, with this Exception, that, instead

of making their Report to the Board of Trade, they shall make the same in such Manner and to such Persons as the Company in General Meeting directs; and the Officers and Agents of the Company shall incur the same Penalties, in case of any Refusal to produce any Book or Document hereby required to be produced to such Inspectors, or to answer any question, as they would have incurred if such Inspector had been appointed by the Board of Trade.

61. A Copy of the Report of any Inspectors appointed under this Act, authenticated by the Seal of the Company into whose Affairs they have made Inspection, shall be admissible in any Legal Proceeding, as Evidence of the Opinion of the Inspectors in relation to any Matter contained in such Report.

Report of Inspectors to be Evidence.

Notices.

62. Any Summons, Notice, Order, or other Document required to be served upon the Company may be served by leaving the same, or sending it through the Post in a prepaid Letter addressed to the Company, at their Registered Office.¹

Service of Notices, etc., on Company.

¹ As to Registered Office of Company, see Sect. 39, *ante* p. 18.

63. Any Document to be served by Post on the Company shall be posted in such Time as to admit of its being delivered in the due Course of Delivery within the Period (if any) prescribed for the Service thereof; and in proving Service of such Document it shall be sufficient to prove that such Document was properly directed, and that it was put as a prepaid Letter into the Post Office.

Service of Notices, etc., by Post.

64. Any Summons, Notice, Order, or Proceeding requiring Authentication by the Company may be signed by any Director, Secretary, or other authorized Officer of the Company, and need not be under the Common Seal of the Company, and the same may be in Writing or in Print, or partly in Writing and partly in Print.

Authentication of Notices of Company, etc.

Legal Proceedings.

Recovery of
Penalties.

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

Application
of Penalties.

66. The Justices or Sheriff imposing any Penalty under this Act may direct the whole or any Part thereof to be applied in or towards Payment of the Costs of the Proceedings, or in or towards the rewarding the Person upon whose Information or at whose Suit such Penalty has been recovered; and subject to such Direction, all Penalties shall be paid into the Receipt of Her Majesty's Exchequer in such Manner as the Treasury may direct, and shall be carried to and form Part of the Consolidated Fund of the United Kingdom.

67. Every Company under this Act shall cause Minutes of all Resolutions and Proceedings of General Meetings of the Company, and of the Directors or Managers of the Company in Cases where there are Directors or Managers, to be duly entered in Books to be from Time to Time provided for the Purpose; and any such Minute as aforesaid, if purporting to be signed by the Chairman of the Meeting at which such Resolutions were passed or Proceedings had, or by the Chairman of the next succeeding Meeting shall be received as Evidence in all Legal Proceedings; and until the contrary is proved, every General Meeting of the Company or Meeting of Directors or Managers in respect of the Proceedings of which Minutes have been so made shall be deemed to have been duly held and convened, and all Resolutions passed thereat or Proceedings had, to have been duly passed and had, and all Appointments of Directors, Managers, or Liquidators shall be deemed to be valid, and all Acts done by such Directors, Managers, or Liquidators shall be valid, notwithstanding any Defect that may afterwards be discovered in their Appointments or Qualifications.

Evidence of
Proceedings
at Meetings.

68. In the Case of Companies under this Act, and engaged in working Mines within and subject to the Jurisdiction of the Stannaries, the Court of the Vice Warden of the Stannaries shall have and exercise the like Jurisdiction and Powers, as well on the Common Law as on the Equity Side thereof, which it now possesses by Custom, Usage, or Statute in the Case of unincorporated Companies, but only so far as such Jurisdiction or Powers are consistent with the Provisions of this Act and with the Constitution of Companies, as prescribed or required by this Act; and for the Purpose of giving fuller Effect to such Jurisdiction in all Actions, Suits, or Legal Proceedings instituted in the said Court, in Causes or Matters whereof the Court has Cognizance, all Process issuing out of the same and all Orders, Rules, Demands, Notices, Warrants, and Summonses required or authorized by the Practice of the Court to be served on any Company whether

Jurisdiction
of Vice
Warden of
Stannaries.



registered or not registered, or any Member or Contributory thereof, or any Officer, Agent, Director, Manager, or Servant thereof, may be served in any Part of *England* without any Special Order of the Vice Warden for that Purpose, or by such special Order may be served in any Part of the United Kingdom of *Great Britain* and *Ireland*, or in the adjacent Islands, Parcel of the Dominions of the Crown, on such Terms and Conditions as the Court shall think fit; and all Decrees, Orders, and Judgments of the said Court made or pronounced in such Causes or Matters may be enforced in the same Manner in which Decrees, Orders, and Judgments of the Court may now by Law be enforced, whether within or beyond the Local Limits of the Stannaries; and the Seal of the said Court, and the Signature of the Registrar thereof, shall be judicially noticed by all other Courts and Judges in *England*, and shall require no other Proof than the Production thereof: The Registrar of the said Court, or the Assistant Registrar, in making Sales under any Decree or Order of the Court shall be entitled to the same Privilege of selling by Auction or Competition without a License, and without being liable to Duty, as a Judge of the Court of Chancery is entitled to in pursuance of the Acts in that Behalf.

Power to
order Se-
curity for
Costs in
Actions
brought by
Limited
Companies.

69. Where a limited Company is Plaintiff or Pursuer in any Action, Suit, or other Legal Proceeding, any Judge having Jurisdiction in the Matter may, if it appears by any credible Testimony that there is Reason to believe that if the Defendant be successful in his Defence the Assets of the Company will be insufficient to pay his Costs, require sufficient Security to be given for such Costs, and may stay all Proceedings until such Security is given.

Allegations
in Action
against
Members.

70. In any Action or Suit brought by the Company against any Member to recover any Call¹ or other Monies due from such Member in his Character of Member, it shall not be necessary to set forth the special Matter, but it shall be sufficient to allege that the Defendant is a Member of the Company, and is

indebted to the Company in respect of a Call made or other Monies due whereby an Action or Suit hath accrued to the Company.

¹ As to Calls on Shares, see Table A, 4 to 7, *post* pp. 93, 94.

Alteration of Forms.

71. The Forms set forth in the Second Schedule hereto, or Forms as near thereto as Circumstances admit, shall be used in all Matters to which such Forms refer: the Board of Trade may from Time to Time make such Alterations in the Tables and Forms contained in the First Schedule hereto, so that it does not increase the Amount of Fees payable to the Registrar in the said Schedule mentioned,¹ and in the Forms in the Second Schedule, or make such Additions to the last-mentioned Forms as it deems requisite:² Any such Table or Form, when altered, shall be published in the *London Gazette*, and upon such Publication being made such Table or Form shall have the same Force as if it were included in the Schedule to this Act, but no Alteration made by the Board of Trade in the Table marked A. contained in the First Schedule shall affect any Company registered prior to the Date of such Alteration, or repeal, as respects such Company, any Portion of such Table.

Forms in
2nd Sched-
ule to be
used.
Board of
Trade may
alter Forms
in Schedule.

¹ In Tables B or C, *post* pp. 107, 108.

² For forms under the Companies Act, 1900, see *post* p. 226 *et seq.*

Arbitrations.

72. Any Company under this Act may from Time to Time, by Writing under its Common Seal, agree to refer and may refer to Arbitration, in accordance with "The Railway Companies Arbitration Act, 1859," any existing or future Difference, Question, or other Matter whatsoever in dispute between itself and any other Company or Person, and the Companies Parties to the Arbitration may delegate to the Person or Persons to whom the Reference is made Power to settle any Terms

Power for
Companies
to refer
Matters to
Arbitration
in accord-
ance with
22 & 23 Vict.
c. 59.

or to determine any Matter capable of being lawfully settled or determined by the Companies themselves, or by the Directors or other managing Body of such Companies.

Provisions
of 22 & 23
Vict. c. 59,
to apply.

73. All the Provisions of "The Railway Companies Arbitration Act, 1859," shall be deemed to apply to Arbitrations between Companies and Persons in pursuance of this Act; and in the Construction of such Provisions "the Companies" shall be deemed to include Companies authorized by this Act to refer Disputes to Arbitration.

PART IV.

WINDING UP OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Preliminary.

Meaning of
Contribu-
tory.

74. The Term "Contributory" shall mean every Person¹ liable to contribute to the Assets of a Company under this Act, in the event of the same being wound up: It shall also, in all Proceedings for determining the Persons who are to be deemed Contributories, and in all Proceedings prior to the final Determination of such Persons, include any Person alleged to be a Contributory.

¹ As to who these are, see Sect. 38, *ante* p. 17, and also Sects. 76, 77 and 78, *post* p. 33; as to Companies Registered but not formed under this Act, Sect. 196 (5), *post* p. 83, and as to unregistered Companies, Sect. 200, *post* p. 88.

Nature of
Liability of
Contribu-
tory.

75. The Liability of any Person to contribute to the Assets of a Company under this Act, in the event of the same being wound up, shall be deemed to create a Debt (in *England* and *Ireland* of the Nature of a Specialty) accruing due from such Person at the Time when his Liability commenced, but payable at the Time or respective Times when Calls are made as

herein-after mentioned¹ for enforcing such Liability; and it shall be lawful in the Case of the Bankruptcy of any Contributory to prove against his Estate the estimated Value of his Liability to future Calls as well as Calls already made.

¹ Sect. 102, p. 43, Sect. 133 (9), p. 56, and Sect. 151, p. 62.

76. If any Contributory dies either before or after he has been placed on the List of Contributories herein-after mentioned,¹ his Personal Representatives, Heirs, and Devisees shall be liable in a due Course of Administration to contribute to the Assets of the Company in discharge of the Liability of such deceased Contributory and such Personal Representatives, Heirs, and Devisees shall be deemed to be Contributories accordingly.

Contribu-
tories in
case of
Death.

¹ Sect. 98, *post* p. 42.

77. If any Contributory becomes bankrupt, either before or after he has been placed on the List of Contributories, his Assignees shall be deemed to represent such Bankrupt for all the Purposes of the Winding up, and shall be deemed to be Contributories accordingly, and may be called upon to admit to Proof against the Estate of such Bankrupt, or otherwise to allow to be paid out of his Assets in due Course of Law, any Monies due from such Bankrupt in Respect of his Liability¹ to contribute to the Assets of the Company being wound up; and for the purposes of this Section any Person who may have taken the Benefit of any Act for the Relief of Insolvent Debtors before the Eleventh Day of *October* One thousand eight hundred and sixty-one shall be deemed to have become bankrupt.

Contribu-
tories in
case of
Bank-
ruptcy.

¹ Sect. 75, *ante* p. 32.

78. If any Female Contributory marries, either before or after she has been placed on the List of Contributories, her Husband¹ shall during the Continuance of the Marriage be liable to contribute to the Assets of the Company the same Sum as she

Contribu-
tories in
case of
Marriage.

would have been liable to contribute if she had not married, and he shall be deemed to be a Contributory accordingly.

¹ But see now Sects. 6, 7, and 14 of the Married Women's Property Act, 1882 (33 & 34 Vict., cap. 75).

Winding up by Court.

Circumstances under which Company may be wound up by Court.

79. A Company under this Act may be wound up by the Court as herein-after defined,¹ under the following Circumstances; (that is to say,)

- (1.) Whenever the Company has passed a Special Resolution² requiring the Company to be wound up by the Court:
- (2.) Whenever the Company does not commence its Business within a Year from its Incorporation, or suspends its Business for the Space of a whole Year:
- (3.) Whenever the Members are reduced in Number to less than Seven:³
- (4.) Whenever the Company is unable to pay its Debts:⁴
- (5.) Whenever the Court is of opinion that it is just and equitable that the Company should be wound up.⁵

¹ Sect. 1 of the Companies Winding-up Act, 1890, *post* p. 164.

² As to what is a Special Resolution, see Sect. 51, *ante* p. 23.

³ As to this, see also Sect. 48, *ante* p. 22, and the Companies Act, 1867, Sect. 40, *post* p. 143.

⁴ See next Sect.

⁵ And see also the Companies Act, 1900, Sect. 12 (8), *post* p. 215.

Company when to be deemed unable to pay its Debts.

80. A Company¹ under this Act shall be deemed to be unable to pay its Debts:

- (1.) Whenever a Creditor, by Assignment or otherwise, to whom the Company is indebted, at Law or in Equity, in a Sum exceeding Fifty Pounds then due, has served on the Company, by leaving the same at their Registered Office,

a Demand under his Hand requiring the Company to pay the Sum so due, and the Company has for the Space of Three Weeks succeeding the Service of such Demand neglected to pay such Sum, or to secure or compound for the same to the reasonable Satisfaction of the Creditor :

- (2.) Whenever, in *England* and *Ireland*, Execution or other Process issued on a Judgment, Decree, or Order obtained in any Court in favour of any Creditor, at Law or in Equity in any Proceeding instituted by such Creditor against the Company, is returned unsatisfied in whole or in part :
- (3.) Whenever, in *Scotland*, the Induciæ of a Charge for payment on an Extract Decree, or an Extract registered Bond, or an Extract registered Protest have expired without Payment being made :
- (4.) Whenever it is proved to the Satisfaction of the Court that the Company is unable to pay its Debts.

¹ If Company be unregistered, *see* Sect. 199 (4), *post* p. 86.

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

In the Case of a Company engaged in working any Mine within and subject to the Jurisdiction of the Stannaries, the Court of the Vice Warden of the Stannaries, unless the Vice Warden certifies that in his Opinion the Company would be more advantageously wound up in the High Court of Chancery, in which Case "the Court" shall mean the High Court of Chancery :

In the Case of a Company registered in *England* that is not engaged in working any such Mine as aforesaid, the High Court of Chancery :

In the Case of a Company registered in *Ireland*, the Court of Chancery in *Ireland* :

In all Cases of Companies registered in *Scotland*, the Court of Session in either Division thereof :

Provided that where the Court of Chancery in *England* or *Ireland* makes an Order for winding up a Company under this Act, it may, if it thinks fit, direct all subsequent Proceedings for winding up the same to be had in the Court of Bankruptcy

having Jurisdiction in the Place in which the Registered Office of the Company is situate; and thereupon such last-mentioned Court of Bankruptcy shall, for the Purposes of winding up the Company, be deemed to be "the Court" within the Meaning of the Act, and shall have for the Purposes of such winding up all the Powers of the High Court of Chancery, or of the Court of Chancery in *Ireland*, as the Case may require.

¹ *Repealed by the Companies (Winding-up) Act, 1890, Sect. 1, whereof (post p. 164) is substituted for this Section.*

Application
for winding
up to be
made by
Petition.

82. Any Application to the Court for the winding up¹ of a Company under this Act shall be by Petition; it may be presented by the Company, or by any One or more Creditor or Creditors, Contributory or Contributories² of the Company, or by all or any of the above Parties, together or separately; and every Order which may be made on any such Petition shall operate in favour of all the Creditors and all the Contributories of the Company in the same Manner as if it had been made upon the joint Petition of a Creditor and a Contributory.

¹ See also as to the machinery for winding up Companies, the Companies (Winding-up) Act, 1890, *post* p. 164.

² Subject to the provisions of the Companies Act, 1867, Sect. 40, *post* p. 143.

Power of
Court.

83. Any Judge of the High Court of Chancery may do in Chambers any Act which the Court is hereby authorized to do; and the Vice Warden of the Stannaries may direct that a Petition for winding up a Company be heard by him at such Time and at such Place within the Jurisdiction of the Stannaries, or within or near to the Place where the Registered Office of the Company is situated, as he may deem to be convenient to the Parties concerned, or (with the Consent of the Parties concerned) at any Place in *England*; and all Orders made thereupon shall have the same Force and Effect as if they had been made by the Vice Warden sitting at *Truro* or elsewhere within the Jurisdiction of the Court, and all Parties and Persons summoned to attend at the Hearing of any such Petition shall be compellable to give their Attendance before the Vice Warden by like Process and in like

Manner as at the Hearing of any Cause or Matter at the usual Sitting of the said Court; and the Registrar of the Court may, subject to Exception or Appeal to the Vice Warden as heretofore used, do and exercise such and the like Acts and Powers in the Matter of winding up¹ as he is now used to do and exercise in a Suit on the Equity Side of the said Court.

¹“Winding up” here includes proceedings under the Companies Act, 1867, Sect. 12 of that Act, *post* p. 133.

84. A Winding up of a Company by the Court shall be deemed to commence at the Time of the Presentation of the Petition for the Winding up. Commencement of winding up by Court.

85.¹ The Court may, at any Time after the Presentation of a Petition for winding up a Company under this Act, and before making an Order for winding up the Company, upon the Application of the Company, or of any Creditor or Contributory of the Company, restrain further Proceedings in any Action, Suit or Proceeding against the Company, upon such Terms as the Court thinks fit; the Court may also at any Time after the Presentation of such Petition, and before the First Appointment of Liquidators, appoint provisionally² an Official Liquidator³ of the Estate and Effects of the Company. Court may grant Injunction to restrain proceedings and appoint provisionally an Official Liquidator.

¹ Where Company is registered but not formed under this Act, *see* Sect. 197, *post* p. 84; where Company is unregistered, *see* Sect. 201, *post* p. 88.

² The Companies (Winding-up) Act, 1890, Sect. 4 (5), *post* p. 167.

³ As to Official Liquidators, *see* Sects. 92 to 96, *post* p. 39 *et seq.*

86. Upon hearing the Petition the Court may dismiss the same with or without Costs, may adjourn the Hearing conditionally or unconditionally, and may make any Interim Order, or any other Order that it deems just. Course to be pursued by Court on hearing Petition.

87.¹ When an Order has been made for winding up a Company under this Act no Suit, Action, or other Proceeding shall be proceeded with or commenced against the Company except with the Leave of the Actions and Suits to be stayed after Order for winding up.

Court, and subject to such Terms as the Court may impose.

¹ Where Company is registered but not formed under this Act, see Sect. 198, *post* p. 84; where Company is unregistered, see Sect. 202, *post* p. 88.

Copy of
Order to be
forwarded
to Registrar.

88. When an Order has been made for winding up a Company under this Act, a Copy of such Order shall forthwith be forwarded by the Company to the Registrar of Joint Stock Companies, who shall make a Minute thereof in his Books relating to the Company.

Power of
Court to
stay Pro-
ceedings.

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

Effect of
Order on
Share
Capital of
Company
limited by
Guarantee.

90. When an Order has been made for winding up a Company limited by Guarantee¹ and having a Capital divided into Shares, any Share Capital that may not have been called up shall be deemed to be Assets of the Company, and to be a Debt (in *England* and *Ireland* of the Nature of a Specialty) due to the Company from each Member to the Extent of any Sums that may be unpaid on any Shares held by him, and payable at such time as may be appointed by the Court.

¹ But see now the Companies Act, 1900, Sect. 27, *post* p. 223.

Court may
have regard
to Wishes
of Creditors
or Contribu-
tories.

91.¹ The Court may, as to all Matters relating to the Winding up, have regard to the Wishes of the Creditors or Contributories, as proved to it by any sufficient Evidence, and may, if it thinks it expedient, direct Meetings of the Creditors or Contributories to be summoned, held, and conducted in such Manner as the Court directs, for the Purpose of ascertaining their Wishes, and may appoint a Person to act as Chairman of any such Meeting, and to report the Result of such Meeting to the Court: In the case of Creditors, regard is to be had to the Value of the Debts due to each Cre-

ditor, and in the Case of Contributories to the Number of Votes conferred on each Contributory by the Regulations of the Company.

¹The Companies (Winding-up) Act, 1890, Sect. 13, *post* p. 175.

Official Liquidators.

92. For the Purpose of conducting the Proceedings in winding up a Company, and assisting the Court therein, there may be appointed a Person or Persons to be called an Official Liquidator¹ or Official Liquidators; and the Court having Jurisdiction may appoint such Person or Persons, either provisionally or otherwise, as it thinks fit, to the Office of Official Liquidator or Official Liquidators; in all Cases if more Persons than One are appointed to the Office of Official Liquidator, the Court shall declare whether any Act hereby required or authorized to be done by the Official Liquidator is to be done by all or any One or more of such Persons. [The Court may also determine whether any and what Security is to be given by any Official Liquidator on his Appointment; ²] if no Official Liquidator is appointed, or during any Vacancy in such Appointment, all the Property of the Company shall be deemed to be in the Custody of the Court.

Appoint-
ment of
Official
Liquidators.

¹Now become Official Receiver by virtue of the Companies (Winding-up) Act, 1890, Sect. 4, *post* p. 166.

²Repealed by the Companies (Winding-up) Act, 1890, *post* p. 189.

93. Any Official Liquidator may resign or be removed by the Court on due Cause shown: And any Vacancy in the Office of an Official Liquidator appointed by the Court shall be filled by the Court: There shall be paid to the Official Liquidator such Salary or Remuneration, by way of Per-centage or otherwise, as the Court may direct; and if more Liquidators than One are appointed, such Remuneration shall be distributed amongst them in such Proportions as the Court directs.

Resigna-
tions, Re-
movals,
filling up
Vacancies,
and Re-
muneration.

Style and
Duties of
Official
Liquidator.

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

Powers of
Official
Liquidator.

95. The Official Liquidator shall have Power,¹ with the Sanction of the Court, to do the following Things:

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

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

To sell the Real and Personal and Heritable and Moveable Property, Effects and Things in Action of the Company by Public Auction or Private Contract, with Power to transfer the whole thereof to any Person or Company, or to sell the same in Parcels:

To do all Acts and to execute, in the Name and on behalf of the Company, all Deeds, Receipts, and other Documents, and for that Purpose to use, when necessary, the Company's Seal:

To prove, rank, claim, and draw a Dividend, in the Matter of the Bankruptcy or Insolvency or Sequestration of any Contributory, for any Balance against the Estate of such Contributory, and to take and receive Dividends in respect of such Balance, in the Matter of Bankruptcy or Insolvency or Sequestration, as a separate Debt due from such Bankrupt or Insolvent, and rateably with the other separate Creditors:

To draw, accept, make, and endorse any Bill of Ex-

change or Promissory Note in the Name and on behalf of the Company, also to raise upon the Security of the Assets of the Company from Time to Time any requisite Sum or Sums of Money; and the drawing, accepting, making, or endorsing of every such Bill of Exchange or Promissory Note as aforesaid on behalf of the Company shall have the same Effect with respect to the Liability of such Company as if such Bill or Note had been drawn, accepted, made, or endorsed by or on behalf of such Company in the course of carrying on the Business thereof:

To take out, if necessary, in his official Name, Letters of Administration to any deceased Contributory, and to do in his official Name any other Act that may be necessary for obtaining Payment of any Monies due from a Contributory or from his Estate, and which Act cannot be conveniently done in the Name of the Company; and in all Cases where he takes out Letters of Administration, or otherwise uses his official Name for obtaining Payment of any Monies due from a Contributory, such Monies shall, for the Purpose of enabling him to take out such Letters or recover such Monies, be deemed to be due to the Official Liquidator himself.

To do and execute all such other Things as may be necessary for winding up the Affairs of the Company and distributing its Assets.

¹The Companies (Winding-up) Act, 1890, Sect. 12, *post* p. 175.

96. The Court may provide by any Order that the Official Liquidator may exercise any of the above Powers without the Sanction or Intervention of the Court, and where an Official Liquidator is provisionally appointed¹ may limit and restrict his Powers by the Order appointing him.

Discretion
of Official
Liquidator.

¹ As provided for by Sect. 85, *ante* p. 37.

Appointment of Solicitor to Official Liquidator.

97.¹ The Official Liquidator may, with the Sanction of the Court, appoint a Solicitor or Law Agent to assist him in the Performance of his Duties.

¹ *Repealed by the Companies (Winding-up) Act, 1890, and replaced by Sect. 12 (4) of that Act, post p. 175.*

Ordinary Powers of Court.

List of Contributories and Collection and Application of Assets.

98.¹ As soon as may be after making an Order for winding up the Company, the Court shall settle a List of Contributories, with Power to rectify the Register of Members in all Cases where such Rectification is required in pursuance of this Act,² and shall cause the Assets of the Company to be collected, and applied in discharge of its Liabilities.

¹ The Companies (Winding-up) Act, 1890, Sect. 13, *post* p. 175.

² Sect. 35, *ante* p. 15.

Provision as to Representative Contributories.

99.¹ In settling the List of Contributories, the Court shall distinguish between Persons who are Contributories in their own Right and Persons who are Contributories as being Representatives of or being liable to the Debts of others; it shall not be necessary, where the Personal Representative of any deceased Contributory is placed on the List, to add the Heirs or Devisees of such Contributory, nevertheless such Heirs or Devisees may be added as and when the Court thinks fit.

¹ The Companies (Winding-up) Act, 1890, Sect. 13, *post* p. 175.

Power of Court to require Delivery of Property to Official Liquidator.

100.¹ The Court may, at any Time after making an Order for winding up a Company, require any Contributory for the Time being settled on the List of Contributories, Trustee, Receiver, Banker, or Agent, or Officer of the Company to pay, deliver, convey, surrender, or transfer forthwith, or within such Time as the Court directs, to or into the Hands of the Official Liquidator, any Sum or Balance, Books, Papers, Estate, or Effects which happen to be in his Hands for the Time being, and to which the Company is *primâ facie* entitled.

¹ The Companies (Winding-up) Act, 1890, Sect. 13, *post* p. 175.

101. The Court may, at any Time after making an Order for winding up the Company, make an Order on any Contributory for the Time being settled on the List of Contributories, directing Payment to be made, in manner in the said Order mentioned, of any Monies due from him or from the Estate of the Person whom he represents to the Company, exclusive of any Monies which he or the Estate of the Person whom he represents may be liable to contribute by virtue of any Call made or to be made by the Court in pursuance of this Part of this Act;¹ and it may, in making such Order, when the Company is not limited, allow to such Contributory² by way of Set-off any Monies due to him or the Estate which he represents from the Company on any independent Dealing or Contract with the Company, but not any Monies due to him as a Member of the Company in respect of any Dividend or Profit:

Power of Court to order Payment of Debts by Contributory.

Provided that when all the Creditors of any Company whether limited or unlimited are paid in full, any Monies due on any Account whatever to any Contributory from the Company may be allowed to him by way of Set-off against any subsequent Call or Calls.

¹ Sect. 102 *infra*.

² And also to a Director with unlimited Liability; the Companies Act, 1867, Sect. 6, *post* p. 130.

102.¹ The Court may, at any Time after making an Order for winding up a Company, and either before or after it has ascertained the Sufficiency of the Assets of the Company, make Calls on and order Payment thereof by all or any of the Contributories, for the Time being settled on the List of Contributories, to the Extent of their Liability for Payment of all or any Sums it deems necessary to satisfy the Debts and Liabilities of the Company, and the Costs, Charges, and Expenses of winding it up, and for the Adjustment of the Rights of the Contributories amongst themselves, and it may, in making a Call, take into Consideration the Probability that some of the Contributories upon whom the same is made may partly or wholly fail to pay their respective Portions of the same.

Power of Court to make Calls.

¹ The Companies (Winding-up) Act, 1890, Sect. 13, *post* p. 175.

Power of Court to order Payment into Bank.

103. The Court may order any Contributory, Purchaser, or other Person from whom Money is due to the Company to pay the same into the Bank of *England* or any Branch thereof to the Account of the Official Liquidator instead of to the Official Liquidator, and such Order may be enforced in the same Manner as if it had directed Payment to the Official Liquidator.

Regulation of Account with Court.

104. All Monies, Bills, Notes, and other Securities paid and delivered into the Bank of *England* or any Branch thereof in the event of a Company being wound up by the Court, shall be subject to such Order and Regulation for the keeping of the Account of such Monies and other Effects, and for the Payment and Delivery in, or Investment and Payment and Delivery out of the same as the Court may direct.

Proceedings in case of Representative Contributory not paying Monies ordered.

105. If any Person made a Contributory¹ as Personal Representative of a deceased Contributory makes Default in paying any Sum ordered to be paid by him, Proceedings may be taken for administering the Personal and Real Estates of such deceased Contributory, or either of such Estates, and of compelling Payment thereout of the Monies due.

¹ Sect. 76, *ante* p. 33.

Order conclusive Evidence.

106. Any Order made by the Court in pursuance of this Act¹ upon any Contributory shall, subject to the Provisions herein contained² for appealing against such Order, be conclusive Evidence that the Monies, if any, thereby appearing to be due or ordered to be paid are due, and all other pertinent Matters stated in such Order are to be taken to be truly stated as against all Persons, and in all Proceedings whatsoever, with the Exception of Proceedings taken against the Real Estate of any deceased Contributory, in which Case such Order shall only be *primâ facie* Evidence for the Purpose of charging his Real Estate, unless his Heirs or Devisees³ were on the List of Contributories at the Time of the Order being made.

¹ Sects. 101, 102 and 103, *ante* pp. 43, 44.

² Sect. 124, *post* p. 50.

³ Sect. 99, *ante* p. 42.

107.¹ The Court may fix a certain Day or certain Days on or within which Creditors of the Company are to prove their Debts or Claims, or to be excluded from the Benefit of any Distribution made before such Debts are proved.

Court may fix a time for Creditors to prove.

¹ See the Companies (Winding-up) Act, 1890, Sect. 13, *post* p. 175.

108. If in the course of proving the Debts and Claims of Creditors in the Court of the Vice Warden of the Stannaries any Debt or Claim is disputed by the Official Liquidator or by any Creditor or Contributory, or appears to the Court to be open to Question, the Court shall have Power, subject to Appeal as hereinafter provided, to adjudicate upon it, and for that Purpose the said Court shall have and exercise all needful Powers of Inquiry touching the same by Affidavit or by oral Examination of Witnesses or of Parties, whether voluntarily offering themselves for Examination or summoned to attend by compulsory Process of the Court, or to produce Documents before the Court, and the Court shall also have power incidentally, to decide on the Validity and Extent of any Lien or Charge claimed by any Creditor on any Property of the Company in respect of such Debt, and to make Declarations of Right, binding on all Persons interested; and for the more satisfactory Determination of any Question of Fact, or mixed Question of Law and Fact arising on such Inquiry, the Vice Warden shall have Power, if he thinks fit, to direct and settle any Action or Issue to be tried either on the Common Law Side of his Court, or by a Common or Special Jury, before the Justices of Assize in and for the Counties of *Cornwall* or *Devon*, or at any Sitting of One of the Superior Courts in *London* or *Middlesex*, which Action or Issue shall accordingly be tried in due Course of Law, and without other or further Consent of Parties; and the Finding of the Jury in such Action or Issue shall be conclusive of the Facts found, unless the Judge who tried it makes known to the Vice Warden that he was not satisfied with the Finding, or unless it appears to

Proceedings in the Court of the Vice Warden of the Stannaries on Proof of Debts.

the Vice Warden that, in consequence of Miscarriage, Accident, or the subsequent Discovery of fresh material Evidence, such Finding ought not to be conclusive.

Court to adjust Rights of Contributors.

109. The Court shall adjust the Rights of the Contributors amongst themselves, and distribute any Surplus that may remain amongst the Parties entitled thereto.

Court may determine Priority of Costs.

110. The Court may, in the event of the Assets being insufficient to satisfy the Liabilities, make an Order as to the Payment out of the Estate of the Company of the Costs, Charges, and Expenses incurred in winding up any Company in such order of Priority as the Court thinks just.

Dissolution of Company.

111. When the Affairs of the Company have been completely wound up, the Court shall make an Order that the Company be dissolved from the Date of such Order, and the Company shall be dissolved accordingly.

Registrar to be informed of and make Minute of Dissolution of Company.

112. Any Order so made shall be reported by the Official Liquidator to the Registrar, who shall make a Minute accordingly in his Books of the Dissolution of such Company.

Penalty on not reporting Dissolution of Company.

113. If the Official Liquidator makes Default in reporting to the Registrar, in the Case of a Company being wound up by the Court, the Order that the Company be dissolved, he shall be liable to a Penalty not exceeding Five Pounds for every Day during which he is so in Default.

Petition to be *Lis pendens*.

114. *Repealed by 30 & 31 Vict. c. 47.*

Extraordinary Powers of Court.

Power of Court to summon Persons before it suspected of having Property of Company, etc.

115. The Court may, after it has made an Order for winding up the Company, summon before it any Officer of the Company or Person known or suspected to have in his Possession any of the Estate or Effects of the Company, or supposed to be indebted to the Company, or any Person whom the Court may deem capable of giving Information concerning the Trade, Dealings, Estate, or Effects of the Company; and the

Court may require any such Officer or Person to produce any Books, Papers, Deeds, Writings, or other Documents in his Custody or Power relating to the Company; and if any Person so summoned, after being tendered a reasonable Sum for his Expenses, refuses to come before the Court at the Time appointed, having no lawful Impediment (made known to the Court at the Time of its sitting, and allowed by it), the Court may cause such Person to be apprehended, and brought before the Court for Examination;¹ nevertheless, in Cases where any Person claims any Lien on Papers, Deeds, or Writings or Documents produced by him, such Production shall be without Prejudice to such Lien, and the Court shall have Jurisdiction in the Winding up to determine all Questions relating to such Lien.

¹ Sect. 117 *infra*.

116. If, after an Order for winding up in the Court of the Vice Warden of the Stannaries, it appears that any Person claims Property in, or any Lien, legal or equitable, upon any of the Machinery, Materials, Ores, or Effects on the Mine, or on Premises occupied by the Company in connexion with the Mine, or to which the Company was at the Time of the Order *primâ facie* entitled, it shall be lawful for the Vice Warden or the Registrar to adjudicate upon such Claim or Interpleader in the Manner provided by Section Eleven of the Act passed in the Eighteenth Year of the Reign of Her present Majesty, Chapter Thirty-two; and any Action or Issue directed upon such Interpleader may, if the Vice Warden think fit, be tried in his Court or at the Assizes or the Sittings in *London or Middlesex*, before a Judge of One of the Superior Courts, in the Manner and on the Terms and Conditions herein-before provided in the Case of disputed Debts and Claims of Creditors.

Special Provisions as to Court of Vice Warden of the Stannaries.

117. The Court may examine upon Oath, either by Word of Mouth or upon written Interrogatories, any Person appearing or brought before them in manner

Examination of Parties by Court.

aforesaid ¹ concerning the Affairs, Dealings, Estate, or Effects of the Company, and may reduce into Writing the Answers of every such Person, and require him to subscribe the same.

¹ Sect. 115, *ante* p. 46.

Power to arrest Contributory about to abscond, or to remove or conceal any of his Property.

118. The Court may, at any Time before or after it has made an Order for winding up a Company, upon Proof being given that there is probable Cause for believing that any Contributory¹ to such Company is about to quit the United Kingdom, or otherwise abscond or to remove or conceal any of his Goods or Chattels, for the Purpose of evading Payment of Calls, or for avoiding Examination in respect of the Affairs of the Company, cause such Contributory to be arrested, and his Books, Papers, Monies, Securities for Monies, Goods, and Chattels to be seized, and him and them to be safely kept until such Time as the Court may order.

¹ Sect. 74, *ante* p. 32.

Powers of Court cumulative.

119. Any Powers by this Act conferred on the Court shall be deemed to be in addition to and not in restriction of any other Powers subsisting, either at Law or in Equity, of instituting Proceedings against any Contributory, or the Estate of any Contributory, or against any Debtor of the Company, for the Recovery of any Call or other Sums due from such Contributory or Debtor, or his Estate, and such Proceedings may be instituted accordingly.

Enforcement of and Appeal from Orders.

Power to enforce Orders.

120. All Orders made by the Court of Chancery in *England* or *Ireland* under this Act may be enforced in the same Manner in which Orders of such Court of Chancery made in any Suit pending therein may be enforced, and for the Purposes of this Part of this Act the Court of the Vice Warden of the Stannaries shall, in addition to its ordinary Powers, have the same Power of enforcing any Orders made by it as the Court of Chancery in *England* has in relation to Matters within

the Jurisdiction of such Court, and for the last-mentioned Purposes the Jurisdiction of the Vice Warden of the Stannaries shall be deemed to be co-extensive in local Limits with the Jurisdiction of the Court of Chancery in *England*.

121. Where an Order, Interlocutor, or Decree has been made in *Scotland* for winding up a Company by the Court, it shall be competent to the Court in *Scotland* during Session, and to the Lord Ordinary on the Bills during Vacation, on Production by the Liquidators of a List certified by them of the Names of the Contributories liable in Payment of any Calls which they may wish to enforce, and of the Amount due by each Contributory respectively, and of the Date when the same became due, to pronounce forthwith a Decree against such Contributories for Payment of the Sums so certified to be due by each of them respectively, with Interest from the said Date till Payment, at the Rate of Five Pounds *per Centum per Annum*, in the same Way and to the same Effect as if they had severally consented to Registration for Execution, on a Charge of Six Days, of a legal Obligation to pay such Calls and Interest; and such Decree may be extracted immediately, and no Suspension thereof shall be competent, except on Caution or Consignation, unless with special Leave of the Court or Lord Ordinary.

Power to
order Con-
tributories
in *Scotland*
to pay Calls.

122. Any Order made by the Court in *England* for or in the course of the Winding up of a Company under this Act shall be enforced in *Scotland* and *Ireland* in the Courts that would respectively have had Jurisdiction in respect of such Company if the Registered Office of the Company has been situate in *Scotland* or *Ireland*, and in the same Manner in all respects as if such Order had been made by the Courts that are hereby required to enforce the same; and in like Manner Orders, Interlocutors, and Decrees made by the Court in *Scotland* for or in the course of the Winding up of a Company shall be enforced in *England* and *Ireland*, and Orders made by the Court in *Ireland* for or in the course of winding up a Company shall be enforced in

Order made
in *England*
to be en-
forced in
Scotland
and *Ire-*
land, etc.

England and Scotland by the Courts which would respectively have had Jurisdiction in the Matter of such Company if the Registered Office of the Company were situate in the Division of the United Kingdom where the Order is required to be enforced, and in the same Manner in all respects as if such Order had been made by the Court required to enforce the same in the Case of a Company within its own Jurisdiction.

Mode of
dealing
with Orders
to be en-
forced by
other
Courts.

123. Where any Order, Interlocutor, or Decree made by one Court is required to be enforced by another Court, as herein-before provided,¹ an Office Copy of the Order, Interlocutor, or Decree so made shall be produced to the proper Officer of the Court required to enforce the same, and the production of such Office Copy shall be sufficient Evidence of such Order, Interlocutor, or Decree having been made, and thereupon such last-mentioned Court shall take such Steps in the Matter as may be requisite for enforcing such Order, Interlocutor, or Decree, in the same Manner as if it were the Order, Interlocutor, or Decree of the Court enforcing the same.

¹ Sect. 122, *ante*, p. 49.

Appeals
from
Orders.

124. Rehearings of and Appeals from any Order or Decision made or given in the Matter of the Winding up of a Company by any Court having Jurisdiction under this Act may be had in the same Manner and subject to the same Conditions in and subject to which Appeals may be had from any Order or Decision of the same Court in cases within its ordinary Jurisdiction; subject to this Restriction, that no such Rehearing or Appeal shall be heard unless Notice of the same is given within Three Weeks after any Order complained of has been made, in manner in which Notices of Appeal are ordinarily given according to the Practice of the Court appealed from, unless such Time is extended by the Court of Appeal: Provided that it shall be lawful for the Lord Warden of the Stannaries, by a Special or General Order, to remit at once any Appeal allowed and regularly lodged with him against any Order or

Decision of the Vice Warden made in the Matter of a Winding up to the Court of Appeal in Chancery, which Court shall thereupon hear and determine such Appeal, and have Power to require all such Certificates of the Vice Warden, Records of Proceedings below, Documents, and Papers as the Lord Warden would or might have required upon the Hearing of such Appeal, and to exercise all other the Jurisdiction and Powers of the Lord Warden specified in the Act of Parliament passed in the Eighteenth Year of the Reign of Her present Majesty, Chapter Thirty-two, and any Order so made by the Court of Appeal in Chancery shall be final without any further Appeal.

125. In all Proceedings under this Part of this Act, all Courts, Judges, and Persons judicially acting, and all other Officers, Judicial or Ministerial, of any Court, or employed in enforcing the Process of any Court, shall take judicial Notice of the Signature of any Officer of the Courts of Chancery or Bankruptcy in *England* or in *Ireland*, or of the Court of Session in *Scotland*, or of the Registrar of the Court of the Vice Warden of the Stannaries, and also of the official Seal or Stamp of the several Offices of the Courts of Chancery or Bankruptcy in *England* or *Ireland*, or of the Court of Session in *Scotland*, or of the Court of the Vice Warden of the Stannaries, when such Seal or Stamp is appended to or impressed on any Document made, issued, or signed under the Provisions of this Part of the Act, or any official Copy thereof.

Judicial
Notice to be
taken of
Signature
of Officers,
etc.

126. [The Commissioners of the Court of Bankruptcy and¹] the Judges of the County Courts in *England* who sit at Places more than Twenty Miles from the General Post Office, and the Commissioners of Bankrupt and the Assistant Barristers and Recorders in *Ireland*, and the Sheriffs of Counties in *Scotland*, shall be Commissioners for the Purpose of taking Evidence under this Act in Cases where any Company is wound up in any Part of the United Kingdom, and it shall be lawful for the Court to refer the whole or any Part of the Examination of any Witnesses under this Act to

Special
Commissioners for
taking Evidence.

any Person hereby appointed Commissioner, although such Commissioner is out of the Jurisdiction of the Court that made the Order or Decree for winding up the Company; and every such Commissioner shall, in addition to any Power of summoning and examining Witnesses, and requiring the Production or Delivery of Documents, and certifying or punishing Defaults by Witnesses, which he might lawfully exercise as a [Commissioner of the Court of Bankruptcy,¹] Judge of a County Court, Commissioner of Bankrupt, Assistant Barrister, or Recorder, or as a Sheriff of the County, have in the Matter so referred to him all the same Powers of summoning and examining Witnesses, and requiring the Production or Delivery of Documents, and punishing Defaults by Witnesses, and allowing Costs and Charges and Expenses to Witnesses, as the Court which made the Order for winding up the Company has; and the Examination so taken shall be returned or reported to such last-mentioned Court in such Manner as it directs.

¹ Repealed by the Statute Law Revision Act, 1875.

Court may
order the
Examina-
tion of
Persons in
Scotland.

127. The Court may direct the Examination in *Scotland* of any Person for the Time being in *Scotland*, whether a Contributory of the Company or not, in regard to the Estate, Dealings, or Affairs of any Company in the course of being wound up, or in regard to the Estate, Dealings, or Affairs of any person being a Contributory of the Company, so far as the Company may be interested therein by reason of his being such Contributory, and the Order or Commission to take such Examination shall be directed to the Sheriff of the County in which the Person to be examined is residing or happens to be for the time, and the Sheriff shall summon such Person to appear before him at a Time and Place to be specified in the Summons for Examination upon Oath as a Witness or as a Haver, and to produce any Books, Papers, Deeds, or Documents called for which may be in his Possession or Power, and the Sheriff may take such Examination

either orally or upon written Interrogatories, and shall report the same in Writing in the usual Form to the Court, and shall transmit with such Report the Books, Papers, Deeds, or Documents produced, if the Originals thereof are required and specified by the Order, or otherwise such Copies thereof or Extracts therefrom, authenticated by the Sheriff, as may be necessary; and in case any Person so summoned fails to appear at the Time and Place specified, or appearing refuses to be examined or to make the Production required, the Sheriff shall proceed against such Person as a Witness or Haver duly cited, and failing to appear or refusing to give Evidence or make Production may be proceeded against by the Law of *Scotland*; and the Sheriff shall be entitled to such and the like Fees, and the Witness shall be entitled to such and the like Allowances, as Sheriffs when acting as Commissioners under Appointment from the Court of Session and as Witnesses and Havers are entitled to in the like Cases according to the Law and Practice of *Scotland*: If any Objection is stated to the Sheriff by the Witness, either on the Ground of his Incompetency as a Witness, or as to the Production required to be made, or on any other Ground whatever, the Sheriff may, if he thinks fit, report such Objection to the Court, and suspend the Examination of such Witness until such Objection has been disposed of by the Court.

128. Any Affidavit, Affirmation, or Declaration required to be sworn or made under the Provisions or for the Purposes of this Part of this Act may be lawfully sworn or made in *Great Britain* or *Ireland*, or in any Colony, Island, Plantation, or Place under the Dominion of Her Majesty in Foreign Parts, before any Court, Judge, or Person lawfully authorized to take and receive Affidavits, Affirmations, or Declarations, or before any of Her Majesty's Consuls or Vice Consuls in any Foreign Parts out of Her Majesty's Dominions, and all Courts, Judges, Justices, Commissioners, and Persons acting judicially shall take judicial Notice of the Seal or Stamp or Signature (as the Case may be)

Affidavits,
etc., may be
sworn, etc.,
before any
competent
Court or
Person.

of any such Court, Judge, Person, Consul, or Vice Consul attached, appended, or subscribed to any such Affidavit, Affirmation, or Declaration, or to any other Document to be used for the Purposes of this Part of this Act.

Voluntary Winding up of Company.

Circumstances under which Company may be wound up voluntarily.

129. A Company¹ under this Act may be wound up voluntarily,

- (1.) Whenever the Period, if any, fixed for the Duration of the Company by the Articles of Association expires, or whenever the Event, if any, occurs, upon the Occurrence of which it is provided by the Articles of Association that the Company is to be dissolved, and the Company in General Meeting has passed a Resolution requiring the Company to be wound up voluntarily :
- (2.) Whenever the Company has passed a Special Resolution² requiring the Company to be wound up voluntarily :
- (3.) Whenever the Company has passed an Extraordinary Resolution to the Effect that it has been proved to their Satisfaction that the Company cannot by reason of its Liabilities continue its Business, and that it is advisable to wind up the same :

Definition of Extraordinary Resolution.

For the Purposes of this Act any Resolution shall be deemed to be extraordinary which is passed in such Manner as would, if it had been confirmed by a subsequent Meeting, have constituted a Special Resolution as herein-before defined.

¹ But not an unregistered Company, Sect. 199 (2), *post* p. 85.

² As to passing of Special Resolutions, *see* Sect. 51, *ante* p. 23.

Commencement of voluntary Winding up.

130. A voluntary Winding up shall be deemed to commence at the Time of the passing of the Resolution authorizing such Winding up.

131. Whenever a Company is wound up voluntarily the Company shall, from the Date of the Commencement¹ of such Winding up, cease to carry on its Business, except in so far as may be required for the beneficial Winding up thereof, and all Transfers of Shares, except Transfers made to or with the Sanction of the Liquidators, or Alteration in the Status of the Members of the Company, taking place after the Commencement of such Winding up shall be void, but its Corporate State² and all its Corporate Powers shall, notwithstanding it is otherwise provided by its Regulations, continue until the Affairs of the Company are wound up.

Effect of
voluntary
Winding up
on Status of
Company.

¹ See preceding Section.

² As to this, see Sect. 18, *ante* p. 8.

132. Notice of any Special Resolution or Extraordinary Resolution passed for winding up a Company voluntarily shall be given by Advertisement as respects Companies registered in *England* in the *London Gazette*, as respects Companies registered in *Scotland* in the *Edinburgh Gazette*, and as respects Companies registered in *Ireland* in the *Dublin Gazette*.

Notice of
Resolution
to wind up
voluntarily.

133. The following Consequences shall ensue upon the voluntary Winding up of a Company:

Conse-
quences of
voluntary
Winding
up.

- (1.) The Property of the Company shall be applied in satisfaction of its Liabilities *pari passu*, and, subject thereto, shall, unless it be otherwise provided by the Regulations of the Company, be distributed amongst the Members according to their Rights and Interests in the Company:¹
- (2.) Liquidators shall be appointed for the Purpose of winding up the affairs of the Company and distributing the Property:
- (3.) The Company in General Meeting shall appoint such Persons or Person as it thinks fit to be Liquidators or a Liquidator, and may fix the Remuneration to be paid to them or him:
- (4.) If One Person only is appointed, all the Pro-

visions herein contained in reference to several Liquidators shall apply to him :

- (5.) Upon the Appointment of Liquidators all the Power of the Directors shall cease, except in so far as the Company in General Meeting or the Liquidators may sanction the Continuance of such Powers :
- (6.) When several Liquidators are appointed, every Power hereby given may be exercised by such One or more of them as may be determined at the Time of their Appointment, or in Default of such Determination by any Number not less than Two :
- (7.) The Liquidators may, without the Sanction of the Court, exercise all Powers by this Act given to the Official Liquidator :²
- (8.) The Liquidators may exercise the Powers herein-before given to the Court of settling the List of Contributories³ of the Company, and any List so settled shall be *prima facie* Evidence of the Liability of the Persons named therein to be Contributories :
- (9.) The Liquidators may at any Time after the passing of the Resolution for winding up the Company, and before they have ascertained the Sufficiency of the Assets of the Company, call on all or any of the Contributories for the Time being settled on the List of Contributories to the Extent of their Liability to pay all or any Sums they deem necessary to satisfy the Debts and Liabilities of the Company, and the Costs, Charges, and Expenses of winding it up, and for the Adjustment of the Rights of the Contributories amongst themselves, and the Liquidators may in making a Call take into consideration the Probability that some of the Contributories upon whom the same is made may partly or wholly fail to pay their respective Portions of the same :
- (10.) The Liquidators shall pay the Debts of the

Company, and adjust the Rights of the Contributors amongst themselves.⁴

¹ Sect. 38, *ante* p. 17.

² Sect. 95, *ante* p. 40.

³ Sect. 98, *ante* p. 42.

⁴ Sect. 38 (7), *ante* p. 18.

134. Where a Company limited by Guarantee, and having a Capital divided into Shares,¹ is being wound up voluntarily, any Share Capital that may not have been called up shall be deemed to be Assets of the Company and to be a Specialty Debt² due from each Member to the Company to the Extent of any sums that may be unpaid on any Shares held by him, and payable at such Time as may be appointed by the Liquidators.

Effect of Winding up on Share Capital of Company limited by Guarantee.

¹ But see now the Companies Act, 1900, Sect. 27, *post* p. 223.

² Sect. 75, *ante* p. 32.

135. A Company about to be wound up voluntarily, or in the course of being wound up voluntarily, may, by an Extraordinary Resolution,¹ delegate to its Creditors, or to any Committee of its Creditors, the Power of appointing Liquidators or any of them, and supplying any Vacancies in the Appointment of Liquidators, or may by a like Resolution enter into any Arrangement with respect to the Powers to be exercised by the Liquidators, and the Manner in which they are to be exercised; and any Act done by the Creditors in pursuance of such delegated Power shall have the same Effect as if it had been done by the Company.

Power of Company to delegate Authority to appoint Liquidators, etc.

¹ Defined in Sect. 129, *ante* p. 54.

136.¹ Any Arrangement entered into between a Company about to be wound up voluntarily, or in the course of being wound up voluntarily, and its Creditors, shall be binding on the Company if sanctioned by an Extraordinary Resolution,² and on the Creditors if acceded to by Three Fourths in Number and Value of the Creditors, subject to such Right of Appeal as is herein-after mentioned.³

Arrangement when binding on Creditors.

¹ See also the Joint Stock Companies Arrangement Act, 1870, Sect. 2, *post* p. 145.

² Defined in Sect. 129, *ante* p. 54.

³ Next Section.

Power of
Creditor or
Contribu-
tory to
Appeal.

137. Any Creditor or Contributory of a Company that has in manner aforesaid¹ entered into any Arrangement with its Creditors may within Three Weeks from the Date of the Completion of such Arrangement, appeal to the Court against such Arrangement, and the Court may thereupon, as it thinks just, amend, vary, or confirm the same.

¹ In previous Section.

Power for
Liquidators
or Contribu-
tories in
voluntary
Winding-up
to apply to
Court.

138. Where a Company is being wound up voluntarily the Liquidators or any Contributory¹ of the Company may apply to the Court in *England, Ireland, or Scotland*, or to the Lord Ordinary on the Bills in *Scotland*, in Time of Vacation, to determine any Question arising in the Matter of such Winding up, or to exercise, as respects the enforcing of Calls, or in respect of any other Matter, all or any of the Powers which the Court might exercise if the Company were being wound up by the Court; and the Court or Lord Ordinary, in the Case aforesaid, if satisfied that the Determination of such Question, or the required Exercise of Power, will be just and beneficial, may accede, wholly or partially, to such Application, on such Terms and subject to such Conditions as the Court thinks fit, or it may make such other Order, Interlocutor, or Decree on such Application as the Court thinks just.

¹ Or any Creditor. The Companies Act, 1900, Sect. 25, *post* p. 222.

Power of
Liquidators
to call
General
Meetings.

139. Where a Company is being wound up voluntarily the Liquidators may from Time to Time, during the Continuance of such Winding up, summon General Meetings of the Company for the Purpose of obtaining the Sanction of the Company by Special Resolution¹ or Extraordinary Resolution,² or for any other Purposes they think fit; and in the event of the Winding up continuing for more than One Year, the Liquidators shall summon a General Meeting of the Company at the End of the First Year, and of each succeeding Year from the Commencement of the Winding up, or as soon thereafter as may be convenient, and shall

lay before such Meeting an Account showing their Acts and Dealings, and the Manner in which the Winding-up has been conducted during the preceding Year.

¹ Sect. 51, *ante* p. 23.

² Sect 129, *ante* p. 54.

140. If any Vacancy occurs in the Office of Liquidators appointed by the Company, by Death, Resignation, or otherwise, the Company in General Meeting may, subject to any Arrangement they may have entered into with their Creditors,¹ fill up such Vacancy, and a General Meeting for the Purpose of filling up such Vacancy may be convened by the continuing Liquidators, if any, or by any Contributory of the Company, and shall be deemed to have been duly held if held in manner prescribed by the Regulations of the Company, or in such other Manner as may, on Application by the continuing Liquidator, if any, or by any Contributory of the Company, be determined by the Court.

Power to fill up Vacancy in Liquidators.

¹ Sect. 135, *ante* p. 57.

141. If from any Cause whatever there is no Liquidator acting in the Case of a voluntary Winding up, the Court may, on the Application of a Contributory, appoint a Liquidator or Liquidators; the Court may also, on due Cause shown, remove any Liquidator, and appoint another Liquidator to act in the Matter of a voluntary Winding up.

Power of Court to appoint Liquidators.

142. As soon as the Affairs of the Company are fully wound up, the Liquidators shall make up an Account showing the Manner in which such Winding up has been conducted, and the Property of the Company disposed of; and thereupon they shall call a General Meeting of the Company for the Purpose of having the Account laid before them, and hearing any Explanation that may be given by the Liquidators: The Meeting shall be called by Advertisement, specifying the Time, Place, and Object of such Meeting; and such Advertisement shall be published One Month at

Liquidators on Conclusion of Winding up to make up an Account and lay it before a General Meeting.

least previously to the Meeting, as respects Companies registered in *England* in the *London Gazette*, and as respects Companies registered in *Scotland* in the *Edinburgh Gazette*, and as respects Companies registered in *Ireland* in the *Dublin Gazette*.

Liquidators to report Meeting to Registrar and Company to be deemed dissolved at the Expiration of Three Months.

143. The Liquidators shall make a Return to the Registrar of such Meeting having been held, and of the Date at which the same was held, and on the Expiration of Three Months from the Date of the Registration of such Return the Company shall be deemed to be dissolved: If the Liquidators make Default in making such Return to the Registrar they shall incur a Penalty not exceeding Five Pounds for every Day during which such Default continues.

Costs of voluntary Liquidation.

144. All Costs, Charges, and Expenses properly incurred in the voluntary Winding up of a Company, including the Remuneration of the Liquidators, shall be payable out of the Assets of the Company in priority to all other Claims.

Creditor may insist on Winding-up by Court.

145. The voluntary Winding up of a Company shall not be a Bar to the Right of any Creditor of such Company to have the same wound up by the Court, if the Court is of opinion that the Rights of such Creditor will be prejudiced by a voluntary Winding up.

Power of Court to adopt Proceedings taken in the voluntary Winding-up.

146. Where a Company is in course of being wound up voluntarily; and Proceedings¹ are taken for the Purpose of having the same wound up by the Court, the Court may, if it thinks fit, notwithstanding that it makes an Order directing the Company to be wound up by the Court, provide in such Order or in any other Order for the Adoption of all or any of the Proceedings taken in the course of the voluntary Winding up.

¹ As specified in preceding Section.

Power of Court to direct voluntary Winding up to continue subject to Supervision of the Court.

Winding up Subject to the Supervision of the Court.

147. When a Resolution¹ has been passed by a Company to wind up voluntarily, the Court may make an Order directing that the voluntary Winding up

should continue, but subject to such supervision of the Court, and with such Liberty for Creditors, Contributories, or others to apply to the Court, and generally upon such Terms and subject to such Conditions as the Court thinks just.

¹ Sect. 129, *ante* p. 54.

148. A Petition, praying wholly or in part that a voluntary Winding-up should continue, but subject to the Supervision of the Court, and which Winding up is herein-after referred to as a Winding up subject to the Supervision of the Court, shall, for the Purpose of giving Jurisdiction to the Court over Suits and Actions, be deemed to be a Petition for winding up¹ the Company by the Court.

Effect of petition for continuance of winding up subject to Supervision.

¹ Sect. 85, *ante* p. 37.

149. The Court may, in determining whether a Company is to be wound up altogether by the Court or subject to the Supervision of the Court, in the Appointment of Liquidator or Liquidators, and in all other Matters relating to the Winding-up subject to Supervision, have regard to the Wishes of the Creditors or Contributories as proved to it by any sufficient Evidence, and may direct Meetings¹ of the Creditors or Contributories to be summoned, held, and regulated in such Manner as the Court directs, for the Purpose of ascertaining their Wishes, and may appoint a Person to act as Chairman of any such Meeting, and to report the Result of such Meeting to the Court: In the Case of Creditors, regard shall be had to the Value of the Debts due to each Creditor, and in the Case of Contributories to the Number of Votes conferred on each Contributory by the Regulations of the Company.

Court may have regard to Wishes of Creditors.

¹ The Companies (Winding-up) Act, 1890, Sect. 6, *post* p. 168.

150. Where any Order¹ is made by the Court for a Winding up subject to the Supervision of the Court, the Court may, in such Order or in any subsequent Order, appoint any additional Liquidator or Liquidators; and any Liquidators so appointed by the Court

Power to Court to appoint additional Liquidators in Winding up subject to Supervision.

shall have the same Powers, be subject to the same Obligations, and in all respects stand in the same Position as if they had been appointed to by the Company.² The Court may from Time to Time remove any Liquidators so appointed by the Court, and fill up any Vacancy occasioned by such Removal, or by Death or Resignation.

¹ Sect. 147, *ante* p. 60.

² Sect. 133, *ante* p. 55.

Effect of
Order of
Court for
winding
up subject
to Super-
vision.

151. Where an Order¹ is made for a Winding up subject to the Supervision of the Court, the Liquidators appointed to conduct such Winding up may, subject to any Restrictions imposed by the Court, exercise all their Powers, without the Sanction or Intervention of the Court, in the same Manner as if the Company were being wound up altogether voluntarily; but, save as aforesaid, any Order made by the Court for a Winding up subject to the Supervision of the Court shall for all Purposes, including the staying of Actions, Suits, and other Proceedings, be deemed to be an Order of the Court for winding up the Company by the Court, and shall confer full Authority on the Court to make Calls,² or to enforce Calls made by the Liquidators, and to exercise all other Powers which it might have exercised if an Order had been made for winding up the Company altogether by the Court; and in the Construction of the Provisions whereby the Court is empowered to direct any Act or Thing to be done to or in favour of the Official Liquidators, the Expression Official Liquidators shall be deemed to mean the Liquidators conducting the Winding up subject to the Supervision of the Court.

¹ Sect. 147, *ante* p. 60.

² As to power of Court to make Calls, see Sect. 102, *ante* p. 43.

Appoint-
ment in
certain
Cases of
voluntary
Liquidators
to be Official
Liquidators.

152. Where an Order¹ has been made for the Winding up of a Company subject to the Supervision of the Court, and such Order is afterwards superseded by an Order² directing the Company to be wound up compulsorily, the Court may in such last-mentioned

Order, or in any subsequent Order, appoint the voluntary Liquidators or any of them, either provisionally or permanently, and either with or without the Addition of any other Persons, to be Official Liquidators.

¹ Sect. 147, *ante* p. 60.

² Sect. 79, *ante* p. 34.

Supplemental Provisions.

153. Where any Company is being wound up by the Court or subject to the Supervision of the Court, all Dispositions of the Property, Effects, and Things in Action of the Company, and every Transfer of Shares, or Alteration in the Status of the Members of the Company, made between the Commencement¹ of the Winding up and the Order for winding up, shall, unless the Court otherwise orders, be void.

Dispositions of Property, etc., after the Commencement of the Winding up to be void.

¹ Sect. 84, *ante* p. 37, where Company is being wound up by Court; Sect. 130, *ante* p. 54, where under Supervision of the Court.

154. Where any Company is being wound up, all Books, Accounts, and Documents of the Company and of the Liquidators shall, as between the Contributories of the Company, be *prima facie* Evidence of the Truth of all Matters purporting to be therein recorded.

The Books of the Company to be Evidence.

155. Where any Company has been wound up under this Act and is about to be dissolved, the Books, Accounts, and Documents of the Company and of the Liquidators may be disposed of in the following Way; that is to say, where the Company has been wound up by or subject to the Supervision of the Court, in such way as the Court directs, and where the Company has been wound up voluntarily, in such way as the Company by an Extraordinary Resolution directs; but after the Lapse of Five Years from the Date of such Dissolution, no responsibility shall rest on the Company or the Liquidators, or any one to whom the Custody of such Books, Accounts, and Documents has

Disposal of Books, Accounts, and Documents of the Company.

been committed, by reason that the same or any of them cannot be made forthcoming to any Party or Parties claiming to be interested therein.

Inspection
of Books.

156. Where an Order has been made for winding up a Company by the Court or subject to the Supervision of the Court, the Court may make such Order for the Inspection by the Creditors and Contributories of the Company of its Books and Papers as the Court thinks just, and any Books and Papers in the Possession of the Company may be inspected by Creditors or Contributories in conformity with the Order of the Court, but not further or otherwise.

Power of
Assignee to
sue and be
sued.

157. Any Person to whom any Thing in Action belonging to the Company is assigned in pursuance of this Act¹ may bring or defend any Action or Suit relating to such Thing in Action in his own Name.

¹Sect. 95, *ante* p. 40, and as to unregistered Companies Sect. 203, *post* p. 89.

Debts and
Claims of
all Descrip-
tions to be
proved.

158. In the event of any Company being wound up under this Act, all Debts payable on a Contingency, and all Claims against the Company, present or future, certain or contingent, ascertained or sounding only in Damages, shall be admissible as Proof against the Company, a just Estimate being made, so far as is possible, of the Value of all such Debts or Claims as may be subject to any Contingency or sound only in Damages, or for some other Reason do not bear a certain Value.

Power to
make Com-
promises,
etc., with
Creditors
may be
sanctioned.

159. The Liquidators may, with the Sanction of the Court, where the Company is being wound up by the Court or subject to the Supervision of the Court, and with the Sanction¹ of an Extraordinary Resolution of the Company where the Company is being wound up altogether voluntarily, pay any Classes of Creditors in full, or make such Compromise or other Arrangement² as the Liquidators may deem expedient with Creditors or Persons claiming to be Creditors, or Persons having or alleging themselves to have any Claim, present or future, certain or contingent, ascertained or sounding

only in Damages against the Company, or whereby the Company may be rendered liable.

¹ Sect. 139, *ante* p. 58.

² As to such Arrangements, see Sect. 136, *ante* p. 57, and also the Joint Stock Companies Arrangement Act, 1870, Sect. 2, *post* p. 145.

160. The Liquidators may, with the Sanction of the Court where the Company is being wound up by the Court or subject to the Supervision of the Court, and with the Sanction¹ of an Extraordinary Resolution of the Company where the Company is being wound up altogether voluntarily, compromise all Calls and Liabilities to Calls, Debts, and Liabilities capable of resulting in Debts, and all Claims, whether present or future, certain or contingent, ascertained or sounding only in Damages, subsisting or supposed to subsist between the Company and any Contributory or alleged Contributory, or other Debtor or Person apprehending Liability to the Company, and all Questions in any way relating to or affecting the Assets of the Company or the winding up of the Company, upon the Receipt of such Sums, payable at such Times, and generally upon such Terms as may be agreed upon, with Power for the Liquidators to take any Security for the Discharge of such Debts or Liabilities, and to give complete Discharges in respect of all or any such Calls, Debts, or Liabilities.

Power to compromise with Contributories and Debtors.

¹ Sect. 139, *ante* p. 58.

161. Where any Company is proposed to be or is in the course of being wound up altogether voluntarily, and the Whole or a Portion of its Business or Property is proposed to be transferred or sold to another Company, the Liquidators of the first-mentioned Company may, with the Sanction of a Special Resolution¹ of the Company by whom they were appointed, conferring either a general Authority on the Liquidators, or an Authority in respect of any particular Arrangement, receive in Compensation or part Compensation for such Transfer or Sale Shares, Policies, or other like

Power for Liquidators to accept Shares, etc., as a Consideration for Sale of Property to another Company.

Interests in such other Company, for the Purpose of Distribution amongst the Members of the Company being wound up, or may enter into any other Arrangement whereby the Members of the Company being wound up may, in lieu of receiving Cash, Shares, Policies, or other like Interests, or in addition thereto, participate in the Profits of or receive any other Benefit from the purchasing Company; and any Sale made or Arrangement entered into by the Liquidators in pursuance of this Section shall be binding on the Members of the Company being wound up; subject to this Proviso, that if any Member of the Company being wound up who has not voted in favour of the Special Resolution passed by the Company of which he is a Member at either of the Meetings held for passing the same expresses his Dissent from any such Special Resolution in Writing addressed to the Liquidators or One of them, and left at the Registered Office of the Company not later than Seven Days after the Date of the Meeting at which such Special Resolution was passed, such dissentient Member may require the Liquidators to do One of the following Things as the Liquidators may prefer; that is to say, either to abstain from carrying such Resolution into effect, or to purchase the Interest held by such dissentient Member at a Price to be determined in Manner herein-after mentioned,² such Purchase Money to be paid before the Company is dissolved, and to be raised by the Liquidators in such Manner as may be determined by Special Resolution: No Special Resolution shall be deemed invalid for the Purposes of this Section by reason that it is passed antecedently to or concurrently with any Resolution for winding up the Company, or for appointing Liquidators; but if an Order be made within a Year for winding up the Company by or subject to the Supervision of the Court, such Resolution shall not be of any Validity unless it is sanctioned by the Court.

¹ Sect. 51, *ante* p. 23.

² Next Section.

162. The Price to be paid for the Purchase of the Interest of any dissentient Member¹ may be determined by Agreement, but if the Parties dispute about the same such Dispute shall be settled by Arbitration, and for the Purposes of such Arbitration the Provisions of "The Companies Clauses Consolidation Act, 1845," with respect to the Settlement of Disputes by Arbitration, shall be incorporated with this Act; and in the Construction of such Provisions this Act shall be deemed to be the Special Act, and "the Company" shall mean the Company that is being wound up, and any Appointment by the said incorporated Provisions directed to be made under the Hand of the Secretary, or by any Two of the Directors, may be made under the Hand of the Liquidator, if only One, or any Two or more of the Liquidators if more than One.

Mode of
determin-
ing Price.

¹ Under preceding Section.

163. Where any Company is being wound up by the Court or subject to the Supervision of the Court, any Attachment, Sequestration, Distress, or Execution put in force against the Estate or Effects of the Company after the Commencement of the Winding up shall be void to all Intents.

Certain At-
tachments,
Executions,
etc., after
Commence-
ment of
Winding up
to be void.

164. Any such Conveyance, Mortgage, Delivery of Goods, Payment, Execution, or other Act relating to Property as would, if made or done by or against any individual Trader, be deemed in the event of his Bankruptcy to have been made or done by way of undue or fraudulent Preference of the Creditors of such Trader, shall, if made or done by or against any Company, be deemed, in the event of such Company being wound up under this Act, to have been made or done by way of undue or fraudulent Preference of the Creditors of such Company, and shall be invalid accordingly; and for the Purposes of this Section the Presentation of a Petition for winding up a Company shall, in the Case of a Company being wound up by the Court or subject to the Supervision of the Court, and a Resolution for winding up the Company shall,

Fraudulent
Preference.

Transfer of
all Effects
to Trustees
for Benefit
of Creditors
void.

in the Case of a voluntary Winding up, be deemed to correspond with the Act of Bankruptcy, in the Case of an individual Trader; and any Conveyance or Assignment made by any Company formed under this Act of all its Estate and Effects to Trustees for the Benefit of all its Creditors shall be void to all Intents.

Power of
Court to
assess
Damages
against
delinquent
Directors
and Officers.

165.¹ Where in the course of the Winding up of any Company under this Act, it appears that any past or present Director, Manager, Official or other Liquidator, or any Officer of such Company, has misapplied or retained in his own Hands, or become liable or accountable for any Moneys of the Company, or been guilty of any Misfeasance or Breach of Trust in relation to the Company, the Court may, on the Application of any Liquidator, or of any Creditor or Contributory of the Company, notwithstanding that the Offence is one for which the Offender is criminally responsible, examine into the Conduct of such Director, Manager, or other Officer, and compel him to repay any Moneys so misapplied or retained, or for which he has become liable or accountable, together with Interest after such Rate as the Court thinks just, or to contribute such Sums of Money to the Assets of the Company by way of Compensation in respect of such Misapplication, Retainer, Misfeasance, or Breach of Trust, as the Court thinks just.

¹ *Repealed by the Companies (Winding-up) Act, 1890, and replaced by Sect. 10 of that Act, post p. 173.*

Penalty on
destruction
or Falsifica-
tion of
Books.

166. If any Director, Officer, or Contributory of any Company wound up under this Act destroys, mutilates, alters, or falsifies any Books, Papers, Writings, or Securities, or makes or is privy to the making of any false or fraudulent Entry in any Register, Book of Account, or other Document belonging to the Company with Intent to defraud or deceive any Person, every Person so offending shall be deemed to be guilty of a Misdemeanor, and upon being convicted shall be liable to Imprisonment for any Term not exceeding Two Years, with or without hard labour.¹

¹ *See also the Larceny Act, 1861 (24 & 25 Vict. c. 96), Sects. 82, 83, 84, and the Companies Act, 1900, Sect. 28, post p. 223.*

Prosecu-
tion of
delinquent
Directors in
the Case of
winding up
by Court.

167. Where any Order is made for winding up a Company by the Court or subject to the Supervision of the Court, if it appear in the course of such Wind-

ing up that any past or present Director, Manager, Officer, or Member of such Company has been guilty of any Offence in relation to the Company for which he is criminally responsible, the Court may, on the Application of any Person interested in such Winding up, or of its own Motion, direct the Official Liquidators, or the Liquidators (as the Case may be,) to institute and conduct a Prosecution or Prosecutions for such Offence, and may order the Costs and Expenses to be paid out of the Assets of the Company.

168. Where a Company is being wound up altogether voluntarily, if it appear to the Liquidators, conducting such Winding up that any past or present Director, Manager, Officer, or Member of such Company has been guilty of any Offence in relation to the Company for which he is criminally responsible, it shall be lawful for the Liquidators, with the previous Sanction of the Court, to prosecute such Offender, and all Expenses properly incurred by them in such Prosecution shall be payable out of the Assets of the Company in priority to all other Liabilities.

Prosecution of delinquent Directors, etc., in case of voluntary Winding up.

169. If any Person, upon any Examination upon Oath or Affirmation authorized under this Act, or in any Affidavit, Deposition, or solemn Affirmation in or about the Winding up of any Company under this Act, or otherwise in or about any Matter arising under this Act, wilfully and corruptly gives false Evidence, he shall, upon Conviction, be liable to the Penalties of wilful Perjury.¹

Penalties for giving false evidence.

¹ See 2 Geo. II., c. 25, s. 2, and 54 & 55 Vict., c. 69.

Power of Courts to make Rules.

170. *Repealed by the Statute Law Revision Act, 1881.*

171. In Scotland the Court of Session may make such Rules concerning the Mode of Winding up as may be necessary by Act of Sederunt; but, until such Rules are made, the general Practice of the Court of Session in Suits pending in such Court shall, so far as

Power of Court of Session in Scotland to make Rules.

the same is applicable, and not inconsistent with this Act, apply to all Proceedings for winding up a Company, and Official Liquidators shall in all respects be considered as possessing the same Powers as any Trustee on a Bankrupt Estate.

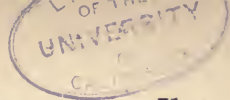
Power to
make Rules
in Stan-
naries
Court.

172. The Vice Warden of the Stannaries may from Time to Time, with the Consent provided for by Section Twenty-three of the Act of Eighteenth of *Victoria*, Chapter Thirty-two, make Rules for carrying into Effect the Powers conferred by this Act upon the Court of the Vice Warden, but, subject to such Rules, the general Practice of the said Court and of the Registrar's Office in the said Court, including the present Practice of the said Court in winding up Companies, may be applied to all Proceedings under this Act; the said Vice Warden may likewise, with the same Consent, make from Time to Time Rules for specifying the Fees to be taken in his said Court in Proceedings under this Act; and any Rules so made shall be of the same Force as if they had been enacted in the Body of this Act; and the Fees paid in respect of Proceeding taken under this Act, including Fees taken under "The Joint Stock Companies Act, 1856," in the Matter of winding up Companies, shall be applied exclusively towards Payment of such additional Officers, or such Increase of the Salaries of existing Officers, or Pensions to retired Officers, or such other needful Expenses of the Court, as the Lord Warden of the Stannaries shall from Time to Time, on the Application of the Vice Warden or otherwise, think fit to direct, sanction, or assign, and meanwhile shall be kept as a separate Fund apart from the ordinary Fees of the Court arising from other Business to await such Direction and Order of the Lord Warden herein, and to accumulate by Investment in Government Securities until the whole shall have been so appropriated.

Fees.

Power of
Lord Chan-
cellor of
Ireland to
make Rules.

173. In *Ireland* the Lord Chancellor of *Ireland* may, as respects the Winding up of Companies in *Ireland*, with the Advice and Consent of the Master of the Rolls in *Ireland*, exercise the same Power of



making Rules as is by this Act herein-before given to the Lord Chancellor of *Great Britain*; but until such Rules are made the general Practice of the Court of Chancery in *Ireland*, including the Practice hitherto in use in *Ireland* in winding up Companies, shall, so far as the same is applicable and not inconsistent with this Act, apply to all Proceedings for winding up a Company.

PART V.

REGISTRATION OFFICE.

174. The Registration of Companies under this Act shall be conducted as follows; (that is to say,) Constitu-
tion of
Registra-
tion Office.

- (1.) The Board of Trade may from Time to Time appoint such Registrars, Assistant Registrars, Clerks, and Servants as they may think necessary for the Registration of Companies under this Act, and remove them at Pleasure :
- (2.) The Board of Trade may make such Regulations as they think fit with respect to the Duties to be performed by any such Registrars, Assistant Registrars, Clerks, and Servants as aforesaid :
- (3.) The Board of Trade may from Time to Time determine the Places at which Offices for the Registration of Companies are to be established, so that there be at all Times maintained in each of the Three Parts of the United Kingdom at least One such Office, and that no Company shall be registered except at an Office within that Part of the United Kingdom in which by the Memorandum of Association the Registered Office of the Company is declared to be established; and the Board may require that the Registrar's Office of the Court of the Vice Warden of the Stannaries shall be One of the

Offices for the Registration of Companies formed for working Mines within the Jurisdiction of the Court :

- (4.) The Board of Trade may from Time to Time direct a Seal or Seals to be prepared for the Authentication of any Documents required for or connected with the Registration of Companies :
- (5.) Every Person may inspect the Documents kept by the Registrar of Joint Stock Companies ; and there shall be paid for such Inspection such Fees as may be appointed by the Board of Trade, not exceeding One Shilling for each Inspection ; and any Person may require a Certificate¹ of the Incorporation of any Company, or a Copy or Extract¹ of any other Document or any Part of any other Document, to be certified by the Registrar ; and there shall be paid for such Certificate of Incorporation, certified Copy, or Extract such Fees² as the Board of Trade may appoint, not exceeding Five Shillings for the Certificate of Incorporation, and not exceeding Sixpence for each Folio of such Copy or Extract, or in *Scotland* for each Sheet of Two hundred Words :

¹ Which shall be evidence. The Companies Act, 1877, Sect. 6, *post* p. 148.

² To be paid by adhesive stamps ; *see* Treasury order of 31st January, 1901, *post* p. 226.

- (6.) The existing Registrar, Assistant Registrars, Clerks, and other Officers and Servants in the Office for the Registration of Joint Stock Companies shall, during the pleasure of the Board of Trade, hold the Offices and receive the Salaries hitherto held and received by them, but they shall in the Execution of their Duties conform to any Regulations that may be issued by the Board of Trade :
- (7.) There shall be paid to any Registrar, Assistant Registrar, Clerk, or Servant that may hereafter

be employed in the Registration of Joint Stock Companies such Salary as the Board of Trade may, with the Sanction of the Commissioners of the Treasury, direct :

- (8.) Whenever any Act is herein directed to be done to or by the Registrar of Joint Stock Companies, such Act shall until the Board of Trade otherwise directs, be done in *England* to or by the existing Registrar of Joint Stock Companies, or in his Absence to or by such Person as the Board of Trade may for the Time being authorize ; in *Scotland* to or by the existing Registrar of Joint Stock Companies in *Scotland* ; and in *Ireland* to or by the existing Assistant Registrar of Joint Stock Companies for *Ireland*, or by such Person as the Board of Trade may for the Time being authorize in *Scotland* or *Ireland*, in the Absence of the Registrar ; but in the event of the Board of Trade altering the Constitution of the existing Registry Office, such Act shall be done to or by such Officer or Officers and at such Place or Places with reference to the local Situation of the Registered Offices of the Companies to be registered as the Board of Trade may appoint.

PART VI.

APPLICATION OF ACT TO COMPANIES REGISTERED UNDER THE JOINT STOCK COMPANIES ACTS.

175. The Expression "Joint Stock Companies Acts" as used in this Act shall mean "The Joint Stock Companies Act, 1856," "The Joint Stock Companies Acts, 1856, 1857," "The Joint Stock Banking Companies Act, 1857," and "The Act to enable Joint Stock Banking Companies to be formed on the Principle of

Joint Stock Companies Acts to mean 19 & 20 Vict. c. 47, 20 & 21 Vict. c. 14, and 21 & 22 Vict. c. 91, but not to include 7 & 8 Vict. c. 110

Limited Liability," or any One or more of such Acts, as the Case may require; but shall not include the Act passed in the Eighth Year of the Reign of Her present Majesty, Chapter One hundred and ten, and intituled *An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies*.

Application
of Act to
Companies
formed
under Joint
Stock Com-
panies Acts.

176. Subject as herein-after mentioned, this Act, with the Exception of Table A. in the First Schedule, shall apply to Companies formed and registered under the said Joint Stock Companies Acts,¹ or any of them, in the same Manner in the Case of a Limited Company as if such Company had been formed and registered under this Act as a Company Limited by Shares, and in the Case of a Company other than a Limited Company as if such Company had been formed and registered as an Unlimited Company under this Act, with this Qualification, that wherever Reference is made expressly or impliedly to the Date of Registration, such Date shall be deemed to refer to the Date at which such Companies were respectively registered under the said Joint Stock Companies Acts or any of them, and the Power of altering Regulations by Special Resolution given by this Act² shall, in the Case of any Company formed and Registered under the said Joint Stock Companies Acts or any of them, extend to altering any provisions contained in the Table marked B. annexed to "The Joint Stock Companies Act, 1856," and shall also in the Case of an Unlimited Company formed and registered as last aforesaid extend to altering any Regulations relating to the Amount of Capital or its Distribution into Shares, notwithstanding such Regulations are contained in the Memorandum of Association.

¹ Preceding Section.

² Sect. 50, *ante* p. 22.

Application
of Act to
Companies
registered
under Joint
Stock Com-
panies Acts.

177. This Act shall apply to Companies registered but not formed under the said Joint Stock Companies Acts¹ or any of them, in the same Manner as it is here-in-after declared to apply to Companies registered but

not formed under this Act,² with this Qualification, that wherever Reference is made expressly or impliedly to the Date of Registration, such Date shall be deemed to refer to the Date at which such Companies were respectively registered under the said Joint Stock Companies Acts or any of them.

¹ Sect. 175, *ante* p. 73.

² Sect. 196, *post* p. 82.

178. Any Company registered under the said Joint Stock Companies Acts or any of them may cause its Shares to be transferred in Manner hitherto in use, or in such other Manner as the Company may direct.

Mode of
transferring
Shares.

PART VII.

COMPANIES AUTHORIZED TO REGISTER UNDER THIS ACT.

179. The following Regulations shall be observed with respect to the Registration of Companies under this Part of this Act; (that is to say,)

Regulations
as to Regis-
tration of
existing
Companies.

(1.) No Company having the Liability of its Members limited by Act of Parliament or Letters Patent, and not being a Joint Stock Company as herein-after defined, shall register under this Act in pursuance of this Part thereof:

(2.) No Company having the Liability of its Members limited by Act of Parliament or by Letters Patent shall register under this Act in pursuance of this Part thereof as an Unlimited Company, or as a Company limited by Guarantee.

(3.) No Company that is not a Joint Stock Company as herein-after defined shall in pursuance of this Part of this Act register under this Act as a Company limited by Shares:

(4.) No Company shall register under this Act in

pursuance of this Part thereof unless an Assent to its so registering is given by a Majority of such of its Members as may be present, personally or by Proxy, in Cases where Proxies are allowed by the Regulations of the Company, at some General Meeting summoned for the Purpose :

- (5.) When a Company not having the Liability of its Members limited by Act of Parliament or Letters Patent is about to register as a Limited Company, the Majority required to assent as aforesaid shall consist of not less than Three Fourths of the Members present, personally or by Proxy, at such last-mentioned General Meeting :
- (6.) Where a Company is about to register as a Company limited by Guarantee, the Assent to its being so registered shall be accompanied by a Resolution declaring that each Member undertakes to contribute to the Assets of the Company, in the event of the same being wound up, during the Time that he is a Member, or within One Year afterwards, for Payment of the Debts and Liabilities of the Company contracted before the Time at which he ceased to be a Member, and of the Costs, Charges, and Expenses of winding up the Company, and for the Adjustment of the Rights of the Contributories amongst themselves, such Amount as may be required, not exceeding a specified Amount :

In computing any Majority under this Section when a Poll is demanded regard shall be had to the Number of Votes to which each Member is entitled according to the Regulations of the Company of which he is a Member.

180. With the above Exceptions, and subject to the foregoing Regulations,¹ every Company existing at the Time of the Commencement of this Act, including any Company registered under the said Joint Stock

Companies Acts,² consisting of Seven or more Members, and any Company hereafter formed in pursuance of any Act of Parliament other than this Act, or of Letters Patent, or being a Company engaged in working Mines within and subject to the Jurisdiction of the Stannaries, or being otherwise duly constituted by Law, and consisting of Seven or more Members, may at any Time hereafter register itself under this Act as an Unlimited Company, or a Company limited by Shares, or a Company limited by Guarantee; and no such Registration shall be invalid by reason that it has taken place with a view to the Company being wound up.

¹ Preceding Section.

² Sect. 175, *ante* p. 73.

181. For the Purposes of this Part of this Act, so far as the same relates to the Description of Companies empowered to register as Companies limited by Shares, a Joint Stock Company shall be deemed to be a Company having a permanent paid-up or nominal Capital of fixed amount divided into Shares, also of fixed Amount, or held and transferable as Stock, or divided and held partly in one way and partly in the other, and formed on the Principle of having for its Members the Holders of Shares in such Capital, or the Holders of such Stock, and no other Persons; and such Company when registered with Limited Liability under this Act shall be deemed to be a Company limited by Shares.

Definition
of Joint
Stock Com-
pany.

182.¹ No Banking Company claiming to issue Notes in the United Kingdom shall be entitled to Limited Liability in respect of such Issue, but shall continue subject to Unlimited Liability in respect thereof, and, if necessary, the Assets shall be marshalled for the Benefit of the general Creditors, and the Members shall be liable for the whole Amount of the Issue, in Addition to the Sum for which they would be liable as Members of a Limited Company.

Proviso as
to Banking
Company.

¹ Repealed by the Companies Act, 1879, and replaced by Sect. 6 of that Act, *post* p. 150.

183. Previously to the Registration in pursuance of this Part of this Act of any Joint Stock Company¹ there

Requisi-
tions for
Registra-
tion by
Companies.

shall be delivered to the Registrar the following Documents; (that is to say,)

- (1.) A List showing the Names, Addresses, and Occupations of all Persons who on a Day named in such List, and not being more than Six clear Days before the Day of Registration were Members of such Company, with the Addition of the Shares held by such Persons respectively, distinguishing, in Cases where such Shares are numbered, each Share by its Number :
- (2.) A Copy of any Act of Parliament, Royal Charter, Letters Patent, Deed of Settlement, Contract of Co-partnery, Cost Book Regulations, or other Instrument constituting or regulating the Company :
- ✓ (3.) If any such Joint Stock Company is intended to be registered as a Limited Company, the above List and Copy shall be accompanied by a Statement specifying the following Particulars ; that is to say,
 The nominal Capital of the Company and the Number of Shares into which it is divided :
 The Number of Shares taken and the Amount paid on each Share :
 The name of the Company, with the Addition of the Word " Limited,"² as the last Word thereof :
 With the Addition, in the Case of a Company intended to be registered as a Company limited by Guarantee, of the Resolution declaring the Amount of the Guarantee.

¹ As defined in Sect. 181, *ante* p. 77.

² See Sect. 190, *post* p. 80.

184. Previously to the Registration in pursuance of this Part of this Act of any Company not being a Joint Stock Company¹ there shall be delivered to the Registrar a List showing the Names, Addresses, and

Occupations of the Directors or other Managers (if any) of the Company, also a Copy of any Act of Parliament, Letters Patent, Deed of Settlement, Contract of Co-partnery, Cost Book Regulations, or other Instrument constituting or regulating the Company, with the Addition, in the Case of a Company intended to be registered as a Company limited by Guarantee, of the Resolution declaring the Amount of Guarantee.

¹ As defined in Sect. 181, *ante* p. 77.

185. Where a Joint Stock Company¹ authorized to register under this Act has had the whole or any Portion of its Capital converted into Stock, such Company shall, as to the Capital so converted, instead of delivering to the Registrar a Statement of Shares, deliver to the Registrar a Statement of the Amount of Stock belonging to the Company, and the Names of the Persons who were Holders of such Stock, on some Day to be named on the Statement, not more than Six clear Days before the Day of Registration.

Power for
Company
to register
Amount of
Stock in-
stead of
Shares.

¹ Sect. 180, *ante* p. 76.

186. The Lists of Members and Directors and any other Particulars relating to the Company hereby required to be delivered to the Registrars shall be verified by a Declaration of the Directors of the Company delivering the same, or any Two of them, or of any Two other principal Officers of the Company, made in pursuance of the Act passed in the Sixth Year of the Reign of His late Majesty King *William* the Fourth, Chapter Sixty-two.

Authentica-
tion of
Statements.

187. The Registrar may require such Evidence as he thinks necessary for the Purpose of satisfying himself whether an existing Company is or not a Joint Stock Company as herein-before defined.¹

Registrar
may require
Evidence as
to Nature of
Company.

On Regis-
tration of
Banking
Company
with Lim-
ited Lia-
bility
Notice to
be given to
Customers.

¹ Sect. 181, *ante* p. 77.

188. Every Banking Company existing at the Date of the passing of this Act which registers itself as a Limited Company shall, at least Thirty Days previous

to obtaining a Certificate of Registration with Limited Liability, give Notice that it is intended so to register the same to every Person and Partnership Firm who have a Banking Account with the Company, and such Notice shall be given either by delivering the same to such Person or Firm, or leaving the same or putting the same into the Post addressed to him or them at such Address as shall have been last communicated or otherwise become known as his or their Address to or by the Company; and in case the Company omits to give any such Notice as is herein-before required to be given, then as between the Company and the Person or Persons only who are for the Time being interested in the Account in respect of which such Notice ought to have been given, and so far as respects such Account and all Variations thereof down to the Time at which such Notice shall be given, but not further or otherwise, the Certificate of Registration with Limited Liability shall have no Operation.

Exemption
of certain
Companies
from Pay-
ment of
Fees.

189. No Fees shall be charged in respect of the Registration in pursuance of this Part of this Act of any Company in Cases where such Company is not registered as a Limited Company, or where previously to its being registered as a Limited Company the Liability of the Shareholders was limited by some other Act of Parliament or by Letters Patent.

Power to
Company to
change
Name.

190. Any Company authorized by this Part of this Act to register with Limited Liability shall, for the purpose of obtaining Registration with Limited Liability,¹ change its Name by adding thereto the Word "Limited".

¹ Sect. 183 (3), *ante* p. 78.

Certificate
of Registra-
tion and In-
corporation
of Com-
panies

191. Upon compliance with the Requisitions in this Part of this Act contained with respect to Registration, and on Payment of such Fees, if any, as are payable under the Tables marked B. and C. in the First Schedule hereto, the Registrar shall certify under his Hand that the Company so applying for Registration is incorporated as a Company under this Act, and in

the Case of a Limited Company, that it is limited, and thereupon such Company shall be incorporated, and shall have perpetual Succession and a Common Seal, with Power to hold Lands; and any Banking Company in *Scotland* so incorporated shall be deemed and taken to be a Bank incorporated, constituted, or established by or under Act of Parliament.

192.¹ A Certificate of Incorporation given at any Time to any Company registered in pursuance of this Part of this Act shall be conclusive Evidence that all the Requisitions herein contained in respect of Registration under this Act have been complied with, and that the Company is authorized to be registered under this Act as a Limited or Unlimited Company, as the Case may be, and the Date of Incorporation mentioned in such Certificate shall be deemed to be the Date at which the Company is incorporated under this Act.

Certificate to be Evidence of Compliance with Act.

¹ *Repealed by the Companies Act, 1900, and virtually re-enacted by Sect. 1 of that Act, post p. 202.*

193. All such Property, Real and Personal, including all Interests and Rights in, to, and out of Property, Real and Personal, and including Obligations and Things in Action, as may belong to or be vested in the Company at the Date of its Registration under this Act, shall on Registration pass to and vest in the Company as incorporated under this Act, for all the Estate and Interest of the Company therein.

Vesting of Property in Company.

194. The Registration in pursuance of this Part of this Act of any Company shall not affect or prejudice the Liability of such Company to have enforced against it, or its Right to enforce, any Debt or Obligation incurred, or any Contract entered into, by, to, with, or on behalf of such Company previously to such Registration.

Registration not to affect Obligations incurred previously thereto.

195. All such Actions, Suits, and other Legal Proceedings as may at the Time of the Registration of any Company registered in pursuance of this Part of this Act¹ have been commenced by or against such Company, or the Public Officer or any Member thereof, may be continued in the same Manner as if such Registration had not taken place; nevertheless Exe-

Continuation of existing Actions and Suits.

cution shall not issue against the Effects of any individual-Member of such Company upon any Judgment, Degree, or Order obtained in any Action, Suit, or Proceeding so commenced as aforesaid; but in the event of the Property and Effects of the Company being insufficient to satisfy such Judgment, Decree, or Order, an Order may be obtained for winding up the Company.

¹ Or of the Companies Act, 1879, *see* Sect. 4, thereof, *post* p. 149.

196. When a Company is registered under this Act in pursuance of this Part thereof, all Provisions contained in any Act of Parliament, Deed of Settlement, Contract of Co-partnery, Cost Book Regulations, Letters Patent, or other Instrument constituting or regulating the Company, including, in the Case of a Company registered as a Company Limited by Guarantee the Resolution declaring the Amount of the Guarantee, shall be deemed to be Conditions and Regulations of the Company, in the same Manner and with the same Incidents as if they were contained in a registered Memorandum of Association and Articles of Association; and all the Provisions of this Act shall apply to such Company, and the Members, Contributors, and Creditors thereof, in the same Manner in all respects as if it had been formed under this Act, subject to the Provisions following; (that is to say,)

- (1.) That Table A. in the First Schedule to this Act shall not, unless adopted by Special Resolution,¹ apply to any Company registered under this Act in pursuance of this Part thereof:
- (2.) That the Provisions² of this Act relating to the numbering of Shares shall not apply to any Joint Stock Company whose Shares are not numbered.
- (3.)³ That no Company shall have Power to alter any Provision contained in any Act of Parliament relating to the Company:
- (4.)³ That no Company shall have Power, without the Sanction of the Board of Trade, to alter

any Provision contained in any Letters Patent relating to the Company :

- (5.) That in the event of the Company being wound up, every Person shall be a Contributory, in respect of the Debts and Liabilities of the Company contracted prior to Registration, who is liable, at Law or in Equity, to pay or contribute to the Payment of any Debt or Liability of the Company contracted prior to Registration, or to pay or contribute to the Payment of any Sum for the Adjustment of the Rights of the Members amongst themselves in respect of any such Debt or Liability, or to pay or contribute to the Payment of the Costs, Charges, and Expenses of winding up the Company so far as relates to such Debts or Liabilities as aforesaid ; and every such Contributory shall be liable to contribute to the Assets of the Company, in the Course of the Winding up, all Sums due from him in respect of any such Liability as aforesaid ; and in the event of the Death, Bankruptcy, or Insolvency of any such Contributory as last aforesaid, or Marriage of any such Contributory being a Female, the Provisions⁴ herein-before contained with respect to the Representatives, Heirs, and Devisees of deceased Contributories, and with Reference to the Assignees of bankrupt or insolvent Contributories, and to the Husbands of married Contributories, shall apply :
- (6.) That nothing herein contained shall authorize any Company to alter any such Provisions⁵ contained in any Deed of Settlement, Contract of Co-partnery, Cost Book Regulations, Letters Patent, or other Instrument constituting or regulating the Company, as would, if such Company had originally been formed under this Act, have been contained in the Memorandum of Association,⁶ and are not authorized to be altered by this Act :

But nothing herein contained shall derogate from any Power of altering its Constitution or Regulations which may be vested in any Company registering under this Act in pursuance of this Part thereof by virtue of any Act of Parliament, Deed of Settlement, Contract of Co-partnery, Letters Patent, or other Instrument constituting or regulating the Company.

¹ Sect. 51, *ante* p. 23.

² Sect. 25, *ante* p. 11.

³ See Sect. 47 of the Companies Act, 1867 (*post* p. 144), which was probably also intended to apply to sub-Sect. 4 of this Sect. instead of to sub-Sect. 2.

⁴ Sects. 76, 77, 78, *ante* p. 33.

⁵ See, however, the Companies (Memorandum of Association) Act, 1890, *post* p. 161.

⁶ As required by Sects. 8, 9, 10, *ante* p. 3 *et seq.*

Power of
Court to
restrain
further Pro-
ceedings in
Actions,
etc.

197. The Court may, at any Time after the Presentation of a Petition for winding up a Company registered in pursuance of this Part of this Act, and before making an Order for winding up the Company, upon the Application by Motion of any Creditor of the Company, restrain further Proceedings in any Action, Suit, or legal Proceeding against any Contributory of the Company as well as against the Company as herein-before provided,¹ upon such Terms as the Court thinks fit.

¹ Sect. 85, *ante* p. 37.

After Order
for winding
up Company
no legal
Proceedings
to be taken
without
leave of
Court.

198. Where an Order has been made for winding up a Company registered in pursuance of this Part of the Act, in addition to the Provisions herein-before contained,¹ it is hereby further provided that no Suit, Action, or other legal Proceeding shall be commenced or proceeded with against any Contributory of the Company in respect of any Debt of the Company, except with the Leave of the Court, and subject to such Terms as the Court may impose.

¹ Sect. 87, *ante* p. 37.

PART VIII.

APPLICATION OF ACT TO UNREGISTERED COMPANIES.

199. Subject as herein-after mentioned, any Partnership, Association, or Company, except Railway Companies incorporated by Act of Parliament, consisting of more than Seven Members, and not registered under this Act, and herein-after included under the Term unregistered Company, may be wound up under this Act, and all the Provisions of this Act with respect to winding up shall apply to such Company, with the following Exceptions and Additions:

Winding
up of un-
registered
Companies.

- (1.) An unregistered Company shall, for the Purpose of determining the Court having Jurisdiction in the Matter of the Winding up, be deemed to be registered in that Part of the United Kingdom where its principal Place of Business is situate; or if it has a principal place of Business situate in more than One Part of the United Kingdom, then in each Part of the United Kingdom where it has a principal Place of Business; moreover the principal Place of Business of an unregistered Company, or (where it has a principal Place of Business situate in more than One Part of the United Kingdom) such One of its principal Places of Business as is situate in that Part of the United Kingdom in which Proceedings are being instituted, shall for all the Purposes of the winding up of such Company be deemed to be the Registered Office of the Company:¹
- (2.) No unregistered Company shall be wound up under this Act voluntarily or subject to the Supervision of the Court:
- (3.) The Circumstances under which an unregistered Company may be wound up are as follows; (that is to say,)
 - (a.) Whenever the Company is dissolved, or has ceased to carry on Business, or is carrying

- on Business only for the Purpose of winding up its Affairs ;
- (b.) Whenever the Company is unable to pay its Debts ;
 - (c.) Whenever the Court is of opinion that it is just and equitable that the Company should be wound up :
- (4.) An unregistered Company shall, for the Purposes of this Act, be deemed to be unable to pay its Debts,
- (a.) Whenever a Creditor to whom the Company is indebted at Law or in Equity, by Assignment or otherwise, in a Sum exceeding Fifty Pounds then due, has served on the Company, by leaving the same at the principal Place of Business of the Company, or by delivering to the Secretary or some Director or principal Officer of the Company, or by otherwise serving the same in such Manner as the Court may approve or direct, a Demand under his Hand requiring the Company to pay the Sum so due, and the Company has for the Space of Three Weeks succeeding the Service of such Demand neglected to pay such Sum, or to secure or compound for the same to the Satisfaction of the Creditor :
 - (b.) Whenever any Action, Suit, or other Proceeding has been instituted against any Member of the Company for any Debt or Demand due, or claimed to be due, from the Company, or from him in his Character of Member of the Company, and Notice in Writing of the Institution of such Action, Suit, or other legal Proceeding having been served upon the Company by leaving the same at the principal Place of Business of the Company, or by delivering it to the Secretary, or some Director, Manager, or

principal Officer of the Company, or by otherwise serving the same in such Manner as the Court may approve or direct, the Company has not within Ten Days after Service of such Notice paid, secured, or compounded for such Debt or Demand, or procured such Action, Suit, or other legal Proceeding to be stayed, or indemnified the Defendant to his reasonable Satisfaction against such Action, Suit, or other legal Proceeding, and against all Costs, Damages, and Expenses to be incurred by him by reason of the same :

- (c.) Whenever, in *England* or *Ireland*, Execution or other Process issued on a Judgment, Decree, or Order obtained in any Court in favour of any Creditor in any Proceeding at Law or in Equity instituted by such Creditor against the Company, or any Member thereof as such, or against any Person authorized to be sued as nominal Defendant on behalf of the Company, is returned unsatisfied :
- (d.) Whenever, in the Case of an unregistered Company engaged in working Mines within and subject to the Jurisdiction of the Stannaries, a Customary Decree or Order Absolute for the Sale of the Machinery, Materials, and Effects of such Mine has been made in a Creditor's Suit in the Court of the Vice Warden :
- (e.) Whenever, in *Scotland*, the Induciæ of a Charge for Payment on an Extract Decree, or an Extract registered Bond, or an Extract registered Protest, have expired without Payment being made :
- (f.) Whenever it is otherwise proved to the Satisfaction of the Court that the Company is unable to pay its Debts.

¹ Required by Sect. 39, *ante* p. 18, and *see* the Companies (Winding-up) Act, 1890, Sect. 32 (3), *post* p. 185.

Who to be deemed Contributory in the event of Company being wound up.

200. In the event of an unregistered Company being wound up every Person shall be deemed to be a Contributory who is liable, at Law or in Equity, to pay or contribute to the Payment of any Debt or Liability of the Company, or to pay or contribute to the Payment of any Sum for the Adjustment of the Rights of the Members amongst themselves, or to pay or contribute to the Payment of the Costs, Charges, and Expenses of winding up the Company, and every such Contributory shall be liable to contribute to the Assets of the Company in the Course of the Winding up all Sums due from him in respect of any such Liability as aforesaid; but in the event of the Death, Bankruptcy, or Insolvency of any Contributory, or Marriage of any Female Contributory, the Provisions herein-before contained with respect to the Personal Representatives, Heirs, and Divisees of a deceased Contributory,¹ and to the Assignees of a bankrupt or insolvent Contributory,² and to the Husband of married Contributories³ shall supply.

¹ Sect. 76, *ante* p. 33.

² Sect. 77, *ante* p. 33.

³ Sect. 78, *ante* p. 33.

Power of Court to restrain further Proceedings in Actions, etc.

201. The Court may, at any Time after the Presentation of a Petition for winding up an unregistered Company, and before making an Order for winding up the Company, upon the Application of any Creditor of the Company, restrain further Proceedings in any Action, Suit, or Proceeding against any Contributory of the Company, or against the Company as herein-before provided,¹ upon such Terms as the Court thinks fit.

¹ Sect. 85, *ante* p. 37.

Effect of Order for winding up Company.

202. Where an Order has been made for winding up an unregistered Company in addition to the Provisions¹ herein-before contained in the Case of Companies formed under this Act, it is hereby further provided that no Suit, Action, or other legal Proceeding

shall be commenced or proceeded with against any Contributory of the Company in respect of any Debt of the Company, except with the Leave of the Court, and subject to such Terms as the Court may impose.

¹ Sect. 87, *ante* p. 37.

203. If any unregistered Company has no Power to sue and be sued in a common Name, or if for any reason it appears expedient, the Court may by the Order made for winding up such Company, or by any subsequent Order, direct that all such Property, Real and Personal, including all Interest, Claims, and Rights into and out of Property, Real and Personal, and including Things in Action as may belong to or be vested in the Company, or to or in any Person or Persons on trust for or on behalf of the Company or any Part of such Property, is to vest in the Official Liquidator or Official Liquidators by his or their official Name or Names, and thereupon the same or such Part thereof as may be specified in the Order shall vest accordingly, and the Official Liquidator or Official Liquidators may, in his or their Official Name or Names, or in such Name or Names and after giving such Indemnity as the Court directs, bring or defend any Actions, Suits, or other legal Proceeding relating to any Property vested in him or them, or any Actions, Suits, or other legal Proceedings necessary to be brought or defended for the Purposes of effectually winding up the Company and recovering the Property thereof.

Property may be vested in Official Liquidators, etc.

204. The Provisions made by this Part of the Act with respect to unregistered Companies shall be deemed to be made in addition to and not in restriction of any Provisions¹ herein-before contained with respect to winding up Companies by the Court, and the Court or Official Liquidator may, in addition to anything contained in this Part of the Act, exercise any Powers or do any Act in the Case of unregistered Companies which might be exercised or done by it or him in winding up Companies formed under the Act; but an unregistered Company shall not, except in the event

Provisions in this Part of Act cumulative.

of its being wound up, be deemed to be a Company under this Act, and then only to the Extent provided by this Part of this Act.

¹ Sects. 74 to 128, and Sects. 153 to 173 *ante*.

PART IX.

REPEAL OF ACTS AND TEMPORARY PROVISIONS.

Repeal of
Acts.

205. After the Commencement of this Act there shall be repealed the several Acts specified in the First Part of the Third Schedule hereto, with this Qualification, that so much of the said Acts as is set forth in the Second Part of the said Third Schedule shall be hereby re-enacted and continue in force as if unrepealed.

Saving
Clause as
to Repeal.

206. No Repeal hereby enacted shall affect,

(1.) Anything duly done under any Acts hereby repealed:

(2.) The Incorporation of any Company registered under any Act hereby repealed:

(3.) Any Right or Privilege acquired or Liability incurred under any Act hereby repealed:

(4.) *Repealed by the Statute Law Revision Act, 1875.*

(5.) Table B. in the Schedule annexed to the Joint Stock Companies Act, 1856, or any Part thereof, so far as the same applies to any Company existing at the Time of the Commencement of this Act.

207. *Repealed by the Statute Law Revision Act, 1875.*

Saving of
Convey-
ances, etc.,
made pursu-
ant to any
repealed
Act.

208. Where previously to the Commencement of this Act any Conveyance, Mortgage, or other Deed has been made in pursuance of any Act hereby repealed, such Deed shall be of the same Force as if this Act had not passed, and for the Purposes of such Deed such repealed Act shall be deemed to remain in full Force.

209. Every Insurance Company completely registered under the Act passed in the Eighth Year of the Reign of Her present Majesty, Chapter One hundred and ten, intituled *An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies*, shall on or before the Second Day of November One thousand eight hundred and sixty-two, and every other Company required by any Act hereby repealed to register under the said Joint Stock Companies Acts, or one of such Acts, and which has not so registered, shall, on or before the Expiration of the Thirty-first Day from the Commencement of this Act, register itself as a Company under this Act, in manner and subject to the Regulations herein-before contained,¹ with this Exception, that no Company completely registered under the said Act of the Eighth Year of the Reign of Her present Majesty shall be required to deliver to the Registrar a Copy of its Deed of Settlement; and for the Purpose of enabling such Insurance Companies as are mentioned in this Section to register under this Act, this Act shall be deemed to come into operation immediately on the passing thereof; nevertheless the Registration of such Companies shall not have any Effect until the Time of the Commencement of this Act. No Fees shall be charged in respect of the Registration of any Company required to register by this Section.

Compulsory
Registration
of
certain
Companies.

¹ Sect. 179, *ante* p. 75, and following Sects.

210. If any Company required by the last Section to register under this Act makes Default in complying with the Provisions thereof, then from and after the Day upon which such Company is required to register under this Act, until the Day on which such Company is registered under this Act (which it is empowered to do at any Time), the following Consequences shall ensue; (that is to say,)

Penalty on
any such
Company
not regis-
tering
21 Vict. c.
14. s. 28.

- (1.) The Company shall be incapable of suing either at Law or in Equity, but shall not be incapable of being made a Defendant to a Suit either at Law or in Equity:

- (2.) No Dividend shall be payable to any Shareholder in such Company :
- (3.) Each Director or Manager of the Company shall for each Day during which the Company so being in Default carries on Business incur a Penalty not exceeding Five Pounds, and such Penalty may be recovered by any Person, whether a Shareholder or not in the Company, and be applied by him to his own Use :

Nevertheless, such Default shall not render the Company so being in Default illegal, nor subject it to any Penalty or Disability, other than as specified in this Section ; and Registration under this Act shall cancel any Penalty or Forfeiture, and put an end to any Disability which any Company may have incurred under any Act hereby repealed by reason of its not having registered under the said Joint Stock Companies Acts, 1856, 1857, or One of them.

211 and 212. *Repealed by the Statute Law Revision Act, 1875.*

FIRST SCHEDULE.

TABLE A.

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES.

Shares.

- (1.) If several Persons are registered as joint Holders of any Share, any One of such Persons may give effectual Receipts for any Dividend payable in respect of such Share.
- (2.) Every Member shall, on payment of One Shilling, or such less Sum as the Company in General Meeting may prescribe, be entitled to a Certificate,¹ under the Common Seal of the Company, specifying the Share or Shares held by him, and the Amount paid up thereon.

¹ Sect. 31, *ante* p. 14.

- (3.) If such Certificate is worn out or lost, it may be renewed, on Payment of One Shilling, or such less Sum as the Company in General Meeting may prescribe.

Calls on Shares.

- (4.) The Directors may from Time to Time make such Calls upon the Members in respect of all Monies unpaid on their Shares as they think fit, provided that Twenty-one Days' Notice at least is given of each Call, and each Member shall be liable to pay the Amount of Calls so made to the Persons and at the Times and Places appointed by the Directors.
- (5.) A Call shall be deemed to have been made at the Time when the Resolution of the Directors authorizing such Call was passed.
- (6.) If the Call payable in respect of any Share is not paid before or on the Day appointed for Payment thereof, the Holder for the Time being of such Share shall be liable to pay

Interest for the same at the Rate of Five Pounds per Cent. per Annum from the Day appointed for the Payment thereof to the Time of the actual Payment.

- (7.) The Directors may, if they think fit, receive from any Member willing to advance the same all or any Part of the Monies due upon the Shares held by him beyond the Sums actually called for; and upon the Monies so paid in advance, or so much thereof as from Time to Time exceeds the Amount of the Calls then made upon the Shares in respect of which such Advance has been made, the Company may pay Interest at such Rate as the Member paying such Sum in advance and the Directors agree upon.

*Transfers of Shares.*¹

¹ Sect. 22, *ante* p. 10.

- (8.) The Instrument of Transfer of any Share in the Company shall be executed both by the Transferor and Transferee, and the Transferor shall be deemed to remain a Holder of such Share until the Name of the Transferee is entered in the Register Book in respect thereof.
- (9.) Shares in the Company shall be transferred in the following Form:—
 I, *A.B.*, of _____, in consideration of the Sum of _____ Pounds paid to me by *C.D.*, of _____, do hereby transfer to the said *C.D.* the Share [*or* Shares] numbered _____ standing in my Name in the Books of the _____ Company, to hold unto the said *C.D.*, his Executors, Administrators, and Assigns, subject to the several Conditions on which I held the same at the Time of the Execution hereof; and I the said *C.D.* do hereby agree to take the said Share [*or* Shares] subject to the same Conditions. As witness our Hands, the _____ Day of _____
- (10.) The Company may decline to register any Transfer of Shares made by a Member who is indebted to them.
- (11.) The Transfer Books shall be closed during the Fourteen Days immediately preceding the Ordinary General Meeting¹ in each Year.

¹ See Sect. 49, *ante* p. 22.

Transmission of Shares.

- (12.) The Executors or Administrators of a deceased Member shall be the only Persons recognized by the Company as having any Title to his Share.
- (13.) Any Person becoming entitled to a Share in consequence of the Death, Bankruptcy, or Insolvency of any Member, or

in consequence of the Marriage of any Female Member, may be registered as a Member upon such Evidence being produced as may from Time to Time be required by the Company.

- (14.) Any Person who has become entitled to a Share in consequence of the Death, Bankruptcy, or Insolvency of any Member, or in consequence of the Marriage of any Female Member, may, instead of being registered himself, elect to have some Person to be named by him registered as a Transferee of such Share.
- (15.) The Person so becoming entitled shall testify such Election by executing to his Nominee an Instrument of Transfer of such Share.
- (16.) The Instrument of Transfer shall be presented to the Company, accompanied with such Evidence as the Directors may require to prove the Title of the Transferor, and thereupon the Company shall register the Transferee as a Member.

Forfeiture of Shares.

- (17.) If any Member fails to pay any Call on the Day appointed for Payment thereof, the Directors may at any Time thereafter, during such Time as the Call remains unpaid, serve a Notice on him, requiring him to pay such Call, together with Interest and any Expenses that may have accrued by reason of such Non-payment.
- (18.) The Notice shall name a further Day on or before which such Call, and all Interest and Expenses that have accrued by reason of such Non-payment, are to be paid. It shall also name the Place where Payment is to be made (the Place so named being either the Registered Office of the Company or some other Place at which Calls of the Company are usually made payable). The Notice shall also state that in the event of Non-payment at or before the Time and at the Place appointed the Shares in respect of which such Call was made will be liable to be forfeited.
- (19.) If the Requisitions of any such Notice as aforesaid are not complied with, any Share in respect of which such Notice has been given may at any Time thereafter, before payment of all Calls, Interest, and Expenses due in respect thereof, has been made, be forfeited, by a Resolution of the Directors to that Effect.
- (20.) Any Share so forfeited shall be deemed to be the property of the Company, and may be disposed of in such Manner as the Company in General Meeting thinks fit.
- (21.) Any Member whose Shares have been forfeited shall notwithstanding be liable to pay to the Company all Calls owing upon such Shares at the Time of the Forfeiture.

- (22.) A statutory Declaration in Writing, that the Call in respect of a Share was made and Notice thereof given, and that Default in Payment of the Call was made and that the Forfeiture of the Share was made by a Resolution of the Directors to that effect, shall be sufficient Evidence of the Facts therein stated, as against all Persons entitled to such Share, and such Declaration and the Receipt of the Company for the Price of such Share, shall constitute a good Title to such Share, and a Certificate of Proprietorship shall be delivered to a Purchaser, and thereupon he shall be deemed the Holder of such Share discharged from all Calls due prior to such Purchase, and he shall not be bound to see to the Application of the Purchase Money, nor shall his Title to such Share be affected by any Irregularity in the Proceedings in reference to such Sale.

Conversion of Shares into Stock.

- (23.) The Directors may, with the Sanction of the Company previously given in General Meeting, convert any paid-up Shares into Stock.
- (24.) When any Shares have been converted into Stock, the several Holders of such Stock may thenceforth transfer their respective Interests therein, or any part of such Interests, in the same Manner and Subject to the same Regulations as and subject to which any Shares in the Capital of the Company may be transferred, or as near thereto as Circumstances admit.
- 25.) The several Holders of Stock shall be entitled to participate in the Dividends and Profits of the Company according to the Amount of their respective Interests in such Stock; and such Interests shall, in proportion to the Amount thereof, confer on the Holders thereof respectively the same Privileges and Advantages for the Purpose of voting at Meetings of the Company, and for other Purposes, as would have been conferred by Shares of equal Amount in the Capital of the Company; but so that none of such Privileges or Advantages, except the Participation in the Dividends and Profits of the Company, shall be conferred by any such aliquot Part of Consolidated Stock as would not, if existing in Shares, have conferred such Privileges or Advantages.

*Increase in Capital.*¹

- (26.) The Directors may, with the Sanction of a Special Resolution² of the Company previously given in General Meeting, increase its Capital by the Issue of New Shares, such aggregate Increase to be of such Amount and to be divided

into Shares of such respective Amounts, as the Company in General Meeting direct, or, if no Direction is given, as the Directors think expedient.

¹ Sect. 34, *ante* p. 15.

² Sect. 51, *ante* p. 23.

- (27.) Subject to any Direction to the contrary that may be given by the Meeting that sanctions the Increase of Capital, all new Shares shall be offered to the Members in proportion to the existing Shares held by them, and such offer shall be made by Notice specifying the Number of Shares to which the Member is entitled, and limiting a Time within which the Offer, if not accepted, will be deemed to be declined, and after the Expiration of such Time, or on the Receipt of an Intimation from the Member to whom such Notice is given that he declines to accept the Shares offered, the Directors may dispose of the same in such Manner as they think most beneficial to the Company.
- (28.) Any Capital raised by the Creation of new Shares shall be considered as Part of the original Capital, and shall be subject to the same Provisions with reference to the Payment of Calls, and the Forfeiture of Shares on Non-payment of Calls, or otherwise, as if it had been Part of the original Capital.

*General Meetings.*¹

- (29.) The First General Meeting² shall be held at such Time, not being more than Six Months after the Registration of the Company, and at such Place, as the Directors may determine.

¹ Sect. 49, *ante* p. 22, and Sect. 52, *ante* p. 24.

² Now called "Statutory Meeting" and regulated by the Companies Act, 1900, Sect. 12, *post* p. 213.

- (30.) Subsequent General Meetings shall be held at such Time and Place as may be prescribed by the Company in General Meeting; and if no other Time or Place is prescribed, a General Meeting shall be held on the First Monday in February in every Year, at such Place as may be determined by the Directors.
- (31.) The above-mentioned General Meetings shall be called Ordinary Meetings; all other General Meetings shall be called Extraordinary.
- (32.) The Directors may, whenever they think fit, and they shall upon a Requisition made in Writing by not less than One Fifth in Number of the Members of the Company, convene an Extraordinary General Meeting.
- (33.) Any Requisition made by the Members shall express the

Object of the Meeting proposed to be called, and shall be left at the Registered Office of the Company.

- (34.) Upon the Receipt of such Requisition the Directors shall forthwith proceed to convene an Extraordinary General Meeting. If they do not proceed to convene the same within Twenty-one Days from the Date of the Requisition, the Requisitionists, or any other Members amounting to the required Number, may themselves convene an Extraordinary General Meeting.

Proceedings at General Meetings.

- (35.) Seven Days' Notice at the least, specifying the Place, the Day, and the Hour of Meeting, and in case of special Business, the general Nature of such Business shall be given to the Members in manner hereinafter mentioned, or in such other Manner, if any, as may be prescribed by the Company in General Meeting; but the Non-receipt of such Notice by any Member shall not invalidate the Proceedings at any General Meeting.
- (36.) All Business shall be deemed special that is transacted at an Extraordinary Meeting, and all that is transacted at an Ordinary Meeting, with the Exception of sanctioning a Dividend and the Consideration of the Accounts, Balance Sheets, and the ordinary Report of the Directors.
- (37.) No Business shall be transacted at any General Meeting, except the Declaration of a Dividend, unless a Quorum of Members is present at the Time when the Meeting proceeds to Business: and such Quorum shall be ascertained as follows; that is to say, if the Persons who have taken Shares in the Company at the Time of the Meeting do not exceed Ten in Number, the Quorum shall be Five; if they exceed Ten there shall be added to the above Quorum One for every Five additional Members up to Fifty, and One for every Ten additional Members after Fifty, with this Limitation, that no Quorum shall in any Case exceed Twenty.
- (38.) If within One Hour from the Time appointed for the Meeting a Quorum is not present, the Meeting, if convened upon the Requisition of Members, shall be dissolved: In any other Case it shall stand adjourned to the same Day in the next Week, at the same Time and Place; and if at such adjourned Meeting a Quorum is not present it shall be adjourned *sine die*.
- (39.) The Chairman (if any) of the Board of Directors shall preside as Chairman at every General Meeting of the Company.
- (40.) If there is so such Chairman, or if at any Meeting he is not present within Fifteen Minutes after the Time appointed

for holding the Meeting, the Members present shall choose some one of their Number to be Chairman.

- (41.) The Chairman may, with the Consent of the Meeting, adjourn any Meeting from Time to Time and from Place to Place, but no Business shall be transacted at any adjourned Meeting other than the Business left unfinished at the Meeting from which the Adjournment took place.
- (42.) At any General Meeting, unless a Poll is demanded by at least Five Members, a Declaration by the Chairman that a Resolution has been carried, and an Entry to that Effect in the Book of Proceedings¹ of the Company, shall be sufficient Evidence of the Fact, without Proof of the Number or Proportion of the Votes recorded in favour of or against such Resolution.

¹ Required to be kept by Sect. 67, *ante* p. 29.

- (43.) If a Poll is demanded by Five or more Members it shall be taken in such Manner as the Chairman directs, and the Result of such Poll shall be deemed to be the Resolution of the Company in General Meeting. In the Case of an Equality of Votes at any General Meeting, the Chairman shall be entitled to a Second or Casting Vote.

Votes of Members.

- (44.) Every Member shall have One Vote for every Share up to Ten: He shall have an additional Vote for every Five Shares beyond the First Ten Shares up to One Hundred, and an additional Vote for every Ten Shares beyond the First Hundred Shares.
- (45.) If any Member is a Lunatic or Idiot, he may vote by his Committee, Curator bonis, or other legal Curator.
- (46.) If One or more Persons are jointly entitled to a Share or Shares, the Member whose Name stands first in the Register of Members as One of the Holders of such Share or Shares, and no other, shall be entitled to vote in respect of the same.
- (47.) No Member shall be entitled to vote at any General Meeting unless all Calls due from him have been paid, and no Member shall be entitled to vote in respect of any Share that he has acquired by Transfer at any Meeting held after the Expiration of Three Months from the Registration of the Company, unless he has been possessed of the Share in respect of which he claims to vote for at least Three Months previously to the Time of holding the Meeting at which he proposes to vote.
- (48.) Votes may be given either personally or by proxy.
- (49.) The Instrument appointing a Proxy shall be in Writing, under the Hand of the Appointor, or if such Appointor is a Corporation, under their Common Seal, and shall be

attested by One or more Witness or Witnesses: No Person shall be appointed a Proxy who is not a Member of the Company.

- (50.) The Instrument appointing a Proxy shall be deposited at the Registered Office of the Company not less than Seventy-two Hours before the Time for holding the Meeting at which the Person named in such Instrument proposes to vote, but no Instrument appointing a Proxy shall be valid after the Expiration of Twelve Months from the Date of its Execution.
- (51.) Any Instrument appointing a Proxy shall be in the following Form:—

Company Limited.

I, _____, of _____, in the County of _____,
 being a Member of the _____ Company Limited,
 and entitled to _____ Vote [or _____ Votes], hereby
 appoint _____, of _____, as my Proxy,
 to vote for me and on my Behalf at the [Ordinary or Extra-
 ordinary, *as the case may be*] General Meeting of the
 Company to be held on the _____ Day of _____,
 and at any Adjournment thereof [or, at any Meeting of the
 Company that may be held in the Year _____].

As witness my Hand, this _____ Day of _____
 Signed by the said _____ in the Presence of
Directors.

Directors.

- 52.) The Number of Directors, and the Names of the First Directors, shall be determined by the Subscribers of the Memorandum of Association.
- (53.) Until Directors are appointed the Subscribers of the Memorandum of Association shall be deemed to be Directors.
- (54.) The future Remuneration of the Directors, and their Remuneration for Services performed previously to the First General Meeting, shall be determined by the Company in General Meeting.

Powers of Directors.

- (55.) The Business of the Company shall be managed by the Directors, who may pay all Expenses incurred in getting up and registering the Company, and may exercise all such Powers of the Company as are not by the foregoing Act, or by these Articles, required to be exercised by the Company in General Meeting, subject nevertheless to any Regulations of these Articles, to the Provisions of the foregoing Act, and to such Regulations, being not incon-

sistent with the aforesaid Regulations or Provisions, as may be prescribed by the Company in General Meeting; but no Regulation made by the Company in General Meeting shall invalidate any prior Act of the Directors which would have been valid if such Regulation had not been made.

- (56.) The Continuing Directors may act notwithstanding any Vacancy in their Body.

Disqualification of Directors.

- (57.) The Office of Director shall be vacated,—
 If he holds any other Office or Place of Profit under the Company:
 If he becomes bankrupt or insolvent:
 If he is concerned in or participates in the Profits of any Contract with the Company:
 But the above Rules shall be subject to the following Exceptions: That no Director shall vacate his Office by reason of his being a Member of any Company which has entered into Contracts with or done any Work for the Company of which he is Director; nevertheless he shall not vote in respect of such Contract or Work; and if he does so vote his Vote shall not be counted.

Rotation of Directors.

- (58.) At the First Ordinary Meeting after the Registration of the Company the whole of the Directors shall retire from Office; and at the First Ordinary Meeting in every subsequent Year One Third of the Directors for the Time being, or if their Number is not a Multiple of Three, then the Number nearest to One Third, shall retire from Office.
- (59.) The One Third or other nearest Number to retire during the First and Second Years ensuing the First Ordinary Meeting of the Company shall, unless the Directors agree among themselves, be determined by Ballot: In every subsequent Year the One Third or other nearest Number who have been longest in Office shall retire.
- (60.) A retiring Director shall be re-eligible.
- (61.) The Company at the General Meeting at which any Directors retire in manner aforesaid shall fill up the vacated Offices by electing a like Number of Persons.
- (62.) If at any Meeting at which an Election of Directors ought to take place the Places of the vacating Directors are not filled up, the Meeting shall stand adjourned till the same Day in the next Week, at the same Time and Place; and if at such adjourned Meeting the Places of the vacating Directors are not filled up, the vacating Directors, or such of them as have not had their Places filled up,

shall continue in Office until the Ordinary Meeting in the next Year, and so on from Time to Time until their Places are filled up.

- (63.) The Company may from Time to Time, in General Meeting, increase or reduce the Number of Directors, and may also determine in what Rotation such increased or reduced Number is to go out of Office.
- (64.) Any casual Vacancy occurring in the Board of Directors may be filled up by the Directors, but any Person so chosen shall retain his Office so long only as the vacating Director would have retained the same if no Vacancy had occurred.
- (65.) The Company, in General Meeting, may, by a Special Resolution,¹ remove any Director before the Expiration of his Period of Office, and may by an ordinary Resolution appoint another Person in his Stead: The Person so appointed shall hold Office during such Time only as the Director in whose Place he is appointed would have held the same if he had not been removed.

¹ Sect. 51, *ante* p. 23.

Proceedings of Directors.

- (66.) The Directors may meet together for the Despatch of Business, adjourn and otherwise regulate their Meetings as they think fit, and determine the Quorum necessary for the Transaction of Business: Questions arising at any Meeting shall be decided by a Majority of Votes: In case of an Equality of Votes the Chairman shall have a Second or Casting Vote: A Director may at any Time summon a Meeting of the Directors.
- (67.) The Directors may elect a Chairman of their Meetings, and determine the Period for which he is to hold Office; but if no such Chairman is elected, or if at any Meeting the Chairman is not present at the Time appointed for holding the same, the Directors present shall choose some One of their Number to be Chairman of such Meeting.
- (68.) The Directors may delegate any of their Powers to Committees consisting of such Member or Members of their Body as they think fit: Any Committee so formed shall, in the exercise of the Powers so delegated, conform to any Regulations that may be imposed on them by the Directors.
- (69.) A Committee may elect a Chairman of their Meetings: If no such Chairman is elected, or if he is not present at the Time appointed for holding the same, the Members present shall choose One of their Number to be Chairman of such Meeting.
- (70.) A Committee may meet and adjourn as they think proper: Questions arising at any Meeting shall be determined by a Majority of Votes of the Members present; and in case of

an Equality of Votes the Chairman shall have a Second or Casting Vote.

- (71.) All Acts done by any Meeting of the Directors, or of a Committee of Directors, or by any Person acting as a Director, shall, notwithstanding that it be afterwards discovered that there was some Defect in the Appointment of any such Directors or Persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such Person had been duly appointed and was qualified to be a Director.

Dividends.

- (72.) The Directors may, with the Sanction of the Company in General Meeting, declare a Dividend to be paid to the Members in proportion to their Shares.
- (73.) No Dividend shall be payable except out of the Profits arising from the Business of the Company.
- (74.) The Directors may, before recommending any Dividend, set aside out of the Profits of the Company such Sum as they think proper as a reserved Fund to meet Contingencies, or for equalising Dividends, or for repairing or maintaining the Works connected with the Business of the Company, or any Part thereof; and the Directors may invest the Sum so set apart as a reserved Fund upon such Securities as they may select.
- (75.) The Directors may deduct from the Dividends payable to any Member all such Sums of Money as may be due from him to the Company on account of Calls or otherwise.
- (76.) Notice of any Dividend that may have been declared shall be given to each Member in manner herein-after mentioned; and all Dividends unclaimed for Three Years after having been declared may be forfeited by the Directors for the Benefit of the Company.
- (77.) No Dividend shall bear Interest as against the Company.

Accounts.

- (78.) The Directors shall cause true Accounts to be kept,—
Of the Stock in Trade of the Company;
Of the Sums of Money received and expended by the Company, and the Matter in respect of which such Receipt and Expenditure takes place; and,
Of the Credits and Liabilities of the Company:
The Books of Account shall be kept at the Registered Office of the Company, and, subject to any reasonable Restrictions as to the Time and Manner of inspecting the same that may be imposed by the Company in General Meeting, shall be open to the Inspection of the Members during the Hours of Business.

- (79.) Once at least in every Year the Directors shall lay before the Company in General Meeting a Statement of the Income and Expenditure for the past Year, made up to a date not more than Three Months before such Meeting.
- (80.) The Statement so made shall show, arranged under the most convenient Heads, the Amount of gross Income, distinguishing the several Sources from which it has been derived, and the Amount of gross Expenditure, distinguishing the Expense of the Establishment, Salaries and other like Matters: Every Item of Expenditure fairly chargeable against the Year's Income shall be brought into Account so that a just Balance of Profit and Loss may be laid before the Meeting; and in Cases where any Item of Expenditure which may in fairness be distributed over several Years has been incurred in any One Year the whole Amount of such Item shall be stated, with the Addition of the Reasons why only a Portion of such Expenditure is charged against the Income of the Year.
- (81.) A Balance Sheet shall be made out in every Year, and laid before the Company in General Meeting, and such Balance Sheet shall contain a Summary of the Property and Liabilities of the Company arranged under the Heads appearing in the form annexed to this Table, or as near thereto as Circumstances admit.
- (82.) A printed Copy of such Balance Sheet shall, Seven Days previously to such Meeting, be served on every Member in the Manner in which Notices are herein-after directed to be served.

*Audit.*¹

- (83.) Once at the least in every Year the Accounts of the Company shall be examined, and the Correctness of the Balance Sheet ascertained, by One or more Auditor or Auditors.
- (84.) The First Auditors shall be appointed by the Directors: Subsequent Auditors shall be appointed by the Company in General Meeting.
- (85.) If one Auditor only is appointed, all the Provisions herein contained relating to Auditors shall apply to him.
- (86.) The Auditors may be Members of the Company; but no Person is eligible as an Auditor who is interested otherwise than as a Member in any Transaction of the Company; and no Director or other Officer of the Company is eligible during his Continuance in Office.
- (87.) The Election of Auditors shall be made by the Company at their Ordinary Meeting in each Year.

¹ As to Banking Companies, see the Companies Act, 1879, Sect. 7, *post* p. 151; and generally, see the Companies Act, 1900, Sects. 21, 22, 23, *post* p. 220 *et seq.*

- (88.) The Remuneration of the First Auditors shall be fixed by the Directors; that of subsequent Auditors shall be fixed by the Company in General Meeting.
- (89.) Any Auditor shall be re-eligible on his quitting Office.
- (90.) If any casual Vacancy occurs in the Office of any Auditor appointed by the Company, the Directors shall forthwith call an Extraordinary General Meeting for the Purpose of supplying the same.
- (91.) If no Election of Auditors is made in manner aforesaid the Board of Trade may, on the Application of not less than Five Members of the Company, appoint an Auditor for the current Year, and fix the Remuneration to be paid to him by the Company for his Services.
- (92.) Every Auditor shall be supplied with a Copy of the Balance Sheet and it shall be his duty to examine the same, with the Accounts and Vouchers relating thereto.
- (93.) Every Auditor shall have a List delivered to him of all Books kept by the Company, and shall at all reasonable Times have Access to the Books and Accounts of the Company: He may, at the Expense of the Company, employ Accountants or other Persons to assist him in investigating such Accounts, and he may in relation to such Accounts examine the Directors or any other Officer of the Company.
- (94.) The Auditors shall make a Report to the Members upon the Balance Sheet and Accounts, and in every such Report they shall state whether, in their Opinion, the Balance Sheet is a full and fair Balance Sheet containing the Particulars required by these Regulations, and properly drawn up so as to exhibit a true and correct View of the State of the Company's Affairs, and in case they have called for Explanations or Information from the Directors, whether such Explanations or Information have been given by the Directors, and whether they have been satisfactory; and such Report shall be read, together with the Report of the Directors, at the Ordinary Meeting.

Notices.

- (95.) A Notice may be served by the Company upon any Member either personally or by sending it through the Post in a prepaid Letter addressed to such Member at his registered Place of Abode.
- (96.) All Notices directed to be given to the Members shall, with respect to any Share to which Persons are jointly entitled, be given to whichever of such Persons is named first in the Register of Members; and Notice so given shall be sufficient Notice to all the Holders of such Share.

Dr. BALANCE SHEET of the Co. made up to 18 . Cr.

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THE COMPANIES ACT, 1862.

CAPITAL AND LIABILITIES.			PROPERTY AND ASSETS.		
I. CAPITAL.	Showing : 1. The Number of Shares. 2. The Amount paid per Share. 3. If any Arrears of Calls, and the Nature of the Arrear, and the Names of the Defaulters. 4. The Particulars of any forfeited Shares.	£ s. d.	III. PROPERTY held by the Company.	7.	£ s. d.
II. DEBTS AND LIABILITIES of the Company.	Showing : 5. The Amount of Loans on Mortgages or Debenture Bonds. 6. The Amount of Debts owing by the Company, distinguishing— (a.) Debts for which Acceptances have been given. (b.) Debts to Tradesmen for Supplies of Stock in Trade or other Articles. (c.) Debts for Law Expenses. (d.) Debts for Interest on Debentures or other Loans. (e.) Unclaimed Dividends. (f.) Debts not enumerated above.	£ s. d.	IV. DEBTS owing to the Company.	9.	£ s. d.
VI. RESERVE FUND.	Showing : The Amount set aside from Profits to meet Contingencies.	£ s. d.	V. CASH AND INVESTMENTS.	11.	£ s. d.
VII. PROFIT AND LOSS.	Showing : The disposable Balance for Payment of Dividend, etc.	£ s. d.		12.	£ s. d.
CONTINGENT LIABILITIES.	Claims against the Company not acknowledged as Debts. Monies for which the Company is contingently liable.	£ s. d.		13.	£ s. d.

- (97.) Any Notice, if served by Post, shall be deemed to have been served at the Time when the Letter containing the same would be delivered in the Ordinary Course of the Post; and in proving such Service it shall be sufficient to prove that the Letter containing the Notices was properly addressed and put into the Post Office.

TABLE B.¹

TABLE OF FEES to be paid to the REGISTRAR of JOINT STOCK COMPANIES by a Company having a Capital divided into Shares.

For Registration of a Company whose nominal Capital does not exceed £2,000, a Fee of - - -	£	s.	d.
	2	0	0
For Registration of a Company whose nominal Capital exceeds £2,000, the above Fee of £2, with the following additional Fees, regulated according to the Amount of nominal Capital; (that is to say,)	£	s.	d.
For every £1,000 of nominal Capital, or Part of £1,000, after the first £2,000, up to £5,000 - - -	1	0	0
For every £1,000 of nominal Capital, or Part of £1,000, after the first £5,000, up to £100,000 - - -	0	5	0
For every £1,000 of nominal Capital, or Part of £1,000, after the first £100,000 - - -	0	1	0
For Registration of any Increase of Capital made after the First Registration of the Company, the same Fees per £1,000, or Part of a £1,000, as would have been payable if such increased Capital had formed Part of the original Capital at the Time of Registration.			
Provided that no Company shall be liable to pay in respect of nominal Capital, on Registration or afterwards, any greater Amount of Fees than £50, taking into account in the Case of Fees payable on an Increase of Capital after Registration the Fees paid on Registration.			
For Registration of any existing Company, except such Companies as are by this Act exempted from payment of Fees in respect of Registration under this Act, the same Fee as is charged for Registering a new Company.			

¹ Sect. 17, *ante* p. 8, and Sect. 71, *ante* p. 31.

For Registering any Document hereby required or authorized to be registered, other than the Memorandum of Association - - - - -	0	5	0
For making a Record of any Fact hereby authorized or required to be recorded by the Registrar of Companies, a Fee of - - - - -	0	5	0

TABLE C.¹

TABLE OF FEES to be paid to the REGISTRAR of JOINT STOCK COMPANIES by a Company not having a Capital divided into Shares.

	£	s.	d.
For Registration of a Company whose number of Members, as stated in the Articles of Association, does not exceed 20 - - - - -	2	0	0
For Registration of a Company whose Number of Members, as stated in the Articles of Association, exceeds 20, but does not exceed 100 - - - - -	5	0	0
For Registration of a Company whose Number of Members, as stated in the Articles of Association, exceeds 100, but is not stated to be unlimited, the above Fee of £5, with an additional 5s. for every 50 Members or less Number than 50 Members after the first 100.			
For Registration of a Company in which the Number of Members is stated in the Articles of Association to be unlimited, a Fee of - - - - -	20	0	0
For Registration of any Increase on the Number of Members made after the Registration of the Company in respect of every 50 Members, or less than 50 Members, of such Increase - - - - -	0	5	0
Provided that no One Company shall be liable to pay on the whole a greater Fee than £20 in respect of its Number of Members, taking into account the Fee paid on the First Registration of the Company.			
For Registration of any existing Company, except such Companies as are by this Act exempted from Payment of Fees in respect of Registration under this Act, the same Fee as is charged for registering a new Company.			
For registering any Document hereby required or authorized to be registered, other than the Memorandum of Association - - - - -	0	5	0

¹ Sect. 17, *ante* p. 8, and Sect. 71 *ante* p. 31.

For making a Record of any Fact hereby authorized
or required to be recorded by the Registrar of
Companies, a Fee of - - - - - - 0 5 0

FORM D.¹

FORM OF STATEMENT referred to in Part III. of the Act.

* The Capital of the Company is _____, divided into
Shares of _____ each.
The Number of Shares issued is _____.
Calls to the Amount of _____ Pounds per Share have been
made, under which the Sum of _____ Pounds has been received.

The Liabilities of the Company on the First Day of January
(or July) were,—

Debts owing to sundry Persons by the Company.

On Judgment, £
On Specialty, £
On Notes or Bills, £
On Simple Contracts, £
On estimated Liabilities, £

The Assets of the Company on that Day were—
Government Securities [*stating them*]
Bills of Exchange and Promissory Notes, £
Cash at the Bankers, £
Other Securities, £

*If the Company has no Capital divided into Shares the Portion of the Statement relating to Capital and Shares must be omitted.

¹ Sect. 44, *ante* p. 20.

SECOND SCHEDULE.¹

FORM A.

MEMORANDUM of ASSOCIATION of a Company limited by Shares.²

1st. The Name of the Company is "The Eastern Steam Packet Company, Limited."

2d. The Registered Office of the Company will be situate in England.

3d. The Objects for which the Company is established are, "the Conveyance of Passengers and Goods in Ships or Boats "between such Places as the Company may from Time to Time "determine, and the doing all such other Things as are "incidental or conducive to the Attainment of the above "Object."

4th. The Liability of the Members is limited.

5th. The Capital of the Company is Two hundred thousand Pounds divided into One thousand Shares of Two hundred Pounds each.

WE, the several Persons whose Names and Addresses are subscribed, are desirous of being formed into a Company in pursuance of this Memorandum of Association, and we respectively agree to take the Number of Shares in the Capital of the Company set opposite our respective Names.

Names, Addresses, and Description of Subscribers.	Number of Shares taken by each Subscriber.
"1. John Jones of in the County of Merchant	200
"2. John Smith of in the County of -	25
"3. Thomas Green of in the County of -	30
"4. John Thompson of in the County of -	40
"5. Caleb White of in the County of -	15
"6. Andrew Brown of in the County of -	5
"7. Cæsar White of in the County of -	10
Total Shares taken - - -	325

Dated the 22d Day of November, 1861.

Witness to the above Signatures,

A.B., No. 13 Hute Street, Clerkenwell, Middlesex.

¹ Sect 71, *ante* p. 31.

² Sect. 8, *ante* p. 3.

FORM B.

MEMORANDUM and ARTICLES of ASSOCIATION of a Company limited by Guarantee, and not having a Capital divided into Shares.

*Memorandum of Association.*¹

1st. The Name of the Company is, "The Mutual London Marine Association, Limited."

2d. The Registered Office of the Company will be situate in England.

3d. The Objects for which the Company is established are, "the mutual Insurance of Ships belonging to Members of the Company, and the doing all such other Things as are incidental or conducive to the Attainment of the above Objects."

4th. Every Member of the Company undertakes to contribute to the Assets of the Company in the event of the same being wound up during the Time that he is a Member, or within One Year afterwards, for Payment of the Debts and Liabilities of the Company contracted before the Time at which he ceases to be a Member, and the Costs, Charges, and Expenses of winding up the same, and for the Adjustment of the Rights of the Contributories amongst themselves, such Amount as may be required not exceeding Ten Pounds.

WE, the several Persons whose Names and Addresses are subscribed, are desirous of being formed into a Company, in pursuance of this Memorandum of Association.

Names, Addresses, and Descriptions of Subscribers.

"1. John Jones of	in the County of	Merchant.
"2. John Smith of	in the County of	
"3. Thomas Green of	in the County of	
"4. John Thompson of	in the County of	
"5. Caleb White of	in the County of	
"6. Andrew Brown of	in the County of	
"7. Cæsar White of	in the County of	

Dated the 22d Day of November, 1861.

Witness to the above Signatures,

A.B., No. 13 Hute Street, Clerkenwell, Middlesex.

¹ Sect. 9, *ante* p. 4.

ARTICLES of ASSOCIATION¹ to accompany preceding MEMORANDUM of ASSOCIATION.

- (1.) The Company, for the Purpose of Registration, is declared to consist of Five hundred Members.
- (2.) The Directors herein-after mentioned may, whenever the Business of the Association requires it, register an Increase of Members.

Definition of Members.

- (3.) Every Person shall be deemed to have agreed to become a Member of the Company who insures any Ship or Share in a Ship in pursuance of the Regulations herein-after contained.

General Meetings.

- (4.) The First General Meeting shall be held at such Time, not being more than Three Months after the Incorporation of the Company, and at such Place, as the Directors may determine.
- (5.) Subsequent General Meetings shall be held at such Time and Place as may be prescribed by the Company in General Meeting; and if no other Time or Place is prescribed, a General Meeting shall be held on the First Monday in February in every Year, at such Place as may be determined by the Directors.
- (6.) The above-mentioned General Meetings shall be called Ordinary Meetings; all other General Meetings shall be called Extraordinary.
- (7.) The Directors may, whenever they think fit, and they shall, upon a Requisition made in Writing by any Five or more Members, convene an Extraordinary General Meeting.
- (8.) Any Requisition made by the Members shall express the Object of the Meeting proposed to be called and shall be left at the Registered Office of the Company.
- (9.) Upon the Receipt of such Requisition the Directors shall forthwith proceed to convene a General Meeting: If they do not proceed to convene the same within Twenty-one Days from the Date of the Requisition, the Requisitionists, or any other Five Members, may themselves convene a Meeting.

Proceedings at General Meetings.

- (10.) Seven Days' Notice at the least, specifying the Place, the Day, and the Hour of Meeting, and in case of special Business the general Nature of such Business, shall be

¹ Sect. 14, *ante* p. 6.

given to the Members in Manner herein-after mentioned, or in such other Manner, if any, as may be prescribed by the Company in General Meeting; but the Non-receipt of such Notice by any Member shall not invalidate the Proceedings at any General Meeting.

- (11.) All Business shall be deemed special that is transacted at an Extraordinary Meeting, and all that is transacted at an Ordinary Meeting, with the Exception of the Consideration of the Accounts, Balance Sheets, and the ordinary Report of the Directors.
- (12.) No Business shall be transacted at any Meeting except the Declaration of a Dividend, unless a Quorum of Members is present at the Commencement of such Business; and such Quorum shall be ascertained as follows; that is to say, if the Members of the Company at the Time of the Meeting do not exceed Ten in Number, the Quorum shall be Five; if they exceed Ten there shall be added to the above Quorum One for every Five additional Members up to Fifty, and One for every Ten additional Members after Fifty, with this Limitation, that no Quorum shall in any Case exceed Thirty.
- (13.) If within One Hour from the Time appointed for the Meeting a Quorum of Members is not present, the Meeting, if convened upon the Requisition of the Members, shall be dissolved: In any other Case it shall stand adjourned to the same Day in the following Week at the same Time and Place; and if at such adjourned Meeting a Quorum of Members is not present, it shall be adjourned *sine die*.
- (14.) The Chairman (if any) of the Directors shall preside as Chairman at every General Meeting of the Company.
- (15.) If there is no such Chairman, or if at any Meeting he is not present at the Time of holding the same, the Members present shall choose some One of their Number to be Chairman of such Meeting.
- (16.) The Chairman may, with the Consent of the Meeting, adjourn any Meeting from Time to Time and from Place to Place, but no Business shall be transacted at any adjourned Meeting other than the Business left unfinished at the Meeting from which the Adjournment took place.
- (17.) At any General Meeting, unless a Poll is demanded by at least Five Members, a Declaration by the Chairman that a Resolution has been carried, and an Entry to that Effect in the Book of Proceedings of the Company, shall be sufficient Evidence of the Fact, without Proof of the Number or Proportion of the Votes recorded in favour of or against such Resolution.
- (18.) If a Poll is demanded in manner aforesaid, the same shall be taken in such Manner as the Chairman directs, and the Result of such Poll shall be deemed to be the Resolution of the Company in General Meeting.

Votes of Members.

- (19.) Every Member shall have One Vote and no more.
- (20.) If any Member is a Lunatic or Idiot he may vote by his Committee Curator bonis, or other legal Curator.
- (21.) No Member shall be entitled to vote at any Meeting unless all Monies due from him to the Company have been paid.
- (22.) Votes may be given either personally or by Proxies: A Proxy shall be appointed in Writing under the Hand of the Appointor, or if such Appointor is a Corporation, under its Common Seal.
- (23.) No Person shall be appointed a Proxy who is not a Member, and the Instrument appointing him shall be deposited at the Registered Office of the Company not less than Forty-eight Hours before the Time of holding the Meeting at which he proposes to vote.
- (24.) Any Instrument appointing a Proxy shall be in the following Form :—

_____, of _____, in the County
 of _____, being a Member of the
 Company Limited, hereby appoint
 _____, of _____,
 as my Proxy, to vote for me and on
 my behalf at the [Ordinary or Extraordinary, *as the case
 may be*] General Meeting of the Company to be held on the
 _____ Day of _____, and at any Adjournment
 thereof to be held on the _____ Day of _____
 next [*or at any Meeting of the Company that may be
 held in the Year* _____].
 As witness my Hand, this _____ Day of _____
 Signed by the said _____ in the Presence of

Directors.

- (25.) The Number of the Directors, and the Names of the First Directors shall be determined by the Subscribers of the Memorandum of Association.
- (26.) Until Directors are appointed the Subscribers of the Memorandum of Association shall for all the Purposes of this Act be deemed to be Directors.

Powers of Directors.

- (27.) The Business of the Company shall be managed by the Directors, who may exercise all such Powers of the Company as are not hereby required to be exercised by the Company in General Meeting; but no Regulation made by the Company in General Meeting shall invalidate any prior Act of the Directors which would have been valid if such Regulation had not been made.

Election of Directors.

- (28.) The Directors shall be elected annually by the Company in General Meeting.

Business of Company.

[Here insert Rules as to Mode in which Business of Insurance is to be conducted.]

Accounts.

- (29.) The Accounts of the Company shall be audited by a Committee of Five Members, to be called the Audit Committee.
- (30.) The First Audit Committee shall be nominated by the Directors out of the Body of Members.
- (31.) Subsequent Audit Committee shall be nominated by the Members at the Ordinary General Meeting in each year.
- (32.) The Audit Committee shall be supplied with a Copy of the Balance Sheet, and it shall be their Duty to examine the same with the Accounts and Vouchers relating thereto.
- (33.) The Audit Committee shall have a List delivered to them of all Books kept by the Company, and they shall at all reasonable Times have access to the Books and Accounts of the Company: They may, at the expense of the Company, employ Accountants or other Persons to assist them in investigating such Accounts, and they may in relation to such Accounts examine the Directors or any other Officer of the Company.
- (34.) The Audit Committee shall make a Report to the Members upon the Balance Sheet and Accounts, and in every such Report they shall state whether in their Opinion the Balance Sheet is a full and fair Balance Sheet, containing the Particulars required by these Regulations of the Company, and properly drawn up, so as to exhibit a true and correct View of the State of the Company's Affairs, and in case they have called for Explanation or Information from the Directors, whether such Explanations or Information have been given by the Directors, and whether they have been satisfactory, and such Report shall be read together with the Report of the Directors at the Ordinary Meeting.

Notices.

- (35.) A Notice may be served by the Company upon any Member either personally, or by sending it through the Post in a prepaid Letter addressed to such Member at his registered Place of Abode.
- (36.) Any Notice, if served by Post, shall be deemed to have been served at the Time when the Letter containing the same

would be delivered in the ordinary Course of the Post ; and in proving such Service it shall be sufficient to prove that the Letter containing the Notice was properly addressed, and put into the Post Office.

Winding up.

- (37.) The Company shall be wound up voluntarily whenever an Extraordinary Resolution,¹ as defined by the Companies Act, 1862, is passed requiring the Company to be wound up voluntarily.

¹ Sect. 129, *ante* p. 54.

Names, Addresses, and Descriptions of Subscribers.

" 1. John Jones of	in the County of	Merchant.
" 2. John Smith of	in the County of	
" 3. Thomas Green of	in the County of	
" 4. John Thompson of	in the County of	
" 5. Caleb White of	in the County of	
" 6. Andrew Brown of	in the County of	
" 7. Cæsar White of	in the County of	

Dated the 22d Day of November, 1861.

Witness to the above Signatures,

A.B., No. 13 Hute Street, Clerkenwell, Middlesex.

FORM C.

MEMORANDUM and ARTICLES of ASSOCIATION of a Company limited by Guarantee,¹ and having a Capital divided into Shares.

Memorandum of Association.

1st. The Name of the Company is "The Highland Hotel Company, Limited."

2d. The Registered Office of the Company will be situate in Scotland.

3d. The Objects for which the Company is established are "the facilitating travelling in the Highlands of Scotland, by providing Hotels and Conveyances by Sea and by Land for the Accommodation of Travellers, and the doing all such other Things as are incidental or conducive to the Attainment of the above Object."

¹ Sect. 9, *ante* p. 4, and *see* now the Companies Act, 1900, Sect. 27, *post* p. 223.

4th. Every Member of the Company undertakes to contribute to the Assets of the Company in the event of the same being wound up during the Time that he is a Member, or within One Year afterwards, for Payment of the Debts and Liabilities of the Company, contracted before the Time at which he ceases to be a Member, and the Costs, Charges, and Expenses of winding up the same and for the Adjustment of the Rights of the Contributories amongst themselves, such Amount as may be required, not exceeding Twenty Pounds.

WE, the several Persons whose Names and Addresses are subscribed, are desirous of being formed into a Company, in pursuance of this Memorandum of Association.

Names, Addresses, and Descriptions of Subscribers.

"1. John Jones of	in the County of	Merchant.
"2. John Smith of	in the County of	
"3. Thomas Green of	in the County of	
"4. John Thompson of	in the County of	
"5. Caleb White of	in the County of	
"6. Andrew Brown of	in the County of	
"7. Cæsar White of	in the County of	

Dated the 22d Day of November, 1861.

Witness to the above Signatures,

A.B., No. 13 Hute Street, Clerkenwell, Middlesex.

Articles of Association¹ to accompany preceding Memorandum of Association.

1. The Capital of the Company shall consist of Five hundred thousand Pounds, divided into Five thousand Shares of One hundred Pounds each.

2. The Directors may, with the Sanction of the Company in General Meeting, reduce the Amount of Shares.

3. The Directors may, with the Sanction of the Company in General Meeting, cancel any Shares belonging to the Company.

4. All the Articles of Table A. shall be deemed to be incorporated with these Articles, and to apply to the Company.

WE, the several Persons whose Names and Addresses are subscribed, agree to take the Number of Shares in the Capital of the Company set opposite our respective Names.

¹ Sect. 14, *ante* p. 6.

Names, Addresses, and Description of Subscriber.			Number of Shares taken by each Subscriber.
"1. John Jones of	in the County of	-	200
"2. John Smith of	in the County of	-	25
"3. Thomas Green of	in the County of	-	30
"4. John Thompson of	in the County of	-	40
"5. Caleb White of	in the County of	-	15
"6. Andrew Brown of	in the County of	-	5
"7. Cæsar White of	in the County of	-	10
Total Shares taken			325

Dated the 22d Day of November, 1861.

Witness to the above Signatures,

A.B., No. 13 Hute Street, Clerkenwell, Middlesex.

FORM D.

MEMORANDUM and ARTICLES of ASSOCIATION of an unlimited Company having a Capital divided into Shares.

*Memorandum of Association.*¹

1st. The Name of the Company is "The Patent Stereotype Company."

2d. The Registered Office of the Company will be situate in England.

3d. The Objects for which the Company is established are "the working of a Patent Method of founding and casting Stereotype Plates, of which Method John Smith of London, is the sole Patentee."

WE, the several Persons whose Names are subscribed, are desirous of being formed into a Company, in pursuance of this Memorandum of Association.

Names, Addresses, and Description of Subscribers.

"1. John Jones of	in the County of	Merchant.
"2. John Smith of	in the County of	
"3. Thomas Green of	in the County of	
"4. John Thompson of	in the County of	
"5. Caleb White of	in the County of	
"6. Andrew Brown of	in the County of	
"7. Abel Brown of	in the County of	

Dated 22d Day of November, 1861.

Witness to the above Signatures,

A.B., No. 20 Bond Street, Middlesex.

¹ Sect. 10, *ante* p. 4.

Articles of Association¹ to accompany the preceding Memorandum of Association.

Capital of the Company.

The Capital of the Company is Two thousand Pounds, divided into Twenty Shares of One hundred Pounds each.

Application of Table A.

All the Articles of Table A. shall be deemed to be incorporated with these Articles, and to apply to the Company.

We, the several Persons whose Names and Addresses are subscribed, agree to take the Number of Shares in the Capital of the Company set opposite our respective Names.

Names, Addresses, and Description of Subscribers.	Number of Shares taken by Subscribers.
"1. John Jones of in the County of Merchant	1
"2. John Smith of in the County of -	5
"3. Thomas Green of in the County of -	2
"4. John Thompson of in the County of -	2
"5. Caleb White of in the County of -	3
"6. Andrew Brown of in the County of -	4
"7. Abel Brown of in the County of -	1
Total Shares taken - - -	18

Dated the 22d Day of November, 1861.

Witness to the above Signatures,
A.B., No. 20 Bond Street, Middlesex.

No. of }
Certificate }

[Form No. 7A.]

"THE COMPANIES' ACTS, 1862 to 1900."

FORM E

as altered by the Board of Trade, by Notices in the London Gazette, pursuant to s. 71 of the Companies' Act, 1862, and s. 19 of the Companies' Act, 1900.

A 5/-
Companies'
Registration
Fee Stamp
must be
impressed
here.

Summary of Capital and Shares of the

_____ Company, Limited, made up
to the _____ day of _____ 190_____ (being the four-
teenth day succeeding the date of the First Ordinary General Meeting
in the year).

¹ Sect. 14, *ante* p. 6.

Presented for filing by

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 Leger 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	

* 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 subdivided 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.

FORM F.

LICENCE to hold LANDS.¹

The Lords of the Committee of Privy Council appointed for the consideration of Matters relating to Trade and Foreign Plantations hereby license the Association, Limited, to hold the Lands hereunder described [*insert Description of Lands*]. The Conditions of this License are [*insert Conditions, if any*].

¹ Sect. 21, *ante* p. 10.

THIRD SCHEDULE.

FIRST PART.

Date and Chapter of Act.	Title of Act.
21 & 22 Geo. 3. c. 46 . (Parliament of Ireland.)	An Act to promote Trade and Manufactures by regulating and encouraging Partnerships.
7 & 8 Vict. c. 110. -	An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies.
7 & 8 Vict. c. 111. -	An Act for facilitating the winding up the Affairs of Joint Stock Companies unable to meet their pecuniary Engagements.
7 & 8 Vict. c. 113. -	An Act to regulate Joint Stock Banks in England.
8 & 9 Vict. c. 98. -	An Act for facilitating the winding up the Affairs of Joint Stock Companies in Ireland unable to meet their pecuniary Engagements.
9 & 10 Vict. c. 28. -	An Act to facilitate the Dissolution of certain Railway Companies.
9 & 10 Vict. c. 75. -	An Act to regulate Joint Stock Banks in Scotland and Ireland.
10 & 11 Vict. c. 78. -	An Act to amend an Act for the Registration, Incorporation, and Regulation of Joint Stock Companies.
11 & 12 Vict. c. 45. -	An Act to amend the Acts for facilitating the winding up the Affairs of Joint Stock Companies unable to meet their pecuniary Engagements, and also to facilitate the Dissolution and winding up of Joint Stock Companies and other Partnerships.
12 & 13 Vict. c. 103. -	An Act to amend the Joint Stock Companies Winding-up Act, 1848.
19 & 20 Vict. c. 47. -	An Act for the Incorporation and Regulation of Joint Stock Companies and other Associations.
20 & 21 Vict. c. 14. -	An Act to amend the Joint Stock Companies Act, 1856.
20 & 21 Vict. c. 49. -	An Act to amend the Law relating to Banking Companies.

Date and Chapter of Act.	Title of Act.
20 & 21 Vict. c. 78. -	An Act to amend the Act Seven and Eight Victoria, Chapter One hundred and eleven, for facilitating the winding up the Affairs of Joint Stock Companies unable to meet their pecuniary Engagements, and also the Joint Stock Companies Winding-up Acts, 1848 and 1849.
20 & 21 Vict. c. 80. -	An Act to amend the Joint Stock Companies Act, 1856.
21 & 22 Vict. c. 60. -	An Act to amend the Joint Stock Companies Acts, 1856 and 1857, and the Joint Stock Banking Companies Act, 1857.
21 & 22 Vict. c. 91. -	An Act to enable Joint Stock Banking Companies to be formed on the Principle of Limited Liability.

SECOND PART.

7 & 8 Vict. c. 113. s. 47.

Existing Companies to have the Powers of suing and being sued.

Every Company of more than Six Persons established on the Sixth Day of May One thousand eight hundred and forty-four, for the Purpose of carrying on the Trade or Business of Bankers within the Distance of Sixty-five Miles from London, and not within the Provisions of the Act passed in the Session holden in the Seventh and Eighth Years of the Reign of Her present Majesty, Chapter One hundred and thirteen, shall have the same Powers and Privileges of suing and being sued in the Name of any One of the Public Officers of such Co-partnership as the Nominal Plaintiff, Petitioner, or Defendant on behalf of such Co-partnership; and all Judgments, Decrees, and Orders, made and obtained in any such Suit may be enforced in like Manner as is provided with respect to such Companies carrying on the said Trade or Business at any Place in England exceeding the Distance of Sixty-five Miles from London, under the Provisions of an Act passed in the Seventh year of the Reign of King George the Fourth, Chapter Forty-six, intituled "An Act for the better regulating Co-partnerships of Certain Bankers in England, and for amending so much of an Act of the Thirty-ninth and Fortieth Years of the Reign of His late Majesty King George the Third, intituled 'An Act for establishing an Agreement with the Governor and Company of the Bank of England for advancing the Sum of Three Millions towards the Supply for the Service of the Year One thousand eight hundred,' as relates to the

same," provided that such first-mentioned Company shall make out and deliver from Time to Time to the Commissioners of Stamps and Taxes the several Accounts or Returns required by the last-mentioned Act, and all the provisions of the last-recited Act as to such Accounts or Returns shall be taken to apply to the Accounts or Returns so made out and delivered by such first-mentioned Companies as if they had been originally included in the Provisions of the last-recited Act.

20 & 21 Vict. c. 49, Part of Section XII.

Notwithstanding anything contained in any Act passed in the Session holden in the Seventh and Eighth Years of the Reign of Her present Majesty, Chapter One hundred and thirteen, and intituled "An Act to regulate Joint Stock Banks in England," or in any other Act, it shall be lawful for any Number of Persons, not exceeding Ten, to carry on in Partnership the Business of Banking, in the same Manner and upon the same Conditions in all respects as any Company of not more than Six Persons could before the passing of this Act have carried on such Business.

Power to
form Bank-
ing Partner-
ships of Ten
Persons.

THE COMPANIES SEALS ACT, 1864.

(27 VICTORIA, CHAPTER 19).

An Act to enable Joint Stock Companies carrying on Business in Foreign Countries to have Official Seals to be used in such Countries.

Short Title.

1. This Act may be cited for all Purposes as "The Companies Seals Act, 1864."

Power to Companies under Companies Act, 1862, transacting business in foreign countries to have Official Seals for use in such countries.

2. Any Company, under "The Companies Act, 1862," whose Objects require or comprise the Transaction of Business, as herein-before mentioned, in Foreign Countries, may cause to be prepared an Official Seal for and to be used in any Place, District, or Territory situate out of the United Kingdom in which the Business of the Company shall be carried on, and every such Official Seal may and shall be a Fac-simile of or as nearly as practicable a Fac-simile of the Common Seal of the Company, with the Exception that on the Face thereof shall be inscribed the Name of each and every Place, District, or Territory in and for which it is to be used: Provided that it shall be lawful for any such Company as aforesaid from Time to Time to break up and renew any Official Seal or Seals, and to vary the Limits within which it is intended to be used.

Power to Companies to appoint Agents abroad to affix Seals.

3. Every Company having or using any such Official Seal as is authorized by this Act may from Time to Time, by any Instrument or Instruments in Writing under the Common Seal of the Company, empower any Agent, or Agents specially appointed for the Purpose, or any local Agent, Board, Committee, Manager, or Commissioner appointed under the Provisions of the

Articles of Association of such Company, in any Place, District, or Territory situate out of the United Kingdom where the Business of the Company shall for the Time being be carried on, to affix such Official Seal to any Deed, Contract, or other Instrument to which the Company is or shall be made a Party in such Place, District, or Territory, and no other Order of the Company or the Board of Directors thereof shall be necessary to authorize any such Seal to be affixed to any Deed, Contract, or other Instrument.

4. Every Power granted under the last preceding Section shall, as between the Company, their Successors and Assigns, on the one hand, and the Person or Persons dealing with the Agent or Agents, Board, Committee, Manager, or Commissioner named in the Instrument conferring the Power, and all Parties claiming through or under such Person or Persons, on the other hand, continue in force during the Period, if any, mentioned in the Instrument conferring the Power, or if no Power be there mentioned then until Notice of the Revocation or Determination of the Power shall have been given to such Person or Persons as aforesaid.

5. Whenever any such Official Seal as aforesaid shall be affixed to any Document, the Person affixing the same shall, by Writing under his Hand, and written on the Document to which the Seal may have been affixed, certify the Date when and the Place where the same was affixed; and any Document to which any such Seal shall have been duly affixed within the District or Territory or Place the Name whereof is inscribed on such Seal shall bind the Company in the same Way and to the same Extent and have the same Force and Effect as if it had been duly sealed with the Common Seal of the Company.

6. The Powers given by this Act shall be exercised by such Companies only as are or shall be expressly authorized to exercise the same by their Articles of Association, or a Special Resolution passed according to the Provisions of "The Companies Act, 1862," and shall be exercised by such Companies subject to any

Duration of Powers granted under Sect. 3. of this Act.

Person affixing Seal to Document to certify the Date when so affixed.

Effect of Document to which Seal is so affixed.

Companies to exercise Powers of this Act only if authorized by and under Restrictions in Articles of Association or Special Resolution.

Directions or Restrictions in their Articles of Association or the Special Resolutions contained.

Section 55 *
of 25 & 26
Vict. c. 89.
not re-
pealed.

7. Nothing in this Act contained shall operate to repeal the Provisions of the Fifty-fifth Section of "The Companies Act, 1862," but such Section shall continue in force, and all Acts done or to be done thereunder shall be as valid and effectual as if this Act had not been passed.

* *Ante*, p. 25.

THE COMPANIES ACT, 1867.

(30 & 31 VICTORIA, CHAPTER 131.)

An Act to amend "The Companies Act, 1862."

Preliminary.

1. This Act may be cited for all purposes as "The Companies Act, 1867." Short Title.

2. The Companies Act, 1862, is herein-after referred to as "the Principal Act"; and the Principal Act and this Act are herein-after distinguished as and may be cited for all Purposes as "The Companies Acts, 1862 and 1867"; and this Act shall, so far as is consistent with the Tenor thereof, be construed as One with the Principal Act; and the Expression "this Act" in the Principal Act, and any Expression referring to the Principal Act which occurs in any Act or other Document, shall be construed to mean the Principal Act as amended by this Act. Act to be construed as One with 25 & 26 Vict. c. 89.

3. This Act shall come into force on the First Day of *September* One thousand eight hundred and sixty-seven, which Date is herein-after referred to as the Commencement of this Act. Commencement of Act.

Unlimited Liability of Directors.

4. Where after the Commencement of this Act a Company is formed as a Limited Company under the Principal Act, the Liability of the Directors or Managers of such Company, or the Managing Director, may, if so provided by the Memorandum of Association, be unlimited. Company may have Directors with unlimited Liability.

Liability of
Directors
past and
present to
Contribute
in winding
up where
Liability is
unlimited.

5. The following Modifications shall be made in the Thirty-eighth Section of the Principal Act, with respect to the Contributions to be required in the event of the Winding up of a Limited Company under the Principal Act, from any Director or Manager whose Liability is, in pursuance of this Act, unlimited :

- (1.) Subject to the Provisions herein-after contained, any such Director or Manager, whether past or present, shall, in addition to his Liability (if any) to contribute as an ordinary Member, be liable to contribute as if he were at the Date of the Commencement of such Winding up a Member of an unlimited Company :
- (2.) No Contribution required from any past Director or Manager who has ceased to hold such Office for a Period of One Year or upwards prior to the Commencement of the Winding up shall exceed the Amount (if any) which he is liable to contribute as an ordinary Member of the Company :
- (3.) No Contribution required from any past Director or Manager in respect of any Debt or Liability of the Company contracted after the Time at which he ceased to hold such Office shall exceed the Amount (if any) which he is liable to contribute as an ordinary Member of the Company :
- (4.) Subject to the Provisions contained in the Regulations of the Company no Contribution required from any Director or Manager shall exceed the Amount (if any) which he is liable to contribute as an ordinary Member, unless the Court deems it necessary to require such Contribution in order to satisfy the Debts and Liabilities of the Company, and the Costs, Charges, and Expenses of the Winding up.

Director
with unlim-
ited Lia-
bility may
have Set-off
as under
Sect. 101 * of
25 & 26 Vict.
c. 89.

6. In the event of the Winding up of any Limited Company, the Court, if it think fit, may make to any Director or Manager of such Company whose Liability is unlimited the same Allowance by way of Set-off as

under the One hundred and first Section of the Principal Act it may make to a Contributory where the Company is not limited.

* *Ante*, p. 43.

7. In any Limited Company in which, in pursuance of this Act, the Liability of a Director or Manager is unlimited, the Directors or Managers of the Company (if any), and the Member who proposes any Person for Election or Appointment to such Office, shall add to such Proposal a Statement that the Liability of the Person holding such Office will be unlimited, and the Promoters, Directors, Managers, and Secretary (if any) of such Company, or One of them, shall, before such Person accepts such Office or acts therein, give him Notice in Writing that his Liability will be unlimited.

Notice to be given to Director on his Election that his Liability will be unlimited.

If any Director, Manager, or Proposer make Default in adding such Statement, or if any Promoter, Director, Manager, or Secretary make Default in giving such Notice, he shall be liable to a Penalty not exceeding One hundred Pounds, and shall also be liable for any Damage which the Person so elected or appointed may sustain from such Default, but the Liability of the Person elected or appointed shall not be affected by such Default.

Penalty for neglect to give Notice.

Liability not affected by neglect.

8. Any Limited Company under the Principal Act, whether formed before or after the Commencement of this Act, may, by a Special Resolution, if authorized so to do by its Regulations, as originally framed or as altered by Special Resolution, from Time to Time modify¹ the Conditions contained in its Memorandum of Association so far as to render unlimited the Liability of its Directors or Managers, or of the Managing Director; and such Special Resolution shall be of the same Validity as if it had been originally contained in the Memorandum of Association, and a Copy thereof shall be embodied in or annexed to every Copy of the Memorandum of Association which is issued after the passing of the Resolution, and any Default in this respect shall be deemed to be a Default in complying

Existing Limited Companies may, by Special Resolutions, make Liability of Directors unlimited.

with the Provisions of the Fifty-fourth Section² of the Principal Act, and shall be punished accordingly.

¹ Sect. 12 of the Companies Act, 1862, *ante* p. 5.

² *Ante* p. 24.

*Reduction of Capital and Shares.*¹

Power to
Company
to reduce
Capital by
Special Re-
solution and
Order of
Court regis-
tered by
Registrar.

9. Any Company limited by Shares may, by Special Resolution, so far modify the Conditions contained in its Memorandum of Association, if authorized so to do by its Regulations as originally framed or as altered by Special Resolution, as to reduce its Capital; but no such Resolution for reducing the Capital of any Company shall come into operation until an Order of the Court is registered by the Registrar of Joint Stock Companies, as is herein-after mentioned.²

¹ Sects. 9 to 20 are altered and extended by the Companies Act, 1877, Sects. 3, 4, 5, *post* p. 146 *et seq.*; see also the Companies Act, 1880, Sects. 3 and 4, *post* p. 154.

² Sect. 15, *post* p. 134.

Company to
add "and
Reduced"
to its Name
for a limited
Period.

10. The Company shall, after the Date of the passing of any Special Resolution for reducing its Capital, add to its Name, until such Date as the Court may fix, the Words "and Reduced," as the last Words in its Name, and those Words shall, until such Date, be deemed to be Part of the Name of the Company within the Meaning of the Principal Act.¹

¹ The Companies Act, 1862, Sects. 41 and 42, *ante* p. 19.

Company to
apply to the
Court for an
Order con-
firming Re-
duction
which may
be made
as herein
provided.

11. A Company which has passed a Special Resolution for reducing its Capital, may apply to the Court by Petition for an Order confirming the Reduction, and on the Hearing of the Petition the Court, if satisfied that with respect to every Creditor of the Company who under the Provisions of this Act is entitled to object to the Reduction, either his Consent to the Reduction has been obtained, or his Debt or Claim has been discharged or has determined, or has been secured as herein-after provided,¹ may make an Order confirming the Reduction on such Terms and subject to such Conditions as it deems fit.

¹ Sect. 14, *post* p. 133.

12. The Expression "the Court" shall in this Act mean the Court which has Jurisdiction to make an Order for Winding up the petitioning Company, and the Eighty-first¹ and Eighty-third Sections of the Principal Act shall be construed as if the Term "Winding up" in those Sections included Proceedings under this Act, and the Court may in any Proceedings under this Act make such Order as to Costs as it deems fit.

✓
Definition
of "the
Court".

Application
of 25 & 26
Vict. c. 89.
Sects. 81, 83.

¹ Repealed and replaced by the Companies (Winding-up) Act, 1890, Sect. 1, *post* p. 164.

13. Where a Company proposes to reduce its Capital, every Creditor of the Company who at the Date fixed by the Court is entitled to any Debt or Claim which, if that Debt were the Commencement of the Winding up of the Company, would be admissible in Proof against the Company, shall be entitled to object to the proposed Reduction, and to be entered in the Lists of Creditors who are so entitled to object.

✓
Creditors
entitled to
Prove in
winding up
may object
to Reduc-
tion.

The Court shall settle a List of such Creditors, and for that Purpose shall ascertain as far as possible without requiring an Application from any Creditor the Names of such Creditors and the Nature and Amount of their Debts or Claims, and may publish Notices fixing a certain Day or Days within which Creditors of the Company who are not entered on the List are to claim to be so entered or to be excluded from the Right of objecting to the proposed Reduction.

List of such
Creditors to
be settled by
the Court.

14. Where a Creditor whose Name is entered on the List of Creditors, and whose Debt or Claim is not discharged or determined, does not consent to the proposed Reduction, the Court may (if it think fit) dispense with such Consent on the Company securing the Payment of the Debt or Claim of such Creditor by setting apart and appropriating in such Manner as the Court may direct, a Sum of such Amount as is herein-after mentioned; (that is to say,)

✓
Court may
dispense
with Con-
sent of
Creditor on
Security
being given
for his Debt.

(1.) If the full Amount of the Debt or Claim of the Creditor is admitted by the Company, or, though

not admitted, is such as the Company are willing to set apart and appropriate, then the full Amount of the Debt or Claim shall be set apart and appropriated.

- (2.) If the full Amount of the Debt or Claim of the Creditor is not admitted by the Company, and is not such as the Company are willing to set apart and appropriate, or if the Amount is contingent or not ascertained, then the Court may, if it think fit, inquire into and adjudicate upon the Validity of such Debt or Claim, and the Amount for which the Company may be liable in respect thereof, in the same Manner as if the Company were being wound up by the Court, and the Amount fixed by the Court on such Inquiry and Adjudication shall be set apart and appropriated.

Order confirming Reduction and Minute showing certain particulars as to Capital as altered to be Registered. ✓

15. The Registrar of Joint Stock Companies upon the Production to him of an Order of the Court confirming the Reduction of the Capital of a Company, and the Delivery to him of a Copy of the Order and of a Minute¹ (approved by the Court), showing with respect to the Capital of the Company, as altered by the Order, the Amount of such Capital, the Number of Shares in which it is to be divided, and the Amount of each Share, shall register the Order and Minute, and on the Registration the Special Resolution confirmed by the Order so registered shall take effect.

Notice of such Registration shall be published in such Manner as the Court may direct.

The Registrar shall certify under his Hand the Registration of the Order and Minute, and his Certificate shall be conclusive Evidence that all the Requisitions of this Act with respect to the Reduction of Capital have been complied with, and that the Capital of the Company is such as is stated in the Minute.

¹ And see also the Companies Act, 1877, Sect. 4, *post* p. 147.

16. The Minute when registered shall be deemed to be substituted for the corresponding Part of the Memorandum of Association of the Company, and shall be of the same Validity and subject to the same Alterations as if it had been originally contained in the Memorandum of Association; and, subject as in this Act mentioned, no Member of the Company, whether past or present, shall be liable in respect of any Share to any Call or Contribution exceeding in Amount the Difference (if any) between the Amount which has been paid on such Share and the Amount of the Share as fixed by the Minute.

Minute to form part of Memorandum of Association and Members to be liable only for difference between Amounts paid on Shares and Amounts of Shares as fixed by Minute.

17. If any Creditor who is entitled in respect of any Debt or Claim to object to the Reduction of the Capital of a Company under this Act is, in consequence of his Ignorance of the Proceedings taken with a View to such Reduction, or of their Nature and Effect with respect to his Claim, not entered on the List of Creditors, and after such Reduction the Company is unable, within the Meaning of the Eightieth Section¹ of the Principal Act, to pay to the Creditor the Amount of such Debt or Claim, every Person who was a Member of the Company at the Date of the Registration of the Order and Minute relating to the Reduction of the Capital of the Company, shall be liable to contribute for the Payment of such Debt or Claim an amount not exceeding the Amount which he would have been liable to contribute if the Company had commenced to be wound up on the Day prior to such Registration, and on the Company being wound up, the Court on the Application of such Creditor, and on Proof that he was ignorant of the Proceedings taken with a view to the Reduction, or of their Nature and Effect with respect to his Claim, may, if it think fit, settle a List of such Contributories accordingly, and make and enforce Calls and Orders on the Contributories settled on such List in the same Manner in all respects as if they were ordinary Contributories in a Winding up; but the Provisions of this Section shall not affect the Rights of the Contributories of the Company among themselves.

Saving of Rights of Creditors who are ignorant of Proceedings.

Liability of Members to Contribute for Payment of Debts of such Creditors.

¹ *Ante* p. 34.

Copy of registered Minute to be embodied in every Memorandum of Association subsequently issued.

✓ **18.** A Minute when registered shall be embodied in every Copy of the Memorandum of Association issued after its Registration; and if any Company makes Default in complying with the Provisions of this Section it shall incur a Penalty not exceeding One Pound for each Copy in respect of which such Default is made, and every Director and Manager of the Company who shall knowingly and wilfully authorize or permit such Default shall incur the like Penalty.

✓ Penalty for Concealment of Name of Creditor or misrepresentation of his Debt, etc.

19. If any Director, Manager, or Officer of the Company wilfully conceals the Name of any Creditor of the Company who is entitled to object to the proposed Reduction, or wilfully misrepresents the Nature or Amount of the Debt or Claim of any Creditor of the Company, or if any Director or Manager of the Company aids or abets in or is privy to any such Concealment or Misrepresentation as aforesaid, every such Director, Manager, or Officer shall be guilty of a Misdemeanor.

✓ Power to make Rules extended to making Rules concerning Matters in which Jurisdiction is given by this Act.

20. The Powers of making Rules concerning Winding up conferred by the [One hundred and seventieth,¹] One hundred and seventy-first, One hundred and seventy-second, and One hundred and seventy-third Sections of the Principal Act shall respectively extend to making Rules concerning Matters in which Jurisdiction is by this Act given to the Court which has the Power of making an Order to wind up a Company, and until such Rules are made the Practice of the Court in Matters of the same Nature shall, so far as the same is applicable, be followed.

¹ *The 170th Section of the Principal Act was Repealed by the Statute Law Revision Act, 1881.*

Sub-division of Shares.

✓ Shares may be divided into Shares of smaller Amount.

21. Any Company limited by Shares may by Special Resolution so far modify the Conditions¹ contained in its Memorandum of Association, if authorized so to do by its Regulations as originally framed or as altered by Special Resolution, as by Sub-division of its existing

Shares or any of them, to divide its Capital, or any Part thereof, into Shares of smaller Amount than is fixed by its Memorandum of Association.

Provided, that in the Sub-division of the existing Shares the Proportion between the Amount which is paid and the Amount (if any) which is unpaid on each Share of reduced Amount shall be the same as it was in the Case of the existing Share or Shares from which the Share of reduced Amount is derived.

Proportions between Amounts paid and unpaid on Shares to be preserved.

¹ The Companies Act, 1862, Sect. 12, *ante* p. 5.

22. The Statement of the Number and Amount of the Shares into which the Capital of the Company is divided contained in every Copy of the Memorandum of Association issued after the passing of any such Special Resolution, shall be in accordance with such Resolution; and any Company which makes Default in complying with the Provisions of this Section shall incur a Penalty not exceeding One Pound for each Copy in respect of which such Default is made; and every Director and Manager of the Company who knowingly or wilfully authorizes or permits such Default shall incur the like penalty.

✓
Statement of Number and Amount of Shares as altered to be embodied in Memorandum of Association subsequently issued.

Associations not for Profit.

23. Where any Association is about to be formed under the Principal Act as a Limited Company, if it proves to the Board of Trade that it is formed for the Purpose of promoting Commerce, Art, Science, Religion, Charity, or any other useful Object, and that it is the Intention of such Association to apply the Profits, if any, or other Income of the Association, in promoting its Objects, and to prohibit the Payment of any Dividend to the Members of the Association, the Board of Trade may by Licence, under the Hand of One of the Secretaries or Assistant Secretaries, direct such Association to be registered with Limited Liability,¹ without the Addition of the Word "Limited" to its Name, and such Association may be registered

Special Provisions as to Associations formed for Purposes not of Gain.

accordingly, and upon Registration shall enjoy all the Privileges and be subject to the Obligations by this Act imposed on Limited Companies, with the Exceptions that none of the Provisions of this Act that require a Limited Company to use the Word "Limited" as any Part of its Name, or to publish its Name, or to send a List of its Members, Directors, or Managers to the Registrar, shall apply to an Association so registered.

The Licence by the Board of Trade may be granted upon such Conditions and subject to such Regulations as the Board thinks fit to impose, and such Conditions and Regulations shall be binding on the Association, and may, at the Option of the said Board, be inserted in the Memorandum and Articles of Association, or in both or One of such Documents.

¹ The Companies Act, 1862, Sect. 18, *ante* p. 8.

Calls upon Shares.

Company
may have
some Shares
fully paid
and others
not.

24. Nothing contained in the Principal Act shall be deemed to prevent any Company under that Act, if authorized by its Regulations as originally framed or as altered by Special Resolution, from doing any One or more of the following Things; namely,—
- ✓ (1.) Making Arrangements on the Issue of Shares for a Difference between the Holders of such Shares in the Amount of Calls to be paid, and in the Time of Payment of such Calls:
 - (2.) Accepting from any Member of the Company who assents thereto the whole or a Part of the Amount remaining unpaid on any Share or Shares held by him, either in discharge of the Amount of a Call payable in respect of any other Share or Shares held by him or without any Call having been made:
 - (3.) Paying Dividend in proportion to the Amount paid up on each Share in Cases where a larger Amount is paid up on some Shares than on others.

25.¹ 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.

Manner in which Shares are to be issued and held.

¹ Repealed by the Companies Act, 1900, and replaced by Sect. 4 (2), post p. 204, and Sect. 7 (1), post p. 207, of that Act.

*Transfer of Shares.*¹

26. A Company shall on the Application of the Transferor of any Share or Interest in the Company enter in its Register of Members the Name of the Transferee of such Share or Interest, in the same Manner² and subject to the same Conditions as if the Application for such Entry were made by the Transferee.

Transfer may be registered at Request of Transferor.

¹ The Companies Act, 1862, Sect. 22, ante p. 10.

² The Companies Act, 1862, Sect. 35, ante p. 11.

Share Warrants to Bearer.

27. In the Case of a Company limited by Shares the Company, if authorized so to do by its Regulations as originally framed or as altered by Special Resolution, and subject to the Provisions of such Regulations, may, with respect to any Share which is fully paid up, or with respect to Stock, issue under their Common Seal a Warrant stating that the Bearer of the Warrant is entitled to the Share or Shares or Stock therein specified, and may provide, by Coupons or otherwise, for the Payment of the future Dividends on the Share or Shares or Stock included in such Warrant, herein-after referred to as a Share Warrant.

Warrants for fully paid-up Shares or Stocks may be issued in Name of Bearer.

28. A Share Warrant shall entitle the Bearer of such Warrant to the Shares or Stock specified in it, and such Shares or Stock may be transferred by the Delivery of the Share Warrant.

Effect of Share Warrant: Transfer of Shares by Delivery.

The Bearer of a Share Warrant may be entered in the Register of Members on delivering up the Warrant for Cancellation.

29. The Bearer of a Share Warrant shall, subject to the Regulations of the Company, be entitled, on surrendering such Warrant for Cancellation, to have his Name entered as a Member in the Register of Members, and the Company shall be responsible for any Loss incurred by any Person by reason of the Company entering in its Register of Members the Name of any Bearer of a Share Warrant in respect of the Shares or Stock specified therein without the Share Warrant being surrendered and cancelled.

Regulations of the Company may make the Bearer of a Share Warrant a Member, but not so as to qualify him as a Director in respect of such Shares.

30. The Bearer of a Share Warrant may, if the Regulations of the Company so provide, be deemed to be a Member of the Company within the Meaning of the Principal Act,¹ either to the full Extent or for such Purposes as may be prescribed by the Regulations:

Provided that the Bearer of a Share Warrant shall not be qualified in respect of the Shares or Stock specified in such Warrant for being a Director or Manager of the Company in Cases where such a Qualification is prescribed by the Regulations of the Company.

¹ The Companies Act, 1862, Sect. 23, *ante* p. 10.

Entries in Register where Share Warrant issued.

31. On the Issue of a Share Warrant in respect of any Share or Stock the Company shall strike out of its Register of Members the Name of the Member then entered therein as holding such Share or Stock as if he had ceased to be a Member, and shall enter in the Register the following Particulars:

- (1.) The fact of the Issue of the Warrant:
- (2.) A Statement of the Shares or Stock included in the Warrant, distinguishing each Share by its Number:
- (3.) The Date of the Issue of the Warrant:

And until the Warrant is surrendered the above Particulars shall be deemed to be the Particulars which are required by the Twenty-fifth Section of the Principal Act to be entered in the Register of Members of a Company; and on the Surrender of a Warrant the Date of such Surrender shall be entered as if it were the Date at which a Person ceased to be a Member.

32. After the Issue by the Company of a Share Warrant the annual Summary required by the Twenty-sixth Section of the Principal Act shall contain the following Particulars,—the total Amount of Shares or Stock for which Share Warrants are outstanding at the Date of the Summary, and the total Amount of Share Warrants which have been issued and surrendered respectively since the last Summary was made, and the Number of Shares or Amount of Stock comprised in each Warrant.

Particulars
as to Share
Warrants
to be con-
tained in
Annual
Summary.

33. There shall be charged on every Share Warrant a Stamp Duty of an Amount equal to Three Times the Amount of the *ad valorem* Stamp Duty which would be chargeable on a Deed transferring the Share or Shares or Stock specified in the Warrant, if the Consideration for the Transfer were the nominal Value of such Share or Shares or Stock.

Stamps on
Share
Warrants.

34. Whosoever forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any Share Warrant or Coupon, or any Document purporting to be a Share Warrant or Coupon, issued in pursuance of this Act, or demands or endeavours to obtain or receive any Share or Interest of or in any Company under the Principal Act, or to receive any Dividend or Money payable in respect thereof, by virtue of any such forged or altered Share Warrant, Coupon, or Document, purporting as aforesaid, knowing the same to be forged or altered, with Intent in any of the Cases aforesaid to defraud, shall be guilty of Felony, and being convicted thereof shall be liable to be kept in Penal Servitude for Life.

Penalties
on Persons
committing
Forgery.

35. Whosoever falsely and deceitfully personates any Owner of any Share or Interest of or in any Company, or of any Share Warrant or Coupon issued in pursuance of this Act, and thereby obtain or endeavours to obtain any such Share or Interest, or Share Warrant or Coupon, or receives or endeavours to receive any Money due to any such Owner, as if such Offender were the true and lawful Owner, shall be guilty of Felony, and being convicted thereof shall be liable to be kept in Penal Servitude for Life.

Penalties
on Persons
falsely per-
sonating
Owners of
Shares on
Share
Warrants.

Penalties
on Persons
engraving
Plates, etc.

36. Whosoever, without lawful Authority or Excuse, the Proof whereof shall be on the Party accused, engraves or makes upon any Plate, Wood, Stone, or other Material any Share Warrant or Coupon purporting to be a Share Warrant or Coupon issued or made by any particular Company under and in pursuance of this Act, or to be a blank Share Warrant or Coupon issued or made as aforesaid, or to be a Part of such a Share Warrant or Coupon, or uses any such Plate, Wood, Stone, or other Material for the making or printing any such Share Warrant or Coupon, or any such blank Share Warrant or Coupon, or any Part thereof respectively, or knowingly has in his Custody or Possession any such Plate, Wood, Stone, or other Material, shall be guilty of Felony, and being convicted thereof shall be liable to be kept in Penal Servitude for any Term not exceeding Fourteen Years.

Contracts.

Contracts
on behalf of
Companies
how to be
made.

37. Contracts on behalf of any Company under the Principal Act may be made as follows ; (that is to say,)

- (1.) Any Contract which if made between private Persons would be by Law required to be in Writing, and if made according to English Law to be under Seal, may be made on behalf of the Company in Writing under the Common Seal of the Company, and such Contract may be in the same Manner varied or discharged :
- (2.) Any Contract which if made between private Persons would be by Law required to be in Writing, and signed by the Parties to be charged therewith, may be made on behalf of the Company in Writing signed by any Person acting under the express or implied Authority of the Company, and such Contract may in the same Manner be varied or discharged :
- (3.) Any Contract which if made between private Persons would by Law be valid although made by Parol only, and not reduced into Writing,

may be made by Parol on behalf of the Company by any Person acting under the express or implied Authority of the Company, and such Contract may in the same Way be varied or discharged :

And all Contracts made according to the Provisions herein contained shall be effectual in Law, and shall be binding upon the Company and their Successors and all other Parties thereto, their Heirs, Executors, or Administrators, as the Case may be.

38.¹ Every Prospectus of a Company, and every Notice inviting Persons to subscribe for Shares in any Joint Stock Company, shall specify the Dates and the Names of the Parties to any Contract entered into by the Company, or the Promoters, Directors, or Trustees thereof, before the Issue of such Prospectus or Notice, whether subject to Adoption by the Directors or the Company, or otherwise; and any Prospectus or Notice not specifying the same shall be deemed fraudulent on the Part of the Promoters, Directors, and Officers of the Company knowingly issuing the same, as regards any Person taking Shares in the Company on the Faith of such Prospectus, unless he shall have had Notice of such Contract.

Prospectus, etc., to specify Dates and Names of Parties to any Contract made prior to issue of such Prospectus, etc.

¹ Repealed by the Companies Act, 1900, and replaced by Sect. 10 of that Act, post p. 209.

Meetings.

39.¹ Every Company formed under the Principal Act after the Commencement of this Act shall hold a General Meeting within Four Months after its Memorandum of Association is registered; and if such Meeting is not held the Company shall be liable to a Penalty not exceeding Five Pounds a Day for every Day after the Expiration of such Four Months until the Meeting is held; and every Director or Manager of the Company, and every Subscriber of the Memorandum of Association, who knowingly authorizes or permits such Default, shall be liable to the same Penalty.

Company to hold Meeting within Four Months after Registration.

¹ Repealed by the Companies Act, 1900, and replaced by Sect. 12 of that Act, post p. 213.

Winding up.

40. No Contributory of a Company under the Principal Act shall be capable of presenting a Petition for winding up such Company¹ unless the Members of

Contributory when not qualified to present Winding-up Petition

the Company are reduced in Number to less than Seven,² or unless the Shares in respect of which he is a Contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his Name, for a Period of at least Six Months during the Eighteen Months previously to the Commencement of the Winding up, or have devolved upon him through the Death of a former Holder :

Provided that where a Share has during the whole or any Part of the Six Months been held by or registered in the Name of the Wife of a Contributory either before or after her Marriage, or by or in the Name of any Trustee or Trustees for such Wife or for the Contributory, such Share shall for the Purposes of this Section be deemed to have been held by and registered in the Name of the Contributory.

¹ The Companies Act, 1862, Sect. 82, *ante* p. 36.

² The Companies Act, 1862, Sect. 79 (3), *ante* p. 34.

41 to 46. These Sections, which only deal with the Administrative Machinery for winding up Companies are repealed by the Companies (Winding-up) Act, 1890, Sects. 1, 2, 3 (*post* p. 164) whereof replace these repealed Sections.

Saving.

47. Nothing in this Act contained shall exempt any Company from the Second or Third Provisions¹ of the One hundred and ninety-sixth Section of the Principal Act, restraining the Alteration of any Provision in any Act of Parliament or Charter.

¹ Apparently a mistake for "third or fourth," *ante* p. 82.

Companies not exempted from the Second or Third Provisions of 25 & 26 Vict. c. 89. sect. 196.

THE JOINT STOCK COMPANIES ARRANGEMENT ACT, 1870.

(33 & 34 VICTORIA, CHAPTER 104.)

1. This Act may be cited as "The Joint Stock Short title.
Companies Arrangement Act, 1870."

2. Where any compromise or arrangement shall be proposed between a company which is, in the course of being wound up, either voluntarily¹ or by or under the supervision of the Court,² under the Companies Acts, 1862 and 1867, or either of them, and the creditors of such company,³ or any class of such creditors,³ it shall be lawful for the Court, in addition to any other of its powers, on the application in a summary way of any creditor or the liquidator, to order that a meeting of such creditors or class of creditors shall be summoned in such manner as the Court shall direct, and if a majority in number representing three-fourths in value of such creditors or class of creditors present either in person or by proxy at such meeting shall agree to any arrangement or compromise, such arrangement or compromise shall, if sanctioned by an order of the Court, be binding on all such creditors or class of creditors, as the case may be, and also on the liquidator and contributories of the said company.

Where compromise proposed Court of Chancery may order a meeting of creditors, etc., to decide as to such compromise.

¹ The Companies Act, 1862, Sects. 136, 137, *ante* pp. 57, 58.

² The Companies Act, 1862, Sect. 159, *ante* p. 64.

³ Extended to members of the company or any class thereof by the Companies Act, 1900, Sect. 24, *post* p. 222.

3. The word "Company" in this Act shall mean any company liable to be wound up under "The Companies Act, 1862."

Interpretation.

Act and Companies Act to be read together.

4. This Act shall be read and construed as part of "The Companies Act, 1862."

THE COMPANIES ACT, 1877.

(40 & 41 VICTORIA, CHAPTER 26.)

Whereas doubts have been entertained whether the power given by the Companies Act, 1867, to a company of reducing its capital extends to paid-up capital, and it is expedient to remove such doubts :
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 :

30 & 31 Vict.
c. 131.

Short title.

1. This Act may be cited for all purposes as the Companies Act, 1877.

Construc-
tion of Act.
25 & 26 Vict.
c. 89.
30 & 31 Vict.
c. 131.

2. This Act shall, so far as is consistent with the tenor thereof, be construed as one with the Companies Acts, 1862 and 1867, and the said Acts and this Act may be referred to as " The Companies Acts, 1862, 1867, and 1877."

Construc-
tion of
" capital "
and powers
to reduce
capital in
30 & 31 Vict.
c. 131.

3. The word " capital " as used in the Companies Act, 1867, shall include paid-up capital ; and the power to reduce capital conferred by that Act¹ shall include a power to cancel any lost capital, or any capital unrepresented by available assets, or to pay off any capital which may be in excess of the wants of the company ;² and paid-up capital may be reduced either with or without extinguishing or reducing the liability (if any) remaining on the shares of the company, and to the extent to which such liability is not extinguished or reduced it shall be deemed to be preserved, notwithstanding anything contained in the Companies Act, 1867.

¹ Sects. 9 to 20 thereof, *ante* p. 132 *et seq.*

² Or to return accumulated profits, by the Companies Act, 1880, Sect. 3, *post* p. 154.

4. The provisions of the Companies Act, 1867,¹ as amended by this Act, shall apply to any company reducing its capital in pursuance of this Act and of the Companies Act, 1867, as amended by this Act: Application of provisions of 30 & 31 Vict. c. 131.

Provided that where the reduction of the capital of a company does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital.

(1.) The creditors of the company shall not, unless the Court otherwise direct, be entitled to object or required to consent to the reduction; and

(2.) It shall not be necessary before the presentation of the petition for confirming the reduction to add, and the Court may, if it thinks it expedient so to do, dispense altogether with the addition of the words "and reduced" as mentioned in the Companies Act, 1867.²

In any case that the Court thinks fit so to do, it may require the company to publish in such manner as it thinks fit the reasons for the reduction of its capital or such other information in regard to the reduction of its capital as the Court may think expedient with a view to give proper information to the public in relation to the reduction of its capital by a company, and, if the Court thinks fit, the causes which led to such reduction. 30 & 31 Vict. c. 131.*

The minute required to be registered in the case of reduction of capital shall show, in addition to the other particulars required by law, the amount (if any) at the date of the registration of the minute proposed to be deemed to have been paid up on each share.

¹ Sects. 9 to 20 thereof, *ante* p. 132 *et seq.*

² In Sect. 10 thereof, *ante* p. 132.

5. Any company limited by shares may so far modify the conditions contained in its memorandum of association, if authorised so to do by its regulations as originally framed or as altered by special resolution, as to reduce its capital by cancelling any shares which, at the date of the passing of such resolution, have not been Power to reduce capital by the cancellation of unissued shares.

taken or agreed to be taken by any person; and the provisions¹ of "The Companies Act, 1867," shall not apply to any reduction of capital made in pursuance of this section.

¹ Sects. 9 to 20 thereof, *ante* p. 132.

Certified
copies of
documents
as legal
evidence.
25 & 26 Vict.
c. 89.
30 & 31 Vict.
c. 131.
40 & 41 Vict.
c. 26.

6. And whereas it is expedient to make provision for the reception as legal evidence of certificates of incorporation other than the original certificates, and of certified copies of or extracts from any documents filed and registered under the Companies Acts, 1862 to 1877: Be it enacted, that any certificate¹ of the incorporation of any company given by the registrar or by any assistant registrar for the time being shall be received in evidence as if it were the original certificate; and any copy of or extract from any of the documents² or part of the documents kept and registered at any of the offices for the registration of joint stock companies in England, Scotland, or Ireland if duly certified to be a true copy under the hand of the registrar or one of the assistant registrars for the time being, and whom it shall not be necessary to prove to be the registrar or assistant registrar, shall, in all legal proceedings, civil or criminal, and in all cases whatsoever, be received in evidence as of equal validity with the original document.

¹ The Companies Act, 1900, Sect. 1, *post* p. 202.

² The Companies Act, 1862, Sect. 174 (5), *ante* p. 72.

THE COMPANIES ACT, 1879.

(42 & 43 VICTORIA, CHAPTER 76.)

1. This Act may be cited as the Companies Act, 1879. Short title
 2. This Act shall not apply to the Bank of England. Act not to apply to Bank of England.
 3. This Act shall, so far as is consistent with the tenor thereof, be construed as one with the Companies Acts, 1862, 1867, and 1877. Act to be construed with 25 & 26 Vict. c. 89, 30 & 31 Vict. c. 131, and 40 & 41 Vict. c. 26.
 4. Subject as in this Act mentioned, any company registered before or after the passing of this Act as an unlimited company may register under the Companies Acts, 1862 to 1879, as a limited company, or any company already registered as a limited company may re-register under the provisions of this Act. Registration anew of company. 25 & 26 Vict. c. 89. 30 & 31 Vict. c. 131. 40 & 41 Vict. c. 26. 42 & 43 Vict. c. 76.
- The registration of an unlimited company as a limited company in pursuance of this Act shall not affect or prejudice any debts, liabilities, obligations, or contracts incurred or entered into by, to, with, or on behalf of such company prior to registration, and such debts, liabilities, contracts, and obligations may be enforced in manner provided by Part VII. of the Companies Act, 1862,¹ in the case of a company registering in pursuance of that Part. 25 & 26 Vict. c. 89.

¹The Companies Act, 1862, Sects. 195 and 196 (5), *ante* pp. 82, 83.

Reserve
capital of
company
how pro-
vided.
25 & 26 Vict.
c. 89.
30 & 31 Vict.
c. 131.
40 & 41 Vict.
c. 26.
42 & 43 Vict.
c. 76.

✓ 5. An unlimited company may, by the resolution¹ passed by the members when assenting to registration as a limited company under the Companies Acts, 1862 to 1879, and for the purpose of such registration, or otherwise, increase the nominal amount of its capital by increasing the nominal amount of each of its shares. Provided always, that no part of such increased capital shall be capable of being called up, except in the event of and for the purposes of the company being wound up.

And, in cases where no such increase of nominal capital may be resolved upon, an unlimited company may, by such resolution as aforesaid, provide that a portion of its uncalled capital shall not be capable of being called up, except in the event of and for the purposes of the company being wound up.

A limited company may by a special resolution declare that any portion of its capital which has not been already called up shall not be capable of being called up, except in the event of and for the purpose of the company being wound up; and thereupon such portion of capital shall not be capable of being called up, except in the event of and for the purposes of the company being wound up.

¹The Companies Act, 1862, Sect. 179 (5), *ante* p. 76.

Liability of
bank of
issue un-
limited in
respect of
notes.

6. A bank of issue registered as a limited company, either before or after the passing of this Act, shall not be entitled to limited liability in respect of its notes; and the members thereof shall continue liable in respect of its notes in the same manner as if it had been registered as an unlimited company; but in case the general assets of the company are, in the event of the company being wound up, insufficient to satisfy the claims of both the note-holders and the general creditors, then the members, after satisfying the remaining demands of the note-holders, shall be liable to contribute towards payment of the debts of the general creditors a sum equal to the amount received by the note-holders out of the general assets of the company.

For the purposes of this section the expression "the general assets of the company" means the funds available for payment of the general creditor as well as the note-holder.

It shall be lawful for any bank of issue registered as a limited company to make a statement on its notes to the effect that the limited liability does not extend to its notes, and that the members of the company continue liable in respect of its notes in the same manner as if it had been registered as an unlimited company.

7.¹ (1.) Once at the least in every year the accounts of every banking company registered after the passing of this Act as a limited company shall be examined by an auditor or auditors, who shall be elected annually by the company in general meeting.

Audit of
accounts of
banking
companies.

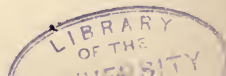
(2.) A director or officer of the company shall not be capable of being elected auditor of such company.

(3.) An auditor on quitting office shall be re-eligible.

(4.) If any casual vacancy occurs in the office of any auditor the surviving auditor or auditors (if any) may act, but if there is no surviving auditor, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the vacancy or vacancies in the auditorship.

(5.) Every auditor shall have a list delivered to him of all books kept by the company, and shall at all reasonable times have access to the books and accounts of the company; and any auditor may, in relation to such books and accounts, examine the directors or any other officer of the company: Provided that if a banking company has branch banks beyond the limits of Europe, it shall be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as may have been transmitted to the head office of the banking company in the United Kingdom.

(6.) The auditor or auditors shall make a report to the members on the accounts examined by him or them, and on every balance sheet laid before the



company in general meeting during his or their tenure of office; and in every such report shall state whether, in his or their opinion, the balance sheet referred to in the report is a full and fair balance sheet 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.

(7.) The remuneration of the auditor or auditors shall be fixed by the general meeting appointing such auditor or auditors, and shall be paid by the company.

¹ The Companies Act, 1900, Sects. 21, 22, 23, *post* pp. 220, 221.

8. Every balance sheet submitted to the annual or other meeting of the members of every banking company registered after the passing of this Act as a limited company shall be signed by the auditor or auditors, and by the secretary or manager (if any), and by the directors of the company, or three of such directors at the least.

9. On the registration, in pursuance of this Act, of a company which has been already registered, the registrar shall make provision for closing the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company;¹ but, save as aforesaid, the registration of such a company shall take place in the same manner and have the same effect as if it were the first registration of that company under the Companies Acts, 1862 to 1879, and as if the provisions of the Acts under which the company was previously registered and regulated had been contained in different Acts of Parliament from those under which the company is registered as a limited company.

¹ The Companies Act, 1862, Sects. 183 to 185, *ante* p. 77 *et seq.*

Signature
of balance
sheet.

Applica-
tion of
25 & 26 Vict.
c. 89.,
30 & 31 Vict.
c. 131., and
40 & 41 Vict.
c. 26.,
25 & 26 Vict.
c. 89.,
30 & 31 Vict.
c. 131.,
40 & 41 Vict.
c. 26., and
42 & 43 Vict.
c. 76.

10. A company authorised to register under this Act may register thereunder and avail itself of the privileges conferred by this Act, notwithstanding any provisions¹ contained in any Act of Parliament, royal charter, deed of settlement, contract of co-partnery, cost book regulations, letters patent, or other instrument constituting or regulating the company.

Privileges
of Act
available
notwith-
standing
constitution
of company.

¹The Companies Act, 1862, Sect. 179 (1), (2), *ante* p. 75.

THE COMPANIES ACT, 1880.

(43 VICTORIA, CHAPTER 19.)

Short title.

1. This Act may be cited for all purposes as the Companies Act, 1880.

Construction of Acts
25 & 26 Vict.
c. 89.,
30 & 31 Vict.
c. 131.,
40 & 41 Vict.
c. 26.,
42 & 43 Vict.
c. 76.

2. This Act shall, so far as is consistent with the tenor thereof, be construed as one with the Companies Acts, 1862, 1867, 1877, and 1879.

Accumulated profits
may be
returned
to share-
holders in
reduction
of paid-up
capital.

✓ 3. When any Company has accumulated a sum of undivided profits, which with the consent of the shareholders may be distributed among the shareholders in the form of a dividend or bonus, it shall be lawful for the Company, by special resolution, to return the same, or any part thereof, to the shareholders in reduction of the paid-up capital of the Company,¹ the unpaid capital being thereby increased by a similar amount. The powers vested in the directors of making calls upon the shareholders in respect of moneys unpaid upon their shares shall extend to the amount of the unpaid capital as augmented by such reduction.

¹The Companies Act, 1867, Sects. 9 to 20, *ante* p. 132 *et seq.*, and the Companies Act, 1877, Sects. 3, 4, *ante* pp. 146, 147.

✓ No resolution
to take
effect till
particulars
have been
registered.

4. No such special resolution as aforesaid¹ shall take effect until a memorandum, showing the particulars² required by law in the case of a reduction of capital by order of the court, shall have been produced to and registered by the Registrar of Joint Stock Companies.

¹Preceding Section.

²The Companies Act, 1867, Sect. 15, *ante* p. 134, and the Companies Act, 1877, Sect. 4, *ante* p. 147.

5. Upon any reduction of paid-up capital made in pursuance of this Act, it shall be lawful for any shareholder, or for any one or more of several joint shareholders, within one month after the passing of the special resolution for such reduction, to require the Company to retain, and the Company shall retain accordingly, the whole of the moneys actually paid upon the shares held by such person, either alone or jointly with any other person or persons, and which, in consequence of such reduction, would otherwise be returned to him or them, and thereupon the shares in respect of which the said moneys shall be so retained shall, in regard to the payment of dividends thereon, be deemed to be paid up to the same extent only as the shares on which payment as aforesaid has been accepted by the shareholders in reduction of their paid-up capital, and the Company shall invest and keep invested the moneys so retained in such securities authorised for investment by trustees as the Company shall determine, and upon the money so invested, or upon so much thereof as from time to time exceeds the amount of calls subsequently made upon the shares in respect of which such moneys shall have been retained, the Company shall pay such interest as shall be received by them from time to time on such securities, and the amount so retained and invested shall be held to represent the future calls which may be made to replace the capital so reduced on those shares, whether the amount obtained on sale of the whole or such proportion thereof as represents the amount of any call when made, produces more or less than the amount of such call.

Power to any shareholder within one month after passing of resolution to require Company to retain moneys paid upon shares held by such person.

6. From and after such reduction of capital the Company shall specify in the annual lists of members, to be made by them in pursuance of the twenty-sixth section¹ of the Companies Act, 1862, the amounts which any of the shareholders of the Company shall have required the Company to retain, and the Company shall have retained accordingly, in pursuance of the fifth section of this Act, and the Company shall also specify in the statements of account laid before any

Company to specify amounts which shareholders have required them to retain under s. 5.; also to specify amounts of profits returned to shareholders. 25 & 26 Vict. c. 89.

general meeting of the Company the amount of the undivided profits of the Company which shall have been returned to the shareholders in reduction of the paid-up capital of the Company under this Act.

¹ *Ante* p. 72.

Power of Registrar to strike names of defunct Companies off register.

7.¹—(1.) 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, he shall send to the Company by post a letter inquiring whether the Company is carrying on business or in operation.

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

(3.) If the Registrar either receives an answer from the Company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer thereto, 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.

This sub-section is thus altered by sect. 26 (2) of the Companies Act, 1900, post p. 222.

(6.) A letter or notice authorised 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 indential 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.

¹ The Companies Act, 1900, Sect. 26 (1), post p. 222.

THE COMPANIES (COLONIAL REGISTERS) ACT, 1883.

(46 & 47 VICTORIA, CHAPTER 30.)

Short title
and con-
struction.

1. This Act may be cited for all purposes as the Companies (Colonial Registers) Act, 1883; and this Act shall, so far as is consistent with the tenor thereof, be construed as one with the Companies Acts, 1862 to 1880, and the said Acts and this Act may be referred to as the Companies Acts, 1862 to 1883.

Definitions.

2. In this Act the term "company" means a company registered under the Companies Act, 1862, and having a capital divided into shares; the term "shares" includes stock; the term "colony" does not include any place within the United Kingdom, the Isle of Man, or the Channel Islands, but includes such territories as may for the time being be vested in Her Majesty by virtue of an Act of Parliament for the government of India, and any plantation, territory, or settlement situate elsewhere within Her Majesty's dominions.

Power for
companies
to keep
colonial
registers.

3. (1.) Any company whose objects comprise the transaction of business in a colony may, if authorised so to do by its regulations, as originally framed or as altered by special resolution, cause to be kept in any colony in which it transacts business a branch register or registers of members resident in such colony.

(2.) The company shall give to the registrar of joint stock companies notice of the situation of the office where any such branch register (in this Act called a colonial register) is kept, and of any change therein, and of the discontinuance of any such office in the event of the same being discontinued.

(3.) A colonial register shall, as regards the particulars entered therein, be deemed to be a part of the company's register of members, and shall be *prima facie* evidence of all particulars entered therein. Any such register shall be kept in the manner provided by the Companies Acts, 1862 to 1880,¹ with this qualification, that the advertisement mentioned in section thirty-three² of the Companies Acts, 1862, shall be inserted in some newspaper circulating in the district wherein the register to be closed is kept, and that any competent court in the colony where such register is kept shall be entitled to exercise the same jurisdiction of rectifying the same as is by section thirty-five³ of the Companies Act, 1862, vested, as respects a register, in England and Ireland in Her Majesty's superior courts of law or equity, and that all offences under section thirty-two⁴ of the Companies Act, 1862, may, as regards a colonial register, be prosecuted summarily before any tribunal in the colony where such register is kept having summary criminal jurisdiction. 25 & 26 Vict.
c. 89.

(4.) The company shall transmit to its registered office a copy of every entry in its colonial register or registers as soon as may be after such entry is made, and the company shall cause to be kept at its registered office, duly entered up from time to time, a duplicate or duplicates of its colonial register or registers. The provisions of section thirty-two⁴ of the Companies Act, 1862, shall apply to every such duplicate, and every such duplicate shall, for all the purposes of the Companies Acts, 1862 to 1880, be deemed to be part of the register of members of the company.

(5.) Subject to the provisions of this Act with respect to the duplicate register, the shares registered in a colonial register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a colonial register shall, during the continuance of the registration of such shares in such colonial register, be registered in any other register.

(6.) The company may discontinue to keep any

colonial register, and thereupon all entries in that register shall be transferred to some other colonial register kept by the company in the same colony, or to the register of members kept at the registered office of the company.

(7.) In relation to stamp duties the following provisions shall have effect:—

(a.) An instrument of transfer of a share registered in a colonial register under this Act shall be deemed to be a transfer of property situated out of the United Kingdom, and unless executed in any part of the United Kingdom shall be exempt from British stamp duty.

(b.)⁵ Upon the death of a member registered in a colonial register under this Act, the share or other interest of the deceased member shall for the purposes of this Act so far as relates to British duties be deemed to be part of his estate and effects situated in the United Kingdom for or in respect of which probate or letters of administration is or are to be granted, or whereof an inventory is to be exhibited and recorded in like manner as if he were registered in the register of members kept at the registered office of the company.

(8.) Subject to the provisions of this Act, any company may, by its regulations as originally framed, or as altered by special resolution, make such provisions as it may think fit respecting the keeping of colonial registers.

¹ *I.e.*, in the Companies Act, 1862, Sects. 25 to 36, *ante* p. 11. *et seq.*, and (as to share warrants) in the Companies Act, 1867, Sect. 31, *ante* p. 140.

² *Ante* p. 14.

³ *Ante* p. 15.

⁴ *Ante* p. 14.

⁵ But now see the Revenue Act, 1889 (52 & 53 Vict., c. 42) Sect. 18.

THE COMPANIES (MEMORANDUM OF ASSOCIATION) ACT, 1890.

(53 & 54 VICTORIA, CHAPTER 62.)

1.—(1.) Subject to the provisions of this Act, a company registered under the Companies Acts, 1862 to 1886, may, by special resolution, alter the provisions¹ of its memorandum of association or deed of settlement,² with respect to the objects of the company so far as may be required for any of the purposes herein-after specified,³ or alter the form of its constitution by substituting a memorandum and articles of association for a deed of settlement, either with or without any such alteration as aforesaid with respect to the objects of the company, but in no case shall any such alteration take effect until confirmed on petition by the court⁴ which has jurisdiction to make an order for winding up the company.

Power for Company to alter objects or form of constitution subject to confirmation by court.

(2.) Before confirming any such alteration the court must be satisfied—

- (a.) that sufficient notice has been given to every holder of debentures or debenture stock of the company, and any persons or class of persons whose interests will, in the opinion of the court, be affected by the alteration; and
- (b.) that, with respect to every creditor who in the opinion of the court is entitled to object, and who signifies his objection in manner directed by the court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the court.

Provided that the court may, in the case of any person or class of persons, for special reasons, dispense with the notice required by this section.

(3.) An order confirming any such alteration may be made on such terms and subject to such conditions as

to the court seems fit, and the court may make such orders as to costs as it deems proper.

(4.) The court shall, in exercising its discretion under this Act, have regard to the rights and interests of the members of the company, or of any class of those members, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members; and the court may give such directions and make such orders as it may think expedient for the purpose of facilitating any such arrangement or carrying the same into effect: Provided always, that it shall not be lawful to expend any part of the capital of the company in any such purchase.

(5.) The court may confirm, either wholly or in part, any such alteration as aforesaid with respect to the objects of the company if it appears that the alteration is required in order to enable the company—

- (a.) To carry on its business more economically or more efficiently; or
- (b.) To attain its main purpose by new or improved means; or
- (c.) To enlarge or change the local area of its operations; or
- (d.) To carry on some business or businesses which under existing circumstances may conveniently or advantageously be combined with the business of the company; or
- (e.) To restrict or abandon any of the objects specified in the memorandum of association or deed of settlement.

Registration of order together with memorandum as altered or substituted memorandum and articles and consequences thereof.

¹ The Companies Act, 1862, Sect. 12, *ante* p. 5.

² The Companies Act, 1862, Sect. 196, *ante* p. 82, and Sect. 3 (3) hereof, *post* p. 163.

³ Sub.-sect. (5) of this Section.

⁴ Specified in the Companies (Winding-up) Act, 1890, Sect. 1, *post* p. 164.

2.—(1.) Where a company has altered the provisions of its memorandum of association or deed of settlement with respect to the objects of the company, or has

altered the form of its constitution by substituting a memorandum and articles of association for a deed of settlement, and such alteration has been confirmed by the court, an office copy of the order confirming such alteration, together with a printed copy of the memorandum of association or deed of settlement so altered, or together with a printed copy of the substituted memorandum and articles of association (as the case may be), shall be delivered by the company to the Registrar of Joint Stock Companies within fifteen days from the date of the order, and the registrar shall register the same, and shall certify under his hand the registration thereof, and his certificate shall be conclusive evidence that all the requisitions of this Act with respect to such alteration and the confirmation thereof have been complied with, and thenceforth (but subject to the provisions of this Act) the memorandum or deed of settlement so altered shall be the memorandum of association or deed of settlement of the company, or, as the case may be, such substituted memorandum and articles of association shall apply to the company in the same manner as if the company were a company registered under Part I. of the Companies Act, 1862, with such memorandum and articles of association, and the company's deed of settlement shall cease to apply to the company.

(2.) If a company makes default in delivering to the registrar any document required by this Act to be delivered to him the company shall be liable to a penalty not exceeding ten pounds for every day during which it is in default.

3.—(1.) This Act may be cited as the Companies (Memorandum of Association) Act, 1890.

(2.) This Act and the Companies Acts, 1862 to 1886, shall be construed as one Act, and may be cited collectively as the Companies Acts, 1862 to 1890.

(3.) In this Act the expression "deed of settlement" includes any contract of co-partnery or other instrument constituting or regulating the company and not being an Act of Parliament, a royal charter or letters patent.

Short title
and con-
struction.

THE COMPANIES (WINDING-UP) ACT, 1890.

Jurisdic-
tion to wind
up com-
panies.

1.—(1.) The courts having jurisdiction to wind up companies in England and Wales shall be the High Court, the chancery courts of the counties palatine of Lancaster and Durham, the county courts, and the Stannaries court.

(2.) Where the amount of the capital of a company paid up or credited as paid up exceeds ten thousand pounds, a petition to wind up the company or to continue the winding up of the company under the supervision of the court shall be presented to the High Court, or, in the case of a company situate within the jurisdiction of either of the palatine courts aforesaid, either to the High Court or to the palatine court having jurisdiction.

(3.) Where the amount of the capital of a company paid up or credited as paid up does not exceed ten thousand pounds, and the registered office of the company is situate within the jurisdiction of a county court having jurisdiction under this Act, a petition to wind up the company or to continue the winding up of the company under the supervision of the court shall be presented to that county court.

(4.) Provided that where a company is formed for working mines within the Stannaries and is not shown to be actually working mines beyond the limits of the Stannaries, or to be engaged in any other undertaking beyond those limits, or to have entered into a contract for such working or undertaking, a petition to wind up the company or to continue the winding up of the company under the supervision of the court shall be

presented to the Stannaries court whatever may be the amount of the capital of the company and wherever the registered office of the company is situate.

(5.) The Lord Chancellor may by order exclude a county court from having jurisdiction under this Act, and for the purposes of such jurisdiction may attach its district, or any part thereof, to the High Court or to any other county court, and may revoke or vary any such order. In exercising his powers under this section the Lord Chancellor shall provide that a county court shall not have jurisdiction under this Act unless it has for the time being jurisdiction in bankruptcy.

(6.) Every court having jurisdiction under this Act to wind up a company shall for the purposes of that jurisdiction have all the powers of the High Court, and every prescribed officer of the court shall perform any duties which an officer of the High Court may discharge by order of the judge thereof or otherwise in relation to the winding up of a company.

(7.) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong court.

2. Subject to general rules and to orders of transfer made under the authority of the Supreme Court of Judicature Act, 1873, and the Acts amending it, the jurisdiction of the High Court under this Act shall, as the Lord Chancellor may from time to time by general order direct, be exercised, either generally or in specified classes of cases, either by such judge or judges of the Chancery Division of the High Court as the Lord Chancellor may assign to exercise that jurisdiction, or by the judge who, for the time being, exercises the bankruptcy jurisdiction of the High Court.

Conduct of winding up business in High Court. 36 & 37 Vict. c. 66.

3.—(1.) The winding up of a company or any proceedings therein may at any time and at any stage, and either with or without application from any of the parties thereto, be transferred from one court to another court, or may be retained in the court in which the proceedings were commenced, although it may not be the court in which the proceedings ought to have been commenced.

Transfer of proceedings.

(2.) The powers of transfer given by the foregoing provisions of this section may, subject to and in accordance with general rules, be exercised by the Lord Chancellor or by any judge of the High Court having jurisdiction under this Act, or, as regards any case within the jurisdiction of any other court, by the judge of that court.

(3.) If any question arises in any winding up proceeding in a county court or in the Stannaries court which all the parties to the proceeding, or which one of them and the judge of the court, may desire to have determined in the first instance in the High Court, the judge shall state the facts in the form of a special case for the opinion of the High Court, and thereupon the special case and the proceedings, or such of them as may be required, shall be transmitted to the High Court for the purposes of the determination.

Provisions
as to liqui-
dator.

4.—(1.) On an order being made by the court for winding up a company the officer herein-after mentioned¹ shall, by virtue of his office, become the provisional liquidator² of the company, and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such.

(2.) The said officer shall be the official receiver, if any, attached to the court for bankruptcy purposes, or if there is more than one such official receiver, then such one of them as the Board of Trade may appoint, or, if there is no such official receiver, then an officer appointed for the purpose by the Board of Trade. Any such officer shall for the purpose of his duties under this Act be styled the official receiver.

(3.) When a person other than the official receiver is appointed liquidator of a company he shall be styled liquidator and not official liquidator of the company, and the provisions of the Companies Acts³ relating to the official liquidator shall, in their application to him, be construed as if the word “official” were omitted therefrom. Such a person shall not be capable of acting as liquidator until he has notified his appointment to the registrar of joint stock companies and

given security in the manner prescribed to the satisfaction of the Board of Trade. He shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid, as may be requisite for enabling that officer to perform his duties under this Act.

(4.) If any vacancy occurs in the office of liquidator of a company, the official receiver shall, by virtue of his office, be the liquidator during the vacancy.

(5.) The official receiver may be appointed by the court provisional liquidator⁴ of the company at any time after the presentation of a petition and before a winding-up order has been made.

(6.) Where an application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company the official receiver may be so appointed.

¹ Next sub-section.

² The Companies Act, 1862, Sect. 85, *ante* p. 37.

³ The Companies Act, 1862, Sects. 92 to 96, *ante* p. 39 *et seq.*, and Sect. 203, *ante* p. 89.

⁴ The Companies Act, 1862, Sect. 85, *ante* p. 37.

5.—(1.) Where the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court to, and the court may on such application, appoint a special manager thereof during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court.

Power to
appoint
special
manager.

(2.) The special manager shall give such security and account in such manner as the Board of Trade direct.

(3.) The special manager shall receive such remuneration as may be fixed by the court.

Meeting of
creditors.

6.—(1.) When the court has made an order for winding up a company the official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of—

- (a) determining whether or not an application is to be made to the court for appointing a liquidator in the place of the official receiver; and
- (b) determining whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of such committee if appointed.

The court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of any of the matters mentioned in the foregoing provisions the court shall decide the difference and make such order thereon as the court may think fit.

(2.) The provisions of the First Schedule¹ to this Act shall, subject to such modifications as may be made therein by general rules, apply to any meeting summoned in pursuance of this section.

(3.) In case a liquidator is not appointed by the court the official receiver shall be the liquidator of the Company.

¹ *Post* p. 186.

Statement
of com-
pany's
affairs.

7.—(1.) Where the court has made an order for winding up a company, there shall be made out and submitted to the official receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of the assets, debts, and liabilities of the company, the names, residences, and occupations of the creditors of the company, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.

(2.) The statement shall be submitted and verified

by one or more of the persons who are at the time of the winding-up order the directors and by the person who is at that time the secretary or other chief officer of the company, or by such of the persons being or or having been directors or officers of the company or having taken part in the formation of the company at any time within one year before the order for winding up the company, as the official receiver, subject to the direction of the court, may require to submit, and verify the same.

(3.) The statement shall be submitted within fourteen days from the date of the order, or within such extended time as the official receiver or the court may for special reasons appoint.

(4.) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official receiver, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of such statement and affidavit as the official receiver may consider reasonable, subject to an appeal to the court.

(5.) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding ten pounds for every day during which the default continues.

(6.) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom. But any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court and shall be punishable accordingly on the application of the liquidator or of the official receiver.

8.—(1.) Where the court has made an order for winding up a company, the official receiver shall, as soon as practicable after receipt of the statement of

Report on
winding up
and pro-
ceedings
thereupon.

the company's affairs, submit a preliminary report to the court—

- (a) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities; and
 - (b) if the company has failed, as to the causes of the failure; and
 - (c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.
- (2.) The official receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in the promotion or formation of the company or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.
- (3.) The court may, after consideration of any such report, direct that any person who has taken any part in the promotion or formation of the company, or has been a director or officer of the company, shall attend before the court on a day appointed by the court for that purpose, and be publicly examined as to the promotion or formation of the company, or as to the conduct of the business of the company, or as to his conduct and dealings as director or officer of the company.
- (4.) The official receiver shall take part in the examination, and for that purpose may, if specially authorised by the Board of Trade in that behalf, employ a solicitor with or without counsel.
- (5.) The liquidator where the official receiver is not the liquidator and any creditor or contributory of the company may also take part in the examination either personally or by solicitor or counsel.
- (6.) The court may put such questions to the person examined as to the court may seem expedient.

(7.) The person examined shall be examined on oath, and it shall be his duty to answer all such questions as the court may put or allow to be put to him. The person examined shall at his own cost, prior to such examination, be furnished with a copy of the official receiver's report, and shall also at his own cost be entitled to employ at such examination a solicitor with or without counsel, who shall be at liberty to put such questions to the person examined as the court may deem just for the purpose of enabling that person to explain or qualify any answers given by him. Provided always, that if such person is, in the opinion of the court, exculpated from any charges made or suggested against him, the court may allow him such costs as the court in its discretion may think fit. Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him. They shall also be open to the inspection of any creditor or contributory of the company at all reasonable times.

(8.) The court may, if it thinks fit, adjourn the examination from time to time.

(9.) A public examination under this section may, if the court so directs, and subject to general rules, be held before any judge of county courts, or before any officer of the Supreme Court, being an official referee, master, registrar in bankruptcy, or chief clerk, or before any district registrar of the High Court named for the purpose by the Lord Chancellor, or in the case of companies being wound up by a Palatine court, before a registrar of that court, and the powers of the court under sub-sections six, seven, and eight of this section may (except as to costs) be exercised by the person before whom the examination is held.

9.—(1.) A committee of inspection appointed in pursuance of this Act shall consist of persons being creditors or contributories of the company or persons holding general powers of attorney from such persons in such proportions as may be agreed on by the meetings of

Committee
of Inspec-
tion.

creditors and contributories¹ or as, in case of difference, may be determined by the court.

(2.) The committee of inspection shall meet at such times as they from time to time appoint, and, failing such appointment, at least once a month; and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3.) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present at the meeting.

(4.) Any member of the committee may resign his office by notice in writing signed by him, and delivered to the liquidator.

(5.) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members of the committee who together with himself represent the creditors or contributories as the case may be, his office shall thereupon become vacant.

(6.) Any member of the committee representing creditors may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given, stating the object of the meeting. Any member of the committee representing contributories may be removed by an ordinary resolution at any meetings of contributories, of which seven days' notice has been given stating the object of the meeting.

(7.) On a vacancy occurring in the office of a member of the committee, the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, for the purpose of filling the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy.

(8.) The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body.

(9.) If there be no committee of inspection, any act or thing or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by the Board of Trade on the application of the liquidator.

¹ Sect. 6 hereof, *ante* p. 168, and 23 (2), *post* p. 181.

10.—(1.) Where in the course of the winding up of a company under the Companies Acts it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, liquidator, or other officer of the company, has misapplied or retained or become liable or accountable for any monies or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of the official receiver, or of the liquidator of the company, or of any creditor or contributory of the company, examine into the conduct of such promoter, director, manager, liquidator, or other officer of the company, and compel him to repay¹ any moneys or restore any property so misapplied or retained, or for which he has become liable or accountable, together with interest after such rate as the court thinks just, or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust as the court thinks just.

Power of court to assess damages against delinquent directors, officers, and promoters.

(2.) The provisions of this section shall apply in the winding up of any company under the Companies Acts whether the same is being wound up by or subject to the supervision of the court or is being wound up voluntarily, and whether the winding up commenced before or after the passing of this Act, and notwithstanding that the offence is one for which the offender may be criminally responsible.

¹ The Companies (Winding-up) Act, 1893, *post* p. 199.

11.—(1.) An account, called the Companies Liquidation Account, shall be kept by the Board of Trade with the Bank of England, and all monies received

Payment of money into Bank of England.

by the Board of Trade in respect of proceedings under this Act shall be paid to that account.

(2.) Every liquidator of a company which is being wound up by order of the court shall, in such manner and at such times as the Board of Trade, with the concurrence of the Treasury, direct, pay the money received by him to the Companies Liquidation Account at the Bank of England, and the Board of Trade shall furnish him with a certificate of receipt of the money so paid.

(3.) Provided that, if the committee of inspection satisfy the Board of Trade that for the purpose of carrying on the business of the company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any other Bank, the Board of Trade shall, on the application of the committee of inspection, authorise the liquidator to make his payments into and out of such other Bank as the committee may select, and thereupon those payments shall be made in the prescribed manner.

(4.) If any such liquidator at any time retains for more than ten days a sum exceeding fifty pounds, or such other amount as the Board of Trade in any particular case authorise him to retain, then, unless he explains the retention to the satisfaction of the Board of Trade, he shall pay interest on the amount so retained in excess at the rate of twenty pounds per centum per annum, and shall be liable to disallowance of all or such part of his remuneration as to the Board shall seem just, and to be removed from his office by the Board, and shall be liable to pay any expenses occasioned by reason of his default.

(5.) All payments out of money standing to the credit of the Board of Trade in the Companies Liquidation Account shall be made by the Bank of England in the prescribed manner.

(6.) No liquidator of a company which is being wound up by order of the court shall pay any sums received by him as liquidator into his private banking account.

12.—(1.) The liquidator of a company which is being wound up by the court may, with the sanction either of the court or of the committee of inspection, carry on the business of the company, or bring or defend any legal proceeding in the name and on behalf of the company, or exercise any of the powers conferred by section one hundred and fifty-nine¹ or section one hundred and sixty² of the Companies Act, 1862.

Powers of liquidator.

(2.) The liquidator of any such company may, without the sanction of the court or of the committee of inspection, exercise any of the other powers conferred on the liquidator by section ninety-five³ of the Companies Act, 1862.

25 & 26 Vict. c. 89.

(3.) The exercise by the liquidator of the powers referred to in this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

(4.) The liquidator of a company which is being wound up by order of the court may, with the sanction either of the court or of the committee of inspection, employ a solicitor or other agent to take any proceedings or do any business which the liquidator is unable to take or do himself. The sanction aforesaid must be a sanction obtained before the employment, except in cases of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction.

¹ *Ante* p. 64.

² *Ante* p. 65.

³ *Ante* p. 40.

13. General rules may be made for requiring or enabling all or any of the powers and duties conferred and imposed on the court by sections ninety-one, ninety-eight, ninety-nine, one hundred, one hundred and two, and one hundred and seven of the Companies Act, 1862,¹ to be exercised or performed by the liquidator as an officer of the court, and subject to the control of the court.

Delegation to liquidator of certain powers of court.

Provided that the liquidator shall not, without the special leave of the court, rectify the register of members,

and shall not make any call without either the special leave of the court or the sanction of the committee of inspection.

¹ *Ante* p. 38 *et seq.*

Power for
official
receiver to
apply as to
voluntary
winding up.

14. Where a company is being wound up voluntarily or subject to the supervision of the court, the official receiver attached to the court having jurisdiction to wind up the company may present a petition that the company be wound up by the court, and thereupon, if the court is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interest of the creditors or contributories, it may make an order that the company be wound up by the court.

Information
as to pend-
ing liqui-
dations.

15.—(1.) If the winding up of a company is not concluded within one year after its commencement, the liquidator of the company shall, at such intervals as may be prescribed, until the winding up is concluded, send to the registrar of joint stock companies a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation. Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof, or extract therefrom. But any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court, and shall be punishable accordingly on the application of the liquidator or of the official receiver.

(2.) If a liquidator makes default in complying with the requirements of this section he shall be liable to a fine not exceeding fifty pounds for each day during which the default continues.

(3.) If it appears from any such statement or otherwise that any liquidator of a company has in his hands or under his control any money representing unclaimed

or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt, the liquidator shall forthwith pay the same to the Companies Liquidation Account at the Bank of England. Every such liquidator shall be entitled to the prescribed certificate of receipt for the moneys so paid, and that certificate shall be an effectual discharge to him in respect thereof.

(4.) For the purpose of ascertaining and getting in any money payable into the Bank of England in pursuance of this section, the like powers may be exercised and by the like authority as are exerciseable under section one hundred and sixty-two of the Bankruptcy Act, 1883, for the purpose of ascertaining and getting in the sums, funds, and dividends referred to in that section.

(5.) Any person claiming to be entitled to any money paid into the Bank of England in pursuance of this section may apply to the Board of Trade for payment of the same, and the Board of Trade may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due. Any person dissatisfied with the decision of the Board of Trade in respect of any claim made in pursuance of this section may appeal to the High Court.

(6.) This section shall apply whether the winding up of the company has commenced before or after the commencement of this Act.

16.—(1.) Whenever the cash balance standing to the credit of the Companies Liquidation Account is in excess of the amount which in the opinion of the Board of Trade is required for the time being to answer demands in respect of companies' estates, the Board of Trade shall notify the same to the Treasury, and shall pay over the same or any part thereof, as the Treasury may require, to the Treasury, to such account as the Treasury may direct, and the Treasury may invest the said sums, or any part thereof, in Government securities, to be placed to the credit of the said account.

Investment
surplus
funds on
general
account.

(2.) Whenever any part of the money so invested is,

in the opinion of the Board of Trade, required to answer any demands in respect of companies' estates, the Board of Trade shall notify to the Treasury the amount so required, and the Treasury shall thereupon repay to the Board of Trade such sum as may be required to the credit of the Companies Liquidation Account, and for that purpose may direct the sale of such part of the said securities as may be necessary.

(3.) The dividends on the investments under this section shall be paid to such account as the Treasury may direct, and regard shall be had to the amount thus derived in fixing the fees payable in respect of proceedings in the winding up of companies.

Separate
accounts of
particular
estates.

17.—(1.) An account shall be kept by the Board of Trade of the receipts and payments in the winding up of each company, and when the cash balance standing to the credit of the account of any company is in excess of the amount which, in the opinion of the committee of inspection, is required for the time being to answer demands in respect of that company's estate, the Board of Trade shall, on the request of the committee, invest the amount not so required in Government securities, to be placed to the credit of the said account for the benefit of the said company.

(2.) Whenever any part of the money so invested is, in the opinion of the committee of inspection, required to answer any demands in respect of the estate of the company of the assets of which the money so invested formed part, the Board of Trade shall, on the request of the committee, raise such sum as may be required by the sale of such part of the said securities as may be necessary.

(3.) The dividends on the investments made under this section shall be paid to the credit of the company of the assets of which the money so invested formed part.

Interests
on balances
above two
thousand
pounds.

18. When the balance at the credit of any company's account in the hands of the Board of Trade exceeds two thousand pounds, and the liquidator gives notice to the Board of Trade that the excess is not required

for the purposes of the liquidation, then such company shall be entitled to interest upon such excess at the rate of two per centum per annum.

19. The Treasury may from time to time issue to the Board of Trade in aid of the votes of Parliament, out of the receipts arising from fees, fee stamps, and dividends on investments by the Treasury under this Act, any sums which may be necessary to meet the charges estimated by the Board of Trade in respect of salaries and expenses under this Act.

Certain receipts and fees to be applied in aid of expenditure.

20.—(1.) Every liquidator of a company which is being wound up by order of the court shall, at such times as may be prescribed, but not less than twice in each year during his tenure of office, send to the Board of Trade, or as they direct, an account of his receipts and payments as such liquidator.

Audit of liquidator's accounts.

(2.) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.

(3.) The Board of Trade shall cause the accounts so sent to be audited, and for the purpose of the audit the liquidator shall furnish the Board with such vouchers and information as the Board may require, and the Board may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4.) When any such account has been audited, one copy thereof shall be filed and kept by the Board, and the other copy shall be filed with the court, and each copy shall be open to the inspection of any creditor, or of any person interested.

(5.) The Board of Trade shall cause the account or a summary thereof when audited to be printed, and shall send a printed copy thereof by post to every creditor and contributory.

21. Every liquidator of a company which is being wound up by order of the court shall keep, in manner prescribed, proper books in which he shall from time to time cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory of the company

Books to be kept by liquidator.

may, subject to the control of the court, personally or by his agent inspect any such books.

Release of
liquidators.

22.—(1.) When the liquidator of a company which is being wound up by order of the court has realised all the property of the company, or so much thereof as can, in his opinion, be realised without needlessly protracting the liquidation, and distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories between themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Board of Trade shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Board, shall take into consideration the report, and any objection which may be urged by any creditor, or contributory, or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the High Court.

(2.) Where the release of a liquidator is withheld the court may, on the application of any creditor, or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default he may have done or made contrary to his duty.

(3.) An order of the Board releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4.) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

Discretionary
powers of
liquidator
and control
thereof.

23.—(1.) Subject to the provisions of the Companies Acts, the liquidator of a company which is being wound up by order of the court shall, in the administration of the property of the company and in the distribution thereof amongst its creditors, have regard to any direc-

tions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions so given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2.) The liquidator may from time to time summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories as the case may be.

(3.) The liquidator may apply to the court in manner prescribed for directions in relation to any particular matter arising under the winding up.

(4.) Subject to the provisions of the Companies Acts, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

24. If any person is aggrieved by any act or decision of the liquidator of a company which is being wound up by order of the court, he may apply to the court, and the court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just. Appeal to court against liquidator.

25.—(1.) The Board of Trade shall take cognizance of the conduct of liquidators of companies which are being wound up by order of the court, and in the event of any such liquidator not faithfully performing his duties and duly observing all the requirements imposed on him by statute, rules, or otherwise, with respect to the performance of his duties, or in the event of any complaint being made to the Board by any creditor or contributory in regard thereto, the Board shall inquire into the matter, and take such action thereon as may be deemed expedient. Control of Board of Trade over liquidators.

(2.) The Board may at any time require any liqui-

dator of a company which is being wound up by order of the court to answer any inquiry made by them in relation to any winding up in which the liquidator is engaged, and may, if the Board think fit, apply to the court to examine on oath the liquidator or any other person concerning the winding up,

(3.) The Board may also direct a local investigation to be made of the books and vouchers of the liquidator of any company which is being wound up by order of the court.

General
rules and
fees.

26.—(1.) The Lord Chancellor may, with the concurrence of the President of the Board of Trade, make general rules for carrying into effect the objects of this Act.

(2.) All general rules made under the foregoing provisions of this section shall be laid before Parliament within three weeks after they are made, if Parliament is then sitting, and if Parliament is not sitting, within three weeks after the beginning of the next session of Parliament, and shall be judiciously noticed, and shall have effect as if enacted by this Act.

(3.) Any general rule made under this section shall not come into operation until the expiration of one month after the rule has been made and issued.

(4.) There shall be paid in respect of the proceedings under this Act such fees as the Lord Chancellor may, with the sanction of the Treasury, direct, and the Treasury may direct by whom and in what manner the same are to be collected and accounted for, and to what account they are to be paid.

(5.) All rules made and directions given by the Lord Chancellor under the foregoing provisions of this section shall be adopted by the authority for the time being empowered to make rules for regulating the practice or procedure in the chancery court of the County Palatine of Lancaster, but as so adopted shall have effect with the substitution of the words "vice-chancellor" for the word "judge," and the word "registrar" for the words "chief clerk," and of the words "chambers of the registrar" for the words

“chambers of the judge” and “judge’s chambers,” and any directions as to the remuneration to be allowed to officers of that court in respect of proceedings under this Act shall be subject to the sanction of the Chancellor of the Duchy and County Palatine of Lancaster.

27.—(1.) The Board of Trade may, with the approval of the Treasury, appoint such additional officers as may be required by the Board for the execution of this Act, and may dismiss any person so appointed.

Officers and remuneration.

(2.) The Board of Trade, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any officer of, or person attached to, the Board of Trade, performing any duties under this Act, and may vary, increase, or diminish such remuneration as they may think fit.

(3.) The Lord Chancellor, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any person (other than an officer of the Board of Trade) performing any duties under this Act, and may vary, increase, or diminish such remuneration as he may think fit.

28.—(1.) The Treasury shall annually cause to be prepared and laid before both Houses of Parliament an account for the year ending with the thirty-first day of March, showing the receipts and expenditure during that year in respect of proceedings under this Act, whether commenced under this or any previous Act, and the provisions of section twenty-eight of the Supreme Court of Judicature Act, 1875, shall apply to the account as if the account had been required by that section.

Annual accounts of receipts and expenditure in respect of winding up proceedings. 38 & 39 Vict. c. 77.

(2.) The accounts of the Board of Trade under this Act shall be audited in such manner as the Treasury direct, and, for the purpose of the account to be laid before Parliament, the Board of Trade shall make such returns and give such information as the Treasury direct.

29.—(1.) The officers of the courts acting in the winding up of companies shall make to the Board of Trade such returns of the business of their respective

Returns by officers.

courts and offices, at such times and in such manner and form as may be prescribed, and from such returns the Board of Trade shall cause books to be prepared which shall, under the regulations of the Board, be open for public information and searches.

(2.) The Board of Trade shall also cause a general annual report of all matters, judicial and financial, within this Act to be prepared and laid before both Houses of Parliament.

Proceedings
of Board of
Trade.

30.—(1.) All documents purporting to be orders or certificates made or issued by the Board of Trade and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or any person authorised in that behalf by the President of the Board, shall be received in evidence and deemed to be such orders or certificates without further proof unless the contrary is shown.

(2.) A certificate signed by the President of the Board of Trade that any order made, certificate issued, or act done, is the order, certificate, or act of the Board of Trade, shall be conclusive evidence of the fact so certified.

Application
of Act.

31.—(1.) This Act shall not, except where it is expressed to have a more extended application, apply to any company which is being wound up in pursuance of an order made before the commencement of this Act.

(2.) For the purposes of this Act a company shall not be deemed to be wound up by order of the court if the order is to continue a winding up under the supervision of the court.

(3.) This Act shall not apply to any company unless the registered office of the company is situate in England or Wales.

Interpre-
tation of
terms.

32.—(1.) In this Act, unless the context otherwise requires,—

“The Companies Acts” means the Companies Act, 1862, and the Acts amending the same.

“General rules” means general rules made under this Act, and includes forms.

“Prescribed” means prescribed by general rules.

“Stannaries Court” means the court of the Vice-Warden of the Stannaries.

(2.) In Part IV. of the Companies Act, 1862, and in this Act the expression “the court,” when used in relation to a company shall, unless the contrary intention appears, mean the court having jurisdiction under this Act to wind up the company. 25 & 26 Vict.
c. 89.

(3.) For the purposes of this Act the expression “registered office of a company” shall mean the place which has been the registered office of the company for the greater part of the six months immediately preceding the presentation of the petition for winding up the company, and shall include, in the case of an un-registered company, any place which in pursuance of section one hundred and ninety-nine of the Companies Act, 1862,¹ is to be deemed the registered office of the company for the purpose of the winding up thereof.

¹ *Ante* p. 85.

33. The enactments mentioned in the Second Schedule to this Act are hereby repealed, as to England and Wales, to the extent appearing in the third column of that schedule. Repeal.

34. This Act shall come into operation on the first day of January one thousand eight hundred and ninety-one. Commence-
ment of Act.

35.—(1.) This Act may be cited as the Companies (Winding-up) Act, 1890. Short title.

(2.) This Act and the Companies Acts, 1862 to 1886, may be cited together as the Companies Acts, 1862 to 1890.

SCHEDULES.

Section 6.

FIRST SCHEDULE.

MEETINGS OF CREDITORS AND CONTRIBUTORIES.

(1.) The meetings of creditors and contributories shall be held within twenty-one days after the date of the winding-up order, or within such further time as the court may approve, unless a special manager has been appointed, in which case such meeting shall be held within one month from the date of such order, or within such further time as aforesaid.

(2.) The official receiver of the company shall summon the meeting by giving not less than seven days' notice of the time and place thereof in the London Gazette and in a local paper. Notice of such meeting shall also be sent by post to every person appearing by the company's books to be a creditor of the company and to every member of the company.

(3.) The official receiver shall also, as soon as practicable, send to each creditor mentioned in the company's statement of affairs, and to each person appearing from the company's books, or otherwise, to be a contributory of the company, a summary of the company's statement of affairs, including the causes of its failure, and any observations thereon which the official receiver may think fit to make; but the proceedings at any such meeting shall not be invalidated by reason of any summary or notice required by these rules not having been sent or received before the meeting.

(4.) The meeting shall be held at such place as is in the opinion of the official receiver most convenient for the majority of the creditors and contributories.

(5.) The official receiver, or some person nominated by him, shall be the chairman at the meetings.

(6.) A person shall not be entitled to vote as a creditor unless he has duly proved a debt to be due to him from the company, and the proof has been duly lodged before the time appointed for the meeting.

(7.) A creditor shall not vote in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

(8.) For the purpose of voting, a secured creditor shall, unless.

he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him, after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security, unless the court on application is satisfied that the omission to value the security has arisen from inadvertence.

(9.) A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the company, and against whom a receiving order in bankruptcy has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

(10.) It shall be competent to the official receiver, or to the liquidator, within twenty-eight days after a proof estimating the value of a security as aforesaid had been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated, with an addition thereto of twenty per centum. Provided, that where a creditor has put a value on such security, he may, at any time before he has been required to give up such security as aforesaid, correct such valuation by a new proof, and deduct such new value from his debt, but in that case such addition of twenty per centum shall not be made if the liquidator requires the security to be given up.

(11.) The chairman of the meeting shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the court. If he is in doubt whether the proof of a creditor should be admitted or rejected he shall mark the proof as objected to, and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

(12.) A creditor or a contributory may vote either in person or by proxy.

(13.) Every instrument of proxy shall be in the prescribed form, and shall be issued by an official receiver, or by the liquidator of the company, and every written part thereof shall be in the handwriting of the person giving the proxy, or of any manager or clerk or other person in his regular employment, or of a commissioner to administer oaths in the Supreme Court of Judicature in England.

(14.) General and special forms of proxy shall be sent to the creditors and contributories with the notice summoning the meeting, and neither the name nor description of the official receiver or of any other person shall be printed or inserted in the body of any instrument of proxy before it is so sent.

(15.) A creditor or a contributory may give a general proxy to his manager or clerk, or any other person in his regular employment. In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor or contributory.

(16.) A creditor or a contributory may give a special proxy to any person to vote at any specified meeting, or adjournment thereof—

(a) for or against the appointment or continuance in office of any specified person as liquidator or member of the committee of inspection, and

(b) on all questions relating to any matter other than those above referred to and arising at any specified meeting or adjournment thereof.

(17.) A proxy shall not be used unless it is deposited with the official receiver before the meeting at which it is to be used.

(18.) Where it appears to the satisfaction of the court that any solicitation has been used by or on behalf of a liquidator in obtaining proxies or in procuring the appointment of liquidator, except by the direction of a meeting of creditors or contributories, the court shall have power, if it think fit, to order that no remuneration shall be allowed to the person by whom or on whose behalf such solicitation may have been exercised, notwithstanding any resolution of the committee of inspection or of the creditors or contributories to the contrary.

(19.) A creditor or a contributory may appoint the official receiver to act in manner prescribed as his general or special proxy.

(20.) The chairman of the meeting may, with the consent of the meeting, adjourn the meeting from time to time and from place to place.

(21.) A meeting shall not be competent to act for any purpose except the election of a chairman, the proving of debts, and the adjournment of the meeting, unless there are present or represented thereat, at least three creditors or contributories, or all the creditors or contributories if their number does not exceed three.

(22.) If within half an hour from the time appointed for the meeting a quorum of creditors or contributories is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other day as the chairman may appoint, not being less than seven or more than twenty-one days.

(23.) The chairman of the meeting shall cause minutes of the proceedings at the meeting to be drawn up, and fairly entered in a book kept for that purpose, and the minutes shall be signed by him or by the chairman of the next ensuing meeting.

(24.) No person acting either under a general or a special proxy shall vote in favour of any resolution which would directly

or indirectly place himself, his partner or employer, in a position to receive any remuneration out of the estate of the company otherwise than as a creditor rateably with the other creditors of the company: Provided that where any person holds special proxies to vote for an application to the court in favour of the appointment of himself as liquidator he may use the said proxies and vote accordingly.

SECOND SCHEDULE.

Section 31.

ENACTMENTS REPEALED AS TO ENGLAND AND WALES.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
25 & 26 Vict. c. 89. - -	The Companies Act, 1862	Section eighty-one. In section ninety-two the words "The court "shall determine "whether any and "what security is to be "given by any official "liquidator on his "appointment." Section ninety-seven. Section one hundred and sixty-five.
30 & 31 Vict. c. 131. -	The Companies Act, 1867	Sections forty-one to forty-six.

THE DIRECTORS LIABILITY ACT, 1890.

(53 & 54 VICTORIA, CHAPTER 64.)

Short title.

1. This Act may be cited as the Directors Liability Act, 1890.

Construc-
tion.

2. This Act shall be construed as one with the Companies Acts, 1862 to 1890.

Liability
for state-
ments in
prospectus.

3.—(1.) Where after the passing of this Act a prospectus or notice invites persons to subscribe for shares in or debentures or debenture stock of a company, every person who is a director of the company at the time of the issue of the prospectus or notice, and every person who having authorised such naming of him is named in the prospectus or notice as a director of the company or as having agreed to become a director of the company either immediately or after an interval of time, and every promoter of the company, and every person who has authorised the issue of the prospectus or notice, shall be liable to pay compensation to all persons who shall subscribe for any shares, debentures, or debenture stock on the faith of such prospectus or notice for the loss or damage they may have sustained by reason of any untrue statement in the prospectus or notice, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—

(a) With respect to every such untrue statement not purporting to be made on the authority of an expert, or of a public official document or

statement, that he had reasonable ground to believe, and did up to the time of the allotment of the shares, debentures, or debenture stock, as the case may be, believe, that the statement was true; and

- (b) With respect to every such untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an engineer, valuer, accountant, or other expert, that it fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of or extract from the report or valuation. Provided always, that notwithstanding that such untrue statement fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of an extract from the report or valuation, such director, person named, promoter, or other person, who authorised the issue of the prospectus or notice as aforesaid, shall be liable to pay compensation as aforesaid if it be proved that he had no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it; and

- (c) With respect to every such untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of such statement or copy of or extract from such document,

or unless it is proved that having consented to become a director of the company he withdrew his consent before the issue of the prospectus or notice, and that the prospectus or notice was issued without his authority or consent, or that the prospectus or notice was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reason-

able public notice that it was so issued without his knowledge or consent, or that after the issue of such prospectus or notice and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and caused reasonable public notice of such withdrawal, and of the reason therefor, to be given.

(2.) A promoter in this section means a promoter who was a party to the preparation of the prospectus or notice, or of the portion thereof containing such untrue statement, but shall not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company.

(3.) Where any company existing at the passing of this Act, which has issued shares or debentures, shall be desirous of obtaining further capital by subscriptions for shares or debentures, and for that purpose shall issue a prospectus or notice, no director of such company shall be liable in respect of any statement therein, unless he shall have authorised the issue of such prospectus or notice, or have adopted or ratified the same.

(4.) In this section the word "expert" includes any person whose profession gives authority to a statement made by him.

Indemnity
where name
of person
has been
improperly
inserted as
a director.

4. Where any such prospectus or notice as aforesaid contains the name of a person as a director of the company, or as having agreed to become a director thereof, and such person has not consented to become a director, or has withdrawn his consent before the issue of such prospectus or notice, and has not authorised or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus or notice was issued, and any other person who authorised the issue of such prospectus or notice shall be liable to indemnify the person named as a director of the company, as having agreed to become a director thereof as aforesaid, against all damages, costs, charges, and expenses to which he

may be made liable by reason of his name having been inserted in the prospectus or notice, or in defending himself against any action or legal proceedings brought against him in respect thereof.

5. Every person who by reason of his being a director, or named as a director or as having agreed to become a director, or of his having authorised the issue of the prospectus or notice, has become liable to make any payment under the provisions of this Act, shall be entitled to recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment.

Contribution from co-directors, etc.

THE FORGED TRANSFERS ACT, 1891.

(54 & 55 VICTORIA, CHAPTER 43.)

Power to
make com-
pensation
for losses
from forged
transfer.

1.¹—(1.) Where a company or local authority issue or have issued shares, stock, or securities transferable by an instrument in writing or by an entry in any books or register kept by or on behalf of the company or local authority, they shall have power to make compensation by a cash payment out of their funds for any loss arising from a transfer of any such shares, stock, or securities, in pursuance of a forged transfer or of a transfer under a forged power of attorney.

(2.) Any company or local authority may, if they think fit, provide, either by fees not exceeding the rate of one shilling on every one hundred pounds transferred,² to be paid by the transferee upon the entry of the transfer in the books of the company or local authority, or by insurance, reservation of capital, accumulation of income, or in any other manner which they may resolve upon; a fund to meet claims for such compensation.

✓ (3.) For the purpose of providing such compensation any company may borrow on the security of their property, and any local authority may borrow with the like consent and on the like security and subject to the like conditions as to repayment by means of instalments or the provision of a sinking fund and otherwise as in the case of the securities in respect of which compensation is to be provided, but any money so borrowed by a local authority shall be repaid within a term not longer than five years. Any expenses incurred by a local authority in making compensation, or in the

repayment of, or the payment of interest on, or otherwise in connexion with, any loan raised as aforesaid, shall, except so far as they may be met by such fees as aforesaid, be paid out of the fund or rate on which the security in respect of which compensation is to be made is charged.

(4.) Any such company or local authority may impose such reasonable restrictions on the transfer of their shares, stock, or securities, or with respect to powers of attorney for the transfer thereof, as they may consider requisite for guarding against losses arising from forgery.

(5.) Where a company or local authority compensate a person under this Act for any loss arising from forgery, the company or local authority shall, without prejudice to any other rights or remedies, have the same rights and remedies against the person liable for the loss as the person compensated would have had.

¹ The Forged Transfers Act, 1892, Sect. 2, *post* p. 197, which explains this sub-section.

² The Forged Transfers Act, 1892, Sect. 3, *post* p. 197.

2. For the purposes of this Act—

Definitions.

The expression “company” shall mean any company incorporated by or in pursuance of any Act of Parliament, or by royal charter. “Company.”

The expression “local authority” shall mean the council of any county or municipal borough, and any authority having power to levy or require the levy of a rate the proceeds of which are applicable to public local purposes. “Local authority.”

3. This Act shall apply to any industrial, provident, friendly benefit, building, or loan society incorporated by or in pursuance of any Act of Parliament as if the society were a company. Application to industrial societies, etc.

4.—(1.) This Act shall apply to any harbour authority or conservancy authority as if the authority were a company. Application to harbour and conservancy authorities.

(2.) For the purposes of this Act the expression “harbour authority” includes all persons, being pro-

prietors of, or entrusted with the duty or invested with the power of constructing, improving, managing, regulating, maintaining, or lighting any harbour otherwise than for profit, and not being a joint stock company.

(3.) For the purposes of this Act the expression "conservancy authority" includes all persons entrusted with the duty or invested with the power of conserving, maintaining, or improving the navigation of any tidal water otherwise than for profit, and not being a joint stock company.

Application
to colonial
stock.
40 & 41 Vict.
c. 59.

5. In the case of any colonial stock to which the Colonial Stock Act, 1877, applies, the Government of the colony of which the stock forms the whole or part of the public debt may, if they think fit, by declaration under their seal or under the signature of a person authorised by them in that behalf, and in either case deposited with the Commissioners of Inland Revenue, adopt this Act, and thereupon this Act shall apply to the colonial stock as if the registrar of the Government were a company and the stock were issued by him.

Short title.

6. This Act may be cited as the Forged Transfers Act, 1891.

THE FORGED TRANSFERS ACT, 1892.

(55 & 56 VICTORIA, CHAPTER 36.)

1. This Act may be cited as the Forged Transfers Act, 1892, and this Act and the Forged Transfers Act, 1891, may be cited together as the Forged Transfers Acts, 1891 and 1892. Short title.
54 & 55 Vict.
c. 43.

2. Whereas by sub-section one¹ of section one of the Forged Transfers Act, 1891, it is provided that such company or local authority as therein mentioned "shall have power to make compensation by a cash payment out of their funds for any loss arising from the transfer of any such shares, stock, or securities in pursuance of a forged transfer, or of a transfer under a forged power of attorney," and it is expedient to remove doubts as to the application of the Act to losses and forgeries before the passing of the Act: Be it therefore enacted as follows:— Removal of
doubt as to
the opera-
tion of
54 & 55 Vict.
c. 43.

The Forged Transfers Act, 1891, shall have effect as if at the end of sub-section one of section one of that Act there were added the words "whether such loss arises, and whether the transfer or power of attorney was forged before or after the passing of this Act, and whether the person receiving such compensation, or any person through whom he claims, has or has not paid any fee or otherwise contributed to any fund out of which the compensation is paid."

¹ *Ante* p. 194.

3. Sub-section two¹ of section one of the said Act shall be read as if, after the words "on any one hundred" Amend-
ment of
54 & 55 Vict.
c. 43. s. 1 (2).

pounds transferred," were inserted the words "with a minimum charge equal to that for twenty-five pounds."

¹ *Ante* p. 194.

Provision
where one
company
takes over
shares, etc.,
of another
company.

4. Where the shares, stock, or securities of a company or local authority have by amalgamation or otherwise become the shares, stock, or securities of another company or local authority, the last-mentioned company and authority shall have the same power under the Forged Transfers Act, 1891, and this Act, as the original company or authority would have had if it had continued.

THE COMPANIES (WINDING-UP) ACT, 1893.

(56 & 57 VICTORIA, CHAPTER 58.)

1. An order for payment of money made by the court under section ten¹ of the Companies (Winding-up) Act, 1890, shall be deemed to be a final judgment within the meaning of paragraph (g) of sub-section one of section four of the Bankruptcy Act, 1883.

Effect of
order under
53 & 54 Vict.
c. 63. s. 10.
46 & 47 Vict.
c. 52.

¹ *Ante* p. 173.

2. This Act may be cited as the Companies (Winding-up) Act, 1893.

Short title.

THE COMPANIES ACT, 1898.

(61 & 62 VICTORIA, CHAPTER 26.)

Court
empowered
to grant
relief for
non-com-
pliance
with 30 & 31
Vict. c. 131.
s. 25.

1.—(1.) Whenever, before or after the commencement of this Act, any shares in the capital of any company under the Companies Acts, 1862 and 1890, credited as fully or partly paid up shall have been or may be issued for a consideration other than cash,¹ and at or before the issue of such shares no contract or no sufficient contract is filed with the Registrar of Joint Stock Companies, in compliance with section twenty-five of the Companies Act, 1867,² the company or any person interested in such shares or any of them may apply to the court for relief, and the court, if satisfied that the omission to file a contract or sufficient contract was accidental or due to inadvertence, or that for any reason it is just and equitable to grant relief, may make an order for the filing with the registrar of a sufficient contract in writing, and directing that on such contract being filed within a specified period it shall, in relation to such shares, operate as if it had been duly filed with the registrar aforesaid before the issue of such shares.

(2.) Any such application may be made in the manner in which an application to rectify the register of members may be made under section thirty-five of the Companies Act, 1862,³ and either before or after an order has been made or an effective resolution has been passed for the winding up of such company, and either before or after the commencement of any proceedings for enforcing the liability on such shares consequent on the omission aforesaid, and any such application

25 & 26 Vict.
c. 89.

shall, if not made by the company, be served on the company.

(3.) Any such order may be made on such terms and conditions as the court may think fit, and the court may make such order as to costs as it deems proper, and may direct that an office copy of the order shall be filed with the registrar aforesaid, and the order shall in all respects have full effect.

(4.) Where the court in any such case is satisfied that the filing of the requisite contract would cause delay or inconvenience, or is impracticable, it may, in lieu thereof, direct the filing of a memorandum in writing, in a form approved by the court specifying, the consideration for which the shares were issued, and may direct that on such memorandum being filed within a specified period it shall in relation to such shares operate as if it were a sufficient contract in writing within the meaning of section twenty-five of the Companies Act, 1867,⁴ and had been duly filed with the registrar aforesaid before the issue of such shares. The memorandum shall before the filing thereof be stamped with the same amount of *ad valorem* stamp duty as would be chargeable upon the requisite contract unless the contract has been produced to the registrar duly stamped, or unless the registrar is otherwise satisfied that the contract was duly stamped.

¹ The Companies Act, 1900, Sect. 7 (1) (b), *post* p. 207.

² Repealed by the Companies Act, 1900, Sect. 33, *post* p. 225.

³ *Ante* p. 15.

⁴ Repealed by the Companies Act, 1900, and *see* Sect. 7 (1) (b) of that Act, *post* p. 207.

2. The jurisdiction by the Act given to the court is not by implication to curtail or derogate from its jurisdiction to grant relief in any such case under section thirty-five of the Companies Act, 1862,¹ or otherwise.

Jurisdiction cumulative.

¹ *Ante* p. 15.

3. This Act may be cited as the Companies Act, 1898, and shall be read with the Companies Acts, 1862 to 1893.

Short title and construction.

THE COMPANIES ACT, 1900.

(63 & 64 VICTORIA, CHAPTER 48.)

Incorporation and Objects.

Conclusive-
ness of
certificate
of incor-
poration.

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 declaration¹ 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.

¹ Board of Trade form (No. 41) and fees, *post* p. 227.

Restric-
tions on
appoint-
ment or
advertis-
ement of
director.

Appointment and Qualification 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 writing¹ 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 filed² 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 list³ 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,⁴ 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.⁵

¹ Board of Trade form (No. 42) and fees, *post* p. 228.

² Fee 5s., *London Gazette*, 1st January, 1901.

³ Board of Trade form (No. 43) and fees, *post* p. 228.

⁴ Board of Trade form (No. 50) of application for certificate of incorporation of such company and fees, *post*, p. 236.

⁵ Sect. 6, *post* p. 206.

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, Qualification of director.

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.

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.

(2.) The amount so fixed and named and the whole amount aforesaid shall be reckoned exclusively of any amount payable otherwise than in cash,¹ 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.

¹ As to which, see Sect. 7 (1) (b), *post* p. 207.

5.—(1.) An allotment made by a company to an applicant in contravention of the foregoing provisions of this Act¹ shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company² and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

Effect of
irregular
allotment.

(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.

¹ Preceding Section.

² Sect. 12, *post* p. 213.

Restrictions on commencement of business.

✓ **6.**—(1.) A company shall not commence any business or exercise any borrowing powers unless—

(a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; ¹ 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, ² 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.³

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

¹ Defined in Sect. 4 (2), *ante* p. 204.

² Board of Trade form (No. 44) and fees, *post* p. 229.

³ 1st January, 1901, Sect. 35, *post* p. 225.

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—

Return as to allotments.

(a) a return¹ 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 writing² 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 return¹ 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.

¹ Board of Trade form (No. 45) and fees, *post* p. 230.

² Fee for filing 5s., *London Gazette*, 1st January, 1901.

8.—(1.) Upon any offer of shares to the public for subscription, it shall be lawful for a company to pay a

Commissions, discounts, etc.

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 association¹ and disclosed in the prospectus,² and the commission paid or agreed to be paid does not exceed the amount or rate so authorised.

¹ The Companies Act, 1862, Sect. 14, *ante* p. 6.

² Defined in Sect. 30, *post* p. 224, and *see* next Section.

V (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.

*Prospectus.*¹

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 filed² 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.

¹ Defined in Sect. 30, *post* p. 224.

² Fee 5s., *London Gazette*, 1 January, 1901.

10.¹—(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
require-
ments as to
particulars
of pro-
spectus.

- (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
- (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
- (c) the names, descriptions, and addresses of the directors or proposed directors; and
- (d) the minimum subscription² 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
- (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

- (f) the names and addresses of the vendors of any property³ 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,⁴ 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
- (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
- (h) the amount (if any) paid or payable as commission⁵ 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
- ✓ (i) the amount or estimated amount of preliminary expenses; and
- (j) the amount paid or intended to be paid to any promoter and the consideration for any such payment; and
- (k) the dates of and parties to every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected: Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract entered into

more than three years before the date of publication of the prospectus; and

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

(m) full particulars of the nature and extent of the interest (if any) of every director in the promotion of or in the property proposed to be acquired by the company, 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.

(2.) For the purposes of this section every person shall be deemed to be a vendor⁶ 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.

(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—

(a) the requirements as to the memorandum of as

sociation, 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 ;⁷ 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,⁷ 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.

(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 subsection (1) of this section no director⁸ 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.

- (8.) Nothing in this section shall limit or diminish

any liability which any person⁸ may incur under the general law apart from this section.

¹This Section replaces Sect. 38 of the Companies Act, 1867, *ante* p. 143.

²Sect. 4 (2), *ante* p. 204.

³Sub-Sects. (2) and (3), p. 211.

⁴Sect. 9 (1), *ante* p. 208.

⁵Sect. 8, *ante* p. 207.

⁶Next Sub-Section.

⁷Sect. 6, *ante* p. 206.

⁸As to liability of Directors, *see* the Directors Liability Act, 1890, *ante* p. 190.

11. A company shall not prior to the statutory meeting¹ vary the terms of a contract referred to in the prospectus, except subject to the approval of the statutory meeting.

Restriction on alteration of terms mentioned in prospectus.

¹Next Section, Sub-Sect. 2 (e).

Statutory Meeting.

12.¹—(1.) Every company limited by shares and registered after the commencement² of this Act 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,³ hold a general meeting of the members of the company, which shall be called the statutory meeting.

First statutory meeting of company.

(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 report⁴ 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, auditors⁵ (if any), manager (if any), and secretary of the company; and
- (e) the particulars of any contract, the modification⁶ of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

(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,⁵ if any, of the company.

(4.) The directors shall cause a copy of the report,⁴ 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.

(8.) If default is made in filing such report⁴ 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,⁷ 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.

¹ This Section replaces Sect. 39 of the Companies Act, 1867, *ante* p. 143.

² 1st January, 1901, *see* Sect. 35, *post* p. 225.

³ Sect. 6, *ante* p. 206.

⁴ Board of Trade form (No. 46) and fees, *post* pp. 231, 232.

⁵ Sect. 21 (4), *post* p. 221.

⁶ Sect. 11, *ante* p. 213.

⁷ The Companies Act, 1862, Sect. 82, *ante* p. 36.

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

Extra-ordinary
general
meeting.

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 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.

(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.

Mortgages and Charges.

Registra-
tion of mort-
gages and
charges.

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

- (a) a mortgage or charge for the purpose of securing any issue of debentures;¹ 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,

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 Act² 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.

(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.

(3.) The registrar shall keep, with respect to each company, a register in the prescribed³ form of all such mortgages and charges created by the company after the commencement of this Act, and requiring registration under this section, and shall, on payment of the prescribed fee,⁴ 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.

(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.

(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 effect the validity of the debentures issued.

(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.

(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;⁵ but any such mortgage or charge may be registered on the application of any person interested therein.

(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,⁴ 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.

¹ Including debenture stock, Sect. 30, *post* p. 225.

² Sub-Sect. 3 and following Sub-Sects. of this Section.

³ By Board of Trade, Sect. 30, *post* p. 224.

⁴ See for fees prescribed under this Sect., *post* p. 225.

⁵ Board of Trade form (No. 47), *post* p. 224.

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,¹ 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.

¹ Twenty-one days after creation of charge, Sect. 14 (1), *ante* p. 216.

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 ¹ be entered on the register, and shall if required furnish the company with a copy ² thereof. Entry of satisfaction.

¹ Board of Trade form (No. 49) and fees, *post* p. 235.

² On fee of 5s., *London Gazette*, 1st January, 1901.

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. Index to registers of mortgages and charges.

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,¹ he shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding one hundred pounds. Penalties.

¹ As required by Sect. 14 (6), *ante* p. 217.

Annual Summary.

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

19.—(1.) The summary mentioned in section twenty-six of the Companies Act, 1862,¹ 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;² and
- (b) the names and addresses of the persons who are the directors of the company³ at the date of the summary.

(2.) The list and summary mentioned in the said section twenty-six must be signed by the manager or by the secretary of the company.

¹ *Ante* p. 12.

² Under Sect. 14, *ante* p. 216.

³ Board of Trade form (No. 6B), *post* p. 226.

Amend-
ment of 25 &
26 Vict. c.
89. ss. 45, 46.

20. Sections forty-five and forty-six of the Companies Act, 1862,¹ 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.

¹ *Ante* p. 21.

*Audit.*¹

Appoint-
ment 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.

¹ As to Banking Companies, *see* the Companies Act, 1879, Sect. 7, *ante* p. 151, also Table A, 83 to 94, *ante* pp. 104, 105.

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,¹ or to fill any casual vacancy,² may be fixed by the directors.

Remuneration of auditors.

¹ Sect. 21 (4).

² Sect. 21 (5).

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

Rights and duties of auditors.

affairs as shown by the books of the company; and such report shall be read before the company in general meeting.

Winding up.

Application
of 33 & 34
Vict. c. 104.
s. 2.

24. The provisions of section two¹ of the Joint Stock Companies Arrangement Act, 1870, shall apply not only as between the company and the creditors, or any class thereof, but as between the company and the members, or any class thereof.

¹ *Ante* p. 145.

Amendment
of 25 & 26
Vict. c. 89.
s. 138, as to
applica-
tions.

25. In a voluntary winding up an application under section one hundred and thirty-eight¹ of the Companies Act, 1862, may be made by any creditor of the company.

¹ *Ante* p. 58.

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 section seven¹ 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-section five² of the said section seven, 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”.

¹ *Ante* p. 156.

² *Ante* p. 157.

Companies limited by Guarantee.¹

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. ✓
Provisions
as to com-
panies
limited by
guarantee.

(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.

(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.

¹The Companies Act, 1862, Sect. 9, *ante* p. 4; Sect. 14, p. 6; Sect. 90, p. 38; Sect. 134, p. 57, and Form C, p. 116 *et seq.*

False Statements.

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 Penalty for
false state-
ment.

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.

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, 1862,¹ 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, 1862,² as to reconvert such stock into paid-up shares of any denomination.

¹ Sect. 12 thereof, *ante* p. 5.

² Sect. 50 thereof, *ante* p. 22.

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

The expression "debenture" includes debenture stock;

Other expressions¹ have the same meanings as in the Companies Act, 1862.

¹ For these, *see* in Index under "Definition".

31. This Act shall, except as otherwise expressed, Application of Act. apply to every company, whether formed before or after the commencement of this 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 Construction of 53 & 54 Vict. c. 63. and of Act. as extending the Companies (Winding-up) Act, 1890, to Scotland or Ireland.

33.—(1.) Section twenty-five¹ 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. Repeal.

(2.) No proceedings under section twenty-five¹ of the Companies Act, 1867, shall be commenced after the commencement of this Act.

¹ *Ante* p. 139.

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

(1.) "Solicitor of the High Court" shall mean enrolled law agent;

(2.) The provisions of this Act with respect to the registration of mortgages and charges shall not apply to companies registered in Scotland;

(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.

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

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

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.

TABLE OF FORMS directed by the **BOARD OF TRADE** to be used for the purposes of the Companies Act, 1900, together with the fees * relating thereto, published in the *London Gazette*, 1st January, 1901.

No. of Certificate FORM No. 6B.

Names and addresses of the persons who are the Directors of the Limited, on the day of 19

(Pursuant to Sect. 19 (1) (b) of 63 and 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.

* By a Treasury order, dated 31st January, 1901, all fees payable to the Registrar of Joint Stock Companies are to be collected by means of impressed stamps, except in the case of copies of registered documents supplied to the public, to which adhesive stamps are to be affixed.

No. of Certificate

FORM No. 9.

THE COMPANIES ACTS, 1862 to 1900.

Copy of Register of Directors or Managers of the
Company,

Pursuant to Sects. 45 and 46 of 25 and 26 Vict., c. 89, and
Sect. 20 of 63 and 64 Vict., c. 48.

This Notice should be signed by the Secretary of the Com-
pany.

Presented for filing by

Copy of the Register of Directors or Managers of the
Company, , and of any changes therein.

Names.	Addresses.	Occupations.	1 Changes.
			(Signature)

¹ 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.

Fee on presentation for filing, 5s.

No. of Certificate

FORM No. 41.

COMPANIES ACTS, 1862 to 1900.

DECLARATION of Compliance with the requisitions of the
Companies Acts, made pursuant to Sect. 1 (2) of the Companies
Act, 1900 (63 and 64 Vict. Ch. 48) on behalf of a Company pro-
posed to be registered as the

Presented for filing by

I of do solemnly and sincerely declare that
I am¹ , of the Limited, and that all
the requisitions of the Companies Acts in respect of matters
precedent to the registration of the said Company and incidental

¹ Here insert : " A Solicitor of the High Court engaged in the
formation " ; or " a Director or Secretary named in the Articles
of Association " .

thereto have been complied with. And I make this solemn Declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act, 1835.

Declared at the day of one thousand
nine hundred and before me, , a Commissioner
for Oaths.

Fee on presentation for filing, 5s.

No. of Certificate

FORM No. 42.

COMPANIES ACTS, 1862 to 1900.

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 and 64 Vict. Ch. 48).

Presented for filing by

To the Registrar of Joint Stock Companies :—
¹ , the undersigned, hereby testify ² consent
to act as director of the Limited, pursuant to S. 2 (1)
(i) of the Companies Act, 1900.

³ Signature.	Address.	Description.

Dated this of 190 .

¹ Here insert "I" or "We".

² Here insert "My" or "Our".

³ If a director signs by "his agent authorised in writing," the authority must be produced and a copy filed.

Fee on presentation for filing with Registrar, 5s.

No. of Certificate

FORM No. 43.

COMPANIES ACTS, 1862 to 1900.

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 and 64 Vict. c. 48).

Presented for filing by

To the Registrar of Joint Stock Companies :—
¹ , the undersigned, hereby give you notice, pur-
suant to Sect. 2 (2) of the Companies Act, 1900, that the follow-

¹ Here insert "I" or "We".

ing persons have consented to be Directors of the Limited.

Name.	Address.	Description.

Signature, Address, and Description of Applicant for Registration

Dated this day of 190 .

Fee on presentation for filing, 5s.

No. of Certificate

FORM No. 44.

COMPANIES ACTS, 1862 to 1900.

DECLARATION made on behalf of the Limited, that the conditions of Sect. 6 (1) of the Companies Act, 1900 (63 and 64 Vict. c. 48), have been complied with.

Presented for filing by .

I of being ¹ 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 £ .

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 £ .

That shares held subject to the payment of the whole amount thereof in cash have been allotted to the amount of £ .

That every director of the Company has paid to the Company on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription.

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

Declared at the day of one thousand nine hundred and before me, ,
a Commissioner for Oaths.

Fee on presentation for filing, 5s.

¹ Insert here "the Secretary," or "a Director".

No. of Certificate .

FORM No. 45.

COMPANIES ACTS, 1862 to 1900.

RETURN OF ALLOTMENTS from the of 19 ,
to the of 19 , 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.)

¹ Number of the shares allotted payable in cash
 Nominal amount of the Shares so allotted
 Amount paid or due and payable on each such Share ...
 Number of Shares allotted for a consideration other than cash
 Nominal amount of the Shares so allotted
 Amount to be treated as paid on each such Share
 The consideration for which such Shares have been allotted is as follows :—

Presented for filing by .

¹ Distinguish between Preference, Ordinary, etc.

Names, Addresses, and Descriptions of the Allottees.

Surname.	Christian Name.	Address.	Description.	Number of Shares allotted.

Fee on presentation for filing, 5s.

No. of Certificate .

FORM No. 46.

COMPANIES ACTS, 1862 to 1900.

REPORT pursuant to Sect. 12 of the Companies Act, 1900 (63 and 64 Vict. c. 48) of the Limited, to be certified by not less than two Directors, or by one Director or Manager whenever there is only one, and forwarded at least seven days before the Statutory Meeting to every Member of the Company; and to be filed with the Registrar forthwith after the sending thereof to the Members of the Company (Sect. 12 (4)).

NOTE.—This form has been provided for the purpose of indicating the nature of the information that 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.

(a) The total number of shares allotted is _____ of which
are allotted ¹ _____ in consideration of
and upon each of the remaining shares the sum of
has been paid in cash.

(b) The total amount of cash received by the Company in
respect of the shares issued wholly for cash is £ _____ and on
the shares issued partly for cash is £ _____.

(c) The receipts and payments of the Company on capital
account to the date of this report are as follows :—

¹ Here state as “fully paid up” or “paid up otherwise than
in cash to the extent of _____ per share”.

Particulars of Receipts.				Particulars of Payments.			

Presented for filing by _____

The following is an account (or estimate) of the preliminary
expenses of the Company.

--	--	--	--

(d) Names, addresses, and descriptions of the Directors, Auditors (if any), Manager (if any), and Secretary of the Company.

DIRECTORS.

Surname.	Christian Name.	Address.	Description.

AUDITORS.

--	--	--	--

MANAGER.

--	--	--	--

SECRETARY.

--	--	--	--

(e) 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.

We hereby certify this report.

} Two
Directors.

We hereby certify that so much of this report as 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 is correct.

} Auditors.

Fee on presentation for filing, 5s.

No. of Certificate .

FORM No. 47.

COMPANIES ACTS, 1862 to 1900.

PARTICULARS to be supplied to the Registrar pursuant to Sect. 14 (7) of the Companies Act, 1900 (63 and 64 Vict., c. 48), of a mortgage or charge created by the Limited, and being:—

- ¹(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.

¹Strike out the sub-heads (a), (b), (c) or (d) which do not apply.

{NOTE.—The original instrument evidencing the mortgage or 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 on this form.)

Presented for filing by .

Limited.

Particulars of a Mortgage or Charge Created by the

(1) Date of creation of the Mortgage or Charge ; or, in the case of a series of Debentures, the date of the Covering Deed (if any) 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, 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 (with Addresses and Descriptions) of the Mortgagees or persons entitled to the charge ; or, in the case of a series of Debentures, the names, etc., of the Trustees (if any) for the Debenture-holders.	(6) Where more than one issue of Debentures in same series.
					Total amount previously issued of this series (if any).
					Amount of present issue.
					Date of present issue.
					Signature

Fees under Sect. 14 for registering any mortgage or charge created by a Company :—

Where the amount of the mortgage or charge does not exceed £200, 10s.

Where it does exceed £200, £1.

Certificate of registration of any mortgage or charge after the first Certificate, 5s.

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 6d. on each subsequent debenture of the series.

For inspecting the register of mortgages and charges :—

For each inspection, 1s.

No. of Certificate

FORM No. 49

COMPANIES ACTS, 1862 to 1900.

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 and 64 Vict., c. 48).

Presented for filing by _____

To the Registrar of Joint Stock Companies.

The _____ Limited hereby gives notice that the¹
 _____ dated the _____ day of _____ one thousand
 nine hundred and _____, and created by the Company for
 securing the sum of £ _____ was satisfied to the extent
 of £ _____ on the _____ of _____ 190 _____.

In witness whereof the common seal of the Company was
 hereunto affixed the _____ day of _____ one thousand nine
 hundred and _____ in the presence of

} Directors.

Secretary.

(L.S.)

¹ Insert here "mortgage" or "charge," "debentures" or "debenture stock," as the case may be.

Fee on presentation for filing, 5s.
 Fee on furnishing Company with copy, 5s.

Certificate No. .

FORM No. 50.

COMPANIES ACTS, 1862 TO 1900.

COMPANY LIMITED BY SHARES.

APPLICATION for a 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 , 190 .

Witness to the above signatures—

Fee on presentation for filing, 5s.

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