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SHAREHOLDERS' & DIRECTORS'
LEGAL COMPANION

FRANCIS B. PALMER.

Cw. U.K.

X⁵²⁵

P173f.3 THIRD EDITION.

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THE
SHAREHOLDERS' AND DIRECTORS'
LEGAL COMPANION:

A MANUAL OF
EVERY DAY LAW AND PRACTICE,
FOR
PROMOTERS, SHAREHOLDERS, DIRECTORS, SECRETARIES,
CREDITORS, AND SOLICITORS OF COMPANIES,
Under the Companies Acts, 1862 to 1880.

WITH AN APPENDIX,
ON THE CONVERSION OF BUSINESS CONCERNS INTO PRIVATE
COMPANIES.

BY
FRANCIS B. PALMER,
OF THE INNER TEMPLE, ESQ., BARRISTER-AT-LAW, AUTHOR OF
"COMPANY PRECEDENTS."

THIRD EDITION.



LONDON:
STEVENS AND SONS, 119, CHANCERY LANE,
Law Publishers and Booksellers.
1882.



PREFACE TO THIRD EDITION.

THE object of this work, as may be gathered from the title page, is to supply promoters, shareholders, directors, secretaries, creditors, and others with information upon the many legal and practical questions which commonly arise in connection with companies.

In England alone there are many thousand companies formed under the Act of 1862, now carrying on business. The capital invested in these companies amounts to several hundred millions sterling,* and the number of such companies increases at the rate of more than a thousand per annum.

Moreover, Acts in terms almost identical with those of the Companies Act, 1862, are in force in India, Australia, New Zealand, and Canada, and large numbers of limited companies have been and are from time to time being formed under those Acts.

In these circumstances, it is obvious that the number of persons connected with and the interests involved in, such companies must be very large.

The Author has made extensive additions in the present edition. In particular an Appendix has been added on the conversion of business concerns into Private Companies; a subject which day by day is attracting more attention.

The following abbreviations are used;—

The Companies Act, 1862 (25 & 26 Vict. c. 89), is referred to as the Act of 1862.

The Companies Act, 1867 (30 & 31 Vict. c. 131), is referred to as the Act of 1867.

The Act 42 & 43 Vict. c. 76, is referred to as the Companies Act, 1879.

The Act 43 & 44 Vict. c. 19, is referred to as the Companies Act, 1880.

The second edition of the Author's work (intituled "Company Precedents for use in relation to companies under the Companies Acts, 1862 to 1880," is referred to as "Company Precedents."

FRANCIS B. PALMER.

5, NEW SQUARE, LINCOLN'S INN,
December, 1881.

* See Appendix to the Report of the Select Committee of the House of Commons on the Companies Acts, 1862, 1867, Session 1877.

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THE SHAREHOLDERS' AND DIRECTORS' LEGAL COMPANION.

PRELIMINARY.

PART I. of the Companies Act, 1862, permits of the formation of companies of three kinds: (1) limited by shares, (2) limited by guarantee, (3) unlimited.*

In this work it is intended to deal for the most part with companies limited by shares, and accordingly in the following pages, except where otherwise expressed,

“a company” means *a company limited by shares*.

A company is a body corporate, *i.e.*, an artificial person created by law. It comes into existence upon the issue by the Registrar of Joint Stock Companies of a certificate stating its name, and that it is incorporated, and it continues to exist until it has been dissolved in accordance with the provisions of the Act of 1862.

Every company formed under the Act of 1862 has its “Memorandum of Association,” which upon its formation is registered with the Registrar of Joint Stock Companies, and remains in his custody: it states, among other things, the name of the company, its objects, and the amount of its capital.

* As to unlimited companies, see *infra*, p. 97. As to companies limited by guarantee, see *infra*, pp. 93, 95.

As to the registration of chambers of commerce, and social, charitable, and benevolent societies without the word “Limited,” see *infra*, p. 95.

As to the mode of forming a company under Part I. of the Act, see *infra*, p. 78.

As to the formation of a company by deed of settlement and registration under Part VII. of the Act, see *infra*, p. 167.

In addition to this document, most companies so formed have "Articles of Association" (also registered), which contain a series of rules for the regulation of the business, and the determination of the respective rights, duties, and powers of the shareholders, directors, and officers of the company. Those companies so formed which have not got articles of association are governed by the regulations contained in the Table marked A in the First Schedule to the Companies Act, 1862. A copy of Table A will be found *infra*, p. 115.

Where a company has articles of association, they generally contain a clause declaring that "Table A shall not apply to this company," and accordingly in such case Table A has no application. But in other cases the articles of association only contain a small number of rules, and provide, that subject to these rules Table A shall apply, or at any rate do not exclude Table A. In such cases the company is governed by its articles, so far as they go, and in other matters by Table A, for Table A applies so far as it is not expressly excluded. In the following pages the expression

"THE REGULATIONS"

of the company, means the regulations which in each case may happen to be applicable, whether the same are (1) articles of association entirely excluding Table A; or (2) the regulations contained in Table A, where that Table is not excluded; or (3) articles only in part excluding Table A, together with what is not excluded.

Sections 19 and 54 of the Act of 1862 require that a copy of the memorandum and articles of association, and of any special resolutions that may have been passed, 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. In default, the company incurs a penalty for each offence, not exceeding one pound. Every shareholder ought to procure a copy of the memorandum and articles of association of his company, for in the words of the Master of the Rolls "he must be taken to have read them, and must be taken to have understood them."

As to altering the regulations, see *infra*, p. 58.

HOW A PERSON MAY BECOME A SHAREHOLDER.

The expressions "a shareholder in a company," and "a member of a company," are synonymous in the case of a company limited by shares. Every shareholder is a member, and *vice versa*.

A person may become a shareholder in three ways:—

1. By subscribing [*i.e.*, signing] the memorandum of association.

2. By agreeing with the company to take a share or shares.

3. By taking a transfer of a share or shares.

As to (1). A form of memorandum will be found *infra*, p. 153, and it will be seen that the subscribers agree to take the number of shares set opposite their respective names. This document having been registered, each of the subscribers is legally entitled to the number of shares set opposite his name, and he may call on the directors to issue to him certificates of title to such shares, and in the absence of an agreement to the contrary, duly filed with the Registrar [*supra*, p. 10] before the issue of the shares, he is bound to pay for the shares in cash when called on to do so.

As to (2). This is the mode in which most persons become shareholders. The agreement is generally come to as follows:—

(a) The applicant signs and sends a letter in these terms:—

To the directors of the — Company, Limited.

Gentlemen,—Having paid to the company's credit at the — Bank the sum of —, being a deposit of — per share on [10] shares in the above company, I hereby request you to allot me that number of shares; and I agree to accept the same or any less number that may be allotted to me.

(b) The company (*i.e.*, the directors acting on its behalf) allots shares in accordance with the application, and notice is sent as follows:—

The — Company, Limited.

Sir,—I am directed to inform you that in compliance with your application, dated, &c., 10 shares of £10 each in the above company have been allotted to you.

I am, &c.,

— Secretary.

Such letter requires a 1*d.* impressed stamp.

The applicant is not bound until the letter giving him

notice of allotment is posted. Up to that time he may withdraw his application, and if he does he will be entitled to have the deposit returned.

This is not the only way in which the agreement may be come to, *e.g.* : If the secretary, or a director, or some other person authorised to act on behalf of the company, offers a person shares, and such person accepts the offer, he is bound.

As to (3). Many persons acquire shares by purchasing them from shareholders, either directly or through the intervention of a broker. In such case the vendor in due course executes a transfer of the shares to the purchaser. See form of such a document, Table A, cl. 9; and the transfer having been presented to the directors for registration will be registered by them, and the name of the transferee entered in the register of members as the holder of the shares specified in the transfer, and a certificate of title will be issued to him. The same course is taken where the transfer is made gratis. See, further, as to transfer, *infra*, p. 7, *et seq.*

Any person may become a shareholder, but the directors may refuse to admit a person of unsound mind, an infant, a married woman not contracting in respect of her separate estate, or a person otherwise incapacitated.

A married woman may, however, become a shareholder in her own right, so as to bind her separate estate, where the contract to take the shares is made on the credit of her separate estate, provided that the regulations do not exclude married women from being shareholders.

In such case, in the letter of application for the shares, the married woman should say, "I make this application upon the credit of and so as to bind my separate estate."

See also section 4 of the Married Women's Property Act, 1870 (33 & 34 Vict. c. 93), *infra*, p. 14.

A firm may become a member, and so may a company or other body corporate, provided the taking of shares is within its objects. In the case of a company under the Act of 1862, this depends on the objects clause of the memorandum. If that expressly or impliedly authorises the company to take and hold shares in another company, it will be legal so to do. See, further, Company Precedents, p. 107.

The Court, if applied to, will enforce the specific performance of a valid contract to take shares.

CERTIFICATES OF TITLE.

The regulations of a company almost always give a shareholder the right to call upon the directors to issue to him a certificate of title to his share. See Table A, cl. 2. See also sec. 31 of the Act of 1862. The document is usually in these terms:—

The — Company, Limited.

This is to certify that A. B. of — is the holder of — shares numbered — to — inclusive in the above named Company subject to the articles of association thereof, and that the sum of £— has been paid up upon each of the said shares.

Given under the common seal of the said Company this — day of —.

The common seal of the Company was hereunto affixed in the presence of

} *Directors.*

Countersigned _____ *Secretary.*



For other forms see Company Precedents, p. 214.

These documents are a great convenience to shareholders, and persons dealing with them, for the company is bound by its statement in the certificate, and if the certificate is untrue, whether intentionally or accidentally, any person acting on it (*e.g.*, advancing money) can compel the company to pay any damage incurred.

The convenience of a certificate is that the shareholder who wants to sell or mortgage his share can at once produce it as evidence of his title, and of the amount paid up. There is no need, as in the case of real and leasehold property, to go into a history of the property, and consider who were the previous owners. The certificate is sufficient. As, however, the regulations very commonly give the company a lien (*infra*, p. 18), and restrict the right of transfer (*infra*, p. 7), and as a transfer may have been barred by order of the Court or otherwise (*infra*, p. 11), a purchaser or mortgagee before parting with his money will do well to ascertain that there is no difficulty as to transfer. The certificate requires no stamp.

LIABILITY OF A SHAREHOLDER.

A shareholder is liable to pay up the full nominal amount of each of his shares, or so much thereof as shall not have been paid up by a previous holder.

Thus, if A. applies for and accepts an allotment of say ten shares of £10 each, he will be liable when called on to pay the company £10 per share, or the balance after allowing for what he paid on application and allotment. As to calls, see, further, *infra*, p. 15. Suppose A. pays up £5 per share, and then transfers the shares to B. B. then becomes liable when called on to pay the remaining £5 per share. If A. had paid up £10 per share, then B. would not be liable to pay anything.

Shares may be paid for by the original taker, either in cash or with the consent of the company in property, or services or money's worth. Thus, suppose that A. agrees to sell to a company land, in consideration of the issue to him of say 100 £10 shares to be deemed fully paid up. In this case A. is considered to have paid for the shares in land, and accordingly he is not liable to pay any part of the nominal amount in cash, nor will his transferee be under any liability. Again, suppose that the agreement was that, as the consideration for the sale, the company should issue to A. 100 £10 shares to be deemed paid up to the extent of say £5 per share. In this case A. would only be liable to pay the balance in cash when called for, namely, £5 per share. The consideration for such an agreement may be property of any kind, which the company has power to acquire, or services to be rendered to the company, or other valuable consideration, *e.g.*, the surrender of a debenture, the release of a debt, &c.

But it must be borne in mind that the Companies Act, 1867, sec. 25, provides that:—

“Every share in a 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.”

Accordingly, whenever an agreement is made for the issue of shares for a consideration other than cash, it must be

put into writing, and filed with the Registrar. It should be filed before the shares are allotted, and the company should see to the filing, otherwise it will be liable to an action for damages. The contract itself must be filed; not a copy. Hence such contracts are usually executed in duplicate.

TRANSFER OF SHARES ON SALE OR OTHERWISE.

A shareholder has a right to transfer his shares, or any of them, to any other person, upon complying with the rules as to transfer contained in the company's regulations.

Transfers are generally made for the purpose of giving effect to an agreement for sale, but sometimes they are made gratis, *e.g.*, by way of gift or to a trustee for the transferee. A transfer of shares to a trustee is generally made with a view to increasing the votes of the transferee (see *infra*, p. 53), or on a settlement, or mortgage, or in the case of a small company in order to keep the number of members up to seven or more.

The regulations generally provide that no transfer shall be made while any call is due on the shares. See Table A, sec. 10. "Due" here means due and payable.

The regulations generally restrict more or less the right of transfer. Thus, they very commonly provide that no share (*or* no share not fully paid up) shall be transferred to any person of whom the directors do not approve. The object of such rules is to prevent the introduction of insolvent or otherwise objectionable shareholders, and where the directors are acting *bonâ fide*, they may refuse to register a transfer without giving their reasons for objecting to the transferee. But if want of *bona fides* can be shown, *e.g.*, if the directors admit, or it is otherwise proved, that their real reason is something outside the objects of the rule, *e.g.*, a desire to prevent the shareholder from distributing his shares so as to increase his voting power, or to prevent him altogether from parting with his shares, or to compel him to assent to some contract or resolution—the Court will intervene, and compel the registration of the transfer.

The regulations restricting the right of transfer are strictly construed, and so far as they do not restrict the right, the shareholder has an absolute right to transfer.

The instrument of transfer must be in such form, if any, as the regulations prescribe. They generally prescribe a form similar to that in Table A, cl. 8. Sometimes the regulations say that the transfer must be by deed. In such a case a seal must be affixed after each name, and an attestation clause "signed, sealed and delivered by the said —, in the presence of —, of —," subjoined. But Table A only requires the transfer to be in writing, and companies which require a deed are in the minority. Where no seal is requisite, the fact that a transfer otherwise regular is under seal will not invalidate it.

The "common form," which can be purchased at the stationer's and elsewhere, is not quite in terms of the form given in Table A, but the directors may properly pass it; and, perhaps, they could be compelled. However, it is always well to follow, as nearly as may be, the form, if any, prescribed by the regulations. An instrument of transfer must be stamped with *ad valorem* duty as below. It may be stamped either before or after execution: in the latter case within two months after date without payment of penalty.

There is a decided advantage in not requiring a deed. See *infra*, p. 10.

The stamp duty is as follows:—

Where the amount or value of the consideration does not exceed £5.		£	s.	d.
Exceeds £5 but does not exceed £10		0	1	0
" 10	" 15	0	1	6
" 15	" 20	0	2	0
" 20	" 25	0	2	6
" 25	" 50	0	5	0
" 50	" 75	0	7	6
" 75	" 100	0	10	0
" 100	" 125	0	12	6
" 125	" 150	0	15	0
" 150	" 175	0	17	6
" 175	" 200	1	0	0
" 200	" 225	1	2	6
" 225	" 250	1	5	0
" 250	" 275	1	7	6
" 275	" 300	1	10	0
" 300	"			
For every £50 and also for any fractional part of £50 of such amount or value		0	5	0

The regulations usually provide [see Table A, clause 8] that the transferror 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.

This rule should be borne in mind by a transferror, and he should see that there is no delay in registering the transfer, else he may find himself liable to pay calls, &c. The transferee also is interested in seeing that the transfer is duly effected, for in the meantime the shares may be forfeited or transferred to someone else, or lost by the bankruptcy of the vendor.

Where a person is about to take a transfer of shares, stated by the vendor to be wholly or in part paid up, he should require evidence of the fact. The certificates of title to the shares generally state the amount paid up, but if they do not, the intending transferee should write to the company, *i.e.*, to the secretary or the directors, saying that he has agreed to purchase the shares and is about to take a transfer thereof, and desires to know how much per share has been paid up. If the answer is satisfactory, the transfer may be accepted. If the company declines to answer, the register should be examined. See *infra*, p. 71.

The directors should be careful about transfers, for if they register a forged transfer, and issue a certificate to the transferee, and any person acts on this certificate, the company will be liable for the damages sustained by him, *e.g.*, in case the real owner recovers the shares.

Where a shareholder executes a transfer, and has complied with the rules of the company, but the company refuses to register it, either the transferror or transferee may apply to the Court to compel the company to register the transfer. In such case the Court has summary jurisdiction to order the rectification of the register, and if the company has acted improperly it will have to pay the costs of the proceedings and also damages. See, further, *infra*, p. 72.

Where a share not fully paid up has been transferred, the transferror remains to some extent liable as a surety for the transferee. For if the company should be wound up within the space of one year from the registration of the transfer, he may, in the winding up, have to pay any calls which the transferee fails to pay, but he will only be

liable in the event of there being some debt or liability contracted before the transfer and still subsisting, and of the members who are on the books at the commencement of the winding up being unable to contribute sufficient to cover all the debts and liabilities. See further as to the liability of a shareholder, *supra*, p. 6.

MORTGAGE OF SHARES.

There are several modes of effecting mortgages of shares.

1. The shares are transferred into the name of the mortgagee, and upon payment of the mortgage money a deed is executed by which the shareholder promises to pay the mortgage money and the interest thereon, and the mortgagee agrees to re-transfer on payment: power is given to him to sell in certain events. This mode is, in general, the best from the mortgagee's point of view.

But sometimes the mortgagor does not want the mortgagee to be registered in his place as the holder of the shares. He may desire himself to remain the ostensible holder, and to be able to attend and vote at meetings, &c. Or perhaps the shares are not fully paid up, and the mortgagee may not wish to render himself liable to calls by becoming the registered holder. In such case—

2. Another mode may be adopted, namely, the shareholder deposits with the mortgagee (*a*) the certificates of title to the shares, (*b*) blank transfers (that is, with a blank left for the name of the transferee) signed by the shareholder, (*c*) a memorandum in writing stating that the shares are charged with the payment of the advance and interest, and that in certain events the mortgagor may sell and fill up the transfers. This mode is very commonly adopted, and is found convenient; for the mortgagor remains the registered holder of the shares until the mortgagee exercises the power of sale, but it is open to the following objections:—

(1.) If the mortgagor becomes bankrupt or liquidates, the shares will pass to his trustee under the order and disposition clause of the Bankruptcy Act, 1869. This, however, can be prevented by giving notice in writing to the company of the mortgage. But sometimes the shareholder does not wish the company to know of the mortgage.

(2.) If the mortgagor is fraudulently disposed, he can sell the shares behind the back of the mortgagee and transfer them to the purchaser, who will get a good title ; but this can be prevented (1) by getting a restraining order under 5 Vict. c. 5, s. 4, or (2) by filing a formal affidavit and notice at the Royal Courts of Justice, and giving the company notice thereof, as provided by the Rules of Court of April, 1880 (in lieu of the old writ of *distringas*). In either case the company will have to give the mortgagee notice before passing any transfer tendered for registration. Accordingly, if the transfer is improper, the mortgagee will be able to get an injunction to stop it. See *infra*, p. 108.

(3.) The regulations may contain a clause as to lien (*infra*, p. 18), and when the mortgagee wishes to sell he may find that he cannot without discharging the lien.

(4.) Where the shares are not fully paid up, there will be danger of forfeiture, if the calls are not paid in due course by the mortgagor.

(5.) The regulations may require the transfer to be by deed, and, if so, a transfer executed in blank is void. However, the company may not notice or be in a position to show that the transfer was so executed.

(6.) The regulations may give the directors such a large discretion as to the registration of transfers, that it may be difficult to find a purchaser of whom they would approve. See *supra*, p. 7.

SHARE WARRANTS.

A company which is authorised by its regulations so to do may issue share warrants, *i.e.*, documents certifying that "the bearer" is entitled to the shares therein specified. The holder of the share warrant can, by simply handing over this instrument to another person, render him the legal owner of the shares without any necessity for registration or other formalities. The regulations, however, generally contain some inconvenient provisions as to share warrants, *e.g.*, that the holders shall not vote at general meetings, unless they deposit their warrants at the office of the company forty-eight hours beforehand, and that they shall not be entitled to specific notices of general meetings. Comparatively few companies issue share warrants. See, further, *Company Precedents*, pp. 106, 196.

A share warrant must be stamped with three times the amount of duty payable on an ordinary transfer. If the regulations do not authorise the issue of share warrants, the company may, by special resolution, authorise their issue.

DEATH OF SHAREHOLDER.

The regulations of a company generally provide, as in Table A, cl. 12, that on the death of a member, his executors or administrators shall be the only persons recognised by the company, and that his executors or administrators may either have the shares transferred into their own names, or may transfer the same to some other person.

The object of these provisions is to save the company trouble and risk. It merely has to look at the probate of the will or the letters of administration, and, having ascertained who are the executors or administrators, can deal with them without going into any questions as to the construction of the will, or the rights of the legatees, or of the next of kin or otherwise.

If a shareholder specifically bequeaths his shares to some legatee, *e.g.*, says, "I leave to A. my shares in the — Company, Limited," the executors will in due course transfer the same to the legatee. And so, too, where a shareholder dies intestate, and the next of kin elect to take the shares in specie, the administrator will transfer the same accordingly. Where, however, the shares are not specifically given, or are given to the executors as trustees to convert at their discretion, and also where the next of kin do not elect to take in specie, the executors or administrators will have to consider what course to take.

If the shares are fully paid up, they will not incur any risk by having the same transferred into their own names, but it will be otherwise if the shares are only in part paid up. By directing the transfer into their own names they become personally liable to pay future calls, and the company can enforce this liability whether the executors or administrators have assets of their testator or intestate or not. If, on the other hand, they transfer the shares to a stranger, upon sale or otherwise, they incur no personal liability, and at the end of one year from the registration of transfer, their testator's or intestate's estate is freed

from all liability. Sometimes the shares are left standing in the name of the testator or intestate. So long as this state of things continues his assets remain liable, but his executors or administrators are not personally liable. But the regulations of some companies in such a case provide that the executors or administrators shall not receive any dividend till a transfer has been effected.

The executors' right of transfer is sometimes limited, *e.g.*, to a transferee approved by the directors; and sometimes the regulations require that before transfer the shares shall be offered to the other members. See *infra*, p. 158.

BANKRUPTCY OF SHAREHOLDER.

In the event of the bankruptcy or liquidation of a shareholder the right to transfer his shares is, by sec. 22 of the Bankruptcy Act, 1869, vested in the trustee to the same extent as the bankrupt or liquidating debtor might have exercised the same but for the bankruptcy or liquidation. The regulations sometimes impose conditions on the trustee which do not affect the bankrupt or liquidating debtor, but such conditions are void. Besides the power vested in the trustee as above mentioned, the regulations very commonly give him power, upon complying with certain conditions, to become himself the registered holder of the shares of the bankrupt or liquidating debtor. Clause 13 of Table A gives such a power, and the trustee may under that clause insist on registration even where the bankrupt or debtor is indebted to the company in a large sum; for clause 10 of Table A only applies to ordinary transfers. The result is that the trustee after registration can sell and transfer the shares, and thus defeat the company's claim on the bankrupt or debtor. But in properly framed regulations this injustice is prevented. The trustee can (instead of transferring or being registered) disclaim any shares (*e.g.*, where there is a liability to calls), but in such case the company can prove for the damages sustained by it.

MARRIAGE OF FEMALE SHAREHOLDER.

Where a female shareholder marries, her husband *primâ facie* becomes entitled to her shares, and may accordingly

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transfer or be registered as the holder of them, but the regulations generally limit and define his rights (see clauses 12 to 16 of Table A), and he is bound by them. Where the company receives notice of the marriage, the description of the shareholder in the register should be altered to, *e.g.*, "A., the wife of B.," and A. should not afterwards be permitted to transfer without her husband's concurrence. In such a case, if A. dies, her executor or administrator will be entitled, and if B. dies, A. will become solely entitled. Where the husband applies to the company to register him as the holder of the shares, or executes a transfer of them to some other person, the company should require evidence of the marriage and of the identity of the parties, and should see that the regulations, if any, applying to such a case are complied with, and may then register the husband or the transferee as the holder.

Sometimes the husband transfers the shares to himself and his wife as joint holders. This is allowable unless the regulations contain something to the contrary, and in case of the death of one, the survivor will be solely entitled; but the company may decline to register a transfer of shares not fully paid up to a married woman, either alone or jointly with another.

Sometimes the shares of a female who contemplates marriage are transferred to trustees before the marriage, and, of course, in such case the company has no concern with the marriage.

Under section 4 of the Married Women's Property Act, 1870, any married woman, or any woman about to be married, may apply in writing to the directors of a company that any fully paid up shares to which she is entitled (*i.e.*, as registered holder or transferee) may be registered in the company's books in the name, or intended name, of the woman as "a married woman entitled to her separate use." The directors are bound to register the shares accordingly, and they are to be deemed her separate property, and are to be transferable, and the dividends paid as if the holder were unmarried.

Where any such application is made *before* the marriage, the company will have no difficulty in complying with it. But where the application is made *after* the marriage, the company must ascertain that the shares

belong to the applicant for her separate use. If they already stand in her name, the requisite evidence may consist of some settlement or other document under the husband's hand, otherwise a proper transfer from the registered holder expressed to be to her, "for her separate use," should be produced, or a transfer, accompanied by evidence that the shares are her separate property.

Where the application is made after marriage in respect of shares in the applicant's name, the company should, as a general rule, require the concurrence of the husband; but is not entitled to insist thereon. In any case, it would be prudent to give the husband notice; for if the company acts on forged documents, it would be responsible. The company can be compelled in a proper case to register under the Act above mentioned; and it is not entitled to charge for investigating the circumstances, unless its regulations otherwise provide. Sometimes the regulations provide that all shares in the name of a married woman shall be considered her separate property; in such case she can deal with them as if she were unmarried.

CALLS.

Part of the nominal amount of a share is generally made payable on application, and further part on allotment. So much of the nominal amount as is not by the terms of issue made payable at fixed times will have to be paid when called for by the directors.

But calls cannot be made on shares issued as fully paid up (*supra*, p. 6); nor upon shares issued as partly paid up, beyond the amount not credited as paid up.

The directors are generally given power to make calls at such times as they think fit. Sometimes it is provided that no call shall exceed a given sum, *e.g.*, £1 per share, or be made at an interval of say three months after the last preceding call.

And in all cases a reasonable notice is required, usually fourteen or twenty-one days.

A call is made by the directors passing a resolution "That a call of £— per share, payable at the company's bankers, on the — day of —, be, and the same is, hereby made."

Thereupon, by virtue of the Act of 1862, each of the shareholders becomes indebted to the company in a sum equal to the amount of the call multiplied by the number of shares held by him, and the company can bring an action against him for the same.

The payment of a call may also be enforced by forfeiture, as to which see *infra*.

If a shareholder cannot conveniently pay a call he should sell or mortgage his shares. However, very commonly he endeavours to impeach the authority of the directors who made it, and thus delay the company's action till he is able to pay up. Perhaps, too, he has set off, and uses this as a defence in the action. It is no defence to an action that the amount called for was not *bonâ fide* required for the business of the company.

Nor can a member of a company obtain the assistance of the Court to restrain the directors from making a call which the applicant considers unnecessary.

A call made by persons not duly appointed directors is void: and it is a valid defence to an action for calls that the directors who purported to make the call were not duly qualified, or that a quorum was not present at the meeting which made the call, or that the number of directors is below the minimum. Almost any irregularity will invalidate the call. A minute of the resolution making a call ought to be carefully made, for there is some question whether the call can be otherwise proved. The resolution ought to fix the time for payment, and it is desirable that it should also state where the call is to be paid, and to whom.

FORFEITURE.

The regulations usually provide that if a call is not paid in due course, the directors may serve the defaulting shareholder with a peremptory notice to pay, and in default may declare his shares forfeited. The rules as to forfeiture are generally in much the same terms as those in Table A, clauses 17—22.

This power to forfeit is a most valuable one to a company, and saves it from much litigation. The receipt of a notice of intention to forfeit generally secures prompt

payment of a call, if the shareholder can find the means. If the shares are worth anything considerable, such a notice is much more effectual than bringing an action for the amount.

If, however, the shares are worth little, *e.g.*, by reason of depreciation, it may be more for the company's interest not to forfeit, but from time to time to sue for the calls and compel payment.

The effect of forfeiture is to put an end to all the rights of the forfeiting shareholder in the shares. But it is generally provided that he shall remain liable for the amount due at the time of forfeiture. He will not, however, be liable for future calls. The directors are generally given power to annul a forfeiture within a certain period upon payment of the arrears and costs.

The power to forfeit shares is strictly construed. Any slip or error in the proceedings invalidates the forfeiture. Thus, if a proper notice is not given, or if the directors making the call or resolving on the forfeiture were not duly appointed or properly qualified, the forfeiting shareholder will be able to undo the forfeiture. And there are many other circumstances sufficient to render the forfeiture invalid.

In order to undo a forfeiture the forfeited shareholder may bring an action, or cause a motion to be made under section 35 of the Act of 1862 to rectify the register. See *infra*, p. 72.

A member whose share has been improperly forfeited should appeal to the Court for redress. He will obtain it without difficulty, and the company will have to pay the costs.

So, too, if the directors threaten improperly to forfeit a member's shares, *e.g.*, unless he pays a call which has not been duly made, he should appeal to the Court for an injunction (*infra*, p. 108) to prevent such forfeiture.

When directors intend to forfeit shares, they very commonly take legal advice as to the proper course; this precaution saves them from errors which might cause litigation and loss.

See, further, Company Precedents, p. 310, *et seq.*

LIEN.

The regulations of many companies provide that the company shall have a lien on the shares of each member for all monies due from him to the company, whether for calls or otherwise, and gives the company power in default of payment to sell and apply the proceeds in discharge thereof, the surplus to be handed over to such member. This right of lien must be borne in mind when a person proposes to transfer a share.

If the shares are sold by the company without giving proper notice (if any is required), or otherwise in breach of the regulations, the shareholder can get damages for the loss, and perhaps recover the shares; and if the company does not pay over the balance, he or his representatives can bring an action for an account of the sale, and payment of the balance.

The regulations sometimes provide that the directors may refuse to register a transfer of shares on which the company has a lien.

INCREASE OF CAPITAL.

The regulations generally provide that "the company may by special resolution [*or* 'the directors with the sanction of a special resolution may'] increase the capital."

Sometimes it is provided that "the company in general meeting" may do so, and sometimes simply that "the company may increase its capital." In the first case, a special resolution is necessary, as to which see *infra*, p. 56; in the second, a simple resolution passed at an extraordinary general meeting; and in the third (provided the articles contain a clause conferring general powers on the directors, as at p. 27, *infra*), a resolution of the directors acting in the name of the company, *infra*, p. 29.

The following is an example of a resolution:

"That the capital of the company be increased to £30,000 by the creation of 10,000 new shares of £1 each [such shares to be called preference shares, and to carry a fixed cumulative preferential dividend at the rate of 5 per cent. per annum.]"

The resolution merely increases the *nominal* amount of the capital, *i.e.*, it creates the shares; but, of course, the actual capital is not increased unless somebody takes and pays for the new shares.

Notice of the increase of capital must be given to the Registrar within fifteen days after the resolution. The following form may be adopted:

To the Registrar of Joint Stock Companies.

The — Company, Limited, hereby gives you notice that by special resolution of the company duly passed and confirmed at extraordinary general meetings thereof held respectively on the — th of — and the — th of —, the nominal capital of the company has been increased to £ — by the creation of — new shares of £ — each. The registered capital is £ —

Dated, &c.

———— Secretary.

The notice must be signed by the secretary or one of the directors or some other duly authorised person [see *infra*, p. 66], and will require to be stamped at the Registration Office with *ad valorem* duty in accordance with the Table, *infra*, p. 70. It must also bear a 5s. registration stamp. A form of notice nearly the same as the above can be obtained from the stationers'. See *infra*, p. 115.

If the increase was effected by simple resolution at a general meeting, the notice will run: "that by a resolution of the company, passed at an extraordinary general meeting thereof, held," &c. And if by resolution of the directors, it will run: "that by a resolution of the directors of the company, passed at a board meeting held," &c. Default in giving notice of increase renders the company, its directors and managers liable to penalties. Where the increase is effected by special resolution a copy of such special resolution must be registered in addition to the above notice of increase. See *infra*, pp. 51, 69. If the regulations contain no power to increase the capital, it can be increased by special resolution: section 34 of the Act of 1862.

The nominal amount of the capital having been increased, the directors will probably offer the new shares to the existing members or to the public. Sometimes the regulations give the existing members a preferential right to take up the new shares, to be exercised within a certain period after notice. The directors will fix the terms of

issue, and will probably require so much to be paid on application, so much on allotment, and the balance at a fixed date, or when called for, and the funds so received will be applied for the purposes of the company.

If the words in brackets are omitted, the new shares will rank equally with the old shares for dividends; but very often when further capital is required it is necessary to give the new shares a preferential dividend in order to induce persons to subscribe, *e.g.*, where the original shares are much below par. So, too, where a company is very successful it may be convenient to raise any further capital by the issue of preference shares carrying only a fixed rate of dividend, so that the general profits may remain for the existing members. Preference shares can only be issued where the memorandum or articles of association as originally framed gave power so to do.

The privileges given to preference shareholders vary considerably, *e.g.*, they may be given a preference as to dividends, either permanent or for a fixed period, and also a preference as regards return of capital in a winding up. The nature and extent of the privileges which can be conferred depend on the terms of the power. See, for full particulars, *Company Precedents*, pp. 153, 189.

STOCK.

A company may, by special resolution, convert any of its shares which have been fully paid up, or are to be deemed fully paid up, into stock, and the regulations generally provide for such conversion (see Table A, clauses 23 to 25). Nevertheless, the number of companies which have exercised the power is extremely limited. It will, therefore, be sufficient to refer to sections 12, 28, and 29 of the Act of 1862.

REDUCTION OF CAPITAL.

There are several operations which are deemed to be reductions of a company's capital. The following may be mentioned—(1.) Reducing the liability on the shares, *e.g.*,

where the shares are £20 each with £10 paid up, and they are reduced to £15 with £10 paid up, or to £10 fully paid up. (2.) Returning paid up capital, *e.g.*, where the shares are £20 with £15 paid up, and £5 per share is returned. (3.) Cancelling capital which has been lost, *e.g.*, the shares are £12 fully paid up, but worth only £6, and accordingly £6 per share is cancelled.

In order to effect the reduction a special resolution must be passed for the purpose, and a petition presented to the Court to confirm such resolution. See Company Precedents, p. 287, for specimens of petitions and further particulars. In operations (1) and (2) the words "And Reduced" have to be added to the company's name immediately after the passing of the special resolution, and continuously used until the Court has sanctioned the resolution and permitted the company to drop the words. Before the petition in such cases is heard advertisements to the creditors have to be issued, and an opportunity is given them of objecting to the reduction or claiming payment or security. The proceedings take from three to nine months, and when the petition comes on for hearing the Court generally sanctions the reduction, and allows the company to drop the words "And Reduced" at the end of a fortnight. But operation (3) is much more easily effected: After the resolution is passed the petition must be presented, and will come on for hearing in about a week or ten days. No advertisements are necessary: the creditors have no power to object; and upon the application of counsel the Court will dispense with the words "And Reduced" altogether. In such a case the proceedings only take a fortnight or three weeks after the resolution to reduce. Where it is desired to reduce the capital of the company, it must be seen that the regulations authorise a reduction. If they do not, they must be altered by special resolution before the special resolution effecting the reduction can be passed.

Capital can be reduced in another way, namely, shares which have never been issued can be cancelled by special resolution. This requires no petition. Again, under the Companies Act, 1880, a company may by special resolution determine that part of its profits shall be applied in paying off capital with power to call it up again. Objecting members are given special rights, but no petition is requi-

site. A reduction of capital should never be attempted without legal advice, and the resolutions require to be very carefully settled. The expense of reduction is generally very trifling.

DIRECTORS.

The regulations of a company generally provide that it shall be managed by directors. The first directors are usually appointed by the articles of association—*i.e.*, the articles contain a clause that “A. B. and C. shall be the first directors of the company, and shall continue in office until the —th of —.” Sometimes the articles empower the subscribers of the memorandum of association to appoint the first directors, and Table A contains a clause [52] to that effect.

Where the subscribers have this power they will exercise it at a meeting held after the registration of the company at which all the subscribers are present. At such meeting a resolution will be passed to the following effect: “That A. B. and C. be, and they are hereby, appointed directors of the company,” and minutes of what occurred at the meeting will be entered in the minute-book of the company.

An appointment in writing by all the subscribers would be valid without any meeting. Sometimes the regulations authorise the subscribers, or the *majority* of them, to appoint directors, but in the absence of such a provision, it is doubtful whether an appointment made by a majority, however large, would be valid.

The number of the directors is generally fixed by the regulations. It is commonly three, five, or seven, and sometimes twelve, or more.

A director who is a shareholder is entitled to hold office until duly displaced in accordance with the regulations, and if his co-directors improperly interfere, he can get an injunction [*infra*, p. 108] to restrain them.

The regulations usually provide that a certain number or proportion of the directors shall retire at the ordinary general meeting of the company in each year; that the places of those retiring shall thereupon be filled up; that the retiring directors shall be eligible for re-election, and

that if a vacancy is not filled up the retiring director shall remain in office. Where a company is going on satisfactorily, the retiring directors are generally re-elected. Unless the regulations require a particular notice, a director can resign at any time. If, however, a sudden resignation caused damage to the company, he might be held liable for the consequences.

A director who acts *bonâ fide* according to the best of his judgment for the interests of the company will not be held responsible for loss resulting from an error of judgment; but he should take care not to do anything illegal or *ultra vires* of the company, for he is deemed to know the law and the company's regulations.

QUALIFICATION OF DIRECTORS.

The regulations generally require that a director shall hold a certain number of shares in the company as a qualification for office. Where there is no such clause, any person, whether a shareholder or not, may be appointed a director.

The object of a qualification clause is to protect the interests of the shareholders by requiring that those who are intrusted with the management of the concern shall have a personal stake in it. Of course, the larger the stake the more careful are the directors likely to be of the company's interests. Nevertheless, it is but rarely that the holding of a *large* number of shares is required as a qualification. Such a provision in most cases inconveniently limits the number of eligible candidates, for a man most competent to fill the post may not be in a position to invest more than a small sum. And it is now by no means uncommon to require no share qualification.

A great many disputes have arisen in connection with qualification clauses. A person ought not to act as a director unless and until he is entered in the register of members as the holder of the necessary qualification shares. If this rule is not observed, he will in most cases incur a liability to take from the company the proper number of shares, and pay the full nominal amount in cash, although he might have bought them much cheaper in the market. Moreover, his acting without qualification may cause great

inconvenience and loss to the company by invalidating calls, forfeitures, &c. See, further, Company Precedents, p. 121. Sometimes the regulations provide that a person shall not be eligible as a director unless he holds a certain number of shares. In such case an election will be void unless the person elected holds the shares at the time of election. The regulations generally provide that a director shall vacate his office if he cease to hold the necessary share qualification, and also in certain other events. See Table A, cl. 57.

If a director's qualification is privately given him by a promoter or vendor to the company, he will be liable to the company for the value. A director may qualify by shares of which he is only a trustee.

REMUNERATION OF DIRECTORS.

The regulations of a company in most cases provide that the directors shall receive certain remuneration for their services. Sometimes the amount is fixed, *e.g.*, from £50 to £300 a-year each, or so much for each attendance at a board meeting. Or it may be, say from £100 to £3000 per annum, to be divided between them in such shares as they shall agree on. Sometimes, in addition to or instead of the above, they are given a commission on profits, *e.g.*, 20 per cent. of the surplus profits of each year remaining after paying a 6 per cent. dividend.

According to clause 54 of Table A, the remuneration of the directors in the case of companies governed by Table A is to be fixed in general meeting. When this is the case, the directors will take care as soon as possible to get a resolution passed fixing their remuneration. Directors are entitled to be paid their remuneration, whether the company makes profits or not: unless, indeed, it is to be a commission on profits.

Directors are not entitled to any remuneration unless the regulations confer the right.

PROCEEDINGS OF DIRECTORS.

The regulations generally provide that the directors may meet for the despatch of business, adjourn, and otherwise

regulate their meeting as they think fit, and determine the quorum necessary for the transaction of business, and that until otherwise determined, say three shall form a quorum.

The quorum is usually fixed with reference to the number of directors, *e.g.*, if there are five directors, three or two is the usual quorum.

The object of fixing a quorum is to avoid the necessity of requiring all the directors to concur in the transaction of business. In some regulations the word quorum is not used, but it is provided that no business shall be transacted unless a certain number of directors are present. In substance it comes to the same thing. Of course the regulations of the directors differ considerably. The following are of a very simple character :

1. A board meeting shall be held every — day at — o'clock. Such meetings shall be called ordinary board meetings. Other meetings shall be called special.
2. Every meeting shall be held at the registered office of the company.
3. An ordinary meeting shall be competent to transact the following business, namely : To, &c. All other business shall be transacted at a special meeting.
4. Any director may, and upon the requisition of any director the secretary shall, convene a special meeting : not less than — hours' notice shall be given thereof to each director. Every such notice shall be given as follows, &c. The notice must state the time fixed for the meeting.
5. The quorum of an ordinary meeting shall be two directors and of a special three directors.
6. No cheque for more than £—— shall be signed at a meeting unless — directors shall be present.
7. The common seal shall not be affixed to any document, except in pursuance of a resolution of the board, and the sealing shall be attested by two directors, and countersigned by the secretary.
8. A meeting at which not less than — directors are present may suspend or modify these regulations.

The regulations will be adopted by passing a resolution "That the following regulations as to board meetings be adopted," and the resolution and regulations will be recorded in the minute book of directors' proceedings.

As to the chairman :

The regulations generally provide for the election of a chairman of the board of directors. And whether this is provided or not, the directors usually appoint one. In

some cases, a deputy-chairman is appointed, and in the absence of the chairman he will preside. In his absence, the directors present at any meeting will elect one of their number to the chair *pro hac vice*.

At a meeting of the directors, commonly called a board meeting, the secretary will be called on to read the minutes of the last meeting, and if found correct, the chairman will sign the same. See *infra*, p. 68.

No discussion should be permitted as to the policy of the proceedings recorded. If a director objects thereto he can, *after* the minutes have been signed, move a resolution impeaching such policy.

The chairman will then call attention to the business to be transacted. Generally an agenda paper (previously prepared by the secretary) is produced.

The chairman will refer successively to the different items of business, and they will be dealt with as the meeting thinks fit. If any difference of opinion exists, the chairman will put the question to the vote, and the decision of the majority will bind the meeting, unless the regulations otherwise provide. The regulations generally give the chairman a casting vote, in case of an equality of votes. In some companies the decisions of the meeting as to the several items of business are expressed in appropriate resolutions, duly proposed, seconded, and passed. In others a less formal procedure is adopted, and after a discussion of each item, the chairman gives directions to the secretary or manager in relation thereto, with the assent expressed or implied of the other directors who are present. In any case the proceedings are recorded by the secretary in the minute book of the directors' proceedings. See *infra*, p. 66.

POWERS OF DIRECTORS.

The regulations generally give the directors a large number of express powers. Of course, they can exercise such powers in accordance with the terms of the regulations, *e.g.*, to make calls, to forfeit shares, to call meetings of the shareholders, to appoint a secretary and other officers and servants, to borrow money, to mortgage, to buy and sell property, to carry on business, &c.

In addition to these express powers, the directors are

usually given general powers, as in Table A, clause 55, viz., power to "exercise all or any of the powers of the company, not by statute or by the articles of association required to be exercised by the company in general meeting."

In order to understand the meaning and effect of such a clause, it is necessary to consider what the powers of the company are.

These depend on clause 3 of the memorandum of association, which states the objects of the company. See *infra*, pp. 80, 153.

The company has power to do anything which is thereby expressly declared to be one of its objects, and also anything which is reasonably necessary or conducive to the attainment of such objects. For instance, if a company is formed "to establish and carry on the business of a grocer," the company would have power to buy or take on lease or construct business premises, to acquire stock-in-trade, to carry on the business, to employ managers, solicitors, servants, and others, to open a banking account, to bring actions, to borrow money, to mortgage, &c., &c. But generally the objects' clause is much more explicit, and expressly states that the objects are to establish and carry on the business, and to purchase, take on lease or in exchange or otherwise acquire any real or personal property, to borrow money, to mortgage, to purchase any other similar business, to sell, mortgage, or otherwise deal with the property of the company, &c. See *infra*, p. 153.

Whenever anything is an object of the company, either expressed or implied, the company may do anything necessary to attain that object; *e.g.*, if one of the objects of the company is to purchase a property, the company can enter into a contract for that purpose, it can raise the money to pay for the same, either by borrowing or by getting persons to take shares in the company, it can pay the costs of the conveyance, &c., &c.

If, therefore, the regulations contain a clause giving general powers as above, the directors, besides the powers given to them expressly and specifically, can exercise all the powers of the company, *except* such as are required by the statutes or regulations to be exercised by the company in general meeting, *i.e.*, in a general meeting of the members of the company.

The following come within the exception :

1. Anything which the company by the Acts or by its regulations is authorised to do by special resolution, *e.g.*, to reduce its capital.

2. Anything which the directors are by the regulations authorised to do with the sanction or consent—or are forbidden to do without the sanction or consent—

(a) of a special resolution of the company ;

(b) of the company in general meeting [or of a general meeting of the company] ;

(c) of an extraordinary resolution of the company.

3. Anything which the regulations require to be done at a general meeting of the company, whether ordinary or extraordinary.

Sometimes, instead of vesting the general powers of the company in the directors as above, the regulations give them a number of specific powers, and then provide that they may do whatever is necessary for carrying on the business of the company. What powers such a clause confers must depend in each case on the nature of the business and the other regulations. It is much better to have a general clause, and if the regulations do not contain one they should be altered.

Whatever may be the powers conferred by the regulations on the directors, they must exercise them in accordance with the regulations. For example, if the regulations say that the directors may make calls, but that no call shall exceed £1 per share, they cannot make a valid call, say, of £2 per share. So if they say that the directors shall not borrow on behalf of the company more than, say, £10,000, they have no power to borrow more than that sum.

Here, however, it is right to call attention to the power which every company has to alter its regulations by special resolution. See *infra*, p. 58.

This power enables the majority of the members of a company to extend or restrict the powers of the directors, and to authorise a variety of acts which neither the directors nor a single general meeting of the company could otherwise do or assent to.

Whether a given act is within the power of the company is in some cases a very nice question, and where any doubt exists, the directors ought to take legal advice, for if the act done is not within its powers (or as it is expressed

in legal phraseology is “*ultra vires*”), litigation, expense, and difficulties are likely to ensue. See *infra*, p. 60.

Where it is necessary or desirable that something should be done which the directors alone cannot do, a general meeting of the company must be called to authorise it.

And sometimes even where the directors have the necessary power, they prefer to obtain the approval of a general meeting; *e.g.*, when it is proposed to borrow a large sum on debentures, or take any other important step.

MODE IN WHICH DIRECTORS EXERCISE THEIR POWERS.

The directors exercise their powers by resolutions passed at board meetings. Thus a call is made by passing a resolution :

“That a call of £—— per share be and the same is hereby made on the members of the company, such call to be payable on, &c., at, &c.”

A resolution for forfeiture will be :

“That the shares numbered, &c., of A. B. be and the same are hereby forfeited.”

A resolution appointing a committee may be :

“That Messrs. —— and —— be and they are hereby appointed a committee with power [to allot shares to such of the applicants as they think fit].”

A resolution to borrow may be :

“That the sum of £—— be raised for the purposes of the company by the issue of mortgage debentures to that amount, and that the solicitor be requested to furnish a draft debenture for the approval of the board.”

The following refer to contracts :

“That the seal of the company be affixed to a contract, &c.”

“That Mr. ——’s offer to supply the company with —— be and the same is hereby accepted, and that the secretary do give Mr. —— notice of this resolution.”

“That an offer be made to Mr. —— on behalf of the company, to, &c.”

In order to carry a resolution in regard to external matters into effect, it is sometimes necessary to do some further act in the name of the company; *e.g.*, where a resolution has been passed to borrow money, it will be necessary to

apply to some person or persons to lend the same, or to issue a prospectus, and when a lender has been found and the security agreed on, the directors will pass a resolution approving thereof, and directing the seal to be affixed and the contract to be signed by two directors on behalf of the company. Hence a matter may come before the board several times before it is completed. So, too, a mechanical act may be necessary, *e.g.*, to sign or seal a document, &c.

BORROWING.

The regulations generally give the directors express powers to borrow on mortgage or otherwise, and where no express power is given, they usually have power under a general clause, giving them the powers of the company. See *supra*, p. 27.

Money may be borrowed from the company's bankers or others, on deposit of title-deeds or other securities, or by mortgage of its property in the ordinary way.

But, where it is not required merely for some temporary purpose, it is usually obtained on debentures of the company. A debenture is an instrument under the seal of a company, binding it to pay a sum of money at a fixed time with interest. The time is usually from 1 to 7 years after date, and the interest from 4 to 20 per cent. per annum. In some cases the payment of the debentures is secured by a mortgage on the property of the company or some part thereof. And if there are many debentures issued it is usual to make a certain number redeemable each year by drawings. Forms of debentures of all kinds, and of mortgage deeds for securing the same, and of prospectuses in relation thereto, will be found in *Company Precedents*, p. 217, *et seq.*

A register of all mortgages and charges specifically affecting the property of a company must be kept, and certain prescribed particulars entered therein. See s. 43 of the Companies Act, 1862. There are penalties for not duly keeping the register, and any mortgage or charge taken by a director or officer of the company may be void unless it is duly entered. See further *Company Precedents*, p. 239. Any creditor or shareholder of the company may inspect this register.

Where it is desirable to borrow, the directors, if they have the necessary power, will pass a resolution accordingly, and then issue debentures in the name of the company, or take such other steps as they may be advised. If, however, they have not the necessary power, an extraordinary general meeting will be called for the purpose of giving it. If additional working capital is wanted, it is in most cases better to obtain it by the issue of shares than by borrowing on debentures or otherwise. If the shares are below par, it may be necessary to create and issue preference shares in order to get the money. But even this is better than to issue debentures. The point to be borne in mind is that a shareholder, whether preferential or not, cannot break up the company merely because dividends are not paid to him, whereas a debenture holder, being a creditor, must be paid his interest and capital in due course, and, in default, will be entitled to wind up the company. However, the rights of a debenture holder can be qualified so as to protect the interests of the shareholders without unduly prejudicing the security.

Sometimes the only available security is uncalled capital ; this can only be mortgaged where the regulations give power

MANAGER.

The directors are generally given express or implied power to appoint managers, secretaries, and other officers of the company. The appointment is very commonly made by resolution at a board meeting, stating the terms agreed on ; but it is extremely desirable that the appointment should be embodied in an agreement in writing, even where the articles provide for the matter expressly. The agreement generally provides (*inter alia*) that the officer shall be appointed for a fixed period, shall duly discharge the functions of his office, shall be paid a certain salary, and that either party shall have power to determine the agreement on notice. Unless an agreement is in writing, the officer, if improperly dismissed, may find that he cannot sue for damages. It may here be mentioned that the Court will not grant specific performance of a contract for personal service. *E.g.*, if A. is appointed manager of

company for a term of years and is improperly dismissed, he cannot compel the company to employ him, but must sue for damages. However, if A. is a shareholder, and is under the regulations entitled to continue in office, he might be able to get an injunction restraining the directors from interfering with him. So if A. improperly leaves the company's service, the company can only sue for damages. For forms of agreement appointing managers, secretaries, &c., see *Company Precedents*, p. 41.

COMMITTEES.

The regulations generally empower the directors to delegate to one or more members of their body any of their powers.

This power is frequently exercised. The delegation will be effected by resolution passed at a meeting of the board, *e.g.*,

"That Messrs. — and — be and they are hereby appointed a committee with power on behalf of the company to, &c."

"That Mr. — be and he is hereby appointed a committee for the purpose of, &c. ; and that the following powers and authorities be delegated to him, (1) power to, &c., (2) power to, &c."

"That Messrs. — and — be and they are hereby appointed a committee for the purpose of settling with Mr. — the terms of an agreement for, &c., and that they be authorised to execute on behalf of the Company an agreement in writing embodying such terms."

If the committee consists of more than two members, it is usual to make provision as to quorum, chairman, &c. ; but the regulations as to committees must be attended to, and they vary considerably.

CONTRACTS.

It is not essential that a contract with a company should be under seal, in order to bind the company. A contract under seal is only necessary where in the case of an individual it would have to be under seal, *e.g.*, a lease for more than three years, a bond, &c.

Nor is it essential that a contract by a company should in all cases be in writing. The directors of a company, or any one or more of them duly authorised, or any other

person duly authorised by the directors, can bind the company by verbal contracts, except where a contract is by law required to be in writing, *e.g.*, for the sale of land, where the contract is not to be performed within one year, to pay the debt of another, &c.

As to verbal contracts :

If some person attends at a board meeting and makes an offer to the directors, and the chairman, with the assent of the majority of the other directors present, accepts the offer on behalf of the company, the company is bound. So, too, if a board meeting authorises one of the directors to enter into a contract on behalf of the company with an outsider, he can make the contract by word of mouth, and it will be binding on the company. The person making a verbal contract on behalf of the company must either be authorised at the time of the contract or beforehand, or else the contract made by him must be ratified by a subsequent board meeting. And, as already mentioned, it must be borne in mind that verbal contracts only bind the company when such contracts would bind individuals. The directors very commonly have power to appoint managers and agents for various purposes. Such persons can bind the company by any contract the making of which is necessary for effecting the object of their appointment.

The directors can also bind the company by contracts in writing, except where the contract, if between ordinary individuals, would have to be under seal, *e.g.*, a lease for more than three years, a bond, &c.

However, in many companies it is usual, when the contract is at all important in character, to make it under the seal of the company. And the regulations of some companies *require* certain contracts to be under seal and executed in a particular way. Where such a rule exists, it must be duly observed.

In ordinary cases, where a deed is not necessary, the contract should not be under seal, in order that the expense of stamping it as a deed may be avoided.

All contracts, whether in writing or verbal, made by the directors or any other person on behalf of the company, ought to be expressed to be made in the name or on behalf of the company. Thus agreements in writing will be as follows :

An agreement made the — of — between The — Company, Limited, of the one part, and A. B. of — of the other part ; whereby it is agreed as follows :—The company shall sell, and the said A. B. shall buy, &c.

In such case the conclusion will be :

As witness the hand[s] of — [and — two of the directors of the company] on behalf of the company and the hand of the said A. B., the day and year first above written.

And the signatures will be duly witnessed.

The person or persons signing on behalf of the company will be the person or persons authorised by the board to make the contract.

If a director or other person enters into a contract on behalf of the company, without having the necessary authority, but expecting that the board will ratify his act, the contract may be framed as above, with the addition of a clause as follows : " This agreement is conditional on the ratification thereof by the said company before the — day of — next."

If the contract is to be under the company's seal it will conclude thus :

In witness whereof the company hath caused its common seal to be hereunto affixed, and the said A. B. hath set his hand hereunto, the day, &c.

or :

As witness the seal of the company and the hand of the said A. B., the day, &c.

In such cases there will be an attestation clause, thus :

The seal of the company was affixed hereto in the presence of

_____ } *Directors.*

L. S.

Countersigned _____, *Secretary.*

If thought fit, a contract may be made thus :

An agreement made, &c., between A. B. on behalf of The — Company, Limited, of the one part, and C. D. of the other part, whereby it is agreed as follows :—

1. The company shall, &c.
2. The said C. D. shall, &c.

And the conclusion will be—

As witness the hands of the said parties hereto, the day, &c.

Sometimes, however, it is desirable not to disclose the fact that the person making the contract is acting for the

company. In such case he will act in his own name, but the company will be entitled to the benefit of the contract.

A contract under the seal of a company requires a 10s. impressed deed stamp. If under hand merely a 6d. agreement stamp is sufficient. The stamp may be either impressed or adhesive. If an adhesive stamp is used, care should be taken that it is properly cancelled, *i.e.*, the person who first signs the document should put his initials and the date of signature *on* the stamp.

Many companies have a hand stamp engraved with the words, "For The ——— Company, Limited," and the directors, agents, managers and other persons signing contracts, bills, notes, &c., on behalf of the company, or entering into correspondence with a view to any contract, will impress the stamp just above or below the signature.

BILLS AND NOTES, &c.

It is not every company which has power to draw, accept, indorse and execute bills, notes, &c. Sometimes the power is expressly included among the objects set forth in the Memorandum. Where this is the case, of course there is no doubt as to the company's power, but in many cases the power is implied from the objects, *e.g.*, if the objects are to carry on any trade or business in which it is usual to exercise the power, it is implied. The usual mode of accepting a bill on behalf of a company is :

Accepted.

For The — Company, Limited, and by its authority ; payable at, &c.

Countersigned : N. *Secretary.*

A. } *Directors.*
B. }

A bill will be :

£ s. d.

London, 1st March, 1878.

Three months after date, pay to —, or order, one hundred pounds, value received.

For The — Company, Limited.

To Mr. —

A. } *Directors.*
B. }

A bill drawn on a company ought to be addressed to the company thus: "To the — Company, Limited," *not* "To the Directors of the — Company, Limited."

A promissory note will be :

Three months after date, The — Company, Limited, promises to pay to —, or order, the sum of —, value received.

For, &c. [as above].

An indorsement will be :

Pay to —, or order.

For, &c. [as above].

A cheque will be signed in the same way.

A bill, note, cheque or indorsement may be accepted, drawn or made on behalf of a company, by any person who has the necessary authority. See *supra*, p. 33.

Directors and others signing such instruments should take care to express it to be "For" the company, otherwise they will be *personally liable*. As to a hand stamp, see *supra*, p. 35.

CONVEYANCES, ASSIGNMENTS, LEASES, RE-LEASES, DEEDS OF COVENANT, &c.

When the directors, in pursuance of an agreement for sale or otherwise, desire to convey or assign property of the company to a purchaser or some other person, and also when they desire to grant a lease of, or to mortgage, the company's property, the company must be made a party to the deed, by its corporate name, *not* the directors, and the company, not the directors, must thereby grant or assign, or demise as the case may be, and enter into such covenants as may be necessary. Thus a conveyance of land will be to the effect following :—

This Indenture made the — day of — between The — Company, Limited, of the one part, and A. B., of, &c., of the other part. Whereas the said company is seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described : and whereas the company has agreed with the said A. B. for the sale to him of the said hereditaments at the price of £1000.

Now This Indenture Witnesseth that in pursuance of the said agreement, and in consideration of the sum of £1000 paid to the said company by the said A. B. upon the execution hereof (the receipt whereof is hereby acknowledged), The said company doth hereby grant to the said A. B. and his heirs, All and singular [*description of the land*] : To Have and to Hold the same unto and to the use of the said A. B., his heirs and assigns, for ever. And the said company doth hereby covenant with the said A. B., his heirs and assigns, &c.

In Witness whereof the said company hath caused its common seal to be hereunto affixed, and the said A. B. hath set his hand and seal hereto, the day and year first above written.

In like manner where the directors have agreed to purchase or take on lease property, *e.g.*, land, buildings, letters patent, concessions, &c., on behalf of the company, the property will be conveyed, assigned, or demised to the company, not the directors, unless in some special case it is desired to vest the property in trustees for the company. Accordingly the company will be party to the deed; and the conveyance, assignment or lease, will be expressed to be made "to the said company and its assigns," and the covenants will be "with the said company and its assigns."

Some persons use the expression, "the said company, its *successors*, and assigns," but the word successors is unnecessary, and accordingly may be, and generally is, omitted with advantage.

The above rules apply, not only to conveyances, &c., but to releases, and other deeds. Such instruments should all be made in the name of the company. In like manner a receipt will be given in the name of the company, *e.g.* :—

The — Company, Limited, hereby acknowledge the receipt and payment of, &c.

As witness the hands of A. and B., two of the directors of the said company.

A. } For the
B. } said company.

Sometimes a receipt is given under the company's seal. So too a notice by the company, *e.g.*, to dismiss an officer, will be given in the name of the company :—

The — Company, Limited, hereby give you notice, &c.

As witness the hands of two of the directors of the company, this — day of —.

For the company :

A. }
B. } *Directors.*

BRIBES OR COMMISSIONS.

A director of a company is not permitted by law to make any secret profit out of his place, and if he receives a bribe or secret commission, or payment from any person with

whom he is dealing on behalf of the company, he may be called on to pay over the amount to the company. Money so paid is considered to belong to the company. Thus, if the directors agree to buy property in the name or on behalf of a company, and the vendor allows the directors a commission on the transaction, they are deemed guilty of fraud, and if the matter comes to light, may be compelled to hand over the amount to the company. So, too, if a vendor agrees to sell property to the company in consideration of paid-up shares, and by virtue of an understanding between the vendor and the directors part of the shares are given to the directors, they will be liable to the company for the value of such shares. Moreover, where a vendor or other person contracting with the company thus bribes the directors or any of them, the company, if the facts are discovered, can have the contract set aside. If the directors want to receive a commission, they should submit the matter to the company in general meeting. Unless this is done, the payment or profit will be considered secret, and therefore fraudulent. The mere circumstance that all the directors know the facts does not prevent it from being deemed secret.

Where a director has been promised a secret commission or payment as above, the promise is void in law, and can be broken with impunity.

Directors should remember that the repayment to the company of such a bribe may be enforced years after it was paid. Perhaps the payment may never be discovered till a winding up, but when it is discovered the Court will compel its repayment.

The same rules which apply to directors apply to all other agents of a company; *e.g.*, managers, secretaries, solicitors, &c. But if such persons obtain the sanction of the board of directors to the receipt of the commission or payment, they will, generally, be safe. For judgments and orders against directors and others, see *Company Precedents*, pp. 308, 453.

GENERAL MEETINGS.

A general meeting of a company is a meeting convened and held in accordance with the company's regulations, at

which all the shareholders are at liberty to attend. General meetings are of two kinds :—

1. Ordinary.
2. Extraordinary [or special].

The difference will best be understood from the following clauses which, with some slight variations, always occur in the regulations of a company :—

The first general meeting shall be held at such time (not being more than four months after the registration of the memorandum of association of the company) and at such place as the directors may determine.

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 in the month of — in every year at such time and place as may be determined by the directors.

The above-mentioned general meetings shall be called ordinary general meetings ; all *other* meetings shall be called extraordinary general meetings.

See clauses 29, 30, and 31 of Table A, *infra*, p. 113.

The regulations generally enable the directors to convene an extraordinary meeting whenever they think fit, and bind them to call one upon a requisition in writing made by a certain number of members. If the directors fail to convene a meeting pursuant to the requisition, the requisitionists are usually enabled by the regulations themselves to convene a meeting. See further, *infra*, p. 42.

A general meeting, either ordinary or extraordinary, must be held within four months after the formation of a company (section 39 of the Act of 1867). In default, the company, and its directors and managers, will be liable to heavy penalties. At such meeting the directors seldom have anything to communicate, and accordingly they explain that it has been called merely to comply with the Act. A general meeting *must* be held every year (section 49 of the Act of 1862). But if when the company is registered less than four months of the year remains, no meeting need be held that year. (L. R. 10 Q. B. 340.)

As to the notice convening an ordinary meeting :

Great care must be taken that it complies in form with the regulations, and that it is served on the members in proper time. As to the latter, see further, *infra*, p. 65.

As to the form of notice, this depends on the regulations. Table A. provides that :

"35. Seven days' notice, at the least, specifying the place, the day, and the hour of meeting, and in the case of special business the general nature of such business, shall be given....."

And that :

"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."

Under these clauses, it will be observed that special business can be transacted at an ordinary meeting, provided that notice of the general nature thereof has been given.

But in many cases the regulations provide that the business of an ordinary meeting shall be confined to certain specified matters. *e.g.*, "The consideration of the accounts, balance sheet, and the ordinary report of the directors, the election of directors and other officers in the place of those retiring, and the sanctioning a dividend," and that all other business shall be deemed special, and shall be transacted at an extraordinary meeting.

In such cases special business cannot be transacted at an ordinary meeting.

The notice of an ordinary meeting at which it is not intended to transact special business, or at which such business cannot be transacted, will only state the place, day, and hour at which the meeting will be held, "for the purpose of transacting the ordinary business of the company." But occasionally the regulations require the notice of every meeting, whether ordinary or extraordinary, to state the nature of the business to be transacted : where this is the case, particulars of the business must be inserted instead of the words in inverted commas, *e.g.*, "for the purpose of receiving and considering the accounts, balance sheet, &c." See *infra*, p. 64.

If special business is to be and can be transacted at an ordinary meeting, the notice must state the nature of it as below mentioned, just as if the meeting were an extraordinary one.

Where, about the time for holding the ordinary meeting, it happens that there is special business to transact, but the regulations forbid its transaction at an ordinary meeting, it is usual to convene an extraordinary meeting for the same day as the ordinary meeting. In such case, the notice will state when and where the ordinary meeting

will be held, and that "at —— o'clock, or so soon afterwards as the above meeting shall be dissolved, an extraordinary meeting will be held at the same place, for the purpose of, &c." See Company Precedents, p. 206.

As to the notice convening an extraordinary meeting :

The regulations always require that this shall state "the nature [*or* the general nature] of the business to be transacted," or "the purpose" for which the meeting is to be held. In any case the notice must fairly draw attention to the nature of the business. Notices are sometimes framed generally, and sometimes with reference to a particular resolution.

The following are examples of the former :

- (a) "For the purpose of increasing the capital to such extent and in such manner as the meeting shall determine."
- (b) "For the purpose of electing an auditor in the place of Mr. ——, deceased."

And these of the latter :

- (c) "For the purpose of considering, and if thought fit, passing the subjoined resolution—
" 'That the capital of the company be increased to £10,000 by the creation of 5,000 new shares of £1 each.' "
- (d) "When the subjoined resolution will be proposed for adoption—
" 'That Mr. A. Smith of — — be and he is hereby appointed auditor of the company in the room of Mr. ——, deceased.' "

The following is an intermediate form :

- (e) "For the purpose of considering, and if thought fit, passing the subjoined resolution either with or without any modifications."

The mode in which the notice is framed materially affects the competence of the meeting; *e.g.*, in case (a), the meeting could increase the capital to such extent and in such manner as was thought fit, and accordingly the motion for increase might be amended and passed in any form. So, too, in case (b), any person might be elected auditor; and in case (c), the resolution could be modified. But where the notice is framed, as in cases (c) and (d), no amendment can be moved: the resolution must be affirmed or negatived.

Those who convene the meeting will determine which form should be adopted. In many cases a specific resolution, as in (c) and (d), is preferred by directors, in order

that the shareholders may be obliged either to accept or reject their policy. However, it is sometimes desired to leave room for amendment, and in such case the notice will be framed in more general terms.

It should be borne in mind, that a resolution is void where it is passed at a meeting which has not been duly convened [*e.g.*, if the resolution goes beyond the notice]: unless, perhaps, every member be present in person.

REQUISITION FOR GENERAL MEETING.

The regulations generally provide that the directors shall convene a general meeting upon a requisition in writing signed by a specified number of the members [Table A. requires one-fifth], and that in default, the requisitionists may call a meeting. See clauses 32, 33 and 34 of Table A. There is sometimes a difficulty in getting a single document signed by the requisite number, and accordingly the question arises, whether a number of requisitions, all in like terms and each signed by one or more members, will constitute a requisition within the meaning of the regulation. This question has not yet been decided by the Court, but it seems probable that the answer would be in the affirmative, especially if the documents are fastened together when delivered. The matter is of importance, because, if the regulations require a requisition to be signed by a large number of members, it is extremely difficult to get a single document so signed; whereas, a circular letter and form of requisition for signature can be sent out by post to every member, and by return of post the requisite signatures may be received.

The requisition requires to be very carefully penned, for nothing is more common than for the requisitionists to fail, because the objects of the meeting required have not been specified properly in the requisition, and accordingly, when the meeting is held, it is found that it is powerless.

Although the regulations usually declare that, upon the receipt of the requisition, the directors are forthwith to convene a meeting, they are not bound to do so. But if they do, they should convene it for the objects specified in the requisition (together with others if they think fit), otherwise the requisitionists may themselves proceed to

convene a meeting. In like manner, if the requisitionists convene the meeting, they should convene it for the objects specified as aforesaid, and for nothing more or less, otherwise it will be irregular.

Sometimes a section of the members desire to pass some special resolution which the directors will not facilitate, *e.g.*, to remove the directors. In such case very considerable care is requisite, and sometimes it is quite impossible to pass the special resolution. The difficulty is, that the two meetings to pass a special resolution must not be more than a month apart. Now suppose the first meeting has been held, and that a requisition for the second meeting is served the next day; the directors have, perhaps, twenty-one days or more to convene the meeting, and the requisitionists cannot send out notices till the expiration of that time. This only just leaves them time to give a seven days' notice—taking into account the fact that the day of service and day of the meeting must be excluded from the computation. But if the directors manage to get the first meeting adjourned for a few days (*e.g.*, to take a poll); or if any difficulty arises as to having the requisition signed and ready for delivery immediately after the first meeting; or if the directors are entitled to more than twenty-one days; or if more than seven days' notice of a meeting is requisite—it will be impossible to hold the second meeting within the month.

Where Table A. applies, and where the regulations are similar, the matter can sometimes be managed thus. Let the objects of the first meeting be, among other things, to prescribe (see Clause 30 of Table A.) the time and place at which a second extraordinary general meeting for the purpose of confirming as special resolutions any of the resolutions that may be passed at the first meeting, and of determining the manner in which notice of such meeting shall be given to the members (see Clause 35 of Table A.). Then, if the resolutions (*e.g.*, to remove the directors) are passed at the first meeting, a further resolution will be passed fixing the time for the second meeting, and directing one of the requisitionists to convene it by circular, or, perhaps, advertisement. For form of requisition, and notice by requisitionists convening meeting, see Company Precedents, p. 208.

Where it is intended to serve a requisition for a general meeting, legal advice is generally desirable.

PROCEDURE AT GENERAL MEETINGS.

The regulations generally state that the chairman (if any) of the board of directors is to take the chair at every general meeting, whether ordinary or extraordinary. In certain events, the regulations commonly leave the selection of the chairman to the shareholders present thereat.

At the time appointed for the meeting, the person (if any) who is entitled according to the regulations to preside should at once take the chair. If there is no such person present, the members, after the lapse of a proper interval, usually fixed by the regulations, should elect a chairman. This will be effected by passing a resolution, duly proposed and seconded, "That Mr. —— be appointed chairman of this meeting." Some leading shareholder will propose this.

The chairman, having taken the chair, will ascertain that a proper quorum of members is present. This depends on the regulations. Sometimes a specified number forms a quorum, and sometimes a specified number holding a certain amount of the capital. Very commonly the quorum for an ordinary meeting is different from that of an extraordinary meeting. In order to ascertain that a quorum is present, it may be necessary to refer to the register of members and share ledger, and accordingly they should be present.

If there is not a quorum present within the time fixed by the regulations, the meeting must be dissolved or adjourned, according as may be provided by the regulations.

If, however, it appears that a proper quorum is present, the chairman will announce the fact, and will then call on the secretary to read the notice convening the meeting. This having been done, the secretary, according to the practice of some companies, will be required to read the minutes of the last general meeting; and the chairman will then say, "Gentlemen, with your approval, I propose to sign these minutes as correctly entered." Upon this, debate may arise, but no discussion of the policy of the proceedings recorded in the minutes so read should be

permitted: the only question should be whether they are a correct record of what passed, and the chairman should keep the discussion to the point. The minutes, if found correct, or when corrected, will be signed by the chairman. The object of signing is to make them evidence admissible in a Court of law, and to obtain the other benefits conferred by section 67 of the Act of 1862. See *infra*, p. 68.

After these preliminaries, the meeting will proceed to transact the business for which it was convened.

At an ordinary meeting the first step will be for the chairman to refer to the directors' report, which will probably be taken as read, and make a speech in relation thereto, concluding with a motion, "That the report and accounts be adopted." This having been seconded, the chairman will put the question to the meeting as follows:

The question is, "That the report and accounts be adopted." This is the stage for discussion, and members will probably rise and speak in support of or opposition to the motion. The chairman should name those who rise to address the meeting.

When the discussion has subsided, the chairman will rise and reply to any criticisms which have been made, and to any relevant questions that have been asked, and will in conclusion finally put the question thus: "The question is, that the report be adopted. Those who are in favour of the motion hold up one hand 30, and the contrary 10. I declare this motion carried" [or "negatived"].

The regulations very commonly provide that every motion shall be decided in the first instance by a show of hands, and where this is the case a show of hands must be taken; but if there is no such provision, the chairman may, if he thinks fit, take the sense of the meeting by calling on those in favour of the motion to say "Ay," and on those who are against the motion to say "No." If there is no sound of "No," he will declare the motion carried; otherwise, he will call for a show of hands, and declare the result accordingly.

Upon a show of hands the chairman will look to the number of hands only, and will not take into account the votes which the owner of each represents in person or as proxy.

Though it is not uncommon to declare the number of hands in favour of or against a motion, the chairman is not bound to make such declaration.

The chairman having declared the result, a poll may be demanded in accordance with the regulations. As to polls, see further, *infra*, p. 50.

A poll may, if the regulations allow, either be taken at once or at some future day, and the regulations generally vest in the chairman the right to determine when it shall be taken.

Generally speaking it is more convenient, if the regulations allow, to take the poll at once, but there may be cases in which an adjournment is desirable, *e.g.*, where it will require many hours to take the poll.

The poll having been taken, the chairman will state the result, and will declare the fate of the motion accordingly.

When a poll has been granted and the chairman has fixed some future period for taking it, *e.g.*, "Monday next, the —th instant, between the hours of — and —, at the registered office of the company," or "here, so soon as the other business of the meeting shall have been transacted," there is no objection to the meeting transacting in the meantime any other business which it is competent to transact. If there be none such, the meeting will probably be adjourned till after the taking of the poll. If the poll is to be taken at a future day, the meeting will be adjourned to a subsequent day; if it is to be taken at once or after the transaction of the other business, the meeting will be adjourned for a few hours, or for such period as will give time to take the poll. Where the company is a small one, the taking of the poll may be effected in a very short space of time, and in such case no adjournment may be necessary.

If the meeting is adjourned to hear the result of the poll, the chairman will, at the adjourned meeting, state the result, and declare that the motion has been carried or negatived accordingly.

As to amendments, see *infra*, p. 48.

It may here be observed that, although it is usual for motions to be proposed and seconded, and then for the question to be formally put to the meeting, a less regular course of procedure may be perfectly valid unless it be contrary to the regulations, *e.g.*, if the chairman puts the

question without its having been proposed or seconded by any one, and the meeting votes thereon, this may be valid.

After adopting or rejecting the directors' report, an ordinary meeting usually proceeds to the declaration of a dividend in accordance with the recommendation of the directors. See *infra*, p. 62. And afterwards elects or re-elects directors and other officers, and transacts any other business which it is competent to transact.

A general meeting usually closes with a vote of thanks to the chairman, and if the company has been prosperous, with similar votes in favour of divers other persons connected with it, *e.g.*, the manager, the secretary, the agents, &c. For example—

“That the best thanks of this meeting be presented to the directors for their very successful management of the company's business during the past year.”

“That the thanks of this meeting be presented to Mr. —, the manager; to Mr. —, the secretary, and to the other officers and *employés* of the company, for their efficient services.”

“That the cordial thanks of this meeting be presented to the chairman for his able and courteous conduct in the chair.”

The procedure at an extraordinary or special general meeting is much the same as that at an ordinary meeting. After the chair has been taken, the notice read, and the minutes of the last meeting signed, the chairman usually explains the circumstances which have led the directors to convene the meeting, and concludes with a motion, *e.g.*;

“That the directors be authorised to borrow, on behalf of the company, the sum of £10,000;” or—

“That the capital of the company be increased to £—— by the creation of —— new shares of £—— each——;” or—

“That the contract, dated, &c., and read to this meeting, be approved, and that the directors be authorised to carry the same into effect.”

It should be seen that the motion comes within the terms of the notice. The motion having been seconded, the chairman will put it to the meeting, and the subsequent proceedings will be similar to those above detailed.

Where a meeting has been called pursuant to a requisition of shareholders, one of the requisitionists usually moves the resolution.

If at a general meeting the chairman perceives that the time of the meeting is being wasted by a cantankerous

shareholder, and that the meeting wants to vote, he may move or get some one else to move: "That the question be now put," and if this is decided in the affirmative, will act accordingly. A meeting is not bound to hear a member, nor is the chairman bound to find him a hearing.

A chairman should rule a meeting fairly and firmly. He should bear in mind that if the majority of the members of the company are with him, a minority will not be able to upset the proceedings merely because some slight irregularities have occurred at a meeting. See further, *infra*, p. 59.

AMENDMENTS.

When a motion has been moved, seconded, and put by the chairman to the meeting, any member is at liberty to move an amendment thereto, unless the business is special and the notice convening the meeting has been so framed as not to allow any amendment of the original motion. See *supra*, p. 41.

In any case the amendment must keep within the notice; *e.g.*, at a meeting convened "to increase the capital, &c.," it would not be competent to a member to move as an amendment:

"That instead of increasing the capital the directors be authorised to borrow £5,000 for the purposes of the company."

The chairman should decline to put such a motion.

Whether a particular amendment is admissible or not is in some cases a very nice question, and one upon which the solicitor should be consulted.

If an admissible amendment is duly moved and seconded, the debate on the original motion and the amendment will proceed concurrently, some members supporting one, and some the other. The debate having concluded, the chairman will put the amendment to the meeting thus:

"The original motion was, That, &c. To this an amendment has been moved, That, &c. Those who are in favour of the amendment hold up one hand. . . Those who are against the amendment hold up one hand. . . The amendment is negatived."

If the decision of the chairman is disputed, a poll may be demanded. See *supra*, p. 46, and *infra*, p. 50.

This is the mode of dealing with an amendment commonly adopted at company meetings. It is less scientific

than the parliamentary course, and is open to various objections, but in practice it appears to work well enough. In effect, it treats the so-called amendment as a substantive motion, proposed to the meeting for adoption, instead of the original motion.

A better system might be desirable, but for the fact that amendments are not very commonly moved at company meetings.

The chairman should not permit the discussion of an amendment which cannot properly be put to the meeting (*i.e.*, not covered by the notice), nor should he allow an amendment which merely amounts to a negative of the original motion. *E.g.*, the motion being to increase the capital, an amendment should not be entertained: "That it is inexpedient to increase the capital." Those who are in favour of such an amendment can give effect to their views by voting against the motion.

An amendment, according to the practice of some companies, cannot be withdrawn without the consent of the meeting; but in others the mover, with the consent of the seconder (if any), is permitted to withdraw it. But unless the regulations deal with this matter the practice may be disregarded with impunity.

The terms of an amendment before being put to the meeting are sometimes modified at the suggestion of some speaker, and with the consent of the mover and seconder.

Occasionally a second amendment is moved to the original motion. *E.g.*, suppose the original motion to be "That the report be adopted." Amendment (1), "That a committee of investigation be appointed to, &c.;" (2), "That a committee of conference be appointed to, &c." In such case the company practice is to treat amendment (2) in the same way as amendment (1), namely as an alternative motion. The discussion of the original motion and the amendments proceeds concurrently, and eventually the amendments are put in the order in which they were proposed, and if all are negatived the original motion is put.

The terms of every amendment ought to be expressed in writing and handed in to the chairman by the mover; but in some cases the chairman offers to take down the terms in writing. If an amendment is carried, the original motion falls to the ground, unless the amendment, instead of being proposed as a rival motion, merely aimed at modi-

fy the terms of the original motion. In the latter case the amendment having been carried, the original motion in its amended form will be put.

POLLS.

The chairman is not bound to grant a poll unless it is demanded in strict accordance with the regulations. *E.g.*, if they require the demand to be in writing, it must be made in writing; and so, if the persons demanding the poll are required to hold a certain number of shares, the chairman before granting the poll should see that they are duly qualified. In any case it is expedient to make the demand in writing, and it should be handed in as soon as the chairman has taken the sense of the meeting on a show of hands. The demand will be as follows:—

The — Company, Limited.

We, the undersigned members of the above-named company [holding upwards of — shares in the capital], do hereby demand a poll upon the question, "That, &c.," submitted to this meeting.

Dated this — day of —.

It having been ascertained that the persons demanding the poll are duly qualified, the chairman will read out the demand, and will state that he grants the same, and will fix the time when and the place where the poll will be taken, and if necessary the meeting will be adjourned.

Where the regulations merely provide that a poll, if demanded, shall be taken "in such manner as the chairman directs" (Table A., cl. 43), it has been, and is, the common practice to take the poll then and there. But a doubt has been raised in a recent case in the Court of Appeal (10 C. D. 114), whether there ought not to be an adjournment and notice to the members of the day fixed.

It is difficult to see what hardship is involved in the practice above mentioned, for each member receives notice of the meeting, and knows that a poll may be demanded. Moreover, in almost all cases, voting by proxy is allowed, and where a member appoints a proxy it must be in distinct contemplation of a poll; for proxies are only available at a poll, unless the regulations are framed in a very unusual manner. No doubt in the case of parliamentary

elections, vestry meetings, and the like a poll cannot be taken then and there, for a poll is an appeal to the whole constituency, but the reason is that the voters cannot vote by proxy.

However, the doubt having been raised, must be borne in mind, and until it has been settled may afford room for dispute; but it is now not uncommon to insert in the regulations (either originally, or by amendment, *infra*, p. 58), the words "and either at once, or after an interval, or adjournment," after the words "the chairman directs." This precludes any doubt.

If the company has many shareholders it is not unusual to appoint a scrutineer or two to take the poll, and some articles of association expressly require such appointment. In a small company the poll is often taken by the chairman. In taking the poll it is usual to cause a list of members to be made out from the register, thus:—

Names of Members.	Number of Shares.	Number of Votes.	Observations.	Votes given.	
				For.	Against.

At the time appointed for taking the poll, the members who vote personally will come up to the voting table and write their names down on sheets of paper headed "For" or "Against" the motion, as the case may be. A member voting as proxy for another will write down his own name and also that of the person whose proxy he is, *e.g.*, "John Smith, by W. Jones, his proxy."

However, sometimes it is arranged that a member signing his own name shall be deemed to vote for himself and for all those whose proxy he is.

The votes having been taken, the chairman or scrutineers will enter them in the list of votes, in the column "For" and "Against," as the case may be. If, on reference to the books or otherwise, a vote tendered is for any reason found to be invalid, *e.g.*, because the voter is in

arrear of calls, or because the instrument of proxy is not duly stamped, or was not deposited in time, the chairman or scrutineer will reject the same and put a note in the column of observations stating the reason for rejection.

The poll having been closed, the numbers will be added up and the result ascertained. Where scrutineers have been appointed they will make a report in writing of the result to the chairman. Thus:—

The — Company, Limited.

We, the undersigned, being the scrutineers appointed at the general meeting of the above-named company, held at —, on the —th of —, on the motion, "That the report and accounts of the directors be adopted," and having taken a poll at the company's office on Monday, the —th inst., hereby report to you, as the chairman of the said meeting, that the result of such poll was as follows:—

	Number of Votes.
In favour of the motion	700
Against the motion	327
Majority in favour of the motion	373
Dated, this —th of —.	

 _____ } Scrutineers.

To — Esquire,

Chairman of the above-mentioned meeting.

If desired, the report may show the "number of personal votes in favour of the motion" and against, and number of votes of members voting by proxy in favour of or against.

The chairman will then state the result to the meeting or adjourned meeting, as the case may be, and declare that the motion has been carried or negatived.

A few words as to proxies:

Where a member proposes to vote on a poll as proxy for another, it should be ascertained—

1. That the shareholder appointing him is entitled to vote, *e.g.*, the regulations sometimes provide that a member in arrear of calls shall not vote, or that new members shall not vote for three months.

2. That the proxy is competent to act as proxy, *e.g.*, the regulations sometimes provide that a shareholder in arrear of calls shall not vote as proxy for another.

3. That the instrument appointing the proxy has been deposited in due time. See clause 50 of Table A. Where

a proxy must be deposited so many hours before the meeting, the deposit must be made before the *original* meeting, for an adjourned meeting is in law only a continuation of the original meeting.

4. That the instrument is in proper form and is duly stamped.

5. That notice of revocation has not been given.

As to 1, 2, 3, and 5, there will be little difficulty, but questions of some nicety arise as to 4. See further, *infra*, p. 54.

Unless the regulations otherwise provide, a shareholder who is present at a meeting, but abstains from voting on a question put to the meeting, ought not, it would seem, to be counted as voting either way.

VOTES AND PROXIES.

The number of votes which a member is entitled to depends on the regulations of the company. In the absence of anything to the contrary, he is entitled only to one vote. But generally it is provided that a member shall have one vote for each share, or, at any rate, a number of votes proportioned to his shares. Very commonly it is provided that no member shall have more than a certain number of votes, *e.g.*, 50. Where this is so, a member may distribute some of his shares among his friends as trustees for him, and thus increase his voting power. The regulations can be, but seldom are, so framed as to prevent this.

Unless the regulations authorise voting by proxy, votes must be given personally. For usual form of instrument appointing a proxy, see *infra*, Table A, cl. 51.

As to stamping the instrument:

The Stamp Act, 1870, as modified by the Act, 1871 (34 Vict. c. 4), in effect charges every instrument of proxy "For the sole purpose of appointing or authorising a proxy to vote at any one meeting at which votes may be given by proxy, whether the number of persons named in such instrument be one or more," with the duty of 1*d*.

By sec. 102 of the Act of 1870, it is provided as follows:

102. (1.) Every letter or power of attorney [this includes a proxy paper] appointing a proxy to vote at a meeting, and every voting-paper, hereby respectively charged with the duty of one penny, is to specify the day upon which the meeting at

which it is intended to be used is to be held, and is to be available only at the meeting so specified, or an adjournment thereof.

- (2.) The said duty of one penny may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the instrument is executed.
- (3.) Every person who makes or executes, or votes or attempts to vote, under or by means of any such letter or power of attorney or voting-paper, not being duly stamped, shall forfeit the sum of fifty pounds.
- (4.) Every vote given or tendered under the authority or by means of any such letter or power of attorney or voting-paper, not being duly stamped, shall be absolutely null and void.
- (5.) And no such letter or power of attorney or voting-paper shall, on any pretence whatever, be stamped after the execution thereof by any person.

The above rules must be carefully borne in mind.

Most proxy instruments appoint a proxy for one meeting only, and accordingly require a 1*d.* stamp.

In any other case, *e.g.*, when the proxy is appointed for more than one meeting or for a year, a 10*s.* stamp must be impressed. As a proxy paper bearing a penny stamp is available for one meeting only, it follows that if there be two meetings held on the same day (see *supra*, p. 40) there must be two instruments of proxy.

Where an adhesive stamp is used, the common postage and inland revenue stamp is of the right description. An impressed stamp is much to be preferred to an adhesive stamp, for if the former is used the document has merely to be signed, but if an adhesive stamp is used there is considerable danger that it will be improperly cancelled, and in such case the instrument is void, and any person attempting to vote under it is liable to a heavy penalty.

In order to cancel the adhesive stamp, the person signing the instrument should write *his name or initials on or across the stamp, and put the true date of signature on the stamp*. The best plan is for the person to sign his name at the foot of the instrument, and to affix the stamp just below, and put his initials *and* the date *on* the stamp.

In many cases the instrument concludes: "As witness my hand this — day of —," and the stamp is fixed below and the signature written across it. The better opinion is that an instrument so executed is not valid, for the date ought to be written across the stamp.

Upon important occasions the directors or some of the

members sometimes send out stamped proxy papers to the shareholders for signature. In such case the documents ought to be stamped with impressed stamps if possible, otherwise adhesive stamps should be affixed and precise directions as to the mode of signing the paper and *canceling the stamp* should be printed in the margin, *e.g.*, "Please sign your name at the foot of the proxy, and also put your initials and the date on the stamp."

A shareholder may appoint several persons alternatively as his proxy, *e.g.*, "A., and failing him B., and failing him C."

All proxy papers ought to be preserved by the directors by being pasted in a book with a proper index.

A shareholder may vote personally at a poll, though he was not present at the meeting at which the poll was demanded. If a shareholder votes personally on any question, any vote on that question by a proxy on his behalf is void. A shareholder may revoke the appointment of a proxy at any time; but a vote given by the proxy before the revocation will be valid. In case of revocation, the shareholder ought before the meeting to write to the company giving notice that he has revoked the appointment. If he attends personally at a meeting he can hand in notice of the revocation to the chairman. Sometimes the instrument is so framed that personal attendance by the appointor invalidates it, *e.g.*, where it says "*in my absence* to attend and vote," &c.

Sometimes the regulations only allow a proxy to be appointed for a specified meeting, but this is objectionable, for a shareholder may be going abroad and may desire to leave a general authority behind.

ADJOURNMENT.

The regulations generally empower the chairman to adjourn a general meeting with the sanction thereof, and very commonly provide that no poll shall be demanded upon a question of adjournment, or that if a poll is demanded upon any question of adjournment, it shall be taken at the meeting and without adjournment. In the absence of such a provision, the better opinion seems to be that a poll may be demanded and taken then and there.

Unless the regulations otherwise provide, no notice need be given of an adjourned meeting, for it is a continuation of the original meeting, but no business can be transacted thereat other than the business left unfinished at the meeting from which the adjournment took place. Where a meeting is adjourned, and at the adjourned meeting a poll is demanded, it must be borne in mind that no person can vote under an instrument of proxy unless the same was deposited within the prescribed period before the *original* meeting, unless the regulations otherwise provide.

SPECIAL RESOLUTIONS.

A special resolution is a resolution which has been passed at one extraordinary general meeting of a company, and confirmed at another, in accordance with sect. 51 of the Companies Act, 1862. That section is as follows :—

“LI. 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 any proof of the number or proportion of the votes recorded in favour of or against the same : notice of any meeting shall, for the purposes of this section, be deemed to be duly given, and the meeting to be duly held, whenever such notice is given and meeting held in manner prescribed by the regulations of the company ; in computing the majority under this section, when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the company.”

As to the notice :

Notice of the proposed resolution must be given in accordance with the regulations. It is generally desirable that the exact form of the resolution should be given in

the notice. See *supra*, p. 41. The notice may be as follows:—

The — Company, Limited.

Notice is hereby given that an extraordinary general meeting of the above-named company will be held at — on — day the — day of — 1878, at — o'clock in the forenoon, for the purpose of considering, and if thought fit, passing the subjoined resolution.

Resolution.

That, &c. [*Here set out the resolution.*]

Should the resolution be passed by the requisite majority it will be submitted for confirmation as a special resolution to a second extraordinary meeting, which will be subsequently convened.

By order,

Dated, &c.

— Secretary.

If desired, the notice may be framed more generally. See *supra*, p. 41. But s. 51 seems to require the notice to state the proposed resolution, and accordingly, even where the exact words are not given, it is generally deemed desirable to state the substance.

The meeting will be held in due course [as to procedure, see *supra*, p. 44, *et seq.*], and if the motion is lost, or not carried by the requisite majority, the resolution of course falls to the ground, but if it is carried, either with or without a poll, notice will be issued convening the confirmatory or second meeting. The notice of this meeting may be as follows:—

The — Company, Limited.

Notice, &c., when the subjoined resolution, which was passed at the extraordinary meeting of the company held on the — day of — 1878, will be submitted for confirmation as a special resolution.

Resolution.

That, &c.

By order,

Dated, &c.

— Secretary.

This meeting must be held at an interval of not less than fourteen *clear* days after the first meeting, and if the resolution is confirmed thereat, it becomes a special resolution.

Sometimes both meetings are convened by one notice, *viz.*, by substituting the words “in default of further notice will be held on the — day of —, at the same time and place,” for the words “will be subsequently convened.” There is no objection to this, but of course the first meeting may be adjourned, and in that case a new notice of the second meeting may be requisite.

Where a notice has been so framed it must be borne in mind that a separate proxy for each meeting is requisite.

It must be seen that the meetings have been duly convened, and that a quorum is present. A poll should not be granted unless *five* members demand it. If a poll is not so demanded the chairman will declare the result, and it is to be noticed that a declaration by him that the resolution has been carried is to be deemed conclusive evidence of the fact. See sect. 51, above.

Whether an amendment can be moved to a resolution which is intended to be passed and confirmed as a special resolution depends on the notice convening the meeting. See *supra*, p. 41. Such an amendment, if competent, can only be moved at the first meeting: the second meeting must merely confirm the resolution passed at the first.

A printed copy of a special resolution must be filed with the Registrar of Joint Stock Companies. See Company Precedents for form.

Every shareholder is entitled to a printed copy. See sect. 54 of the Act of 1862.

A special resolution is an instrument of great value, for the law permits a company thereby to alter all or any of its regulations, *e.g.*, if the company is governed by Table A, it may by special resolution resolve that Table A shall not longer apply, but that other regulations shall be adopted instead. And so, if it is governed by Articles of Association, it can rescind the same and adopt others.

So, too, any particular rule may be altered, *e.g.*, if the regulations say that the directors shall not borrow more than £10,000, a special resolution can alter the limit or remove it altogether. The power of altering the regulations does not, however, authorise anything which would work unfairly, as against the minority, *e.g.*, a resolution taking away the right to vote from some of the members would be invalid, or authorising the issue of preference shares where there is no power, or authorising some other *ultra vires* act. See *infra*, p. 108, as to injunctions.

Where it is desired to make numerous alterations in the regulations (*e.g.*, where they are badly framed) it is much better to adopt a new set of regulations.

The power to alter the regulations is given by sect. 50 of the Act of 1862.

Besides altering its regulations, a company is permitted

by the Companies Acts, 1862, 1867, 1877, and 1880, to do various things by special resolution, *e.g.*, to reduce its capital, to subdivide its shares, to wind up, &c. And further, the regulations of most companies provide that certain matters shall only be done by or with the sanction of a special resolution, *e.g.*, see clauses 26 and 65 of Table A.

A special resolution cannot alter or extend the objects of a company. See *supra*, p. 27, and *infra*, p. 60.

IRREGULARITIES IN INTERNAL MATTERS.

The regulations of a company are very rarely observed with exactness. Thus it sometimes happens that a director acts who has not been duly elected, or that a general meeting passes a resolution which is acted on, though proper notice was not given of the intention to propose the same, or that the directors do not present their accounts in proper form, or that some shareholder is not given a hearing at a meeting.

A shareholder must not fancy that he can obtain the intervention of the Court to put a stop to, or remedy such irregularities. The Court only intervenes in very exceptional cases, *e.g.*, where there is fraud, or where there is an individual wrong.

But where anything has been done irregularly, which the company could by special resolution or otherwise do regularly, the Court generally refuses to interfere at the suit of a minority. The principle upon which it refuses is, that the minority must submit to the majority, for if a single member or any minority could procure the aid of the Court in such case, it would only lead to endless litigation and the business of a company could not be carried on. This rule is a great protection to the directors of a company, for so long as they keep within the powers of the company, and act with the approval of the majority, and are not guilty of any unfair conduct, they are not liable to litigation at the suit of a minority, who do not approve of their policy.

The rule of non-intervention above referred to, does not apply where the directors or the company in general meeting do, or determine to do, something beyond the power, *ultra vires*, of the company. In such case the Court will

instantly intervene by injunction at the suit of a single member.

Moreover, the directors cannot, in breach of the regulations, set the majority at defiance, for the majority can bring an action against them in the name of the company and get an injunction or other relief. So, too, in such a case a single member could bring the action in the company's name, and if he has the support of the majority he may succeed, but if it turns out that the majority are against him the action will fail, unless, indeed, there is fraud.

As to what acts are beyond the powers of a company, see *supra*, p. 27.

Anything beyond its objects, as stated in the memorandum, is *ultra vires*, *e.g.*, in the case of a company, started to carry on the business of a grocer, it would be *ultra vires* to carry on that of a coal merchant.

And there are other matters which are considered *ultra vires*, or illegal, *e.g.*, to create preference shares where the regulations as originally framed do not authorise the creation thereof, to pay dividends out of capital, to forfeit shares improperly, &c. In these cases the Court, if appealed to, will give prompt relief. See further, *infra*, p. 108.

SECRETARY.

Almost every going company has its secretary. The articles very commonly contain a clause declaring who shall be the first secretary. In any case the agreement with the secretary should be put in writing and signed by him and by some person authorised by the board to sign on behalf of the company. For forms, see Company Precedents, p. 42, *et seq.*

The duties of the secretary will depend on the size and nature of the company, and of the arrangement made with him. But in any case he will be present at all meetings of the company, and of the directors, and will make proper minutes of proceedings; he will issue all notices to members and others as may be requisite; he will conduct all correspondence with shareholders in regard to calls, transfer, forfeiture, and otherwise, and will keep the books of the company, or such of them as relate to the internal

business thereof, *e.g.*, the register of members, the share ledger, the transfer book, &c., &c. He will also make all necessary returns to the Registrar of Joint Stock Companies. See *infra*, p. 74. The secretary is generally remunerated by a fixed salary.

Sometimes one of the directors discharges gratis the functions of a secretary, and occasionally the offices of secretary and manager are amalgamated.

The secretary should have some knowledge of the law relating to companies under the Act of 1862, and he should be familiar with the company's regulations.

SOLICITOR.

Almost every going company has its solicitor. In many cases an arrangement is made for paying him a fixed salary exclusive of all outgoings. Such an arrangement should be in writing, signed by the solicitor, and some person on behalf of the company. Frequent questions of law arise in the management of a company, and as they often have to be answered at a moment's notice, the solicitor should be kept generally informed as to the company's proceedings, and he will of course be familiar with its regulations.

In some companies the solicitor is required to be present at all general meetings to state the law, if necessary. He will also attend at meetings of the board when required.

RESERVE FUND.

The directors are usually given power by the regulations to set aside out of the profits of the company such sum as they think proper as a reserve fund, to be applicable to certain purposes. If the company is flourishing a fair sum will be carried to the reserve fund every year. The reserve fund is sometimes invested in the names of trustees, and sometimes in the name of the company. In some cases, a company employs its reserve fund in its business: where this is done, there is some danger that the reserve fund, when wanted, will not be forthcoming.

Where a company has invested part of its capital in wasting property (*e.g.*, leaseholds or mines), and proposes to pay a dividend, it must be borne in mind that in calculating the profits due provision must first be made (by carrying over to reserve or otherwise) for making good the annual depreciation of the wasting property.

DIVIDENDS.

The regulations usually empower the directors, with the sanction of a general meeting of the company, to declare a dividend. Where this is the case, the usual plan is for the directors, in their report, to recommend a dividend of particular amount, and the ordinary general meeting then passes a resolution that such a dividend be declared, *e.g.*,

"That a dividend at the rate of 5 per cent. per annum, free of income tax, for the year ending the 31st December last, be declared on the shares of the company, and that such dividend be made payable on and after the 20th February, 1881."

"That a dividend at the rate of 3 per cent. free of income tax, for the half-year ended 31st December last (making with the interim dividend at the like rate to 30th June last, 6 per cent. for the year), be paid to the members, and that the same be payable on and after, &c."

"That a dividend at the rate of 6 per cent. per annum, free of income tax, less the amount of interim dividend paid in July last, be declared, &c."

"That a dividend for the half year ending, &c., be declared on the paid-up capital, and that such, &c."

"That a dividend of 5s. per share, free of income tax, be declared, &c."

"That a dividend at the rate of — free of income tax be declared on the preference shares, &c."

A dividend can only be payable out of *profits*. It is illegal to pay a dividend out of capital, even to preference shareholders, and a single dissentient shareholder can prevent it.

Notice of the declaration of a dividend should be given to the shareholders in accordance with the regulations of the company, and when the time fixed for payment has arrived the secretary, with the sanction of the directors, usually sends a cheque or dividend warrant to each shareholder. Not uncommonly the regulations say that the directors may declare interim dividends if and when they consider that the position of the company warrants their doing so.

The regulations of some companies provide for half-yearly accounts and division of profits (if any). As soon as a dividend is payable, each shareholder has a right of action against the company, and can compel the payment thereof.

In declaring dividends the rights of preference shareholders must be borne in mind, *e.g.*, the profits may be insufficient to do more than pay a dividend on the preference shares.

As to applying profits in paying off capital, see *supra*, p. 21.

Primâ facie members are entitled to dividend in proportion to the amount paid up on their shares, but the regulations sometimes provide otherwise. For example, Table A, cl. 72, provides that a dividend is to be paid to the members "in proportion to their shares." In such case the dividend must be in proportion to the shares even where more is paid up on some than on others.

ACCOUNTS.

Proper accounts of the company's affairs must be kept, and the regulations generally provide that at the ordinary general meeting in each year a statement of accounts and balance sheet shall be presented to the meeting by the directors.

As to what books of account should be kept, see further, *infra*, p. 73.

AUDIT.

The regulations always contain rules as to the appointment of auditors and the audit of the accounts. These rules must be duly observed. The remuneration of the auditors is generally fixed by the directors with the sanction of a general meeting; but in some cases it is voted each year by the ordinary meeting.

NOTICES.

The regulations always state the mode in which notices are to be served on the members. Those contained in Table A are as follows:—

"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 shares.

"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 notice was properly addressed and put into the post-office."

Where Table A does not apply, the articles generally contain clauses similar to the above.

Personal service is not much resorted to except in the case of small companies.

Whether the service be personal or by letter, a record should be kept by some officer of the company, so that if the service should subsequently be disputed, he may be able to refer to the record and testify accordingly.

A notice may be either in writing or in print, or partly in one and partly in the other. Where a notice has to be sent to a large number of persons, it is generally deemed expedient to print it.

Notices of general meetings are usually expressed in general terms.

The —— Company, Limited.

Notice is hereby given that the ninth ordinary general meeting of the above-named company will be held at [the registered office of the company, No. ——, —— Street, in the City of ——, or at the —— Hotel, —— Street, &c.], on —— day the —— day of ——, 1881, at —— o'clock in the forenoon,* for the following purposes, namely: to receive and consider the annual statement of accounts and balance sheet, and the reports of the directors and auditors thereon; to elect directors and other officers in the place of those retiring by rotation; to sanction the declaration of a dividend;* and to transact the [other] ordinary business of the company.

Notice is also given that the transfer books of the company will be closed from the 15th to the 28th of ——, 1881, both days inclusive.

No ——, —— Street,
January 1st, 1881.

By order,
—— Secretary.

Sometimes the words within the asterisks are omitted.
See *supra*, p. 40.

Other notices are usually addressed personally to the members, *e.g.*,

Notice of a Call.

Sir,

I beg to give you notice that on the — day of — a call of £— per share was made upon all the members of this company, and that the same will be payable at — on, &c. The amount payable by you is £—.

To —
of —

By order,
— Secretary.

It will be borne in mind that the regulations provide for giving notices to members in a variety of cases, *e.g.*, calls, forfeitures, general meetings, &c. See the requisite forms in *Company Precedents*, p. 203, *et seq.*

In many cases the regulations declare that so many days' notice shall be given in certain cases, *e.g.*, of a call, a general meeting, &c. Where there is any such provision the full number of clear days should be allowed. Thus, if there ought to be seven days' notice of a meeting, seven days should be allowed exclusive of the day of service and the day of the meeting.

As to a shareholder resident abroad, the regulations sometimes provide that he must furnish an address in the United Kingdom to which notices may be sent, and that in default, the registered office of the company shall be considered his place of abode. Where there is such a provision, notice must be served accordingly. Otherwise it has been held that it is not necessary to serve shareholders resident abroad at any rate with notices of general meetings; notices of calls and forfeitures ought, however, to be sent abroad.

As to the notices which have to be given from time to time to the Registrar, see *infra*, p. 74.

As to service of notices, &c., on a company, section 62 of the Act of 1862 provides that:—

“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.”

“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.”

As to the authentication of any notice by the company, sect. 64 of the Act of 1862 provides that:—

"Any summons, notice, order, or proceeding requiring authentication by the company, may be signed by any director, secretary, or other authorised 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."

It is important to bear this section in mind, for notices have frequently to be given by a company, *e.g.*, to the Registrar of Joint Stock Companies. See *infra*, p. 74.

MINUTES OF PROCEEDINGS.

The Act [sect. 67] of 1862 requires every company to cause minutes of all resolutions and proceedings of the company, and of the directors or managers of the company, to be duly entered in books to be from time to time provided for the purpose. Accordingly books must be provided by the directors, and minutes entered. The following will give some idea of the mode in which minutes are entered:—

The fourth ordinary meeting of the — Company, Limited, held the —th of — [at the registered office of the company] at — o'clock.

Mr. — in the chair.

The notice convening the meeting was read by the secretary.

The minutes of the general meeting of the company held the —th ultimo were read by the secretary and signed by the chairman.

It was resolved unanimously that the report of the directors and the accounts annexed thereto be taken as read.

Upon the motion of the chairman, seconded by Mr. —, it was resolved unanimously [*or nem. con.*, as the case may be],

That the report of the directors and the accounts annexed thereto be, and the same are, hereby adopted.

Upon, &c., it was resolved that a dividend, &c.

Upon the motion, &c., it was resolved that Mr. — be and he is hereby elected a director, in the place of Mr. —.

Upon, &c. [vote of thanks].

A. B. *Chairman.*

If an amendment be moved, the minutes will run thus:—

It was moved by the chairman, and seconded by Mr. —,
That, &c.

An amendment was thereupon moved by Mr. —, and seconded by Mr. —, [*Here set it out, e.g.*],

"That the report be received, but not adopted, and that a committee of five shareholders be appointed, with power to add to their number, to inquire into the formation and past management of the

company, and with power to call for books and documents, and to obtain such legal and professional assistance as may be necessary, such committee to report to a meeting to be called for — day, the —th of —.

The amendment was put to the meeting and negatived. The original question was then put to the meeting and declared by the chairman to be carried.

Extraordinary General Meeting of The — Company, Limited, held the —th day of —, at, &c.

Mr. — in the chair.

The notice convening the meeting was read by the secretary.

The minutes of, &c.

Upon the motion of the chairman, seconded by Mr. —,

It was resolved unanimously that the capital of the company be increased to £— by the creation of — new shares of £— each.

A resolution, moved by Mr. —, and seconded by Mr. —,

That, &c., was negatived.

Mr. — moved,

That, &c.

Mr. — seconded this motion.

A show of hands having been called for, the chairman declared that — hands were held up in favour of, and — against the resolution, and that the motion was consequently carried [or lost, as the case may be].

A poll was then demanded and taken, the numbers being as follow: For the motion, 128 votes. Against the motion, 72 votes. [The minutes may distinguish the number of personal votes and of votes by proxy. The scrutineer's report (if any) will be entered.]

The chairman then declared that the resolution was carried.

The minutes of a meeting of the directors will be as follows:—

At a meeting of the directors held the —th day of —, at, &c. Present, Mr. —, Chairman of the Board; Mr. —, and Mr. —.

The minutes of the meeting of the —th were read and signed.

Upon the motion, &c., it was resolved, &c.

A draft contract between, &c., having been read, the chairman was directed to affix the seal of the company to the engrossment thereof.

The secretary was directed to, &c.

A letter from, &c., addressed to the secretary, having been read, and the board being of opinion, &c., the secretary was directed to reply, &c., and the manager was desired to, &c.

The usual plan adopted is for the secretary to make notes at each meeting of what passes, and subsequently to enter the particulars in the proper minute book ready for reading and signature by the chairman at a subsequent meeting.

It is of great importance to have the minutes duly made and signed, for they then, by virtue of sect. 67 of the Act of 1862, become *prima facie* evidence. Moreover the section provides that—

“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.”

Some times, *e.g.*, in the case of legal proceedings, it may be requisite to put the minute book in evidence, but the minutes of the last meeting have not been signed. In such case the chairman can sign, for though it is usual for him to sign at the next succeeding meeting, he is not bound to wait.

As to the conclusive effect of the chairman's declaration in case of a special resolution, see *supra*, p. 56.

NAME.

The name of a company must be painted up, or affixed 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. The name must also be mentioned in legible characters in all notices, advertisements, and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by, or on behalf of such company, and in all bills of parcels, invoices, receipts, and letters of credit of the company. In default, the company and its officers will be liable to heavy penalties. See further, sects. 41 and 42 of the Companies Act, 1862.

A company may, by special resolution, change its name with the consent of the Board of Trade. Sect. 13 of the Act of 1862. The course will be as follows:—1. Pass a special resolution, “That the name of the company be changed to the — Company, Limited.” 2. File a printed copy of the resolution with the Registrar. 3. Let

the secretary write to The Assistant Secretary of the Board of Trade, Railway Department, Board of Trade, Whitehall Gardens, S.W., enclosing a copy of the resolution, stating the circumstances which have rendered the change desirable, and requesting him to obtain the sanction of the Board. 4. In due course, a letter giving the necessary sanction will be received, and the secretary will then write to the Registrar, enclosing the letter of sanction, and requesting the Registrar to enter the new name on the register, and to issue a certificate of the change. 5. This will be issued in due course, and upon such issue, and *not before*, the change is effected. Hence, till the issue of the certificate, the old name must be used.

Before passing the special resolution it should be ascertained that the name is not already registered.

SEAL.

Every company has its seal, and it is one of the first duties of the directors of a new company to procure a seal for it. The name of the company must be engraven on the seal in legible characters. See sections 41 and 42 of the Act of 1862.

The company stationers provide seals, &c. See *infra*, p. 115.

The seal is fixed in a machine capable of impressing documents as required. The impression is plain, but in many companies a large red adhesive wafer is put on the document and the seal impressed thereon. This renders it more conspicuous and permanent. The wafers can be obtained at the stationers.

The directors usually make special rules as to the custody of the seal. As to what contracts must be under seal, see *supra*, p. 32.

REGISTRATION OFFICE.

The London office of the Registrar of Joint Stock Companies is situate at Somerset House, Strand. A person can examine the papers relating to any company by filling up a form of application (supplied in the office). The form costs 1s.

Alphabetical indexes of all registered companies can be examined gratis. A copy of any document or part of a document may be obtained at 4*d.* per folio of seventy-two words.

Documents which have to be registered or filed with the Registrar must be duly stamped. This can be effected at the office. The registration of documents is generally effected through a solicitor. The fees payable are set forth in Table B., schedule 1, to the Companies Act, 1862. The following is a copy so far as material :—

TABLE B.

[See section 17 of the Act.]

Table of fees to be paid to the Registrar of Joint Stock Companies by a company having a capital divided into shares.

	£	s.	d.
For registration of a company whose nominal capital does not exceed £2000, a fee of	2	0	0
For registration of a company whose nominal capital exceeds £2000, the above fee of £2, with the following additional fees, regulated according to the amount of nominal capital (that is to say)—			
For every £1000 of nominal capital, or part of £1000, after the first £2000 up to £5000	1	0	0
For every £1000 of nominal capital, or part of £1000, after the first £5000 up to £100,000	0	5	0
For every £1000 of nominal capital, or part of £1000, 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 for £1000, or part of £1000, 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 or registration, or afterwards, any greater amount of fees than £50, taking into account in case of fees payable on an increase of capital after registration, the fees payable on registration.			
For registering any document hereby required or authorised to be registered, other than the memorandum of association	0	5	0
For making a record of any fact hereby authorised or required to be recorded by the Registrar, a fee of	0	5	0

It will be borne in mind that the above fees are all payable by means of impressed stamps.

The office hours at the Registration Office are 10 to 4, except Saturday, 10 to 2.

REGISTER OF MEMBERS.

The directors of every company must keep a register of members, *i.e.*, shareholders. See section 25 of the Act of 1862.

This register must contain

(a) The names, addresses, and occupations, if any, of the shareholders.

(b) A statement of the number of shares held by each shareholder, the distinguishing number of each share, and the amount paid or agreed to be considered as paid on each share.

(c) The date at which the name of any person was entered in the register as a member.

(d) The date at which any person ceased to be a member.

In default the company and its directors will be liable to heavy penalties.

The register may be contained in one or more books or volumes, *e.g.*, one volume may contain a list of all the members, and may refer to another volume for the other particulars.

Very commonly the register of members and the share ledger (which shows the account of each member) are embodied in one volume. Though this is convenient in many respects, there is one great objection, *viz.*, that as the register of members is public (see below), the share ledger thus becomes open to the public also.

By section 22 of this Act, it is provided that "each share shall, in the case of a company having a capital divided into shares, be distinguished by its appropriate number." The usual plan is to number the shares arithmetically, beginning with 1, according to date of allotment.

No notice of any trust must be entered on the register. Section 30 of the Act of 1862. But the company cannot refuse to accept notices from persons claiming to be interested in shares, though it may not be bound to attend to them. See *supra*, p. 10.

The register must be kept at the registered office of the company. Section 32.

Except when closed, any member may, 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), inspect the register gratis, and any other person may inspect the same on payment of one shilling. And the company shall if required supply any such member or other person with a copy of the whole or any part of the register on payment of 6*d.* for every hundred words copied. Section 32 of the Act of 1862. There is a penalty for default.

Moreover if the company refuses to permit inspection, the person who desires to inspect can at once apply to a Judge of the High Court sitting at Chambers for an order to permit immediate inspection. The application is made by summons, which the applicant's solicitor can obtain at the cost of a few shillings. The applicant will make an affidavit proving the refusal after tender of the proper fee, and unless a good defence is shown, the Judge will, upon the hearing of the summons, order the company to permit immediate inspection. If the order is disobeyed, the property of the company can be sequestered.

If the name of any person is without sufficient cause entered in or omitted from the register, and in various other cases, the Court will, upon the application by any person aggrieved, order the register to be rectified. The application is made by counsel in a summary way, an affidavit of the facts being produced, and notice having been given to the company. Such applications are frequent, *e.g.*, where the company improperly refuses to register a transfer, or has improperly forfeited the applicant's shares.

As to entering particulars of share warrants to bearer in the register, see section 31 of the Act of 1867. As to stock, see section 29.

The register is *prima facie* evidence of the facts therein stated. Section 37 of the Act of 1862.

By section 33 of the Act of 1862, any company

"May, upon giving notice by advertisement in some paper circulating in the district in which the registered office of the company is situated, close the register of members for any time or times not exceeding in the whole thirty days in each year."

The regulations generally contain a clause as to closing. The usual plan is to close for a fortnight before the ordi-

nary general meeting, and the notice convening the meeting will state the fact.

BOOKS.

The following are the principal books which a company should keep :

1. The register of members.
2. The share ledger.

The above are sometimes embodied in one book, which is called the share ledger and register of members. Specimen sheets of books so ruled can be seen at the stationer's, &c., *infra*, p. 115. But the plan is open to the objection above mentioned, p. 71.

3. The numerical register of members.
4. The certificate book. This contains forms of certificates of title, *supra*, p. 5 ; and the particulars of each certificate issued will be entered on the counterfoil.
5. Register of transfers.
6. Minute book of general meetings.
7. Directors' minute book.
8. Register of mortgages, see *supra*, p. 30.

There are other books sometimes used, but in each case the books required depend in a great measure upon the size and circumstances of the company.

The general books of account showing the dealings of the company with outsiders will be similar to those employed by other persons carrying on a similar business.

As a good and simple system of accounts is extremely desirable, it will in any case of doubt be expedient to take the advice of a professional accountant as to what books are requisite, and as to the mode of keeping them.

The regulations usually give a shareholder a right to inspect the books of the company, or some of them. Thus Table A provides that :

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.

This, however, is a more general power than the regulations of most companies give. Not uncommonly it is

provided that a shareholder shall not be entitled to inspect any of the books except the register (*supra*, p. 71) without the consent of the board or of the company in general meeting. In some cases it would be extremely undesirable to allow a shareholder, whose interests may be opposed to those of the company, to examine all the books.

Where a right of inspection is given as regards "the books wherein the proceedings of the company are recorded," a shareholder has no right to inspect the minute book of the directors' proceedings. As to the appointment by the Board of Trade of inspectors to examine into the affairs of a company, see sects. 56—61 of the Act of 1862.

RETURNS AND NOTICES TO REGISTRAR. THE ANNUAL SUMMARY AND LIST OF MEMBERS.

Section 26 of the Companies Act, 1862, provides as follows :

XXVI. Every company under this Act, and having a capital divided into shares, shall make, once at least in every year, a list of all persons who, on the fourteenth day succeeding the day on which the ordinary general meeting, or if there be more than one ordinary general meeting in each year, the first of such ordinary general meetings is held, are members of the company ; and such list shall state the names, addresses, and occupations of all the members therein mentioned, and the number of shares held by each of them, and shall contain a summary specifying the following particulars :—

- (1.) The amount of the capital of the company, and the number of shares into which it is divided ;
- (2.) The number of shares taken from the commencement of the company up to the date of the summary ;
- (3.) The amount of calls made on each share ;
- (4.) The total amount of calls received ;
- (5.) The total amount of calls unpaid ;
- (6.) The total amount of shares forfeited ;
- (7.) The names, addresses, and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them.

The above list and summary shall be contained in a separate part of the register, and shall be completed within seven days after such fourteenth day as is mentioned in this section ; and a copy shall forthwith be forwarded to the Registrar of Joint Stock Companies.

The summary and list will as near as may be in the

form marked E, in Schedule II. to the Act of 1862, which is as follows :—

THE COMPANIES ACT, 1862.

Summary of capital and shares of the — Company, Limited, made up to the — day of —.

Nominal capital £—, divided into shares of £— each.	£
Number of shares taken up to the — day of —	...
There has been called up on each share . . .	...
Total amount of calls received . . .	...
Total amount of calls unpaid . . .	...
Total amount paid on — shares forfeited . .	...

The following items are only to be filled up by companies that have issued share warrants :—

Total amount of shares for which share warrants comprising — shares each are outstanding .	£
Total amount of stock for which share warrants comprising £— stock each are outstanding . .	...
Total amount of share warrants comprising — shares or £ — stock issued since the last summary	...
Total amount of share warrants comprising — shares or £ — stock surrendered since the last summary	...

The form of the list is given on p. 75.

In regard to the summary, the following points will be borne in mind.

In stating how much per share has been called up, the aggregate amount of the calls will be given, *e.g.*, if three calls of £1 each have been made, £3 will be stated.

Sometimes less has been called on one class of shares than on another. In such case the return must be modified by stating that there has been called up on — shares £—— each, and on — shares £—— each.

In stating the calls received, the amount actually received must be given.

As to the amount of forfeited shares the return should state that “there has been paid on forfeited shares £——,” *i.e.*, the aggregate amount. If any money has been paid in anticipation of calls [see clause 7 of Table A] the amount should be stated.

With regard to the list of members, it should be duly filled up, the names being arranged in alphabetical order for convenience of reference. In the sixth column the *aggregate* number of shares held by each member should be set opposite his name, and it is convenient to add up the column and carry the amount forward. The seventh column, headed “Additional shares,” should state the aggregate number of shares which during the past year were *transferred* by each member. In the eighth column should be stated the aggregate number of shares which during the past year were held by persons who at the date of the return are no longer shareholders. In the last column will be inserted any notes, *e.g.*, “deceased,” “forfeited,” “surrendered.” Both the summary and the list should be filled in upon the printed forms, which can be obtained at the stationers’.

The return must be signed at the end by the secretary or director, or other authorised officer of the company, and need not be sealed: see *supra*, p. 66. It requires a 5s. registration stamp, and must be completed or filed with the Registrar within 21 days after the ordinary general meeting in each year. In default, heavy penalties will be incurred, sect. 27 of this Act. If the company has consolidated its shares or any of them into stock, or has issued share warrants, the return will require to be in somewhat different form. Special forms can in such case be obtained from the stationer.

If an erroneous return has been made, an amended return should be filed. Besides the above returns, various notices have to be given to the Registrar.

1. Notice of situation of registered office, sects. 39 and 40, and *infra*, p. 86.
2. Notice of change of office. *Ibid.*
3. A printed copy of every special resolution, *supra*, p. 56.
4. Notice of increase of capital, sect. 34 and *supra*, p. 18.
5. Notice of conversion of shares into stock, sect. 28.
6. Notice of consolidation of shares, sect. 28.
7. Copy of order of Court, and minute on reduction of capital, sect. 15 of Companies Act, 1867, *supra*, p. 21.
8. Consent of Board of Trade to change of name, sect. 13.
9. Letter requesting Registrar to issue certificate on change of name, sect. 13, *supra*, p. 68.
10. Notice of rectification of register by the Court, sects. 35 and 36.
11. Copy winding-up order, sect. 88.
12. Final order for dissolution, sects. 111 and 112.
13. Liquidator's final return, sect. 143.
14. His consent to registration of new company by same name, sect. 23.

It should be borne in mind that two returns are sometimes necessary in regard to the same matter, *e.g.*, where the capital is increased by special resolution, 3 and 4 must be made. If the increase be effected by ordinary resolution, or by resolution of the directors, return 4 will suffice.

Blank printed forms for most of the necessary notices and returns can be obtained from the stationers. See *infra*, p. 115.

FORMATION OF COMPANIES UNDER PART I OF THE ACT OF 1862.

The Preliminary Agreement.

The steps to be taken with a view to the formation of a company depend to some extent upon the objects for which it is to be formed, and the class to which it belongs. The majority of the companies from time to time formed belong to one or other of the following classes :

1. Companies formed to acquire and carry on an existing business or undertaking.

2. Companies formed to start some new business or undertaking. And almost all these companies have in view the immediate acquisition of some property or right, *e.g.*, if the company belongs to class (1), the purchase of the business is the immediate object; and if the company belongs to class (2), the chances are that it is formed with a view to establishing and carrying on a business upon some particular premises, or that it intends forthwith to purchase some patent, licence, concession, mine, building-ground, right, or privilege.

Whenever the acquisition of some particular property or right is nearly connected with the determination of the parties to form a company, it is desirable, before going to the expense of forming the company, to procure an agreement from the owner of the property or right for the sale thereof to the company. If this is not done, when the company has been formed, the owner may raise his terms or refuse to sell, and thereby cause inconvenience and expense to those who have formed the company. In some cases such an occurrence may render the company completely abortive, *e.g.*, where it has been formed to acquire a particular business, patent, concession, or other right, but in other cases it may be possible to acquire from another person the requisite property, *e.g.*, suitable premises for the purposes of the company. There is no need for a preliminary agreement where the intending vendor is himself forming or procuring the formation of the company, or where the promoters are satisfied that the vendor will, when required, sign an agreement in the terms proposed. In such cases the agreement will be made between the vendor and the company, and although it will be prepared before, it will not be executed until after the formation of the company.

The agreement should be in writing, and the following will give some idea of the form it will assume where it is made before the formation of the company; but a preliminary agreement should never be framed without legal advice.

An agreement made the — day of — between A. B. of — of the one part, and C. D. on behalf of the below-mentioned company of the other part. Whereas the said C. D. and others are about to procure the formation under the Companies Acts, 1862 to 1880, of a company limited by shares by the name of The —

Company, Limited, with a capital of £20,000 divided into 2000 shares of £10 each.

Now therefore it is hereby agreed as follows :—

1. The said A. B. shall sell, and the said company, when formed, shall purchase

[Here will follow a description of the property or right.]

2. The consideration for the said sale shall be £10,000,—payable, as to £5000, in cash, and as to the residue in fully paid up shares of the company.

3. 4. 5. *[Here will follow various clauses as to what evidence of title the vendor is to show, and when and where the purchase is to be completed, &c., &c.]*

6. If this agreement is not adopted by the company before the — day of — next, either of the parties hereto may, by notice in writing to the other, rescind the same.

As witness the hands of the said parties hereto the day and year first above written.

C. D. mentioned in the above form is a nominee of the persons who are about to form the company. He may be one of them or a stranger. Such an agreement is commonly referred to as a “preliminary agreement.”

The agreement will require a 6*d.* agreement stamp, and will be signed by the parties in the presence of the solicitor.

Where it is made after the formation of the company, and is sealed with the company's common seal, it will require a 10*s.* deed stamp.

For various forms of preliminary agreement, see Company Precedents, p. 9, *et seq.*

The Memorandum of Association.

The agreement having been signed, the next step is to execute the memorandum and articles of association (if any) of the company. These documents are in many cases prepared contemporaneously with the preliminary agreement, and are executed immediately after the execution thereof. The preparation of the memorandum and articles is a matter of some nicety, and the aid of a solicitor should be obtained. See further, *infra*, p. 84. If there is not to be any preliminary agreement the preparation of these documents will be the first stage in the formation of the company. The memorandum must state :

1. The name of the proposed company, with the addition of the word "Limited" as the last word of such name.
2. Whether the registered office of the company is to be in England, Scotland, or Ireland.
3. The objects of the company.
4. A declaration that the liability of the members is limited.
5. The capital.

As to the Name :

Any name may be selected, provided that it does not resemble too closely the name of another registered company. The Registrar of Joint Stock Companies is very strict in this respect. A rule has also been made forbidding the use of the word "Royal" as part of the name of a company.

Where a company is to acquire an existing business it is usual to give the company the old style, or one based on it, *e.g.*, if the business has been carried on under the style of "Brown & Jones," the company will be called "Brown & Jones, Limited," and so W. Smith and Co. will become "W. Smith & Co., Limited," and Peter Smith will become "Peter Smith, Limited." But, of course, if the parties choose they can select an entirely new name, *e.g.* :

- "The Middlemarch Ironworks, Limited."
- "The York Supply Association, Limited."
- "The Patent Pencil Company, Limited."
- "The European Railway Corporation, Limited."
- "The Share Syndicate, Limited."
- "The Brighton Bank, Limited."
- "The Waterworks Trust, Limited."
- "The Tenby Club, Limited."
- "The Incorporated Proprietors of the Oldham Gas Works, Limited."

As to change of name, see *supra*, p. 68.

As to the registered office :

The office at which the documents relating to the formation of the company are to be registered depends on the intended situation of the registered office. If it is to be "in England," the company must be registered in London, unless the memorandum states that the objects are to work mines in the counties of Devon or Cornwall. In the latter case it must be registered at Truro. But registra-

tion at Truro is not uncommonly attended with considerable inconvenience and liability to delay, and accordingly even where the working of a mine in Devon or Cornwall is the principal object of the company, words should be added extending the objects, *e.g.*, "to acquire and work the Great Tor Mine and any other mines situate in the county of Cornwall or elsewhere." If this is done the registration can be effected in London. If the company is to be "in Scotland," or "in Ireland," it must be registered in Edinburgh or Dublin, as the case may be. The London office for registration is at Somerset House. See *supra*, p. 69.

As to the objects of the company :

Great care has to be taken in stating these, for they cannot, after the registration of the company, be altered except by reconstruction. See *infra*, p. 105, and Company Precedents, p. 494. Thus, if a company is registered with a memorandum, which states the objects to be "To purchase and carry on the business of a grocer now carried on at — by A.," and it subsequently becomes desirable to purchase a rival business, it cannot be done. In order that this might be allowable, the objects ought to include power "to purchase any other business of a similar character," or else to be framed in more general terms, *e.g.*, "To carry on the business of a grocer at — or elsewhere, and with a view thereto to acquire the business now carried on at — by A., and any other business of a similar character."

A person who is acquainted with the legal decisions can readily frame an objects clause so as to give full scope to the undertaking; but great care and experience are requisite; for otherwise the parties will probably find that their power of carrying on the business is inconveniently restricted, and that the reconstruction [*infra*, p. 105] of the company is necessary.

As to the capital :

The founders of the company fix the amount. It must of course depend on the nature of the company, *e.g.*, if it is proposed to purchase some property or right for say £30,000, and say £10,000 is wanted for working capital, the capital will be fixed at £40,000 or £50,000. It will be borne in mind that the capital merely represents the nominal amount, *i.e.*, the aggregate amount of the shares which the company is authorised to issue without paying

further duty. As to increasing the capital, see *supra*, p. 18. The actual capital will depend on how many shares are taken up by the public or others. The memorandum must state both the amount of capital and the number and amount of the shares. The shares may be of any amount; £20, £10, or £5 are common enough, and £1 is now the favourite amount in public companies. In private companies [*infra*, p. 129] the shares are sometimes much larger, *e.g.*, £500.

In order to form a company, seven persons at least must subscribe, *i.e.*, sign the memorandum of association, and each of these persons must write opposite his or her name the number of shares he or she takes. Any person not under disability, *e.g.*, by reason of lunacy, infancy, or coverture, is competent to sign, and it is sufficient if each agrees to take one share. Every share so subscribed for will have to be paid for in money or money's worth, *e.g.*, property or services. If it is to be paid for otherwise than in cash, an agreement in writing must be filed before the issue of the shares, and such agreement should mention the number of the shares subscribed for, and how they are to be paid for. Unless this is done the subscriber will have to pay for the shares in cash. See Company Precedents, p. 12; sect. 25 of the Act of 1867; and *supra*, p. 6.

For a specimen of a memorandum of association, see *infra*, p. 153; other forms will be found in Company Precedents, p. 60, *et seq.*

Each of the subscribers to the memorandum must sign his name, and add thereto his address and occupation. The address should be as precise as possible; *e.g.*, it should give the number of the street. And the occupation should be particular; *e.g.*, if the subscriber is a clerk, he should state whether he is clerk in holy orders, or a clerk to a merchant or railway company, or otherwise.

Very commonly the same person witnesses all the signatures, but it is not essential; *e.g.*, there might be a different witness to each signature, or one for several, and another for the rest.

The memorandum may be in writing or printed. Where articles are filed the memorandum is always printed.

The Articles of Association.

It is not absolutely necessary, in the case of a company limited by shares, to have articles of association, for if none are registered with the memorandum, the company will be governed by Table A, section 15 of the Act of 1862. But unless the company be a very trivial one, it is extremely desirable to register articles—

(1) Because Table A does not provide for a number of matters which experience has shown that it is necessary to provide for; *e.g.*, preference shares, reduction of capital, share warrants, lien, express borrowing powers, &c., &c.

(2) Because Table A contains various clauses which are ambiguous or otherwise objectionable, and

(3) Because it is generally desirable by the articles to appoint the first directors for a definite period; to give them power to appoint others; to fix their remuneration; to authorise them to adopt preliminary contracts, &c., &c.

In some cases, in order to save the expense of printing a full set of articles, a short set is prepared, containing some clauses which are to apply to the company in addition to those contained in Table A, and declaring that some of the clauses in Table A shall not apply, or shall be modified. Where this is done, the regulations of the company will consist of Table A plus the short articles. See ss. 14 & 15 of the Act of 1862. Such an arrangement is not very convenient, but at any rate it is far better than relying on Table A alone. See *supra*, p. 2.

What clauses and provisions should be inserted in the articles must in a great measure be left to the discretion of the solicitor or counsel who prepares the articles. He will, of course, have regard to the objects and wishes of the founders, and to the circumstances of the case. But great care should be taken that the documents are settled by some really competent person; for the inconveniences and difficulties which are occasioned by ill-framed documents are sometimes very serious and perplexing. Some people fancy that a copy of any old memorandum and articles can be readily touched up and adapted for an intended company, forgetting that each year the law is more or less modified by statute and judicial decisions, that the weak points in old clauses are disclosed and new clauses found

requisite, and that the documents of an old company may have been framed in special circumstances, and may be quite unsuited to a new one. The common result of an imperfect memorandum of association is that the company finds its objects inconveniently limited, or dangerously ambiguous ; and imperfect articles of association give rise to frequent inconveniences and uncertainty. For example, at a general meeting a poll is demanded ; the chairman says he shall take it at once ; a shareholder objects, and says the meeting ought to be adjourned, so that absent shareholders may have an opportunity of attending. The chairman says that the regulations provide that the poll shall be taken in such manner as the chairman directs, and he asks the solicitor his opinion. The solicitor says that the regulations are not clear, and that having regard to a recent case in the Court of Appeal, it is doubtful whether regulations so framed authorise the chairman to take the poll at once. Of course the regulations ought not to have left the point in doubt. Again, shares are allotted upon the terms of a prospectus which provides for payment of so much on application and the balance by instalments ; some of the shareholders omit to pay the instalments, and the question arises whether the shares can be forfeited. On turning to the articles it is found that the forfeiture clauses only apply to "calls," and the solicitor advises that an instalment is not a call. The point ought to have been provided for. These are only a few out of many examples that might be given. Forms of articles, which a competent hand can readily adapt to most cases, will be found in *Company Precedents*, p. 95, *et seq.*

The articles must be printed. Formerly they were usually printed on paper the size of foolscap, but a smaller size is more convenient for the use of members, directors, and others, and is now very commonly used.

They must be signed by the same persons who subscribe the memorandum of association, and witnessed in the same way. The number of shares taken by the subscribers need *not* be set opposite their signatures to the articles.

Registration of Memorandum and Articles.

The memorandum and articles having been duly executed, they should be registered. For this purpose they must be taken to the Registrar of Joint Stock Companies at Somerset House [or elsewhere, as the case may be, see *supra*, p. 69], and tendered for registration by filling up the necessary form. The proper stamps will have to be impressed and paid for, *i.e.*, on the memorandum a 10s. deed stamp, a 5s. registration stamp, and also stamps in proportion to the nominal amount of the capital. See *supra*, p. 70. And on the articles a 10s. deed stamp, and a 5s. registration stamp.

The documents having been stamped, and appearing to be in proper form, the Registrar will file them, and give a certificate under his hand, stating that the company is incorporated and limited. The Act of 1862 provides that upon the issue of the certificate the company shall come into existence as a body corporate: section 18 of the Act.

As soon as may be after the incorporation of the company, a notice, stating where the registered office of the company is, and signed by the secretary or some other person [see *supra*, p. 65] on behalf of the company, should be filed with the Registrar. It may be in writing, and must be stamped with a 5s. registration stamp. For form, see Company Precedents, p. 209.

At the first meeting of the directors after the incorporation of the company, resolutions will be passed appointing the secretary (*supra*, p. 60) and solicitor (*supra*, p. 61), making regulations as to meetings of directors, quorums, &c. (see *supra*, p. 25), directing the preparation of the seal, &c. Where there are preliminary agreements, they will be taken into consideration at the same or a subsequent meeting, and if approved, resolutions will be passed for the adoption thereof. A preliminary agreement is not binding upon the company till adopted by the directors. The adoption is sometimes effected by passing a resolution "That the agreement dated, &c., be, and the same is hereby adopted on behalf of the company." In such case notice of the adoption will be given to the vendors, and the seal will be affixed to the agreement thus:

"The above-written agreement is hereby adopted by the — Company, Limited. As witness the seal of the said company this — day of —."

But the better plan is to indorse a short contract of novation on the original agreement. The ordinary form will be found in Company Precedents, p. 56. It only occupies a few lines.

Sometimes [*supra*, p. 79], the preliminary agreement, though prepared before, is not executed until after the incorporation of the company. In such case it will be expressed to be made between the vendor of the one part, and the company of the other part. Its adoption will be effected by passing a resolution of the directors for adoption and affixing the seal to the agreement. This avoids the necessity for a trustee, and has other advantages. See further, Company Precedents, p. 2.

The preliminary agreement having been adopted must, if it provides for the issue of any paid-up shares, be filed with the Registrar before the shares are issued under it. See *supra*, p. 6.

If the company is a private one, the next step will be to procure a transfer to the company of the property or rights comprised in the preliminary agreement, and to commence business. In the case of a public company the transfer cannot in general be procured till after the prospectus has been issued, and thereby the necessary cash capital obtained.

As to the prospectus, see further, *infra*, p. 90.

The allotment of shares will be effected by a resolution or resolutions of the directors as follows :

"That — shares in the capital of the company be allotted as follows :—

Allottee.	Number of Shares.	Denoting numbers of Shares, both inclusive.	
		From	To
A. B.	Ten	1	10
C. D.	One hundred	11	111
&c.	&c.	&c.	&c.

88 INDUCEMENTS TO FORMATION OF COMPANIES.

And that the secretary do give notice of allotment to the above-named persons respectively."

Notice will then be given, *supra*, p. 3, and the names will be entered in the register of members, *supra*, p. 71.

INDUCEMENTS TO THE FORMATION OF COMPANIES.

Companies may be divided into two classes : 1, Public ; 2, Private.

A public company is one which is intended to be carried on with capital or funds to be obtained by an appeal to the public, *i.e.*, by issuing prospectuses, circulars, and advertisements. A private company is one which is intended to be carried on without any such appeal to the public.

Most of the *private* companies from time to time started are formed for the purpose of converting existing business concerns into companies. The inducements to such conversions, and the mode of effecting the same, are fully set forth in the Appendix, *infra*, p. 129.

But there are a good many private companies formed for other purposes. The great inducement to the formation of these companies is the power which the Act gives to persons forming the same of carrying on business with *limited liability*.

It will be borne in mind that at common law a person who goes into business, whether on his own account or as partner in a firm, is liable for all the debts incurred in the business to the full extent of his means. "If," says the law, "you want to trade, you must risk all you have." See further, *infra*, p. 130.

If, then, a person or persons desire to trade, or carry out some undertaking with limited liability, the prudent course is to form a private company for the purpose. Where a single person, or less than seven persons, is or are about to form a company, a few friends must be got to sign the memorandum of association, for every memorandum must be signed by at least seven persons. The extra subscribers, however, need only take one share each, say a £1 or £5 share ; their services are easily obtained, and they are very commonly relations or clerks of the person or persons forming the company.

Private companies are formed, not merely to start and carry on trading concerns of all kinds, but also to carry out particular undertakings which involve risk ; *e.g.*, to build a club house and let it to a club, to acquire a cricket ground, to build and let assembly rooms, to build a church or chapel, to promote a bill in Parliament, to try a patent and if successful to form a public company to buy it, to lend money to a trader in consideration of a share of profits but without danger of partnership (*infra*, p. 133), &c., &c.

As to public companies :

The great inducement to their formation is the facility which a public company has for obtaining from the public the necessary capital for carrying its objects into effect. However large the capital required may be, if a judicious prospectus is issued, shareholders will be found, provided the company appears to have a reasonable chance of success. This is the general rule, though periods of depression and doubt sometimes occur, during which the public are not so ready to part with their money. Of course the motive which impels persons to invest is the desire to share in the profits of a promising undertaking, coupled with the knowledge that the investor's *liability is limited*. There appears to be in this country an almost unlimited number of persons of independent means who can, and from time to time do, take shares in limited companies.

Working capital for a company is also, in many cases, obtained from the public by the issue of *debentures*. There is no market for the debentures of an individual, or of a firm, but a company's debentures are well-known securities, and if the company is in fair repute can be placed without difficulty. And persons who form a company bear this in mind. Where a company wants to borrow, a prospectus offering debentures, or debenture stock, is usually issued, or a financial agent is employed to place the debentures at a discount or otherwise.

So great are the facilities for obtaining money from the public on debentures, that it is not uncommon to convert an existing business into a company for the express purpose of obtaining additional capital on debentures. In such case, probably, the shares in the company will all be issued as fully paid up to the vendors in payment for the

business, and then the directors will issue a prospectus offering mortgage debentures to the public. If things are properly managed they will obtain the necessary funds without difficulty.

There are many other inducements to the formation of companies ; *e.g.*, the rule that directors are limited agents of the company ; the advantages of corporate existence as regards suing and being sued, holding property, death and bankruptcy of members, sale of shares, &c., &c. See further, *infra*, p. 129, *et seq.*

Lastly, it will be borne in mind that (with certain exceptions which need not here be specified) no company, partnership, or association, consisting of more than twenty persons, can now be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, without being registered as a company under the Act of 1862, sect. 4 of the Act. If it is not registered, it is an illegal association.

This law renders it absolutely necessary to start a company when a large number of persons are about to join in a business.

PROSPECTUSES.

Where it is intended to appeal to the public for the capital to work a company, the usual course is to issue a prospectus stating the position and prospects of the company, and inviting applications for shares. In the case of a new company, the document is generally prepared by or under the direction of the promoters before the company is formed, and after its formation is adopted by the directors and published by their order. In many cases large numbers of printed copies of the prospectus are sent by post or otherwise to the investing public, of whom financial agents and others keep lists. And generally the document or an abridgment thereof is advertised, more or less extensively, in the newspapers. A prospectus must (1) be free from misrepresentations, (2) disclose all material facts, (3) specify the contracts made ; and if it is improperly framed, the company, and those who take part in

its preparation and issue, may be involved in litigation and onerous liabilities. As to (1): The prospectus should tell the truth, the whole truth, and nothing but the truth. If it is to state facts which cannot be verified, it should (even though the directors believe the facts to be true) refer to the source of information, *e.g.*, Mr. A. has inspected, &c., and reports, &c., and a copy of his report can be inspected, &c. As to (2): What facts are material to be disclosed, and how disclosure can best be made without unduly depreciating the undertaking, requires judgment and familiarity with the legal decisions. As to (3): Section 38 of the Act of 1867 requires that the dates and the names of the parties to all contracts entered into by the company, or the promoters, directors, or trustees thereof before the issue of the prospectus, shall be specified. Difficult questions arise as to whether a contract is or is not within the section, but it has been held that it applies to all contracts which would be likely to influence persons reading the prospectus in making up their minds whether or not they will apply for shares, and further, that the contracts must be specified whether made before or after the person becomes a promoter, director, or trustee, and whether they relate directly or indirectly to the affairs of the company. Legal advice should be obtained when any doubt arises whether a contract should be specified; for non-compliance with the section, even through ignorance or mistake, may render the persons issuing the prospectus liable to an action for damages for what the law says "shall be deemed fraudulent." If the prospectus is not properly framed, shareholders who have been deceived can take proceedings against the company to get rid of their shares and recover their money, but not a day should be lost after discovering the facts. Moreover, in certain cases, they can bring actions for fraudulent misrepresentation against the directors and others. Such actions can be brought at any time within six years after the discovery of the facts. No prudent man will take part in the issue of a prospectus unless he is satisfied that the prospectus complies with the law.

Where a company intends to apply for a quotation of its shares on the Stock Exchange additional care must be taken in framing the prospectus (and also the memorandum and articles), in order that the rules of the Stock Exchange

may be observed. See further, *Company Precedents*, p. 167, *et seq.*

PROMOTERS.

The promoters of a company are those who form and set the company going. For example: A. wishes to form a public company to purchase his business; he directs his solicitor to prepare the necessary documents, and to have the company registered, and he arranges with three or four gentlemen to become directors. They issue the prospectus as approved by all parties. A. is a promoter. Suppose that A. arranges with B. and C. that they shall assist him by getting directors, and inducing persons to apply for shares, in consideration of his giving them some of the shares which he is to receive from the company, or a commission. B. and C. are also promoters. Again, suppose D. and his friends have a company formed to purchase A.'s property, and get some financial agent to float it. D. and his friends are promoters.

The promoters of a company stand in a fiduciary relation towards [*i.e.*, they are regarded as trustees for] the company, and cannot lawfully make a secret profit out of or in relation to the company. If they make any such profit, they will be liable to refund it in case of discovery. Thus, suppose in the case above-mentioned that the commission paid to B. and C. is not disclosed by the articles of association or the prospectus. In such case the company, on discovering the payment, can compel B. and C. to refund.

As to the remuneration of promoters:

In many cases it is quite just that promoters should be liberally remunerated for their services. They perhaps discover a promising opening for a company, and take great pains in finding competent directors and preparing an attractive prospectus, and the company may be very successful. But sometimes they get much more than they deserve. Whether the remuneration is to be large or small, it is of importance to all connected with the company that it should be fairly disclosed. If this is not done the promoters may have to return the amount, and they and the vendor and the directors may be involved in

litigation and subjected to accusations of fraud. As to the way in which disclosure should be made, and as to the modes in which promoters usually provide for their remuneration, see *Company Precedents*, p. 178. The promotion of companies involves so much danger, that promoters rarely carry out any important transaction without assuring themselves by legal advice that they are acting in accordance with the law.

COMPANIES LIMITED BY GUARANTEE.

Besides companies limited by shares and unlimited, the Act of 1862 allows of the formation of companies limited by guarantee. Such companies may be formed with or without a joint-stock capital divided into shares, but they are scarcely ever formed with such a capital, and this chapter will therefore deal exclusively with those not having a joint-stock capital. A considerable number of associations for mutual insurance, *e.g.*, for the insurance of the ships, freight, or other property of members, or for the insurance of members against liability for damage or injury done to their workmen or property, have registered as companies limited by guarantee; but apart from these, the great majority of the companies which so register are associations intended to be supported by annual subscriptions or donations, and registered by licence of the Board of Trade without the word "Limited" (see *infra*, p. 95).

In order to form a company limited by guarantee, a memorandum and articles of association must be prepared. The memorandum will be similar to that used in the case of a company limited by shares [*infra*, p. 153], except that clause 5 will be omitted, and in lieu thereof a clause will be inserted declaring that "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 £——." This limit

of liability varies from 1s. to £10. Moreover, the words declaring that "the subscribers respectively agree to take the number of shares set opposite their names" will be omitted. The articles of association will provide among other things for—

Membership.—The executive body is generally empowered to admit members either after election, or upon payment, or otherwise.

Subscriptions and entrance fees.—Provisions as to these are usually made.

Transfer.—A member is not usually permitted to transfer his privileges.

Donations.—Sometimes donors are admitted to life membership or given other special privileges.

Calls.—Power to make calls to a limited extent is occasionally inserted.

Expulsion.—Power to expel objectionable members is generally taken. It must be borne in mind that such a power must be exercised with great caution and regularity, for any slip or irregularity will invalidate the proceedings.

The Executive is usually called "the committee," or "the council," or "the governors," or "the governing body," and occasionally "the directors." Very commonly a president, vice-president, a treasurer, and other officers are appointed.

General Meetings.—These will be provided for.

Votes.—Each member is usually given one vote, but sometimes the votes are proportioned to the amount of the member's subscription.

Accounts and audit.—These will be provided for.

A company limited by guarantee is bound to keep a register of its members (*supra*, page 71), and of mortgages (*supra*, page 30), and must give notice of special resolutions (*supra*, page 56). Moreover, section 45 of the Act of 1862 provides that such a company "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." The executive body, by whatever name called, will be the managers within the meaning of this section. But companies registered under

s. 23 of the Act of 1867 (see *infra*) are relieved from the obligations imposed by this section. A company limited by guarantee may alter its regulations by special resolution (*supra*, p. 56), and may wind up by special resolution or otherwise (*infra*, p. 99), as in the case of a company limited by shares. Upon the registration of a company limited by guarantee the memorandum must be stamped with duty as provided by Table "C" of the Act of 1862. The amount is proportioned to the number of members, and accordingly the articles usually state that "for the purposes of registration the company is to consist of [*e.g.*, 100] members." When the number is not to exceed 20 the fee is £2: when it exceeds 20 but does not exceed 100 the fee is £5, and so on up to £20. When the number is to be unlimited the fee is £20. For any increase of members beyond the number registered notice of increase must be given to the Registrar (see section 34 of the Act), and a further fee must be paid as provided by Table "C." Most of the observations contained in this work apply *mutatis mutandis* to companies limited by guarantee, but want of space prevents the writer from treating of such companies in greater detail.

OMISSION OF THE WORD "LIMITED."

Where an association is about to be formed for promoting commerce, arts, science, religion, charity, or *any other useful object*, and the founders are willing to form it on the footing that its profits or income shall be applied in promoting its objects, and that no dividend shall be paid to its members, the Board of Trade may grant a licence authorising its registration with limited liability, but *without the addition of the word "limited"* to its name (see sect. 23 of the Act of 1867). Many associations have been registered under this section. At first the applications came almost exclusively from Law Societies, Chambers of Commerce, and trade protection societies; but the section is now better appreciated, and accordingly associations of all kinds apply. Examples are given below. By registration the association gains stability and credit. It becomes a body corporate with perpetual succession, just as if it were incorporated by Royal Charter or special Act

of Parliament. It can have a common seal ; it can hold property in its own name without the intervention of trustees ; it can contract and take and defend legal proceedings in its own name ; its affairs can be conducted much more effectually ; and its officers and members are freed from personal liability. In almost all cases associations obtaining the licence register as companies limited by guarantee. See *supra*, page 93. The guarantee varies from 1s. to £10. Generally membership is constituted by election or by application in writing accepted by the governing body. Sometimes (*e.g.*, in charitable associations) a candidate for election must make a donation. As to the designation of the governing body, see *supra*, p. 94. In many cases the association is formed to absorb and continue some existing association of the same name ; the members of this all join the registered association, and the property, if any, is transferred to it, and thus the registered association silently takes the place of its predecessor. In order to obtain registration a memorandum and articles of association must be carefully prepared by some competent counsel. The memorandum must contain certain clauses (prohibiting the payment of dividends, &c.) required by the Board of Trade, and the documents have to be submitted to the Board. If approved, the application will be advertised in two or three newspapers, and after an interval of a few weeks the licence will be granted, and thereupon the association can be registered in the usual way, and the certificate of incorporation will be granted. The expense rarely exceeds £50, and is sometimes much less. The amount is sometimes raised by subscription and sometimes provided by some liberal supporter. See *Company Precedents*, p. 63. The following are some examples of companies which have been so registered :—

Associated Chambers of Commerce, 1875.
 Birmingham Exchange, 1880.
 British Dairy Association, 1879.
 British Dental Association, 1880.
 City and Guilds of London Institute for the Advancement of Technical Education, 1880.
 Cheltenham Ladies' College, 1880.

Church of England General Temperance Finance Association, 1878.
 Clifton High School for Girls, 1877.
 College of Organists, 1877.
 Corporation of Foreign Bondholders, 1873.
 Durham, &c., Botanical and Horticultural Society, 1881.

- Glasgow Institute of Fine Arts, 1879.
 Glasgow Mechanics' Institution, 1878.
 Home Hospitals Association for Paying Patients, 1878.
 Huddersfield Borough Club, 1879.
 Huddersfield Carlton Club, 1875.
 Huddersfield Cricket and Athletic Club, 1879.
 Incorporated Council of Law Reporting, 1870.
 Institute of Chemistry of Great Britain and Ireland, 1877.
 Institution of Mechanical Engineers, 1878.
 London Chamber of Commerce, 1881.
 Manchester Girls' High School Trust, 1877.
 Metropolitan Dairyman's Society, 1876.
 Mission Home for English Women in Paris, 1876.
 Newcastle - upon - Tyne Junior Liberal Club, 1880.
 Newnham College, 1880.
 Palestine Exploration Fund, 1879.
 Philological Society, 1879.
 Philosophical Society of Glasgow, 1878.
 Physical Society of London, 1878.
 Royal Army Coffee Taverns Association, 1881.
 Royal School of Art Needlework, 1878.
 Society for Promoting the Employment of Women, 1879.
 Teachers' Training and Registration Society, 1878.
 University College, Bristol, 1876.
 University of Durham College of Medicine, 1877.
 Whitby Institute of Popular Arts, Sciences, and Literature, 1880.
 Yorkshire College, 1878.

Law Societies generally register thus: "The Incorporated Law Society of [Liverpool];" and Chambers of Commerce thus: "The [Hull] Chamber of Commerce." A great many of such associations have been registered. Chambers of Agriculture have also been registered.

UNLIMITED COMPANIES.

Unlimited Companies are rarely incorporated under Part I. of the Act of 1862, and accordingly it will not be necessary here to say much about them. An unlimited company requires a memorandum and articles of association, and may have a joint-stock capital divided into shares or no such capital. Its name will not include the word limited. If the company is wound up the liability of its members to contribute to the payment of the debts and costs of winding-up will be unlimited. After the decision in *Ex parte Hargrove*, 10 Ch. 542, that mutual insurance associations, consisting of more than twenty persons, were illegal unless registered, some such associations were registered as unlimited companies, but the majority registered as companies limited by guarantee. *Supra*, p. 93.

REGISTRATION UNDER PART VII. OF THE
ACT.

Part VII. of the Act of 1862 authorises the registration of companies existing before registration. Most of the companies which so register are old companies, formed by deed of settlement or charter, or letters patent obtained before the Act of 1862; but some are companies formed since that Act (see *infra*, p. 167). If the company is a joint-stock company (*infra*, p. 174) it can register as a company limited by shares: otherwise it must register as a company limited by guarantee or an unlimited company. But there must be at least seven members in any case. In order to register, a resolution for registration must be passed at a meeting of the company, and application in writing must then be made to the Registrar, accompanied by a copy of the company's deed of settlement, charter, or other instrument by which it was constituted, and a list of shareholders, &c., and in due course the Registrar will certify that the company is incorporated, and if so with limited liability. Thereupon the company is placed very much in the same position as if it had originally been formed under Part I. of the Act. The course of procedure is fully stated in Part VII. of the Act, and is specified as regards joint-stock companies in the Appendix (*infra*, p. 170).

The objects of registering are various. In most cases the desire to obtain limited liability (*infra*, p. 130) and the advantages of incorporation (*infra*, p. 136) is the principal object. Sometimes the registration is effected with a view to the voluntary winding-up of the company; for after registration that course is open to the members: and occasionally the object is to reconstruct the company (*infra*, p. 105), which cannot otherwise be done without the consent of every member.

THE COMPANIES ACT, 1879.

Under the Companies Act, 1879, any company registered before or after the passing of the Act as an

unlimited company may be re-registered as a limited company. Moreover, for the purpose of such registration the company may increase the nominal amount of its capital by increasing the nominal amount of its shares, but no part of such increased capital is to be capable of being called up, except in the event of, and for the purposes of, the company being wound up. Many companies have been registered under this Act, especially banking companies, *e.g.*, The London and County Banking Company, Limited; The London and Westminster Bank, Limited; The National Provincial Bank of England, Limited; and a great many of the country banks. The re-registration is effected pursuant to resolution, &c., as above mentioned (p. 98). Prior to this Act, if a company was once registered with unlimited liability it could not subsequently be registered with limited liability. It will be observed, that in order to register under this Act the company must first register as an unlimited company (*supra*, p. 98). In the case of a bank which issues notes, a re-registration does not limit the liability of the members as regards the notes. For the forms of resolutions and further information, see Company Precedents (p. 199).

WINDING-UP.

There are three modes of winding-up companies :—

1. Compulsory, *i.e.*, by the Court,
2. Voluntary.
3. Voluntary, subject to the supervision of the Court.

The expression, “the Court,” is defined by sec. 81 of this Act. As regards companies registered in England, other than those within the jurisdiction of the Stannaries, the High Court of Justice is the Court.

As to compulsory winding-up :

The Court may order a company to be wound-up in various cases specified in sec. 79 of the Act of 1862. But in most cases a compulsory order is made on the ground that it is proved to the Court that the company is unable to pay its debts, or that it is insolvent, or that it is both.

Inability to pay debts means debts actually due and payable.

Insolvency means that the company is in such a condition that, if all its assets, including uncalled capital, were realised, they would be insufficient to meet its liabilities. But in considering the solvency of the company its liability to shareholders for the capital contributed by them is not taken into account.

Hence a company may be able to pay its debts, and yet insolvent; and it may be unable to pay its debts, and yet solvent.

The application to the Court must be by petition, which is always prepared by counsel. For several specimens see *Company Precedents*, p. 291, *et seq.* The company, a creditor, or a shareholder, may present a petition.

As to the company's petition:

It is presented by the directors in the name of the company. Where a company presents a petition it is usually able to state that it is unable to pay its creditors, or is insolvent, or both, and alleges facts in support: *e.g.*, that its acceptances have been dishonoured, that actions have been brought against it, that executions have issued, that it has sustained heavy losses, and so forth.

It has no difficulty in getting an order.

As to a creditor's petition:

The debt must be for a sum actually payable, and not merely about to fall due. A right of action for damages is not a debt.

A creditor who cannot get paid is entitled *ex debito justitiæ* to a winding-up order, except where there is a *bonâ fide* dispute as to his debt. It is no answer to show that the company is solvent, and that it only wants time, unless, indeed, other creditors appear and oppose a present order, in which case the petition is sometimes directed to stand over for a time.

But the directors and members of a company seldom like a winding-up order on the petition of a hostile creditor, who will be able to procure the appointment of his own nominee as official liquidator.

If a compulsory winding-up is inevitable, they prefer that it should be on the company's petition, or on the petition of a friendly creditor or shareholder, in order that the winding-up may be carried out by nominees of the directors. Such persons are more likely to regard the interests of the shareholders than a nominee of a hostile

creditor. Moreover there will be less chance of such persons wasting the assets in litigation, and seeking to rake up past irregularities.

Accordingly, when the petition of a creditor is presented, the directors generally make every effort to raise the funds to pay him off; and then, if there is danger of further petitions being presented which it may be impossible to meet, present a petition in the name of the company, or consent to an order on the petition of some friendly creditor or shareholder. Sometimes several creditors' petitions have to be thus disposed of before the directors can effect their object.

Where a creditor is justified in presenting a petition and is paid off before the hearing, he is entitled to be paid his costs, and *à fortiori*, where he is paid off at the hearing. Sometimes the Court makes a winding-up order on the petition of a creditor, but at the request of counsel for the company directs that the order shall not be drawn up for a week, so that the company may have an opportunity of paying off the creditor.

As to a shareholder's petition :

A shareholder can petition for a winding-up order, but if the company opposes, and its creditors are not pressing, he may find considerable difficulty in getting an order. If the company is insolvent, he has in truth no interest : if it is solvent, he must submit himself to the wishes of the majority. A shareholder cannot petition unless he has held his shares for six months. See sec. 40 of the Act of 1867, for certain exceptions to this rule.

The mere fact that the business appears likely to be a losing concern is not sufficient to authorise a winding-up order against the wish of the majority ; nor is misconduct on the part of the directors sufficient, nor the fact that the directors have been bribed by a vendor.

Where the directors desire to oppose a petition, whether by a creditor or shareholder, the solicitor will instruct counsel to appear for the company, and affidavits will be filed by one or more of the directors and others, to meet the petitioner's case. If possible, some of the leading creditors and shareholders will also be got to appear by counsel, and oppose the order. If the defence set up is that the petitioner's claim is disputed, it must be shown that the dispute existed before the presentation of the

petition, and is a real one, not merely got up to meet the petition. If insolvency of the company is alleged, it should be met by a statement and valuation of the assets showing solvency. Perhaps it may be shown that the petitioner's debt is not yet payable, or that his claim is for unliquidated damages.

If the company merely wants a little time, application can be made to adjourn the petition for a week, and where creditors to a large amount are in favour of such a course, it may be ordered to stand over for some months.

Or it may be shown that the majority of the shareholders and creditors wish for a voluntary winding-up, and time may be asked for to call a meeting to pass the necessary resolutions.

Where a compulsory order is made, the Court appoints an official liquidator, generally some accountant, who, under the direction of the Court, realises the property of the company, pays and satisfies its liabilities as far as possible, and divides any surplus among the shareholders. See further, *Company Precedents*, p. 338, *et seq.*

As to a voluntary winding-up:

A company may at any time resolve on a voluntary winding-up.

In most cases the resolution must either be extraordinary or special (see sec. 129 of the Act of 1862). As to an *extraordinary resolution*: Where a company is in difficulties it may pass such a resolution. In order to do this, a meeting must be duly called by the directors. The notice must be prepared with great care, and may be as follows:—

The — Company, Limited.

Notice is hereby given, that an extraordinary meeting of the above-named company will be held at —, on the —th instant, at — o'clock in the afternoon, for the purpose of considering, and, if thought fit, passing as an extraordinary resolution the subjoined resolution.

Resolution.

That it has been proved to the satisfaction of this meeting that the company cannot, by reason of its liabilities, continue its business, and that it is advisable to wind up the same, and accordingly that the company be wound up voluntarily [and that — and — be and they are hereby appointed liquidators for the purposes of such winding-up.]

By order,

Dated, &c.

—, *Secretary.*

No. —, — Street, &c.

If thought expedient the words in brackets may be omitted, and the following inserted as an additional paragraph at the end of the notice :—

Should the resolution be so passed, a resolution for the appointment of a liquidator or liquidators will be submitted for adoption.

or,

Should the resolution be passed, a resolution for the appointment of a liquidator and fixing his remuneration will be proposed.

Care must be taken in giving this notice, that the regulations of the company as to notices are complied with ; see *supra*, p. 63.

The meeting will be held in due course, and the directors will explain the circumstances which render a voluntary winding-up desirable, *e.g.*, the company's inability to pay its debts, or its insolvency, or the danger of a compulsory order.

It should here be mentioned that by sec. 129 of the Act of 1862, the expression an extraordinary resolution is declared to mean "a resolution passed in such manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution." As to the nature of a special resolution, see *supra*, p. 56. It follows, therefore, that a resolution cannot take effect as an extraordinary resolution, unless (*inter alia*) it is passed "by a majority of not less than three-fourths of such members of the company for the time being entitled to vote, as may be present in person or by proxy" at the meeting.

If at the meeting convened by the above notice the resolution is passed by the requisite majority, it will take effect accordingly, and the voluntary winding-up will thereupon commence.

If no poll is demanded at the meeting, care should be taken that the minutes show that the chairman "declared that the resolution was carried." See as to the importance of this, *supra*, p. 56.

As to a special resolution:

This may be passed in any case, whether the company is solvent or insolvent, able to pay its debts, or unable, and for any purpose, *e.g.*, where the majority think fit to stop further operations, and to divide the assets, when they wish to reconstruct the company or amalgamate with some other

company. As to the mode of passing a special resolution, see *supra*, p. 56.

The notice convening the first meeting may either give the proposed resolution, *e.g.*, "That the — Company, Limited, be wound up voluntarily, and that — and — be and they are hereby appointed liquidators;" or it may be framed more generally, *e.g.*, "for the purpose of considering and, if thought fit, passing a resolution for the voluntary winding-up of the company, and appointing liquidators." If the resolution is passed at the first meeting, and duly confirmed (*supra*, p. 56) at the second, the winding-up will thereupon commence.

As to sending a copy of a special resolution to the Registrar, see *supra*, p. 78.

Every special or extraordinary resolution for winding-up must be advertised, as respects companies registered in England, in the "London Gazette." See section 132 of the Act of 1862. In order to obtain the insertion of the notice in the "Gazette" it must be in proper form, and must be accompanied by a statutory declaration. See further, Company Precedents, p. 471.

Upon a voluntary winding-up being resolved on, the powers of the directors cease, and the liquidator or liquidators assume the direction of matters.

If the company is solvent the directors, or some of them, are very commonly appointed liquidators or liquidator, and they proceed to realise the property, pay the debts, and divide the surplus (if any) among the shareholders. If the company is not solvent, or has many creditors, some outsider, who will be likely to obtain the confidence of the creditors, is usually appointed.

If any legal or other difficulties arise, the liquidators or any shareholder may apply to the Court to settle the same.

A considerable number of the companies from time to time formed are completely abortive, *i.e.*, never succeed in inducing anybody to take shares, or only induce a very small number so to do, and never commence business. In such cases it is important to remember that the company continues to exist till dissolved by law, and the members will be liable for heavy penalties if the proper annual returns are not made to the Registrar. Every such abortive company ought to be wound-up voluntarily, and

thus brought to an end. The process is exceedingly simple, and the expense trifling.

Under the Companies Act, 1880, the Registrar has power in certain cases to strike the name of a company off the register, and therefore it becomes dissolved, but it is not prudent to let an abortive company subsist in the hope that this power will be exercised, for penalties will meantime be incurred and may be enforced.

As to a voluntary winding-up under supervision :

Where the company has resolved on a voluntary winding-up, the Court may, on the application of the company or any creditor or shareholder, order the voluntary winding-up to be continued, subject to the supervision of the Court. The voluntary liquidators are generally continued, though sometimes the Court removes them and appoints others. In many cases a voluntary winding-up under supervision is much less expensive, and more for the interest of all parties than a compulsory order. Accordingly, where a petition for a compulsory order is presented, which it may be difficult to resist, a resolution for voluntary winding-up is sometimes passed, and the Court is asked either to dismiss the petition or to make a supervision order.

A supervision order greatly facilitates the winding-up of a company. After such an order (1) no action or proceeding can be brought, or taken, or proceeded with, against the company without the leave of the Court ; (2) interest ceases (if the company be insolvent) to run on the debts ; (3) the creditors have a right to apply to the Court or Judge in Chambers upon anything relating to the winding-up, and thus they are fully protected, whereas in the case of a purely voluntary winding-up they have no right to apply.

RECONSTRUCTION.

There are a great many reconstructions every year. The process is very simple and, if the company is in a good position, it can (under competent advice) be carried out very easily. The objects of reconstruction are various. Many reconstructions are effected in order to obtain an extension of the company's powers, *e.g.*, (*a*) a company formed to work a colliery wants to manufacture steel or to

go into partnership with some other company; (b) a company wants to issue preference shares, but has no power by its memorandum or articles; (c) a company wants to return some of its capital or to reduce the liability on its shares without applying to the Court as upon a reduction of capital (*supra*, p. 20). The mode of reconstruction is as follows. The memorandum and articles of a new company, which (in most cases) is to bear the same name as the old, are prepared together with an agreement between the old and the new company, by which the old agrees to transfer, and the new agrees to accept, all the assets and liabilities of the old, and to issue shares to the members of the old, so that they may be placed as nearly as may be in the same position in the new as in the old, subject to the desired modifications. The old company then passes a special resolution approving of the agreement, and authorising the liquidator, pursuant to section 161 of the Act of 1862, to adopt it. The new company is then registered, the agreement is executed and the assets transferred, so that the new company at once steps into the shoes of the old, and things go on as before. Care, of course, is taken that the memorandum and articles of the new company give the powers which the old company wanted but did not possess, or otherwise effectuate the objects of the reconstruction. The process is extremely simple to those who are experienced in the working of it, and it can generally be carried into effect with but little difficulty. Any member of the old company who dissents in writing, within seven days after the resolution, is entitled to be paid the value of his interest in the assets in cash, but if the matter is judiciously managed all dissent may generally be avoided. See further, Company Precedents, p. 494, *et seq.*

AMALGAMATION.

Amalgamations are not uncommon. When two companies desire to amalgamate either of the following plans can be adopted. (1) Form a new company and let both the existing companies transfer their assets and liabilities to that company, and let the shareholders of each become shareholders of the new company. (2) Let one of the

companies transfer its assets and liabilities to the other in consideration of shares to be issued to its members. In either case the directors and officers of the old company, or some of them, become directors and officers of the new, and, perhaps, those who do not are compensated. If the undertaking of one company is worth less than that of the other, the shares will be distributed accordingly. Which-ever plan is adopted, it will be carried out very much in the same way as a reconstruction. See *supra*, p. 105.

ARRANGEMENTS WITH CREDITORS.

Where a company gets into difficulties, but has a promising undertaking, it may be expedient to make an arrangement with its creditors. To effect this, the arrangement must be approved by a majority in number, representing three-fourths in value of the creditors present in person, or by proxy, at a meeting, and the sanction of the Court must be obtained. In many cases of arrangement the creditors accept a composition perhaps payable by instalments. Sometimes they merely give time. Sometimes they accept shares or debentures of a new company in satisfaction of their claim. In the latter case the old company is generally reconstructed at the same time [*supra*, p. 105]. The course of procedure is as follows. A special or extraordinary resolution to wind up the company is passed, and a supervision or compulsory order is obtained. In the meantime, the scheme of arrangement, and if a new company is to be formed the memorandum and articles thereof, are prepared. The Court then directs a meeting of the creditors to be convened. At the meeting the scheme is approved, and a petition is then presented seeking the sanction of the Court, and an order obtained accordingly. The advantages of an arrangement are in many cases very great, and may save shareholders and creditors very serious loss, *e.g.*, where a minority of the creditors are pressing for payment against the wish of the majority. Sometimes the scheme is not thought of until after a compulsory winding-up order has been made (*supra*, p. 99). In such case, if the creditors approve, the company can be revived, and start afresh. See further as to Arrangements, Company Precedents, p. 526, *et seq.*

INJUNCTIONS.

In this work an application for an injunction is not uncommonly suggested as the appropriate course to adopt where some injury is apprehended, and it may, therefore, be convenient to say a few words as to the nature of an injunction and mode in which it can be obtained.

An injunction is an order of a Court of Justice restraining a person or company from doing some act. In a proper case an injunction can be obtained in the course of a few hours, and may save the applicant from irreparable injury. Thus an injunction can be obtained (*a*) where the directors of a company improperly threaten to forfeit the shares of a member; (*b*) where the directors are about to do something which is *ultra vires* (*supra*, p. 60) the company, *e.g.*, to issue preference shares, there being no power; or to pay dividends out of capital; or to act on or pass some *ultra vires* resolution or contract; (*c*) where a director is improperly excluded from his office by his co-directors; (*d*) where a creditor whose debt is *bonâ fide* disputed threatens to present a petition for the winding-up of the company. But the cases in which an injunction may be obtained are too various to specify. In order to obtain an injunction the applicant must, in most cases, bring an action and then apply to the Court by counsel. Thus, suppose an improper forfeiture of shares is threatened. The shareholder will go to his solicitor, who will at once issue a writ against the company claiming, among other things, an injunction to restrain the forfeiture: this (in London) can be prepared and issued, say in an hour or two. An affidavit will then be made as to the circumstances by the shareholder or his solicitor, and counsel, armed with the affidavit and copy of writ, will immediately afterwards apply to the Court (*a*) for liberty to serve notice on the company that a motion for an injunction will be made to the Court on an early day (three or four days later), and (*b*) for an interim injunction restraining the company from forfeiting the shares in the meantime. If the affidavit is satisfactory the Court will comply with this application; and, in due course, the motion will be made, and the company will have to show a good defence,

or else the injunction will be granted, and they will be ordered to pay the costs. Anybody disobeying an injunction may be committed to prison for contempt of Court, and the property of a company disobeying an injunction may be sequestered. In many cases where an injury is threatened the mere issue of a writ and the interim injunction brings the defendant to his senses and leads to a satisfactory arrangement.

HINTS TO CREDITORS AND OTHERS.

Every person who has dealings with a company, *e.g.*, any person who buys from, or sells or lends to, or contracts with, a company, or with any director, agent, or other person acting on behalf of a company, is presumed to know the contents of the memorandum of association and regulations of the company. See *supra*, p. 2. This rule marks an important difference between partnerships and companies, for a person dealing with a partner in a firm is not presumed to know the contents of the partnership deed. Accordingly, greater caution is necessary in dealing with a company than with a partnership.

The operation of the rule will be better understood from a few examples.

(a) As we have already seen, a company can do nothing beyond its objects as stated in its memorandum of association (*supra*, pp. 29, 60, 105). Anything beyond the objects is *ultra vires*. Accordingly, if a company formed to carry on the business of a grocer contracts to buy the business of an ironmonger, or to do something not authorized by its memorandum, the contract is void. The person who has made it is not entitled to complain, because he is presumed to have read the memorandum, and therefore to have known that the company was acting *ultra vires*. So, too, if a company whose memorandum does not authorize it to enter into partnership with other companies or persons, enters into a partnership with outsiders, either directly or through nominees, who to the knowledge of such outsiders are trustees for the company, the arrangement is void, and the outsiders are under serious liabilities.

(b) Suppose that the regulations say that "every acceptance of a bill of exchange by or on behalf of the company shall be signed by two of the directors and

countersigned by the secretary; otherwise it shall be void." An acceptance not duly signed and countersigned is void. It is no matter that in fact the holder did not know of the regulation, for the law presumes that he did. In like manner if the regulations require that a contract, receipt, release, or other document, shall be executed in a particular way, every person is presumed to know the fact, and will be dealt with accordingly.

However, there are some things which a person is not obliged to inquire into; *e.g.*, a person may assume that the directors, who, in fact, are acting in the company's business, are duly appointed, and, accordingly, can exercise the power vested in the directors by the regulations.

So, too, if the regulations provide that the directors may do something, *e.g.*, borrow, with the sanction of the company in general meeting, a lender may assume that they have obtained the necessary sanction. If, however, the sanction of a *special* resolution is necessary he should require evidence that it has been passed. And it is generally desirable to see that the proper sanction has been obtained.

From what has been stated, it follows that a person who is about to have dealings with a company (*e.g.*, to lend it money) ought to procure a copy of its memorandum and regulations, and see that the transaction is not *ultra vires*, and is duly carried out. If he cannot procure a copy, he should go or send to the Registration Office and inspect the documents.

In many cases persons do not take these precautions; they assume that the directors and other agents of the company will do everything in proper form, and that no difficulty will arise. Where, however, a transaction of importance is being entered on, or a person has considerable business relations with a company, the precaution ought not to be omitted, for *ultra vires* contracts and irregular proceedings are by no means uncommon. They result in most cases from ignorance of the law, mistake, or carelessness. Where a person has entered into an *ultra vires* contract with a company, or has been party to an irregular proceeding, *e.g.*, taken a bill not properly accepted, it must not be assumed that he will not have any rights against the company in relation thereto. For example, where an irregular acceptance has been taken,

the holder might be able to sue the company for the debt on account of which the acceptance was given. But his position is critical, and he ought to take legal advice.

It is perhaps needless to point out that before dealing with a company inquiries should, except perhaps in trifling transactions, be made into the solvency of the company. It should be borne in mind that the mere fact that the company has a large nominal capital does not imply that it has even £5 of actual capital. The amount of the actual capital depends on the number of shares which have been taken, and on the solvency of the shareholders. Thus the nominal capital may be £20,000 in £1 shares, but only a small number may have been taken, *e.g.*, 7, or 50, or 600, and in such case the actual capital is only £7, £50, or £600, as the case may be.

Perhaps, too, the shareholders have not paid up their shares in full, and if called on would be unable to do so. Moreover, even where a large number of shares have been taken and paid up, the capital may have been lost or misapplied, or spent in preliminary expenses, or in directors' salaries, or otherwise. The number of shares taken, and the amount paid up thereon, and other facts can be ascertained by an inspection of the company's register of members. If a person about to transact business with a company does not like to examine the register himself, he can get a friend to do it (*supra*, p. 71). An inspection of the returns and documents at the Registration Office (*supra*, p. 69) may throw some light on the question of solvency. But, of course, the best information as to the real position of a company is to be obtained from the directors, managers, secretary, or other persons cognisant of the fact. Such information may in many cases be obtained either directly or indirectly. In some cases a person is in a position to *require* evidence of the company's solvency, or references or sureties.

It may be convenient here to say a few words as to *debentures*, for many persons invest in the debentures of companies under the Act of 1862. Such persons should remember that there are two kinds of debentures: 1. [simple] debentures; 2. *mortgage* debentures.

The former are in the nature of a promissory note. The holder has no preference over other creditors, *e.g.*, holders

of acceptances, trade creditors, servants, &c.; and if the company is wound up before the debenture is paid off, the holder will only be entitled to be paid out of the assets rateably with other unsecured creditors, *i.e.*, without any preference over them. But mortgage debentures are secured by mortgage on the property of the company, or certain parts of it, and if the company is wound up, the mortgaged property will be sold and applied *first* in paying off the debentures, the surplus, if any, being handed over to the unsecured creditors. Accordingly, a mortgage debenture is a better security than a simple debenture.

But of course the value of a mortgage debenture depends on the value of the property upon which it is secured and the aggregate amount of the debentures charged thereon. Thus, if the property of the company is worth £10,000, it may form a poor security for £8,000 of mortgage debentures, a fair security for £6,000, and a very good security for £3,000.

Moreover, the value of a mortgage debenture is affected by the terms in which it is expressed and the mode in which it is secured. In regard to these matters, a legal opinion should be obtained.

Ordinary trade creditors of a company, *e.g.*, holders of its acceptances, should bear in mind the right to priority to which holders of mortgage debentures may be entitled, in case a winding-up takes place. It not uncommonly happens, where mortgage debentures have been issued, or the property otherwise mortgaged, and a winding-up ensues, that the ordinary creditors get nothing, the whole of the assets, or the only assets of any value, being subject to the debentures or mortgages, and not sufficient to pay them off.

Whether in any particular case mortgage debentures have been issued can generally be ascertained by inspecting the register (*supra*, p. 30), but the register cannot be absolutely relied on, for a mortgage debenture is not void if unregistered, unless it was issued to a director or other officer whose business it was to see it registered.

As to the mode in which a creditor may enforce payment of a debt

Two courses are open to a creditor—

1. He may bring an action against the company
2. He may present a petition for the compulsory winding-up of the company.

Where the company is certainly or probably solvent, and the non-payment of the claim is caused by a dispute as to the amount or validity of the claim, the proper course is to bring an action. And the same course must be taken where the claim is unliquidated, *e.g.*, for damages for breach of contract. In order to bring an action, the claimant will instruct his solicitor to issue a writ against the company, and in many cases the service of the writ leads to a speedy payment of the claim. In default, the action will be prosecuted and judgment obtained. Upon the judgment execution can be issued, and the property of the company seized and sold; and if the debt is not thus discharged, a winding-up petition can be presented.

Where, however, the company is in difficulties, and doubt exists as to its solvency, and a creditor for an undisputed debt cannot get paid, *e.g.*, has made more than one pressing application for payment without success, or holds a dishonoured acceptance of the company, the usual course is to present a winding-up petition. Whether in any particular case the circumstances warrant the adoption of this course must be left to the solicitor or counsel before whom the matter is brought. A petition should not in general be presented unless there is evidence that the company cannot pay its debts, or is insolvent (*supra*, p. 99).

A creditor is generally in a better position to prove inability to pay debts than insolvency. The fact that execution issued on a judgment against the company has been returned unsatisfied in whole or in part, is evidence that the company is unable to pay its debts. So, too, the fact that a creditor for not less than £50 (undisputed) has served the company (by leaving it at the registered office thereof) with a demand in writing, under his hand, requiring the company to pay the debt, and that the company has for twenty-one clear days after the service neglected to pay the sum, or secure or compound for the same to the reasonable satisfaction of the creditor, is sufficient evidence of inability to pay debts. But without any such formal demand, if a creditor (even for less than £50) has made several applications for payment without success, or has been put off with excuses, &c., the Court will

be ready to assume that the company cannot pay its debts, especially if there are other unpaid creditors, and perhaps dishonoured acceptances outstanding.

If it is decided to present a petition, it will be prepared by counsel, who will state therein the necessary facts. In particular, if the petition is presented on the ground that the company is unable to pay its debts, that fact will be alleged, and the petition will set forth the circumstances from which the Court is asked to conclude that this allegation is made out. For example, the various applications for payment, the dishonour of an acceptance, the issue and return unsatisfied of execution, the service of the demand and non-payment will be referred to. Notice of the presentation of the petition will be inserted in certain newspapers (Rules of 1862) seven days before the hearing, which is generally fixed about ten days or a fortnight after the presentation, and a copy of the petition will be served on the company. If the company can by any means provide the funds, it will probably pay off the creditor before or at the hearing. In such case he ought to insist on being paid all his costs, and being indemnified against all claims by persons appearing at the hearing to oppose the order; and on the day for hearing, his counsel will obtain leave to withdraw the petition. See further as to the motives which impel directors to pay off petitioning creditors, *supra*, p. 101. If the creditor is not paid off, he will, unless in a very exceptional case, get a winding-up order, and thereupon his nominee will be appointed liquidator, and the property of the company realized and distributed. From what has been said, it will be seen that the power of presenting a winding-up petition is a very formidable instrument placed in the hands of a creditor. But the Court will not allow it to be used for the purpose of enforcing payment of a debt not justly due, or about which there is a *bonâ fide* dispute. Accordingly, if in such a case the creditor or person claiming to be a creditor threatens to present a petition unless he is paid, the directors should at once apply for an injunction (*supra*, p. 108) to restrain him from so doing; and if the petition is presented without any previous threat or notice, the company can immediately on hearing of the presentation apply by counsel to the Court for an order staying all further

proceedings and restraining the advertisement of the presentation of the petition, and the Court will order accordingly.

COMPANY STATIONERS.

There are a number of stationers in London who make it their special business to supply persons engaged in the formation and working of companies with the necessary registers and other books, stationery, seals, blank forms for making returns to the Registrar, &c., and to print articles of association, resolutions, notices, &c.

[*See advertisements at end of Book.*]

The following is a copy of Table A. contained in the First Schedule to the Companies Act, 1862. See *supra*, pp. 2, 84.

TABLE A.

Shares.

(1.) If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

(2.) Every member shall, on payment of one shilling, or such less sum as the company in general meeting may prescribe, be entitled to a certificate, under the common seal of the company, specifying the share or shares held by him, and the amount paid up thereon. (See *supra*, p. 5.)

(8.) 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. (See *supra*, pp. 15, 29.)

(5.) A call shall be deemed to have been made at the time when the resolution of the directors authorizing such call was passed.

(6.) If the call payable in respect of any share is not paid before or on the day appointed for payment thereof, the holder for the time being of such share shall be liable to pay interest for the same, at

the rate of five pounds per cent. per annum, from the day appointed for the payment thereof to the time of the actual payment.

(7.) The directors may, if they think fit, receive from any member willing to advance the same, all or any part of the monies due upon the shares held by him beyond the sums actually called for; and upon the monies so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

Transfers of Shares.

(8.) The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of such share until the name of the trustee is entered in the register book in respect thereof. (See *supra*, p. 7.)

(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 meeting in each year. (See *supra*, p. 64.)

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. (See *supra*, p. 12.)

(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. (*Supra*, p. 13.)

(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. (*Supra*, p. 16.)

(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. (*Supra*, p. 20.)

(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.

(26.) The directors may, with the sanction of a special resolution 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 directs, or, if no direction is given, as the directors think expedient. (*Supra*, p. 18.)

(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 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.

(29.) The first general meeting 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. (*Supra*, p. 38.)

(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. (*Supra*, p. 42.)

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. (*Supra*, p. 63.)

(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. (*Supra*, p. 40.)

(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. (*Supra*, p. 44.)

(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*. (*Supra*, p. 44.)

(39.) The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the company. (*Supra*, p. 44.)

(40.) If there is no 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. (*Supra*, p. 55.)

(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 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. (*Supra*, p. 45.)

(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. (*Supra*, p. 53.)

(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. (*Supra*, p. 52.)

(48.) Votes may be given either personally or by proxy. (*Supra*, p. 53.)

(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. (*Supra*, p. 54.)

(51.) Any instrument appointing a proxy shall be in the following form :—(*Supra*, p. 55.)

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 extraordinary, *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.

(52.) The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association. (*Supra*, p. 22.)

(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. (*Supra*, p. 24.)

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, not being inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulations 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. (*Supra*, pp. 27, 29.)

(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 a 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. (*Supra*, p. 37.)

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. (*Supra*, p. 22.)

(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 a 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, 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.

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. (*Supra*, p. 24.)

(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 regulation that may be imposed on them by the directors. (*Supra*, p. 32.)

(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. (*Supra*, p. 62.)

(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. (*Supra*, p. 61.)

(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. (*Supra*, p. 18.)

(76.) Notice of any dividend that may have been declared shall be given to each member in manner hereinafter 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. (*Supra*, p. 73.)

(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 the 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 hereinafter directed to be served.

Audit.

(83.) Once at 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. (*Supra*, p. 63.)

(84.) The first auditor 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.

(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. (*Supra*, p. 64.)

(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.

(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 notice was properly addressed and put into the post-office.

Dr.

BALANCE-SHEET of the

CAPITAL AND LIABILITIES.					
		Showing :	£	s.	d.
I. CAPITAL ...	1.	<i>The number of Shares</i>			
	2.	<i>The amount paid per Share ...</i>			
	3.	<i>If any Arrears of Calls, the Nature of the Arrears, and the Names of the Defaulters.</i>			
	4.	<i>The Particulars of any forfeited Shares.</i>			
II. DEBTS AND LIABILITIES of the Company		Showing :			
	5.	<i>The Amount of Loans on Mortgages or Debenture Bonds.</i>			
	6.	<i>The Amount of Debts owing by the Company, distinguishing—</i>			
		<i>(a.) Debts for which Acceptances have been given.</i>			
		<i>(b.) Debts to Tradesmen for Supplies of Stock in Trade or other Articles.</i>			
		<i>(c.) Debts for Law Expenses.</i>			
		<i>(d.) Debts for Interest on Debentures or other Loans.</i>			
VI. RESERVE FUND		Showing :			
		<i>The Amount set aside from Profits to meet Contingencies.</i>			
VII. PROFIT AND LOSS..		Showing :			
		<i>The disposable Balance for Payment of Dividend, &c.</i>			
CONTINGENT LIABILITIES					
		<i>Claims against the Company not acknowledged as Debts. Monies for which the Company is contingently liable.</i>			

Co. made up to

18 .

Cr.

PROPERTY AND ASSETS.						
		<i>Showing :</i>		£ s. d.	£ s. d.	
III. PROPERTY held by the Company.	7.	<i>Immovable Property, distinguish- ing—</i>				
		(a.) <i>Freehold Land</i>				
		(b.) <i>Buildings</i> ...				
		(c.) <i>Leasehold</i> <i>„</i>				
	8.	<i>Movable Property, distinguish- ing—</i>				
		(d.) <i>Stock in Trade.</i>				
		(e.) <i>Plant</i>				
		<i>The Cost to be stated with Deductions for Deterio- ration in Value as charged to the Reserved Fund or Profit or Loss.</i>				
	IV. DEBTS owing to the Company.	9.	<i>Showing :</i>			
			<i>Debts considered good for which the Company hold Bills or other Securities.</i>			
10.		<i>Debts considered good for which the Company hold no Secu- rity.</i>				
11.		<i>Debts considered doubtful and bad.</i>				
		<i>Any Debt due from a Director or other Officer of the Company to be separately stated.</i>				
V. CASH AND INVESTMENTS		12.	<i>Showing :</i>			
		<i>The Nature of Investment and Rate of Interest.</i>				
	13.	<i>The Amount of Cash, where lodged, and if bearing In- terest.</i>				

NOTE.

The following appendix contains, with some slight modifications, the first four chapters of the third edition of the writer's work intituled "Private Companies: their formation and advantages; or, how to convert your business into a private company, and the benefit of so doing." (Stevens and Sons.)

The conversion under the Acts of 1862 to 1880 of business concerns into private companies is making rapid progress on all sides. The process has been adopted with success, both in regard to large and to small concerns, to concerns belonging to individuals and to those belonging to firms. In these circumstances the writer believes that information as to the inducements which commonly lead to conversion and the mode in which it is generally effected, will be acceptable to at any rate some of the readers of this work.

The following are a few of the many cases which might be mentioned in which well-known and important concerns have been converted into private companies:—

1. Sir Elkanah Armitage and Sons, Limited, cotton spinners, &c. Capital £300,000. Converted in 1881.
2. Bass, Ratcliff and Gretton, Limited, brewers, of Burton-on Trent. Capital £2,000,000. Converted in 1881.
3. Greenall, Whitley and Company, Limited, the well-known Lancashire brewers. Capital £700,000. Converted in 1880.
4. Sir Titus Salt, Bart., Sons and Company, Limited, cotton spinners, of Saltaire. Capital £750,000. Converted in 1881.
5. Siemens Brothers, Limited, telegraph engineers, &c. Capital £400,000. Converted in 1881.
6. Pickering, Phipps and Company, Limited, brewers, of Northampton. Capital £500,000. Converted in 1881.

APPENDIX.

ON THE CONVERSION OF BUSINESS CONCERNS INTO PRIVATE COMPANIES.

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CHAPTER I.

THE INDUCEMENTS TO CONVERSION.

To convert a business into a company is a phrase very commonly used to describe concisely an arrangement which involves the formation of a company under the Companies Acts, 1862 and 1867,* for the purpose of acquiring and carrying on an *existing* business, and the transfer to such company of the business with its assets and liabilities. Whether the business belongs to an individual or to a firm makes no difference : in either case the arrangement is, in common parlance, termed the conversion of the business into a company.

A business may be converted into either a *public* or a *private* company.

All companies registered under the Act of 1862 are in contemplation of law public companies, but in common parlance they are divided into—

- (1) Public, *i.e.*, companies intended to be carried on with capital which is to be obtained by an appeal to the

* 25 & 26 Vict. c. 89, and 30 & 31 Vict. c. 131.

public, namely, by issuing prospectuses, circulars, or advertisements, inviting applications for shares.

- (2) Private, *i.e.*, companies intended to be carried on without any such appeal.*

In the following pages it is proposed to deal exclusively with the conversion of business concerns into *private* companies, and, unless otherwise expressed, the word company signifies a company limited by shares.

Before describing the mode of conversion we shall proceed to point out some of the inducements which commonly lead to such conversions.

Limited Liability.

There can be no doubt that the great inducement to conversion is the power which the Act gives to a person, or to a firm, converting his or their business into a private company, of trading with limited liability.

It will be borne in mind that, at common law, a person who goes into business, whether on his own account or as partner in a firm, is liable for all the debts incurred in the business, to the full extent of his means. He may be held liable even for the fraud, negligence, or other wrongful act of his partner or clerk in connection with the business. "If," says the law, "you want to trade you must risk all you have." The law will not allow such a person to fix a limit to his liability. For example—

(a) Suppose a man to have £20,000 invested in his business and £5000 otherwise invested. He desires to limit his liability to the £20,000, so that if the business fails the £5000 will at any rate remain intact. He cannot.

(b) Suppose a man with a fortune of £50,000 to be partner in a concern in which he has invested £5000. He desires to limit his liability to the £5000. He cannot. If the firm fails the whole of his fortune may be swept away to pay the creditors, even though the failure

* This popular division is now well recognised even in the Courts of law : thus in a recent case before the Court of Appeal, *Re British Seamless Paper Box Co. Lim.*, 17 C. Div. 467, Lord Justice Cotton said, "But here it is an established fact that when the company was formed, it was intended to be a *private* company, that is, it was intended to carry it on without calling in the public or issuing any shares except to the then existing shareholders;" and again, "But this was carried on entirely as a private company, and a considerable time elapsed before they asked any one to join it."

may have been caused by the dishonesty or imprudence of his partners, or of some person in the employment of the firm.

(c) Suppose A., B. and C. to enter into partnership upon an agreement that each shall contribute by way of capital £2000, viz., £1000 down and £1000 when wanted, and that the liability of each to creditors shall be limited to the amount so agreed to be contributed. This attempt to limit their liability is void as to outsiders; and if debts are incurred each partner will be liable "to his last shilling and his last acre" to pay the creditors in full, and in default may be made bankrupt.

But the rigour of the common law has been relaxed by the legislature, which has enabled persons, at a trifling expense, to escape from the burden of unlimited liability. They have merely to convert their business concerns into limited companies, under the Companies Acts, 1862 and 1867, and in exercise of the power given by those Acts, they can place such limit on their liability as the dictates of prudence may suggest.

These limited companies, in the words of the Master of the Rolls (Sir G. Jessel), one of the most able judges on the bench, "are the offspring of a proved necessity, that is, that men should be entitled to engage in commercial pursuits without necessarily involving the whole of their fortune in that particular pursuit in which they are engaged."*

It may be convenient here to give a few examples of cases commonly occurring in which business concerns are converted into companies with a view to obtaining limited liability.

(a) A firm consists of several members, each of whom has put together some private means which he is desirous of freeing from the risk of trade. To effect this they convert the business into a private company.

(b) An individual or a firm is engaged in a profitable but speculative business, out of the profits of which he or they are enabled to make savings. In order to preserve these savings from risk the business is converted into a company.

(c) A firm consists of several members, one of whom is entitled to the greater part of the capital, and also to

* Select Committee (1877) of House of Commons on the Companies Acts, 1862 and 1867. Mins. of Ev., Answers 2307, 2309.

private means. He is disposed to retire on the fortune he has accumulated. If his liability could be limited, he would be willing to leave part of his capital in the business, and to assume the position of a sleeping partner. The only way in which this can be effected is by converting the business into a company, and it is accordingly done.

(*d*) A man desires to leave his business to trustees in order that it may be carried on for the benefit of his family until his sons attain the age of twenty-one years. He finds that the persons whom he wishes to appoint trustees object to undertake a trust which will involve them in unlimited liability and may prove ruinous. Accordingly, he converts the concern into a private company, and the difficulty is removed.

(*e*) The owner of a profitable business dies. There are competent managers, but the owner's sons are not inclined to devote themselves to the concern, or to incur the unlimited liability involved in carrying it on through managers. According, they convert it into a private company.

(*f*) Another example was given by the Master of the Rolls.* "A man dies, leaving his property to three or four sons. He is the senior partner in a concern. If the capital were taken out the concern would be ruined. The junior partners cannot go on; they say to the children who are not in the business, and who have succeeded to large fortunes, 'If you shut up the business you will lose a great deal; let us form it into a limited company, which will enable you gradually to draw out of the concern, and, in the mean time, it can go on as usual.' I have known that done with great success."

(*g*) A capitalist is willing to supply a person or a firm engaged in trade with additional capital in consideration of a share of the profits, but does not wish to incur the liabilities of partnership. He therefore stipulates that the business shall be converted into a company. He will then bring in the additional capital by taking shares in the company to the amount agreed on, and paying for the same in cash. In such a case the capitalist very commonly stipulates that he or his nominee shall be one of the

* Select Committee (1877) of House of Commons on the Companies Acts, 1862 and 1867. Mins. of Ev., Answers 2307, 2309.

directors for a term of years. And sometimes that the shares shall be preference shares.*

(h) The owner of a patented invention is endeavouring to develop it, but with insufficient means. He wants to

* The Act of 1865, to amend the law of partnership (28 & 29 Vict. c. 86), provides that "the advance of money by way of loan to a person engaged or about to engage in any trade or undertaking upon a contract in writing with such person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on such trade or undertaking, shall not, *of itself*, constitute the lender a partner with the person or persons carrying on such trade or undertaking, or render him responsible as such." And advances are sometimes made in reliance on this Act. Where the agreement is in writing, and not otherwise open to objection, the lender in such case is not under any personal liability to the creditors of the business, *i.e.*, if the business fails he may lose the money lent, but not more. But if the agreement savours of partnership, *e.g.*, if it gives the lender any control over or right to interfere in the management of the business, or stipulates that the advance shall be employed therein, or makes the advance repayable only out of the assets of the business, or otherwise expressly or impliedly limits the borrower's personal liability, the arrangement will probably be regarded in law as a partnership, and the lender may find that he is under unlimited liability to the creditors, and that the agreement affords him no protection. Nor, if an agreement savours of partnership, is there any use in expressly stipulating therein that the lender shall not be deemed a partner or liable as such. Accordingly the Act is of very little use. In the words of the Master of the Rolls it "has not worked well, for this reason, that it does not give the lender sufficient control over the business" (Select Committee, above mentioned. Ans. 2225); but it very often operates as a trap for the unwary. Where, therefore, a person desires to put capital into a business without incurring unlimited liability it is safer, unless in a very simple case, to convert the business into a company. If this be done the capitalist, without risking more than the amount he puts in, can obtain a voice in the management, *e.g.*, as manager or director, and may stipulate for rights, which, if stipulated for in an agreement under the Act of 1865, would render his liability unlimited. Occasionally, however, there may be some reason why the business cannot conveniently be converted; and, in such case, the best plan is to form a private company, consisting of the capitalist and a few friends or clerks, with power to carry on such a business, in partnership or otherwise, and to lend money. The capitalist becomes director of the company, and takes up shares to the extent of his proposed advance, and pays up the amount in full. Then acting on the company's behalf he makes the advance to the owner or owners of the business upon such terms as may seem convenient. It matters not whether the agreement savours or does not savour of partnership, for the liability of the company and the members thereof is limited to the advance: the advance may be lost, but that is all.

retain the patent, or a large interest in it, and personally to work the concern. A capitalist is found, who is willing to provide the requisite capital in consideration of a share of profits, but he wants to have a voice in the management, and is not prepared to incur unlimited liability. Accordingly the concern is converted into a private company, and the owner of the patent and the capitalist or his nominee become directors. The owner of the patent receives fully paid-up shares, conferring a right to the stipulated share of profits; and the capitalist takes and pays up shares to the extent of the capital which he is to bring in.

(i) A., B. and C. are trading in partnership as ship-owners, and are entitled to several steamships or other vessels. By the negligence, misconduct, or imprudence of their servants, they may be involved in litigation and personal responsibilities of the most onerous character, *e.g.*, in respect of loss of life or damage to other ships or to merchandise, caused by collision or otherwise. They desire to get rid of all personal liability, and to throw upon each vessel the liabilities incurred by or in respect thereof. Accordingly each ship, with the business connected therewith, is converted into a private company, and the members of the firm become the managers of the company. Henceforth the assets of the company must bear the liabilities.*

* The formation of "single ship" companies is making rapid progress at the chief ports. A well-known Liverpool firm was among the first to set the example. In the month of May, 1880, they transferred eighteen vessels to as many private companies, and since then large numbers of other firms and individuals have followed this example. Not a week now passes without several such conversions, and sometimes a dozen or more are registered the same day. In many cases the capital is divided into sixty-four shares, but £10 shares are frequently adopted. All the shares, except, perhaps, a few for extra subscribers (*infra*, p. 152), are issued to the owner as the consideration for the transfer of the ship. The objects include the acquisition of the particular ship, and of any other vessels, and the trading therewith, &c. The owner, or owners, are generally appointed manager or managers, and the control of the company is vested in them subject to general meetings of the members. Sometimes directors are appointed. As to the name, see *infra*, p. 150. It seems probable that these private companies for working single ships will be generally adopted: their advantages are obvious.

Borrowing Facilities.

The facilities which a company has for borrowing unquestionably constitute another of the inducements to the conversion of a business into a company.

These facilities are much greater than those of an individual or firm engaged in trade. Not only can a company borrow in the same way and by the same methods as an ordinary individual, but it can raise money by the issue of debentures.

Now the debentures of a company are instruments with which the public is familiar ; they are easily enforced and can be made readily transferable. If issued by a company in good repute they are a very marketable security.

It is by no means uncommon for a business to be converted into a company for the express purpose of raising a loan by the issue of debentures. In this way a large sum may be raised on easy terms for a term of years, which, but for the conversion, it would have been impossible to raise.

Limited Agency of Directors.

Another inducement to the conversion of a business belonging to a firm into a private company is, that persons trading as a company can effectually restrict the powers of the acting partners, *i.e.*, of the directors.

In the case of an ordinary trading partnership every partner is in contemplation of law the unlimited agent of every other partner in every matter connected with the partnership. Thus, every partner may pledge and sell the partnership property, may buy goods on account of the partnership, may borrow money, contract debts, and pay debts on account of the partnership, may draw, make, sign, indorse, accept, transfer, negotiate, and procure to be discounted promissory notes, bills of exchange, and other negotiable paper, in the name and on account of the partnership.

And these powers cannot be limited by agreement between the partners so as to bind outsiders. Accordingly a person dealing with a partner is entitled, unless he has

express notice to the contrary, to assume that the partner has the usual powers. Thus, suppose the articles of partnership provide that one of the partners shall not be entitled to accept bills in the name of the firm; a bill accepted by him in the name of the firm will nevertheless be valid, unless the person taking it knew that he was not entitled to accept it.

A man, therefore, who is a member of a trading firm is at the mercy of his partners, just as they are at his mercy. If one member of a firm proves dishonest or imprudent, he has it in his power to involve his partners in liabilities unlimited in amount.

But the directors of a company are in a very different position. They are *special* agents, and have only such powers as are given to them by the articles of association or other regulations of the company; and every one dealing with a company is presumed to know the contents of the articles of association. If, therefore, the articles say that the directors shall not borrow more than a specified sum, a lender must see that they are not exceeding their power. So, if the articles say that every contract of a certain kind, *e.g.*, a negotiable instrument or a mortgage, must be signed by at least three directors, the person dealing with the company must see that three directors sign, otherwise the instrument or security will be invalid. The power of thus effectually limiting the authority of the acting partners is of great value, and constitutes one of the chief advantages which a company has over a partnership.

Advantages of Incorporation.

Another inducement to such conversions consists in the advantages which a company as a body corporate with perpetual succession has over a sole trader or partnership.

In contemplation of law a company is a person distinct from its members, and accordingly no change among them by reason of death, bankruptcy, retirement, new admission or otherwise affects the company's identity: it still remains in law the same person, and continues to exist until dissolved according to law.

The advantages above referred to result, for the most part, from this distinct and separate existence of the company, and it will be convenient to specify some of them.

1. *As regards Death.*

Where a man is possessed of a profitable business or of a business which promises to be profitable, he very commonly wishes to provide for its continuance in the event of his death. If he proposes to bequeath the concern to some person (*e.g.*, a son) absolutely, there is no difficulty; but perhaps his sons may be under age or not anxious to go into the business; or he may wish the concern to be carried on for the benefit of his estate until they attain maturity, or until certain sums are raised (*e.g.*, for his widow and daughters), or otherwise for a limited period; or he may desire to give an interest in the concern to persons (*e.g.*, his daughters) who could not personally carry it on.

In such cases the ordinary course (where the concern is not converted into a company) is to bequeath the business with the capital employed in it to trustees who are directed to carry it on so as to effect the testator's wishes.

But it is often a matter of great difficulty to find competent trustees willing to undertake such trusts; for in carrying on the concern (even though acting avowedly as trustees or executors) they become personally responsible for all debts and liabilities contracted therein after the testator's death; and, very commonly, are only entitled to be indemnified out of the assets employed in the business. Moreover this responsibility may result in bankruptcy, if the concern is not successful: and however prudently the trustees may act, there is a certainty of anxiety and a probability that their conduct will be questioned and misconceived by the persons beneficially interested, and that they will be called to account in an action in the Chancery Division or elsewhere. Even if trustees are found, they may predecease the testator or die before the trusts are at an end, or wish to retire, and there may then be great difficulty in finding successors.

Where, however, the business has been converted into a private company these difficulties disappear. Upon the conversion all the shares in the company (with the exception of perhaps a dozen) are issued to the former owner as fully paid up, and he becomes managing director, with power by will or otherwise to appoint or authorise others (*e.g.*, his trustees) to appoint directors. By his will the shares are bequeathed to trustees, who themselves become

or appoint directors. As the directors of the company are under no personal liability for the company's debts there is no difficulty in finding persons to act. Upon the death of the testator the business will go on as usual, and in due course the shares will be sold, distributed, or otherwise dealt with as the testator directs.

Again, where several persons are carrying on business in partnership, the death of one or more may seriously prejudice the survivors and the persons interested in the estate of the deceased. Unless the articles of partnership contain special provisions the death of a partner dissolves the partnership as to all the partners, and the concern has to be wound up and the assets realised and distributed. In the absence of special authority under the will of the deceased partner, his executors or trustees cannot leave his capital in the concern, and accordingly if the survivors desire to continue the business they must purchase the share of the deceased partner. But this may entail the withdrawal of such an amount of capital as will seriously cripple the concern. Moreover, it may be impossible to arrange terms with the executors, and an action in the Chancery Division may be necessary.

Very commonly the articles provide that the survivors shall purchase or shall have the option of purchasing the share of the deceased, but in such case also the withdrawal of capital, even though spread over several years, may be disastrous to the concern, and it does not preclude the representatives of the deceased partner from having the accounts taken by the Court. Sometimes the deceased partner authorises his trustees or executors to carry on the business in conjunction with the surviving partners; but here again difficulties are apt to arise, for the trustees or executors may disclaim, or the surviving partners may be unwilling or find it impracticable to act with them, or disputes may arise. As stated in Mr. Justice Lindley's work on Partnership (p. 1047):—"The position of the executors of a deceased partner is, in fact, one of considerable hardship and difficulty; if they insist on an immediate winding-up of the firm, they may ruin those whom the deceased may have been most anxious to benefit; whilst if for their advantage the partnership is allowed to go on, the executors may run the risk of being ruined themselves. With a view to obviate this, it is not unusual for one

partner to make his co-partner his executor; but the difficulty of the executor's position is thus rather increased than diminished; for his own personal interest as a surviving partner is brought into direct conflict with his duty as an executor. Everything, therefore, which he does is liable to question and misconstruction on the part of the persons beneficially entitled to the estate of the deceased; and he is practically much more fettered in the discharge of his duties, and in the exercise of his rights, than if he had not to act in the double character imposed on him."

If, however, the concern has been converted into a company these difficulties and inconveniences are got rid of. The shares of the deceased partner become part of his assets, and are bequeathed in trust, or otherwise dealt with as may be convenient, and his estate will be represented on the board of directors by his trustees or their nominees, who can act without incurring personal responsibilities.

2. *As regards Bankruptcy.*

Where a man is engaged in trade he is liable to be made a bankrupt, or may have to liquidate, if he gets into difficulties. His position may be the result of mischance, or of the fraud or misconduct of a partner or clerk, and he may be quite blameless himself, but as he has traded without availing himself of the advantages offered by the Companies Act, 1862, he must take the consequences. But a company cannot be made bankrupt; nor can its shareholders be made bankrupt in respect of the company's liabilities. If the company gets into difficulties it will be wound-up voluntarily or otherwise, and its shareholders will have to pay up the amount, *if any*, unpaid on their shares; but that is all. Again, where a member of a partnership becomes bankrupt or liquidates, great inconvenience may be caused to the solvent partners, for the share of the bankrupt or liquidating partner has to be ascertained and paid, and this may involve an action in the Chancery Division. Sometimes articles of partnership give the solvent partners the option of taking the share of the bankrupt partner at a valuation, or at the amount at which it stands in the books, or otherwise, on favourable terms. Such provisions, however, cannot be relied on, for the law will not allow a man to give his partners a benefit at the expense or to the prejudice of his creditors. But

in the case of a company the bankruptcy or liquidation of a member does not affect the company : the trustee of the bankrupt can sell and transfer the shares of the bankrupt, or he may disclaim, but that is all. He is not entitled to have the accounts of the company taken and the property sold, or to require the other shareholders to pay off the bankrupt's share ; accordingly the concern goes on as before, its capital remains intact and its powers unaffected.

3. *As regards Executions.*

In the case of a partnership the goods of the firm can be taken in execution in respect of the separate debt of a partner, and, practically, the other partners must pay out the execution or submit to litigation with its attendant risks and inconveniences. But the goods of a company cannot be taken in execution in respect of the debt of a shareholder : the judgment creditor can only get at the shares of the debtor. Accordingly an execution against a shareholder does not affect the company. Again, where judgment is obtained against a partnership, the property of the firm, and also the separate property of each of the partners, may be taken in execution, and the judgment creditor is not bound, in the first place, to exhaust the property of the firm : he may resort at once to the separate property of the partners or any of them. But in the case of a company, the separate property of a shareholder cannot be taken in execution by a creditor of the company. If the execution creditor cannot get paid out of the company's property he must apply for a winding-up order, and the shareholders will, in the winding up, have to pay up the amount, if any, unpaid on their shares ; but that is all.

4. *As regards Lunacy.*

When a partner becomes lunatic or of unsound mind, the partnership is placed in an extremely inconvenient position, and litigation is generally inevitable, and the capital of the lunatic partner has to be found and paid out. But the lunacy of a shareholder causes a company no material inconvenience. The committee retains or transfers the shares as the Court directs, and there is no room for litigation so far as the company is concerned.

5. *As regards the Holding of Property.*

In the case of a partnership the property of the firm is

usually vested in the partners jointly, or in one or more in trust for all, and the admission, retirement, death, bankruptcy, or liquidation of a member generally involves some dealing by conveyance or otherwise with the property: this is inconvenient and causes expense. Moreover, where partnership property is to be dealt with, *e.g.*, upon sale or mortgage, it is very common to find that by reason of some slip or omission the legal estate is outstanding in the representatives of a deceased partner, or some release or conveyance is requisite in order to complete the title of the partners. But in the case of a company, the property is vested in the company as a body corporate, and no alteration among the members affects the title. The property remains vested in the company, and the directors for the time being can, in the name of the company, convey, assign, mortgage, or deal with it regardless of any such alterations.

6. *As regards Contracts.*

A company has many advantages in respect of contracts. For example: Contracts with a partnership are in law regarded as contracts with the members of it, for the partnership has not in law any separate existence: accordingly, if a partner dies, retires, or becomes lunatic or bankrupt, or if a new partner is admitted, difficulties and inconveniences may ensue, and releases, assignments, powers of attorney, and indemnities may be requisite. But a company being a body corporate can sue and be sued on contracts made with it, notwithstanding any alterations among its shareholders. Again, where a continuing guarantee is given to a firm (*e.g.*, that goods supplied shall be paid for), any alteration in the firm will *primâ facie* put an end to the guarantee as to goods subsequently supplied. Not so in the case of a company.

Moreover, a company has the great advantage of being able to contract with its shareholders, and to sue and be sued on such contracts. Thus, if a shareholder is indebted to a company for money lent, or in respect of a call made on his shares, the company can sue for the recovery without difficulty. So, too, if a shareholder lends money to the company, he can sue for it and enforce any security given him by the company, just as if he were not a shareholder; and if the company fails he can prove for the money lent in

competition with the outside creditors. But a firm has no such capacity, and great difficulties and inconveniences arise in seeking to enforce contracts between the members of a partnership in connection with the business of the firm.

Moreover, a member of a firm (except under very special circumstances) cannot prove in competition with the outside creditors of the firm. They must first be paid before he can get anything.

7. *As regards Admissions.*

The admission of a new partner generally involves the preparation of a special deed of covenant, and sometimes of an entirely new deed of partnership, besides accounts, valuations, &c. But in the case of a company, the transaction is of the simplest character. If the new shareholder is to bring in new capital, he takes shares in the company to the amount agreed on, is entered in the register, and thereupon the transaction is complete. Where he is not to bring in new capital but is to take the place of some existing member, the latter signs a transfer of his shares to the new member, who pays him the purchase-money, the transfer is registered, and the transaction is complete.

8. *As regards Retirement.*

Where a member of a partnership retires, the concern is more or less dislocated, the capital reduced, and the rights of all the parties affected. Moreover, the retiring partner still remains liable for the existing debts and obligations of the partnership, and must rely on the covenant of the remaining partners to indemnify him: if that covenant is not performed he may have to pay the creditors or become bankrupt, even though years may have passed since his retirement. Further, the retiring member may even become liable for subsequent debts of the firm, unless his retirement is advertised in the *Gazette*, and as regards existing customers notified by individual circular.

But in the case of a company, the retirement of a shareholder is effected without difficulty. He signs a transfer to the person who takes his place; this is registered and the transaction is complete. There is no need to give notice in the *Gazette*, or by circular or otherwise; and the

retiring member is entirely freed from the debts and liabilities of the company, except that if within one year after his retirement the company is wound up, and any debts or liabilities contracted before his retirement remain, which the existing shareholders have not the means to pay, he may be called on to contribute to the payment of the same, but only to the extent (if any) of the capital remaining unpaid on the shares formerly held by him. Accordingly, if his share were fully paid up, he is not even for a year under any liability ; and so, too, he is under no liability where his shares were not fully paid up when he transferred them, but were subsequently paid up by the transferee.

9. *As regards Sale, Mortgage, and Settlement of Shares.*

The sale of a share in an ordinary partnership dissolves it, and to mortgage or settle shares in such a partnership involves very serious difficulties, and is likely to give rise to litigation and dispute. But shares in a company can be readily sold, mortgaged, charged, settled, bequeathed, or otherwise dealt with. Thus in the case of a mortgage the shares can be transferred to the mortgagee subject to redemption, and with authority to sell in certain events, or an equitable security can be effected by signing a blank transfer of the shares and depositing them, together with a memorandum, with the mortgagee, and giving notice to the company.

In the case of a settlement, the shares can be transferred to trustees, or the settlor can covenant himself to hold the shares in trust.

Accordingly, the conversion of a concern into a company enhances the value of the owners' interests therein by rendering the same more convertible and more easily dealt with.

10. *As regards Government Contracts.*

By the Act 22 Geo. III. c. 45, it is provided that any person who shall directly or indirectly enter into a Government contract shall be incapable of being elected a member of Parliament, or if already a member his seat becomes void, and there are severe penalties for violations of the Act. Hence a sole trader or member of a partnership cannot sit in Parliament if he or his firm is interested in

any Government contract, but if the concern is converted into a private company this inconvenience is avoided, for the Act does not apply to incorporated trading companies contracting in their corporate capacity.

Accordingly, where a member of a firm, which has a Government contract, desires to enter Parliament, he should in the first place get the concern converted, and obtain a new Government contract in favour of the company: he will then be free. Again, if a member of a firm is in Parliament, and the firm finds that they are in a position to tender for Government contracts, they should in the first place convert.

CHAPTER II.

PRELIMINARY STEPS TOWARDS CONVERSION.

WE shall now proceed to describe the mode in which a business is converted into a company, and, by way of example, will take the case of the business of an ironmonger carried on by A., B. and C. in partnership, A. being entitled to half the capital, and B. and C. each to a quarter.

The first step is to ascertain the value of the business. To arrive at this a valuation will be made of the assets of the firm, including the goodwill, the stock-in-trade, business premises, moneys, bills, notes, and book and other debts due to the firm; and an account will be taken of the debts and liabilities of the firm. The valuation and account are sometimes made and taken by the partners, and sometimes by some person appointed by them. In the present case we will suppose that the partners come to the conclusion that the assets are worth £20,000, and that the debts and liabilities amount to £4200; so that the net value of the business is £15,800.

The next point is to settle the limit of liability which the partners desire to fix, for on this depends the most important term of the agreement. In many cases of conversion the owners of business concerns, whether sole or in partnership, desire to incur no personal liability to the creditors of the company; they are willing to hand over the business with its assets and liabilities to the company, but desire, if the company should be unsuccessful, not to be under any personal liability to pay its debts; they wish the remedy of the creditors of the company to be exclusively against the assets of the company. Where this is the desire of the parties the conversion must be effected on the footing that the owner or owners shall receive the value of the business in fully paid-up shares. Upon such

shares there is no personal liability. They entitle the holder to votes and dividends, but no call can be made on him.* Sometimes, however, a person may be willing, besides making over his business or his share of a business to a company, to incur a personal liability to a limited extent, *e.g.*, suppose a man desires to convert his business, valued at £10,000, into a company, and is willing to incur a liability to supply £2000 additional working capital if required; in such case the conversion will be effected on the footing that he shall receive 2000 shares of £6 each, with £5 per share credited as paid up: he will thus be liable to pay up the balance of £1 per share = £2000 when required, but will be under no further liability.

In the present case we shall suppose that A., B. and C. desire not to be under any personal liability, accordingly they will receive fully paid-up shares.

These important points having been settled, the legal documents must be prepared. The nature of these depends on whether the conversion is to be effected in accordance with the old or the new plan. These two plans are explained in Chapters III. and IV. respectively, and the cases in which the adoption of the new plan is recommended are stated at p. 172, *infra*.†

* In "single ship companies" (*supra*, p. 134) the shares are almost always fully paid up.

† As to the expense of conversion: If effected in accordance with the new plan, it rarely exceeds £50 or £100, but if it is effected in accordance with the old plan, there may be a further expense for *ad valorem* duty on transfer. See *infra*, p. 172.

CHAPTER III.

CONVERSION IN ACCORDANCE WITH THE OLD PLAN

WHERE the conversion is to be effected in accordance with the old plan the following documents must be prepared :—

- (a.) The Agreement.
- (b.) The Memorandum of Association.
- (c.) The Articles of Association.

The Agreement.

The following will give the reader some idea of the form of such a document :—

An agreement made the day of 1881, between A., B. and C., all of (hereinafter called the vendors), of the one part, and A., B. and Co., Limited (hereinafter called the Company), of the other part. Whereas the vendors are the joint proprietors of a business of an ironmonger now carried on by them in partnership, under the firm name of A., B. and Co., at . And whereas the registered capital of the company is £16,000, divided into 1600 shares of £10 each. Now therefore it is hereby agreed as follows :—

1. The vendors shall sell and the company shall purchase, first, the leasehold hereditaments specified in the schedule hereto upon which the said business is now carried on, and the goodwill of the said business ; secondly, the moneys, bills, notes, and other negotiable instruments and securities for money, and the book and other debts and choses in action of the said partnership, and the full benefit of all contracts and agreements to which the vendors are entitled in relation to the said business ; and thirdly, the plant, machinery, furniture, stock-in-trade and effects of the said partnership in or about the said leasehold hereditaments.

2. As part of the consideration for the said sale the company shall allot to the vendors 1580 of its shares, and such shares shall be deemed to be fully paid up, and shall be allotted as follows, namely, to A. 790, and to B. and C. each 395.

3. As the residue of the consideration for the said sale the company shall pay, satisfy and discharge all the debts and liabilities of the vendors in relation to the said business, and shall indemnify the vendors and their respective heirs, executors and administrators,

estates and effects against all actions, claims and demands in respect thereof.

4. The said sale shall take effect as from the date hereof, and shall be completed on the day of next, when the certificates of title to the said shares shall be issued to the vendors. On or at any time after that day the vendors respectively will, upon the request and at the cost of the company, execute and do all such assurances and things as shall reasonably be required by the company for vesting in it the property agreed to be hereby sold, and giving to it the full benefit of this agreement.

5. All rent, taxes and other outgoings shall be paid by the vendors up to the date hereof, and, if necessary, an apportionment of outgoings shall be made between the vendors and the company.

6. Until the completion of the purchase the vendors shall carry on the said business in trust for the company.

7. The company shall accept, without investigation, the title of the vendors to the property agreed to be hereby sold.

8. This agreement shall be filed with the Registrar of Joint Stock Companies before the said shares are allotted.

As witness the hands of the vendors and the common seal of the company, the day and year first above written.

THE SCHEDULE.

(This will contain particulars of the leasehold hereditaments.)

In reference to the above agreement the following points should be noticed :—

1. The agreement, it will be observed, is made between the members of the firm and the company; accordingly it cannot be executed until *after* the company has been registered, because until then the company does not exist.

Sometimes it is deemed expedient to execute an agreement before the memorandum and articles of association are prepared, *e.g.*, where there is apprehension that a member of a firm, who has assented to the conversion, may change his mind unless bound by agreement at once. In such case the agreement will be made between the vendors and some person "as trustee for the intended company," and will recite the intention to form the company, and provide that the memorandum and articles shall be in the form already approved, or in such form as the vendors, or the majority, shall approve, and will specify the terms of sale as in the above agreement.

2. In the above case the business is supposed to belong to three persons, but the agreement can readily be adapted to a case where the business belongs to a single person, or to a firm consisting of a greater or less number of persons than three.

3. Sometimes instead of specifying part of the property in the body of the agreement (clause 1), it is found more convenient to specify it all in the schedule. In such case clause 1 will provide for the sale and purchase of "the property specified in the schedule hereunder written," and particulars will be given in the schedule.

4. In some cases the sale does not include all the assets of the firm, *e.g.*, part of the ready money may be excluded, or some branch of the business, or some other asset, and sometimes the sale includes scarcely any property except the goodwill of the business, and possibly some pending contracts, or the business premises.

5. If the vendors subscribe the memorandum of association for the shares, clause 2 will require modification.

6. In the above case the shares agreed to be taken by the vendors are to be deemed to be fully paid up, so that the partners will be free from all liability, *i.e.*, the creditors of the company must look to the assets of the company, but they can have no claim against A., B. and C. personally. This freedom from liability, however, only applies to debts and liabilities incurred by the company subsequently to the conversion. As to the debts of the firm existing at the time of the sale, though as between the vendors and the company, the latter is, by clause 3 of the agreement, bound to pay, yet the creditors still retain their right to call on A., B. and C. to pay, and would no doubt enforce this right if the company failed to pay in due time. This liability of A., B. and C. will, however, in ordinary course of business, be got rid of very shortly by the payment of the debts by the company or by novation.

7. Sometimes the vendors determine to accept part payment in fully paid up shares and part in debentures or bills of exchange of the company. And sometimes it is provided that the share of one partner (*e.g.*, the wealthy partner who desires to withdraw) shall be paid for partly in shares, and partly in cash payable by instalments. In such cases the agreement must provide accordingly.

8. As to clause 7 of the agreement. Upon the conversion of a business into a private company it is almost always provided that the company shall accept the title of the vendors without investigation. This saves needless legal expenses.

The Memorandum of Association.

Contemporaneously with the preparation of the agreement the memorandum and articles of association must be settled. The memorandum of association is one of the documents which must be registered in order to form a company. It has to state:—

1. The name of the proposed company, with the addition of the word "limited" as the last word of such name.
2. Whether the registered office of the company is to be in England, Scotland or Ireland.
3. The objects of the company.
4. A declaration that the liability of the members is limited.
5. The amount of capital.

As to the Name.

Any name may be selected, provided that it does not resemble too closely the name of another registered company.

Upon the conversion of a business into a private company, the style under which the business, prior to the conversion, has been carried on is usually adopted, with the addition of the word "limited."

Thus, J. Smith and Company becomes J. Smith and Company, Limited, and Brown and Jones becomes Brown and Jones, Limited. But of course the name can be altered if thought fit. Sometimes the company is called by the name of the principal works of the owner of the business, *e.g.*, The Padworth Ironworks, Limited.*

As to the Registered Office.

The office at which the documents relating to the formation of the company are to be registered depends on the intended situation of the registered office. If it is to be in England, the documents must be registered at the office of the Registrar of Joint Stock Companies at Somerset House.

* In single ship companies (*supra*, p. 134), the company is generally called after the ship, *e.g.*, "The Ship Carmen, Limited," or "The Steamship Garfield, Limited."

As to the Objects of the Company.

Great care has to be taken in stating them, for they cannot after the registration of the company be extended. Thus, if a company is registered with a memorandum of association which states the objects to be—"To purchase and carry on the business of an ironmonger, now carried on at , by A.," and it subsequently becomes desirable to purchase a rival business, it cannot be done. In order that this might be allowable the objects ought to include power "to purchase any other business of a similar character."

As to the Capital.

This is generally fixed at a sum slightly exceeding the aggregate amount of the shares, which under the agreement are to be issued to the vendors. Moreover, it is generally fixed in round numbers, *e.g.*, in the above case (p. 145) the vendors are to take 1580 shares=£15,800, and the capital is accordingly fixed at £16,000.

If the members of the firm are seven or more in number, the capital can, if desired, be fixed at the exact amount of the shares which they are to have, and they will by the memorandum agree to take them all, but in any other case there must be some extra shares for the persons who subscribe the memorandum other than the vendor or vendors.

These extra subscribers are only obliged to take one share apiece, but of course they may, if the vendors consent, subscribe for a greater number. However, they are rarely permitted to take many shares, lest they should interfere in the management. See further, *infra*, p. 152. Sometimes the capital is divided into preference and ordinary shares. The following are cases in which such a division is sometimes stipulated for: (1) A wealthy member of a firm is desirous of retiring, but at the request of his partners agrees to leave part of his capital in the business. He, however, stipulates that the business shall be converted into a company, and that his share in the assets of the firm shall be paid for in preference shares. (2) A capitalist is willing to bring additional capital into a business. It is agreed that the business shall, in the first place, be converted into a company, and that he shall bring in the additional capital by subscribing for prefer-

ence shares. The rights of the preference shareholders will be defined by the articles of association. Ordinarily, the right is, to receive out of the profits a fixed dividend, *e.g.*, £6 per cent. per annum, before any dividend is paid to the other shareholders. Sometimes, in addition to this, it is provided that if the company is wound up, the preference share capital shall be returned before any return of capital is made to the holders of ordinary shares.

The memorandum of association must be subscribed, *i.e.*, signed, by at least seven persons, each of whom must take at least one share, and must write opposite his or her name the number of shares he or she takes.

No one knows why the number seven was fixed by the Act as the smallest number capable of forming a company. It certainly seems rather irrational that seven persons who are willing to subscribe £7 by way of capital can register themselves as a company, but that three or four persons, though willing to subscribe £7000, or any other sum, cannot.

In his evidence before the Select Committee on the Companies Acts, 1862 and 1867, the Master of the Rolls said that he could see no reason why two or three persons should not be enabled to form a limited company just as well as seven; and it is to be hoped that the law will be altered in this direction before long. See note at p. 154, *infra*.

As the law now stands, if it is desired to convert into a private company a business belonging to an individual, or to a firm consisting of less than seven members, it is necessary to obtain the aid of a few friends, *e.g.*, suppose the firm consists of three members, they will constitute three of the subscribers, and four extra subscribers must be obtained. The services of extra subscribers are generally obtained without difficulty. Any person not under disability will do. In private companies the extra subscribers are very commonly relations or clerks of the owner or owners of the business. Each must sign for at least one share, and cannot, in any event, be called on to pay more than the nominal amount of the share or shares so agreed to be taken.

Sometimes the amount is paid by the owner or owners of the business.

The following is a copy of a memorandum of association, containing some of the ordinary clauses, and will show the reader the form such documents assume:—

MEMORANDUM OF ASSOCIATION OF A., B. AND CO., LIMITED.

1. The name of the company is "A., B. and Co., Limited."
2. The registered office of the company will be situated in England.
3. The objects for which the company is established, are:—
 - (a) To carry on the business of an ironmonger in all its branches.
 - (b) To acquire the business of an ironmonger, now carried on by Messrs. A., B. and Co., in partnership at Middlemarch, in the county of , and the goodwill thereof, and all or any part of the real and personal property of or belonging to or used in or about or in connection with the said business, and to undertake all or any part of the liabilities of the said Messrs. A., B. and Co. in relation thereto.
 - (c) To acquire and undertake all or any part of the business assets and liabilities of any person carrying on a business altogether or in part similar to that of this company.
 - (d) To purchase, take on lease, or in exchange, hire, or otherwise acquire any real and personal property, and any rights and privileges necessary or convenient for the purposes of the company, and, in particular, any land, buildings, easements, machinery, plant, and stock-in-trade.
 - (e) To borrow or raise money by the issue of or upon debentures, or in such other manner as the company shall think fit.
 - (f) To make, accept, indorse, and execute promissory notes, bills of exchange, and other negotiable instruments.
 - (g) To sell, improve, manage, develop, lease, mortgage, dispose of, or otherwise deal with all or any part of the property of the company.
 - (h) To do all such other things as are incidental or conducive to the attainment of the above objects.
4. The liability of the members is limited.
5. The capital of the company is £16,000, divided into 1600 shares of £10 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 Descriptions of Subscribers.	Number of Shares taken by each Subscriber.
A., of 10, High Street, Middlemarch, Ironmonger	1
B., of, &c.	1
C., of, &c.	1
William Jarvis, of, &c.	1
Henry Brown, of, &c.	1
Arthur Robinson, of, &c.	1
Richard Carter, of, &c.	1

Dated this 1st day of July, 1881.

Witness to the above signatures,

WILLIAM CLARKE,
14, Avenue Road, Middlemarch,
Solicitor.

NOTE.

It may be convenient here to draw attention in greater detail to the important suggestions made by the Master of the Rolls (see *supra*, p. 152) as to the formation of companies. These suggestions are contained in some of his Lordship's answers when examined before the Select Committee (1877) of the House of Commons on the Companies Acts, 1862 and 1867. The following are taken from the Minutes of Evidence:—

Ans. 2258. I see no reason why persons might not contract to carry on business, either wholly free from liability beyond what sums they subscribed, if it were duly notified to their creditors; or with a liability to a limited sum beyond what they subscribed; or with wholly unlimited liability. I see no reason why three persons might not do that as well as seven, or why one person might not do it; why he might not advertise, for instance, that he has put £10,000 into a concern, and will not be liable for a shilling beyond it.

Q. 2259. You see no objection to that being allowed? Ans. If John Brown started a company "John Brown, Limited," and deposited a note with the Joint Stock Companies' Registrar that "John Brown, Limited," was a company consisting of John Brown, and that he had put £10,000 into it, and was not to be liable for anything beyond that, I see no objection to that being allowed. Anybody dealing with "John Brown, Limited," would know that.

Ans. 2278. I think they (the Companies Acts) do not go far enough; I think there should be perfect freedom of contract. I do not see why a man should embark his whole fortune in every trade into which he enters. If a man says, "I wish to establish a glass factory, and I will start it with £10,000, and give notice to all the

world that I will not be liable beyond that," why should the common law prohibit such a contract?

Q. 2279. But if the common law provides that a man entering into commercial transactions is liable, not only for the money he has in that particular business, but for all the money he holds in the world, does it not offer a person, under the Limited Liability Act, a privilege and advantage over him? Ans. I think to that extent the Limited Liability Act improves the common law, which, to my notion, is barbarous, and not suited to a highly civilised country.

Q. 2280. But, so long as the two laws exist, does it not give an advantage to the person under the Act? Ans. It improves the common law to that extent, by enabling him to contract in a way he could not under the common law, that is, by limiting his liability. The common law prevents freedom of contract.

Ans. 2314. According to my view there is no natural law which makes a man liable beyond that which he has contracted for, and which the other party desires that he should be liable for.

Ans. 2347. I see no reason why any number of persons might not make a company.

Q. 2348. You mean less than seven? Ans. Less than seven, or any other number. . . .

Q. 2349. But you would make them still corporations? Ans. Yes, I think it is as good a way of dealing with them as any other; and I would still put something behind their names, when limited, to show that they are limited; so that everybody dealing with them should have express notice.

The Articles of Association.

The articles of association consist of a series of rules for the regulation of the business of the company, and have to be registered at the same time as the memorandum of association.

They may contain such rules as the persons engaged in the formation of the company think fit.

It is not absolutely essential to register articles of association, for the Companies Act, 1862, declares that, if no articles are registered, certain regulations contained in Table A. in the First Schedule to the Act shall be binding on the company and the members thereof. These regulations (commonly referred to as Table A.) rarely suit a private company, and the result is that very few private companies are formed without special articles of association.

The articles of a private company generally commence with a clause declaring that Table A. shall not apply, and providing that the directors shall forthwith affix the seal of the company to the agreement with the vendors of the business, and shall carry the same into effect. Then follow clauses providing for various matters, of which the principal are the following :—

Certificates.	General meetings.
Calls.	Directors.
Transfer of shares.	Dividends.
Forfeiture and lien.	Accounts.
Increase of capital.	Audit.
Borrowing powers.	Notices.

It may be convenient to refer briefly to these in order.

Certificates.

Each shareholder in a company is entitled to a certificate of title to his shares, and these clauses provide for the issue.

The form of a certificate is usually as follows :—

A., B. and Co., Limited. This is to certify that A., of , is the registered holder of ten shares, of £10 each, in the capital of the above-named company, and that upon each of the said shares the sum of £10 has been paid up.

Given under the common seal of the company, this day of

The common seal of the company was affixed hereto in the presence of

} Directors.

L. S.

Calls.

These clauses declare who are to make calls on the shareholders, whether the directors, or the managers, or the shareholders assembled in general meeting, and what notice of a call must be given, &c.

It will be borne in mind that a call cannot be made in respect of a share which, by the terms of an agreement as above (p. 147), is to be "deemed to be fully paid up." And where a partly paid-up share is issued, *e.g.*, a £6 share with £5 credited as paid up (see *supra*, p. 146), only the balance can be called up.

Transfer of Shares.

In the case of a private company the rules as to the transfer of shares require very careful consideration. Unless the regulations otherwise provide, a shareholder has a right to transfer his shares to any one, and he thus has the power of bringing into the company persons who may be insolvent or otherwise objectionable.

Accordingly it is necessary to control this right. Now in an ordinary partnership a new member can only be introduced by the consent of all the partners, and in a private company it is generally desired to preserve this rule or to adopt one approximating to it. It is therefore commonly provided that no share shall be transferred to a stranger so long as any member is willing to purchase at the fair value; that a member desiring to transfer shall give notice to the company; that the company shall offer the shares to the other shareholders; that if within a certain period the company finds a purchaser the shares shall be transferred to him; and that in case of difference the value shall be settled by arbitration.

The rules as to how the shares are to be offered to the other shareholders vary much. Sometimes it is provided that the directors shall offer them (*a*) to the shareholders in proportion to the shares already held by them, or (*b*) to the shareholders successively according to the number of the shares held by them, or (*c*) to some particular shareholder or shareholders, *e.g.*, the original owner or owners of the business, or (*d*) to the shareholders whose names are entered in a register in rotation, or (*e*) to the members successively in order settled by lot.

Moreover, the rules as to the price to be paid vary considerably. Instead of the fair value it is sometimes provided that the price shall be a sum equal (*a*) to the amount paid up on the shares, with such addition or deduction as the company at half-yearly meetings fixes; or (*b*) to the amount paid up with interest since the last ordinary meeting, less any interim dividend; or (*c*) to the amount paid up with an addition proportioned to the average profits during a certain period. Where the sale is to be at the fair value, it is sometimes provided that not more than, say, ten per cent. beyond the amount paid up shall be awarded.

Sometimes it is provided that during a limited period,

e.g., five years, no share shall be transferred (*a*) without the consent of the holders of, say, three-fourths of the shares, or (*b*) without the consent of a particular person, *e.g.*, the original owner of the business. Liberty is very commonly given to the original owner or owners to transfer some of his or their shares without any restriction, even though the other shareholders may be fettered; and it is not unusual to permit a shareholder to transfer to a son, daughter, husband, wife, brother, or nephew, or some of them.

Sometimes greater freedom is permitted, and it is merely provided that the directors may refuse to register a transfer where they are of opinion that the transferee is not a desirable person to admit to membership, but in most cases more elaborate provisions are inserted.

The terms of the transfer clauses depend materially on the special circumstances, *e.g.*, where the conversion is effected with a view to gradually withdrawing, the capitalist would have free right to transfer.

Transmission of Shares.

Provision has to be made for death, bankruptcy, liquidation, &c.

As regards death.

It is usually provided that the executors or administrators of a deceased shareholder may be registered as the holders of his shares or may transfer them. Accordingly, where a member dies, his personal representatives will deal with his shares as directed by his will (if any) or otherwise as may be arranged. Sometimes their right of transfer is restricted, *e.g.*, to sons, daughters, or widow of the testator or intestate, and it is provided that, before a transfer can be made to any other person, the shares must first be offered to the shareholders as above (p. 157). Occasionally the company is empowered, within a limited period after the shareholder's death, to require the representatives to sell to the company's nominee at the fair value. But in general the personal representatives are not much fettered.

As regards bankruptcy and liquidation.

Where a shareholder becomes bankrupt, the law provides that the right to transfer his shares shall vest in the trustee, to the same extent as the bankrupt or liquidating debtor

might have exercised the same if he had not been bankrupt or liquidated. This must be borne in mind, for it follows that the trustee's right of transfer cannot be fettered to a greater extent than the shareholder's right; *e.g.*, if the shareholder have a free right of transfer, the trustee cannot be compelled before transferring to give the other shareholders the option of purchasing. However, in a private company, the shareholder's right of transfer is generally a good deal fettered, and the trustee is fettered in like manner.

As regards lunacy.

Special provision is usually made for this, and in most cases the committee is authorised or required to transfer.

As regards marriage.

It is sometimes provided that the shares of a married woman shall be considered her separate property and may be dealt with accordingly, or that the husband may with the approval of the directors be registered as the holder, or that on the marriage of a female shareholder the company may compel the transfer of her shares to its nominee at the fair value.

Lien on Shares.

It is generally provided that the company shall have a lien on the shares of each member for all moneys due from him, and that if he makes default in paying the same, after due notice, the shares may be sold and the proceeds applied in satisfying the lien and the balance paid to him.

Forfeiture of Shares.

The forfeiture clauses are important for the purpose of enforcing the payment of calls. When a call made on a member is not duly paid, the directors can bring an action in the name of the company for the amount, but this involves expense, risk, and delay. Instead, therefore, of doing this, the directors give notice to the member that if he does not pay the amount due his share will be forfeited. This generally secures the payment of the amount and prevents litigation. Sometimes, however, in a private company forfeiture clauses are not inserted, or it is provided that they shall not apply to shares held by the original owner or owners of the business.

Increase of Capital.

These clauses are of great importance. Suppose a com-

pany to start with a capital of £50,000, divided into 5000 shares of £10 each, all of which, except perhaps 50 or so, have been issued as fully paid up to the person or persons from whom the business of the company was purchased. Perhaps it may subsequently be found that the working capital of the company is too small, and it may be considered desirable to obtain, say, £10,000 more. In such case the capital will be increased by the creation of 1000 new shares of £10 each, and if the existing members are willing to take the new shares they will be allotted to them, or if preferred, they can be offered to their friends or to the public by advertisement. Sometimes it is provided that, except the shares taken by the subscribers to the memorandum of association and those to be issued to the vendors, no shares (either in the original or any increased capital) shall be issued to strangers until the members have been given the option of taking them, *e.g.*, in one of the modes stated above (p. 157).

The terms of allotment will depend on the wants of the company. Thus, if the £10,000 is wanted at once, the applicants for shares will be required to pay up, say, £5 per share on application and the balance on allotment; or if only part of the amount is wanted at once, it may be stipulated that so much per share shall be paid down and the balance by instalments at fixed dates, or when called for.

It is extremely desirable in the articles to give power upon an increase of capital to create preference shares. If this power is not given by the articles, or by the memorandum of association, it cannot subsequently be obtained.

The mode in which the capital is to be increased, *i.e.*, how the new shares are to be created, will be determined by the articles. In the case of a private company, it is usually given to a general meeting, but it is generally provided that the shareholders shall have the option of taking the new shares in proportion to the number of the shares held by them respectively. In such a case the power will be exercised by passing a resolution, *e.g.*—

“That the capital of the company be increased to £ by the creation of 2000 new shares of £10 each.”

A printed copy of the resolution must be filed with the Registrar of Joint Stock Companies, and a formal notice of the increase must be given to him.

Borrowing Powers.

These require careful consideration. In a private company it is not unusual to give an unlimited power of borrowing to the directors. Sometimes, however, they are empowered to borrow any sum not exceeding a maximum amount, *e.g.*, £10,000. Occasionally they are only empowered to borrow with the consent of a general meeting, *i.e.*, of the majority of the shareholders present in person or by proxy at a meeting. In connection with the power to borrow the power to mortgage will be conferred, for it may be impossible to borrow without giving a charge on the property of the company.

The ordinary mode of securing money lent to a company is by the issue to the lender of a debenture, which is an instrument under the seal of the company, whereby the company binds itself to pay to the lenders a sum of money on a certain day with interest in the meantime. Sometimes it contains a statement that the said sum shall be a first charge on the property of the company, both present and future. In such case it is called a mortgage debenture, for it takes effect as an equitable mortgage. In order to obtain the sum wanted, it may be necessary to issue a number of debentures, *e.g.*, 100, each for £50; in such case each debenture will state that "this is one of a series of 100 like debentures, which rank *pari passu* as a first charge on the property of the company both present and future."

If a company makes default in payment of the interest or principal of a debenture, the owner can bring an action for the amount due, and if it is a mortgage debenture, he can have the property of the company sold and applied in discharge of the amount due. Sometimes mortgage debentures are secured by a mortgage to trustees. If, in any case, it is determined to borrow money on debentures, it is usual in a private company to offer the debentures to the shareholders in the first place. If they decline to advance money the directors will seek it elsewhere.

Neither the directors or the members of a company are under any disability to lend money to it.

General Meetings.

These clauses provide for meetings of the shareholders. In private companies it is usually provided by the articles

of association that every share shall give the holder one vote. Such a provision generally gives the person or persons really interested in the company ample control over its affairs. Thus, suppose the case of a firm consisting of three persons, who transfer their business to a company in consideration of 2000 shares, and that the four extra persons who subscribed the memorandum of association (see *supra*, p. 152) thereby agreed to take one share apiece. It is obvious that these extra subscribers, with only four votes between them, have no power of interference as against the 2000 votes of the other shareholders.

Directors.

Companies are generally managed by directors, and, where a business is converted into a private company, it is usual to provide that the original owner or owners, or some of them, shall be the directors. Sometimes it is provided that the owner or owners shall be entitled to hold office for a term of years, or for life, provided he or they continue to hold a certain number of shares; and sometimes an owner is empowered at any time, and from time to time, to appoint and remove directors, or some of the directors. Occasionally an owner is empowered to authorise his executors or trustees, whilst holding a certain number of shares, to appoint directors. Where the owner or owners hold office on special terms, in conjunction with other directors appointed by themselves or otherwise, they are generally described in the articles as "the governing directors," or "the permanent directors," or "the life directors," whilst the other directors are called the ordinary directors. Sometimes it is provided that all or some of the directors shall retire each year, and the company in general meeting is authorised to fill up the vacated offices, the retiring directors being eligible for re-election. The effect of this is, that the majority of the votes controls the election. In the case of single ship companies (*supra*, p. 134), the original owners, or some of them, or some firm in which they are interested, are usually appointed managers upon special terms, and subject to the control of the company in general meeting. Where this is done, the articles generally provide that the company may at any time appoint directors, and determine their rotation, qualification, remuneration, &c.

In the case of public companies the difficulties of management are very great. The directors rarely hold more than a small proportion of the shares of the company, and the result is that they exert themselves much less than the members of an ordinary firm. But in the case of a private company there is no such difficulty as to management, at any rate, so long as the original owners of the business remain directors of the company and hold the greater part of the shares. They trade with their own money. The company is but the continuance of the firm. If profits are made they pocket them; if losses occur, they must be met out of assets which they have personally supplied. In the case, therefore, of a private company there is no fear that the directors will be negligent of their duties or careless of the interests of the concern.

Powers of Directors.

It is usual to insert a clause in the articles empowering the directors * to exercise all such powers, and do all such things as the company can exercise and do, and are not required by the articles or by law to be done by the company in general meeting. For all practical purposes such a clause enables the directors to carry on the business of the company just as if it were their own business. They have merely to consider whether the company has power to do a given thing, and if so they can do it in the name of the company. Whether the company can do it depends in most cases on the terms of the memorandum of association; *e.g.*, the company can do anything which is specified in its memorandum among its objects, and also anything which is reasonably necessary or incident to carrying its objects into effect. If the business is to be carried on by a manager instead of by directors he will be given similar powers.

Besides giving a general power as above, it is generally deemed expedient to give various special powers, *e.g.*, to appoint and dismiss managers, agents, &c., to bring actions, &c., to buy and sell, to enter into contracts, &c. These express powers are given because persons dealing with directors like to see that the articles expressly authorise proposed

* In "single ship companies" these powers are usually vested in the managers, *supra*, p. 134.

transactions. Moreover the directors like to see their powers set out in black and white.

Dividends.

In a private company the power of declaring a dividend is generally given to the company in general meeting.

Accounts.

The articles always provide for the keeping of the accounts of the company, and also for an annual account of payments and receipts and a balance-sheet. Sometimes the accounts are made up half-yearly.

Audit.

Whether the accounts are to be audited by outsiders or not will depend on the views of the persons forming the company.

Notices.

The articles should provide for the service of notices on the shareholders. It is important to have a prescribed mode of giving notice, because the regulations generally require notice to be given upon various occasions, *e.g.*, upon a call being made, before forfeiture of a share, of a general meeting.

Completion of Conversion.

When the memorandum and articles of association have been prepared they should be printed and executed. The mode in which the memorandum is to be executed can be seen by referring to the form given above (p. 153), where it will be observed each member signs his name in the presence of a witness. The articles of association must be executed by the same persons who sign the memorandum, and the signatures must be duly attested. The memorandum and articles of association, having been executed, must be forwarded to London (if the registered office of the company is to be in England), and presented to the Registrar of Joint Stock Companies (whose office is at Somerset House, Strand) for registration. At the same time the fees will have to be paid and stamps to the pre-

scribed amount impressed on the documents. The memorandum must have a 10s. deed stamp, and it must also be stamped in proportion to the nominal capital of the company, according to the following table :—

	£	s.	d.
Where capital does not exceed £2000	2	0	0
Where capital exceeds £2000 the sum of £2 ; and also			
For every £1000 of nominal capital, or part of £1000, after the first £2000, up to £5000	1	0	0
For every £1000 of nominal capital, or part of £1000, after the first £5000, up to £100,000	0	5	0
For every £1000 of nominal capital, or part of £1000, after the first £100,000	0	1	0

But not more than £50 is to be charged in any case.

Hence, if the capital is £20,000, the duty will be £8 15s.

The articles of association require a 10s. deed stamp and a 5s. registration stamp.

The documents having been duly stamped, and appearing to have been properly executed and in due form, the Registrar will file them and give a certificate under his hand, stating that the company is incorporated and is limited. The Act provides that upon the issue of the certificate the company shall come into existence as a body corporate—an artificial person quite distinct from its members.

Immediately after the issue of the certificate, notices in writing, stating where the registered office of the company is, and signed by the secretary or some other person on behalf of the company, should be given to the Registrar.

As soon as may be after the incorporation of the company, the directors will assemble at a board meeting and will pass a resolution :—

“That the agreement referred to in clause of the articles of association be adopted, and that the seal of the company be affixed thereto.”

This resolution will be recorded in the minute-book, and the agreement will be duly executed by all parties.

As every agreement for the issue of fully or partly paid-up shares for a consideration other than cash must (under the Companies Act, 1867, s. 25) be filed with the Registrar of Joint Stock Companies, it is usual to execute such an agreement as above in duplicate or triplicate. The copy intended to be filed must be sent to the office of the Regis

trar duly stamped, *i.e.*, with a 10s. deed stamp, and a 5s. registration stamp must there be impressed. It will then be filed. Care must be taken that the agreement is filed before the shares are issued to the vendor or vendors, otherwise they will involve them in serious liabilities.

At the time fixed by the agreement for the completion of the purchase, the property will be made over to the company. In order to effect this, deeds will be executed assigning the leasehold and freehold premises (if any) to the company. A deed assigning the goodwill and the benefit of all contracts and agreements will also be executed, and the company will be put in possession of the stock-in-trade and other chattels and effects. At the same time resolutions will be passed by the directors for the issue to the vendors (*i.e.*, to themselves) of paid-up shares, pursuant to the agreement, and the certificates of title to such shares will be made out and, having been duly executed under the seal of the company, will be handed over to the vendors.

These arrangements having been effected the conversion is complete, and it only remains to give notice thereof to any persons whom it may concern, *e.g.*, to the creditors and debtors of the firm. The notice will state that the business has been converted into a company, and that the company will henceforth carry on the concern. Sometimes a circular is sent to customers asking for a continuance of favours.

It may here be mentioned that where a business belonging to a firm has been converted into a company, in accordance with the old plan as above described, the firm dissolves, and a settlement of affairs having been come to, a deed of mutual release is generally executed.

CHAPTER IV.

CONVERSION IN ACCORDANCE WITH THE NEW PLAN.

1. *The Deed of Settlement.*

WE shall now proceed to explain the mode in which the conversion of a business into a private company is effected in accordance with the new plan ; and it will be assumed that the business to be converted is that above (p. 145) mentioned.

The first step is to settle the preliminary matters there mentioned, namely, the value of the concern, and whether the shares are to be fully or only in part paid up. This having been done, the deed of settlement must be prepared.

The parties to this deed will be (1) the owner or owners of the business, (2) a trustee (some outsider with whom the covenants will be made), (3) the other persons who are to join in order to make up the number to seven or more. The formal parts of the deed will be as follows:—

THIS INDENTURE, made the day of , between A., B. and C. of the first part, D. of the second part, and the several persons who have signed their names and affixed their seals, and who shall hereafter sign their names and affix their seals to these presents, of the third part, WITNESSETH that each of the several persons parties hereto of the first and third parts respectively, so far as relates to the acts and deeds of himself and herself respectively, and his and her respective heirs, executors, and administrators, doth hereby for himself and herself respectively, and for his and her respective heirs, executors, and administrators, covenant with the said D. (as trustee on behalf of the others of them), his executors, administrators, and assigns, and also as a separate covenant with each of the others of them, and his or her executors, administrators, and assigns, that the several persons parties hereto of the first and third parts respectively, and the several other persons who shall become members of the company in manner hereinafter mentioned, shall while holding shares in the capital of the company be and continue (until dissolved under the provisions in that behalf

hereinafter contained) a Joint Stock Company under the name hereinafter specified, and that such company, and the members thereof, shall be subject to the regulations following (that is to say):—

[Here will follow the regulations.]

In Witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

[Signatures and Seals
of A., B., C. and D.]

Signed, sealed, and delivered by the above-named A., B., C. and D. in the presence of—

[Signature of witness.]

Attesting witness.	Signatures and addresses of the parties hereto of the third part.	Number of shares taken by each of the parties hereto of the third part.
	W. of —	One.
	X. of —	One.
	Y. of —	One.
	Z. of —	One.

The regulations to be inserted in the deed will consist of a series of clauses numbered consecutively, and will include the following:—

1. Interpretation clause. This will declare, among other things, that “the company” means the company hereby constituted.

“The members” means the holders for the time being of shares in the capital of the company.

“The registration of the company” means the registration of the company, pursuant to Part VII. of the Companies Act, 1862.

2. The name of the company shall be A., B. and Co.

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

[*Here they will be stated as in a memorandum of association.*]

4. The capital of the company is £16,000, divided into 1,600 shares of £10 each.

5. Until after the registration of the company there shall not at any time be more than twenty members thereof.

6. The said A. shall be entitled to 790 shares, and each of them, the said B. and C., to 395 shares in the capital; and each of the several other persons, parties hereto, of the third part, shall be entitled to the number of shares in the capital set opposite his signature hereto.

7. The assets specified in the first schedule hereto shall be brought into the joint stock by the said A., B. and C., and shall be taken to be of the value of £15,800, and accordingly the shares, to which they are to be entitled as aforesaid, shall be deemed to be fully paid up.

8. This will provide that the company shall undertake the liabilities specified in the second schedule and indemnify A., B. and C.

9. This will provide for the transfer of the property to the company, subject to the liabilities, and that, in the meantime, A., B. and C. shall hold it in trust for the company.

The remaining clauses as to certificates, &c., will be as if they were the articles of association (*supra*, p. 156), but with some slight modifications, of which the following may be mentioned:—

(a) Table A need not be excluded, for it will not apply.

(b) Provision should be made for keeping a register of members and numbering the shares and making minutes of proceedings.

(c) The effect of the transfer of a share should be stated, and persons becoming shareholders before the registration of the company should be bound to execute the deed if required.

(d) Power should be given to dissolve by special resolution; to a general meeting to change the company's name; to alter the regulations by special resolution.

(e) Where requisite (*e.g.*, in clause as to common seal or

share warrants) any clause will be qualified by the introduction of the words "after the registration of the company."

The first schedule will specify the assets, and the second the liabilities, either in general terms or in more or less detail, or by reference to books.

The deed must be carefully framed, more especially in order that the concern may thereby be duly constituted as an unincorporated joint stock company, capable of being registered under Part VII. of the Act of 1862. See further as to this, the note at p. 173, *infra*. It is not necessary, but it is convenient to print the deed for execution: by so doing, clerical and other errors are more likely to be noticed, and as members will certainly require printed copies for use, it seems as well to have the document printed at once. The copy for execution should be printed on parchment, and after execution should be deposited with the company's bankers or elsewhere in safe custody. The deed requires a 10s. deed stamp, as in the case of an ordinary partnership.

Upon the execution of the deed, the company is constituted as a common law joint stock company, *i.e.*, a partnership of a special description.

Immediately after the execution of the deed, the directors should enter the names of the shareholders in a register-book, which should show the number of shares taken by each, and the distinguishing number of each share.

The assets should then be transferred to or vested in the company, as to chattels by delivering, and as to other property by conveyance or assignment. Any deed required should be stamped with a 10s. deed stamp, but no *ad valorem* duty is payable on the transfer.

2. Registration and Completion.

The next step is to hold a general meeting of the shareholders. The notice can be issued immediately after the execution of the deed of settlement, and will run as follows :—

Notice is hereby given that an extraordinary general meeting of the members of A., B. & Co. will be held at —, on the

— day of —, at — o'clock, for the purpose of considering, and, if thought fit, passing the following resolution, namely: "That the company be registered under the Companies Acts, 1862 to 1880, as a company limited by shares, and that for that purpose the company's name be changed to A., B. & Co., Limited."

Dated, &c.

—, *Secretary*.

At the meeting it must be seen that the proper number of shareholders requisite under the deed to constitute a meeting is present, and the resolutions should be passed unanimously, or at any rate by a three-fourths majority,* and minutes of the proceedings at the meeting will be made and entered in a minute-book and signed by the chairman. Application must then be made to the Registrar to register the company. The form of application will state that—

A., B. & Co., a company constituted by deed of settlement dated the — day of —, desires to register itself as a company limited by shares, under the Companies Acts 1862 to 1880, by the name of A., B. & Co., Limited, and for that purpose presents the under-mentioned documents for registration under the said Act.

Dated, &c.

Documents presented for registration with the foregoing application:—

- (1.) Copy of the deed of settlement constituting the company.
- (2.) List of the members of the company, made up to the — day of —.
- (3.) Statement showing the nominal capital of the company, its division into shares, the number of shares taken, and the amount paid on each share; also the name of the company, and the situation of its registered office.
- (4.) Copy of resolution of the company assenting to its registration as a limited company, and adding the word "Limited" to its name.
- (5.) Statutory declaration by two directors of the company, verifying the particulars set forth in the above documents.

The application should be signed by a director, secretary, or other duly authorised officer.

The copy of the deed (1) can be in writing or in print. The list of members (2) and the statement (3) must be

* No company is to register as a company limited by shares, under Part VII. of the Act of 1862, unless an assent to its so registering is given by a majority, consisting of not less than three-fourths of such of its members as may be present personally or by proxy, where proxies are allowed, at some general meeting summoned for the purpose; and in computing the majority at a poll, regard is to be had to the number of votes to which each member is entitled.

framed in accordance with sect. 183 of this Act. Each of the documents requires a 5s. registration stamp, and (3) must be stamped in proportion to the capital, as in the case of a memorandum of association.

These things having been done, the Registrar will issue a certificate, stating that the company is incorporated under this Act and is limited, and thereupon the company becomes incorporated accordingly, and the conversion is complete.*

By virtue of this Act, all the property of the company at the date of registration passes to and vests in the company as incorporated for all the estate and interest of the company therein. Accordingly, if before registration the property was transferred to the company, no further conveyance or transfer is requisite, but where the registration is effected before the transfer of the property, or some part of it (*e.g.*, freeholds and leaseholds), the transfer will be completed after the registration. No *ad valorem* duty is payable on the transfer.

After the registration the company will stand as nearly as may be in the position in which it would have stood if this conversion had been effected in accordance with the old plan, and the deed of settlement will be regarded as is memorandum and articles of association amalgamated, and will operate accordingly. See sects. 192 to 196 of this Act.

The principal object of the new plan is, to avoid the heavy expense in respect of *ad valorem* duty which the old plan very commonly entails. Under that plan the conversion is effected pursuant to an agreement for sale (*ante*, p. 147), and accordingly any conveyance or transfer executed is chargeable with *ad valorem* duty at the rate of 10s. per cent. on the consideration. When the consideration is large the duty is onerous, *e.g.*, in the case of £100,000 it is £500, and in some cases the duty amounts to several thousand pounds. This is felt to be a hardship, for in substance the same persons are both vendors and purchasers: and the new plan is adopted in order to escape the hardship. Where a business is to be converted into a private company, and any considerable part of the

* The first case of conversion in accordance with the new plan was effected under the advice of the writer.

assets consists of freehold or leasehold property, or debts, patent rights, or other property not passing by manual delivery, it generally seems expedient to adopt the new plan.* But where the assets consist almost exclusively of chattels there is no reason for adopting the new plan, for the chattels can be handed over pursuant to the agreement for sale, and in that case no duty will be payable. In like manner, there is no reason for adopting the new plan when the assets consist of ships, for no *ad valorem* duty is payable on the transfer of a ship registered under the Merchant Shipping Act.

* It is now becoming by no means uncommon for partners or intending partners, who contemplate the possibility that it may be desirable at some future time to convert their business into a private company, to adopt a deed of partnership framed in accordance with the new plan. This can be done without introducing any additional partners, for a common law joint stock company may consist of less than seven members.

The advantage of this scheme is, that, if at any time it becomes desirable to convert the concern into a private (limited) company, the conversion can be effected with the greatest facility. For no new deed of settlement or memorandum and articles are required; no valuations or accounts with a view to conversion need be made or taken; and no disturbance of rights or liabilities will be occasioned. The parties have merely to pass a resolution to register and proceed in the manner above stated (p. 171), and in due course the certificate of incorporation will be issued. But it should, of course, be borne in mind that before registration the number of the shareholders must be made up to seven, as a company cannot register under the Act unless there are seven or more members: this will be effected by transferring a share apiece to some relations or clerks of the members of the firm. Until registration the partners can carry on the concern just as if it was an ordinary partnership.

NOTE.

As to registration under Part VII. of the Companies Act, 1862.

In order that a company may be registered under Part VII. of the Companies Act, 1862, it must be "duly constituted by law," and must consist of seven or more members, and it may therefore be convenient here to show that a company formed as above mentioned is entitled to be registered.

According to the common law of England, there can be no doubt that a joint stock company may be constituted by deed. This is the mode in which ordinary partnerships are usually constituted, and in

the eye of the law a company is a partnership of a special kind, the principal difference being that the shares are transferable without the consent of all the partners.

The difference was stated by the late Lord Justice James, in *Smith v. Anderson*, 15 C. D. 273 (decided in 1880), thus: "An ordinary partnership is a partnership composed of definite individuals, bound together by contract between themselves to continue combined for some joint object, either during pleasure or during a limited time, and is essentially composed of the persons originally entering into the contract with one another. A company or association (which I take to be synonymous terms) is the result of an arrangement by which the parties intend to form a partnership which is constantly changing; a partnership to-day consisting of certain members, and to-morrow consisting of some only of those members along with others who have come in, so that there will be a constant shifting of the partnership, a determination of the old and a creation of a new partnership; and with the intention that, so far as the partners can, by agreement between themselves, bring about such a result, the new partnership shall succeed to the assets and liabilities of the old partnership."

Common law joint stock companies were formed in large numbers before any Act for the registration of companies was passed. They were usually constituted by an instrument called a deed of settlement, and there can be no doubt of their validity at common law. See Lindley, 4th ed. p. 191; Smith's Mercantile Law, 8th ed. p. 61; Wordsworth on Joint Stock Companies, 6th ed. p. 247.

But after the Registration Act of 1844 (7 & 8 Vict. c. 110), such companies, whether small or large, could no longer be formed, for commercial purposes or profit, by deed merely: they were required to register: for the Act was to apply to every joint stock company as thereafter defined, and the definition included "every partnership whereof the capital is divided or agreed to be divided into shares, and so as to be transferable without the express consent of all the co-partners." However, this Act was repealed by the Companies Act, 1862, and the only restriction which that Act places on the common law right to form a company is contained in section 4, which provides that no company, consisting of more than twenty members, shall be formed after the commencement of the Act for the purpose of carrying on any business that has for its object the acquisition of gain, unless it is registered under the Act, or is otherwise formed, as therein mentioned. So that as regards the formation of companies consisting of less than twenty members the common law is restored.

The Joint Stock Companies Act, 1857, only allowed the registration of companies (not formed thereunder) where they had been "duly constituted by law prior to the passing of this Act," but the Act of 1862 (section 180) allows every company existing at the commencement of the Act, 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," to register. But a company cannot register as a company limited by

shares unless it is "a joint stock company" as defined by section 181 of the Act, *viz.*, "a company having a permanent paid-up or nominal capital of fixed amount and formed upon the principle of having for its members the holders of shares in such capital and no other persons," or possessed of certain other characteristics therein mentioned.

However, a company formed as above mentioned (p. 167, *et seq.*) comes within this definition; and, as we have already seen, it can, if consisting of less than twenty members, be "duly constituted" by deed of settlement.

This is the view which has been taken by the Registrar of Joint Stock Companies, and s. 192 of the Act makes the certificate of incorporation issued by him conclusive evidence that a company is authorised to register.

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COMPANY STATIONERS.

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