PITMAN'S
BUSINESS MAN'S
GUIDE

National Provincial Bank
:: of England, Limited ::

ESTABLISHED 1833

HEAD OFFICE: 15 BISHOPSGATE, LONDON, E.C.

Subscribed Capital . . .	£15,900,000
Capital Paid up	£3,000,000
Reserve Liability	£10,600,000
Reserve Fund	**£1,800,000**

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PITMAN'S
BUSINESS MAN'S GUIDE

A HANDBOOK FOR ALL ENGAGED IN BUSINESS

BY

J. A. SLATER, B.A., LL.B. (Lond.)

(Of the Middle Temple and North-Eastern Circuit, Barrister-at-Law)

AUTHOR OF

"THE COMMERCIAL LAW OF ENGLAND";
"DICTIONARY OF THE WORLD'S COMMERCIAL PRODUCTS";
"PITMAN'S MERCANTILE LAW"; ETC.

EDITOR OF

"PITMAN'S COMMERCIAL ENCYCLOPÆDIA"

SEVENTH EDITION, THOROUGHLY REVISED

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PREFACE

TO THE

SEVENTH EDITION

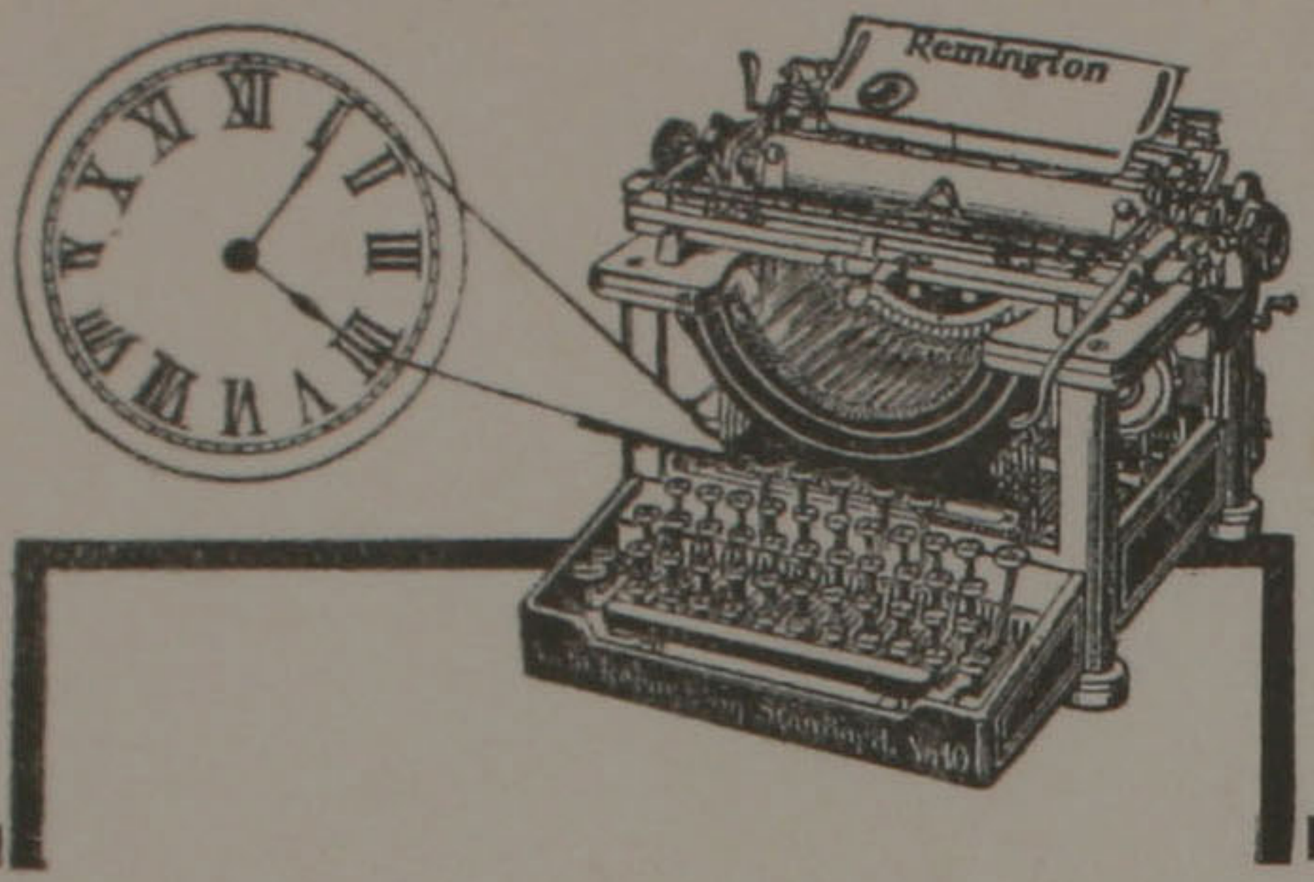
THE aim of the present volume is sufficiently indicated by its title, and the book itself is intended to be a compendium for the business man and a repository of commercial information of every character and description.

Within the limits of a volume of this size it is obvious that the many matters dealt with cannot be treated in an exhaustive fashion. For some of them, at least, special works must be consulted. But, as a ready reminder, it is believed that the information to be gathered from these pages is of such a character as will assist a business man in an emergency, and will clear up doubts and difficulties which are of every-day occurrence.

For the sake of convenience, and as a help to those engaged in foreign correspondence, the French, German, Spanish, and Italian equivalents of English commercial terms and phrases have been given in every case.

The publishers will be glad to receive any criticisms from their readers, in order that the Guide may be rendered as accurate and serviceable as possible; and they tender their most cordial thanks for the valuable suggestions received from various quarters since the publication of the first edition.

NOTE.—*Business Man's Guide* is supplied to the Trade on such terms that it cannot be sold to the public at less than the published price.



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A. This letter occurs in several contractions used in business. The principal of these are the following :—

@, for, at, or to.
A/C, Account Current.
A/c, Account.
A/d, After Date.
A/o, Account of.
A/S, After Sight.
A/s, Account Sales.
Agt., Agreement.
Ats., At the Suit of.

A 1. (Fr. *De premier ordre*, Ger. *ersten Ranges, erster Klasse, hochfein*, Sp. *De primer orden*, It. *Di primo ordine.*)

This is the mark which is employed in Lloyd's Register of Shipping to denote first-class vessels. The letter itself indicates the character of the hull of the vessel, as being built in the best manner. The numeral 1 indicates the efficient state of the stores, cables, anchors, etc. A new ship is registered in Class A for a period varying from four to fifteen years ; and at the expiration of that period the registration may be renewed on condition that her seaworthy condition has been retained by repairs. Periodical surveys are made to see that the first-class character of the vessel is maintained.

The mark A1 is very frequently applied to goods to denote that they are of the very best quality.

ABANDONMENT. (Fr. *Délaissement*, Ger. *Abtretung, Überlassung*, Sp. *Abandono*, It. *Abbandono.*)

In a policy of marine insurance, abandonment is of the essence of a claim for constructive total loss. It has been judicially defined as a "cession or transfer of the ship from the owner to the underwriter, and of all his property or interest in it, with all the claims that may arise from its ownership, and all the profits that may arise from it, including the freight then being earned."

A ship may not be actually lost or completely destroyed, but it may be reduced to a "mere wreck or congeries of planks," and its cargo may be so damaged as to exist only in the shape of a nuisance. This is called a constructive total loss, and the test to be applied seems to be this, that no prudent shipowner would go to the expense of repairing or re-instating the vessel, because the market value of the renovated vessel would probably be less than the cost of restoration. The insured then abandons the vessel or goods to the underwriter and claims to recover on his policy as for a total loss.

Notice of abandonment must be given within a reasonable time by the owner after he has received reliable intelligence of the loss. It need not necessarily be in writing—it may be either express or implied from the conduct of the insurer —but it must be certain, unconditional, and of the whole thing insured. Where notice of abandonment is properly given, the rights of the insured are not prejudiced by the fact that the insurer refuses to accept the abandonment; but when once the notice has been accepted, abandonment is irrevocable. Of course, notice of abandonment may be waived by the insurer; and where it is a case of re-insurance of the risk, no notice at all is required to be given by the insurer.

The term "abandonment" is used in connection with actions at law, when either a plaintiff or a defendant desires to put an end to legal proceedings. The technical term for the abandonment of an action (Fr. *Abandon*, Ger. *Aufgabe*, Sp. *Abandono*, It. *Abbandono*) is discontinuance. This can always be effected upon certain terms, generally upon payment of the whole of the costs which have been incurred.

ABATEMENT. (Fr. *Baisse, bonification, rabais, réduction, remise*, Ger. *Ermässigung, Nachlass*, Sp. *Baja, rebaja, reducción, remisión*, It. *Bonificazione, ribasso, riduzione, abbassamento.*)

The meaning of this term is allowance, and it is most generally used in connection with the remission made from the total of a person's income when assessing him for the purpose of the income tax.

ABLE BODIED SEAMAN. (Fr. *Bon matelot, bon marin, gabier*, Ger. *Voll— or Obermatrose*, Sp. *Marino robusto*, It. *Marinaio valido, marinaio abile.*)

This is the name given to a skilled sailor, who thoroughly understands navigation and is able to take his place in any part of the ship.

ABOVE PAR. (Fr. *Au-dessus du pair*, Ger. *über Pari*, Sp. *Sobre el par*, It. *Sopra alla pari.*)

When the price of stocks or shares or other securities is higher than their nominal value, they are said to be "above par," or at a premium.

ABRASION OF COIN. (Fr. *Action d'enlever par le frottement, frai*, Ger. *Abnutzung*, Sp. *Merma*, It. *Erosione di moneta.*)

This means loss of weight which coins undergo in passing from hand to hand, or from being brought into contact with one another.

An English sovereign must not be issued by the Master of the Mint weighing less than 123·27447 grains, nor more than 123·47447 grains. There is thus a remedy allowance of ·2 grain. If the coin is reduced in weight below 122·5 grains it ceases to be legal tender. By law a person who has such a coin handed to him ought to cut or to deface it, and the offeror will have to bear the loss, for the mutilated coin has no more than its bullion value. In practice this is rarely done except at the Bank of England and at certain Government offices.

ABSTRACT OF TITLE. (Fr. *Précis de titre*, Ger. *Kurzer Begriff des Titels*, Sp. *Sumario del titulo*, It. *Sommario di titolo.*)

An outline of the evidence of the ownership of anything is called its abstract of title. The name is generally applied to the document which sets out in chronological order the dates, nature, and material parts of the deeds, wills, settlements, or other documents which affect the title of a person to land. From an inspection of this document, a purchaser or a mortgagee is able more readily to deduce the title to the property which is in question. The first deed which is referred to in the abstract is called the "root of title."

ACCEPTANCE. (Fr. *Acceptation*, Ger. *Annahme*, Sp. *Aceptación*, It. *Accettazione, accetto.*) (See *Contract, Sale.*)

ACCEPTANCE FOR HONOUR. (Fr. *Acceptation par intervention, par honneur*, Ger. *Annahme per Intervention, Ehrenannahme*, Sp. *Aceptación por el honor*, It. *Accettazione per intervento.*)

"Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill suprà protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn."

The acceptance for honour must be written on the bill and signed by the acceptor, who engages by his acceptance to pay the bill according to its tenor, if it is not paid by the drawee. The liability of the acceptor for honour extends to the holder and to all parties to the bill subsequent to the one for whose honour he has accepted.

A bill may be accepted for honour for a part only of the sum for which it is drawn.

ACCEPTANCE OF BILL OF EXCHANGE. (Fr. *Acceptation*, Ger. *Annahme*, Sp. *Aceptación*, It. *Accettazione.*)

The word "acceptance" alone is frequently used to signify a bill of exchange itself, but the acceptance of a bill is really the writing across the face of the document by which the drawee signifies his assent to the order of the drawer.

An acceptance is invalid unless it complies with the following conditions, namely :—

(*a*) It must be written on the bill and be signed by the drawee. The mere signature of the drawee without additional words is sufficient.

(*b*) It must not express that the drawee will perform his promise by any other means than the payment of money.

The usual mode of acceptance is for the drawee to write the word "accepted" across the face of the bill and to add his signature. But it is seen, by the wording of the Bills of Exchange Act, 1882, referred to above, that the signature alone is sufficient. It is probable that the acceptance is complete if the drawee writes what purports to be an acceptance upon the back of a bill. When the bill is drawn payable at a certain period after sight, the date of the acceptance should be added so that the due date of payment may be known. If a bill is payable at a specified place only, the place must be named together with the acceptance.

Acceptance, like every other contract on a bill of exchange, is incomplete and revocable until delivery of the instrument has been made in order to give effect to it.

A bill may be accepted :—

(1) Before it has been signed by the drawer, or while otherwise incomplete ;

(2) When it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment.

Unless the contrary appears by its terms, a bill of exchange is *primâ facie* presumed to have been accepted before maturity and within a reasonable time after its issue, but there is no presumption as to the exact time of acceptance.

The rules as to acceptance vary in different countries. By German Exchange Law an acceptance once written cannot be cancelled. The Netherlands Code is to the same effect. In France, as in England, an acceptance may be cancelled by the drawee as long as he retains possession of the bill *quâ* drawee. By the common law a verbal acceptance was sufficient, and the common law still prevails in some of the states of North America. Signature of the drawee without any other words, is sufficient in Germany, though not in France. The Spanish Code requires the precise term "accepted" to be used.

Acceptances are either general or qualified. A general acceptance is one which assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn. A qualified acceptance may be

(*a*) Conditional ; that is, dependent upon a condition stated in the acceptance.

(*b*) Partial ; that is, an acceptance to pay a part only of the amount for which the bill is drawn.

(*c*) Local ; that is, an acceptance to pay at a particular place, and there only.

(*d*) Qualified as to time, when a bill drawn for three months is accepted for six.

(*e*) An acceptance by some and not by all the drawees, when there are more than one.

German Banking Law admits a partial acceptance, but makes any other qualification a refusal to accept. French Law admits a partial acceptance, but prohibits a conditional one. England and the United States are the only countries which allow conditional acceptances.

(1) "The holder of a bill may refuse to take a qualified acceptance, and, if he does not obtain an unqualified acceptance, may treat the bill as dishonoured by non-acceptance.

(2) "Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorised the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill.

"The provisions of this sub-section do not apply to a partial acceptance, whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance.

(3) "When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder, he shall be deemed to have assented thereto."

(Bills of Exchange Act, 1882, s. 44.)

If the acceptor of a bill of exchange desires to qualify his acceptance, he must do so on the face of the bill in clear and unequivocal terms, and so that any person taking the bill could not, if he acted reasonably, fail to understand that it was accepted subject to an expressed qualification.

A forged or unauthorised signature is wholly inoperative, and no holder of a bill can acquire any right through the same. An unauthorised signature not amounting to a forgery may be ratified.

"Where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as a *primâ facie* authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor, or the indorser ; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a *primâ facie* authority to fill up the omission in any way he thinks fit."

Any such dealing with blank stamped paper must be within reasonable time, and strictly in accordance with the authority given. The dealing with such incomplete, or inchoate, instruments is fraught with danger, and no business man should have anything to do with them.

The person who accepts a bill as agent must make it clear upon the face thereof that he accepts in that capacity ; otherwise he will be personally liable

under his signature. Thus, if A. is the manager of X. & Co., and signs an acceptance thus, "A., Manager," he will be personally liable as acceptor, since he has simply described himself by naming the position which he occupies; but if he signs "For X. & Co., A., Manager," it is made clear that he is signing in a representative capacity, and his personal liability is excluded.

As to liability under an acceptance, see *Acceptor*, and as to the duties of the holder of a bill, see *Presentment for Acceptance*.

ACCEPTOR. (Fr. *Accepteur*, Ger. *Acceptant*, Sp. *Aceptante*, It. *Accettante*.)

The acceptor is the person who accepts a bill of exchange drawn upon him. Until the bill is accepted, he is called the drawee. There is no liability attached to the drawee until he has signed the bill and become an acceptor.

The acceptor must have capacity to contract. An infant cannot be sued upon a bill of exchange, even though the bill was given for the price of necessaries. If he is sued at all, it must be upon the consideration. Lunacy and drunkenness are defences in an action on a bill against immediate parties, though not against a holder in due course. (N.B.—Immediate parties, in connection with bills of exchange, are those whose names are next to each other in order. Thus, the drawer and the acceptor, the acceptor and the first indorser, the first and the second indorsers, and so on, are immediate parties. All others are remote parties.)

The acceptor must be the person who is named in the bill as drawee. A bill cannot be addressed to one person and accepted by another. Any attempted acceptance of this kind does not make the person who signs liable as an acceptor, though it is possible that, having signed, he may be liable as an indorser.

The acceptor is the person who is primarily liable upon the bill. By accepting he engages to pay it according to the tenor of his acceptance, and he is precluded from denying to a holder in due course—

(1) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill;

(2) In the case of a bill payable to the drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement;

(3) In the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement.

There may be other estoppels, that is, matters which cannot be denied by the acceptor, arising out of the circumstances of the case. The above arise on the bill itself.

The acceptor may be sued upon the bill at any time within six years from its maturity. (N.B.—The extension of time allowed by reason of the emergency legislation of 1914 and onwards is only a temporary change made in the law owing to exceptional circumstances.)

If the acceptor has received no consideration for the bill he is in no way liable upon the instrument to the drawer, nor is he liable to any other party to the bill until value has been given by some party in respect of it. (See *Consideration*, *Holder*.)

In addition to an ordinary acceptor, there is also a person who is known as an "acceptor for honour," that is, one who undertakes to accept liability under the bill in case the same is dishonoured by non-acceptance or non-payment on the part of the acceptor. Such person is also called a "referee in case of need." By the Bills of Exchange Act, 1882, s. 15, it is provided, "the drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment. . . . It is in the option of the holder to resort to the referee in case of need, or not, as he may think fit." Of course, the referee must signify his willingness to accept his position, and he does so by writing across the bill, in addition to his signature, "Accepted S.P." (i.e., *suprà protest*), or "Accepted for the honour of A. B.," naming the person for whose honour the bill is accepted *suprà protest*. If no name is mentioned, the acceptance is presumed to be for the honour of the drawer. By this species of acceptance, the acceptor for honour engages to pay the bill according to the tenor of his acceptance, in case it is dishonoured by the drawee, provided it has been duly presented and that he has had notice of the fact. His liability extends to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted.

ACCIDENT INSURANCE. (Fr. *Assurance contre les accidents*, Ger. *Unfallversicherung*, Sp. *Seguro contra los*

accidentes, It. *Assicurazione contro gli infortuni accidentali.*)

This class of insurance, although to some extent a contract of indemnity, is more especially an undertaking to pay a certain specified sum in the event of death or injury from accident. The insurer, in the case of an accident happening, and his paying the sum named in the policy, is not subrogated to the rights of the assured. Therefore an assured person (or his representative in case of death) is not precluded from claiming damages in respect of the injury he has sustained (or his death) because he has effected an insurance against such a contingency.

The stamp upon such a policy is one penny. Three Acts of Parliament, passed in 1889, 1891, and 1896 respectively, have provided for the compounding of insurance duties to meet the cases of certain periodicals which insure their subscribers against accidental death or injury.

The premium payable upon an accident insurance policy varies according to the nature and extent of the risk which is undertaken.

As to insurance against accidents to workmen, see *Workmen's Compensation*. The fullest information as to all kinds of accident insurances can easily be obtained from the various insurance companies, and to them application should be made as to premiums, conditions, etc.

ACCOMMODATION BILL. (Fr. *Billet de complaisance*, Ger. *Gefälligkeitspapier, Proformawechsel*, Sp. *Letra de acomodación, billete de deferencia, pro forma*, It. *Cambiale di favore, lettera di accomodamento.*)

A bill of this kind, which is known by the various names of a "fictitious bill," a "kite," or a "windmill," is one to which a person has put his name, either as drawer, acceptor, or indorser, without receiving any consideration for the same. So long as no value has been given for such a bill no party is liable to pay the amount of the same; but directly value has been given by any of the parties a holder in due course (see *Holder*) has a right to proceed against any of the signatories, even though he knows that the bill was originally only an accommodation one.

The persons who draw, accept, or indorse such a bill are known as "accommodation parties."

An accommodation bill is discharged when it is paid by any person who is in reality, though not formally, the principal debtor.

The form of an accommodation bill is the same as that of any other bill of exchange. It is the evidence adduced which must prove that it was given without value, and that it still retains its accommodation character.

ACCORD AND SATISFACTION. (See *Contract, Discharge of.*)

ACCOUNT. (A/c.) (Fr. *Compte*, Ger. *Konto, Rechnung*, Sp. *Cuenta*, It. *Conto.*)

This is a general term for all arithmetical calculations. Amongst merchants the name is applied to formal statements relating to goods, services, or values. It may be a statement of business transactions, showing their debits and credits, with the balance in hand or that due.

ACCOUNT BOOKS. (Fr. *Livres de comptes*, Ger. *Geschäftsbücher, Kontobucher, Rechnungbucher*, Sp. *Libros de cuentas*, It. *Libri di conti.*)

These are the books in which accounts are recorded. (See *Book-keeping.*)

ACCOUNT, CAPITAL. (See *Capital Account.*)

ACCOUNT CURRENT. (A/C.) (Fr. *Compte courant*, Ger. *Kontokorrent, laufende Rechnung*, Sp. *Cuenta corriente*, It. *Conto corrente.*)

This is a statement giving the particulars of the transactions which have been carried on between two persons or firms for a certain definite period. The term is in general applied to the copy of a personal account contained in the Ledger, sent to the person with whom the account is running, showing the exact state of the account between the parties. All the items of the account are stated in detail.

ACCOUNT DAYS. (Fr. *Jours de règlement, jours de paie, de liquidation*, Ger. *Abrechnungstage, Liquidationstage, Skontrotage, Zahltage*, Sp. *Días de liquidación, de pago, de ajuste de cuentas*, It. *Giorni di liquidazione.*)

Account days are certain days fixed by the Committee of the Stock Exchange for the settlement of bargains entered into by the members. There are usually two account days (or settlement days, as they are often called) each month—one about the middle and the other at the end. (See *Stock Exchange.*)

ACCOUNT PAYEE. (See *Cheque.*)

ACCOUNT, PROFIT AND LOSS. (Fr. *Compte de profits et pertes*, Ger. *Gewinn- und Verlustrechnung*, Sp. *Cuenta de provechos y pérdidas*, It. *Conto dei profitti e delle perdite.*)

Merchants and other traders keep profit and loss accounts for their own information. These accounts show, on the debit side, all items of loss or expense, such as bad debts, depreciation, gas, insurance, rent, repairs, salaries, trade charges, wages, wear and tear; and, on the credit side, all items of gain or profit. The following may be debit or credit items: commission, dividends, interest, according as they are received or paid. When the profit and loss account shows a nett gain, the balance is placed on the credit side of the capital account; when it shows a nett loss, the balance is entered on the debit side.

ACCOUNT SALES. (A/S.) (Fr. *Compte de vente*, Ger. *Verkaufsrechnung*, Sp. *Cuenta de venta*, It. *Conto di vendita o di netto ricavo.*)

This is the name given to a document sent by an agent or broker to a principal for whom he has sold goods. Such a document must indicate :—

(*a*) The weight, gauge, measure, etc., of the goods sold ;

(*b*) The price obtained per unit, and the total price, or gross proceeds ;

(*c*) Any expenses, such as freight, dock charges, insurance, etc., paid by the agent ;

(*d*) The charges of the agent for brokerage or commission ;

(*e*) The nett proceeds, i.e., the balance remaining after deducting expenses, and the agent's charges from the gross proceeds.

ACCOUNT STATED. (Fr. *Compte rendu*, Ger. *Rechenschaftsbericht*, Sp. *Rendimiento de cuenta*, It. *Rendiconto.*)

This is an account between parties showing a balance which has been agreed upon. When any party to an account stated seeks to impeach its truth, the burden of proof lies upon him; whereas in an open account the rule is the exact opposite.

ACCOUNT, STOCK EXCHANGE. (Fr. *Compte de Bourse*, Ger. *Börsengeschäfte "auf Zeit,"* Sp. *Liquidación*, It. *Liquidazione.*)

Transactions in the transfer of stock are said to be "for the account" when a settlement is to be made at a certain period over which the account extends. In Government securities and other stocks transferable at the Bank of England the settlement is made monthly; in the case of other stocks and shares, there are generally two settlements each month. (See *Stock Exchange.*)

ACCOUNT, SUSPENSE. (Fr. *Compte en suspens*, Ger. *Konto sospeso*, Sp. *Cuenta en suspenso*, It. *Conto in sospeso.*)

Owing to various causes, such as deaths, oversights, or postal irregularities, debits and credits occasionally arise which cannot at once be entered to any particular account. Such items are temporarily entered in the suspense account until the information arrives which disposes of them with certainty, when they are transferred to their proper places.

ACCOUNTANT. (Fr. *Comptable, teneur de livres*, Ger. *Bücherrevisor, Rechnungsführer*, Sp. *Contador, tenedor de libros*, It. *Contabile, tenitore di libri.*)

An accountant is a person who is skilled in commercial and official affairs in general, and the accounts relating thereto in particular.

Accountants are generally employed in preparing, investigating, and auditing the accounts of traders, making up statements of affairs, collecting accounts, etc.

There are, at present, no restrictions placed upon any man who calls himself an accountant, though an effort is being made to raise the status and qualifications of those who practise as such. The Institute of Chartered Accountants (established in 1870, and incorporated by royal charter in 1880), is most active in this direction, and will admit no man as a member who has not passed its recognised examinations and received a certain amount of proper training. Full particulars are obtainable from the Secretary, Moorgate Place, E.C. The other associations of accountants are the Society of Incorporated Accountants and Auditors (50, Gresham Street, E.C.), the Corporation of Accountants (55, West Regent Street, Glasgow), the Central Association of Accountants (Moorgate Station Chambers, E.C.), and the London Association of Accountants, Ltd. (Temple Chambers, Temple Avenue, E.C.). There is a Society of Accountants in Edinburgh, an Institute of Accountants and Auditors in Glasgow, and an Institute of Chartered Accountants in Ireland. A similar society has been established in Aberdeen, and there are several recognised bodies abroad.

By holding himself out as a person possessing skill in accounts, an accountant is liable to any person who employs him if he is guilty of negligence, or lack of proper care and skill, in carrying out his duties and so causes a loss to be sustained by such employer; and as a master is always liable, *primâ facie*, for a loss caused by the negligence of his

servant, when acting in the ordinary course of his duties, an accountant is liable for the negligence of his clerks or assistants. With the increase of business and as the heavy responsibilities attached to accountancy become greater and greater, a new system of insurance, known as "Accountants' Indemnity Insurance" has recently sprung up to provide against losses which may be incurred through such losses or negligence of the kind just noticed.

The remuneration of an accountant is generally fixed by agreement. In the absence of such agreement the remuneration must be fair and adequate. Under the bankruptcy practice, the following charges are allowed :

For preparing balance sheet, investigating accounts, etc., principal's time, exclusively so employed, per day of seven hours, including necessary affidavit, £1 1*s.* to £5 5*s.*

Chief clerk's time, 10*s.* 6*d.* to £1 11*s.* 6*d.*

Other clerk's time, 7*s.* 6*d.* to 16*s.*

These charges include stationery, except forms used.

A COMPTE. Fr. on account ; it means a payment in part.

ACRE. (Fr. *Acre*, Ger. *Morgen*, Sp. *Acre*, It. *Acro, jugero inglese.*)

The original meaning of this word was a field, or piece of open ground. Its signification is now restricted to a measure of land.

The English statute acre consists of 4,840 square yards. There are 640 acres in a square mile. The Irish acre is larger than the English, 100 of the former being equal to 162 of the latter. The Scottish acre is also larger than the English, 48 of the former being equal to 61 of the latter. The English statute acre is equal to about two-fifths, or 0·4046 of the French hectare, which is now the principal unit of land measure in most of the countries of the world. In the United States the measure of an acre is the same as in England.

ACT OF BANKRUPTCY. (Fr. *Acte qui entraîne l'état de faillite*, Ger. *Konkursgesetz*, Sp. *Acto que constituye el estado de quiebra*, It. *Atto che provoca o genera il fallimento.*)

When a person does an act upon which a bankruptcy petition may be founded, he is said to have committed an act of bankruptcy. The act must have been committed within three months previous to the presentation of the bankruptcy petition. If there is more than one such act of bankruptcy, the title of the trustee in bankruptcy relates back to the earliest act proved to have been committed within three months preceding the presentation of the petition.

Each of the following is an act of bankruptcy, under section 1 of the Bankruptcy Act, 1914, on the part of the debtor :—

(1) If in England or elsewhere he makes a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally.

(2) If in England or elsewhere he makes a fraudulent conveyance, gift, delivery, or transfer of his property or of any part thereof.

(3) If in England or elsewhere he makes any conveyance or transfer of his property, or any part thereof, or creates any charge thereon which would, under any other Act, be void as a fraudulent preference if he were adjudged bankrupt.

(4) If with intent to defeat or delay his creditors he does any of the following things, namely, departs out of England, or being out of England remains out of England, or departs from his dwelling-house, or otherwise absents himself, or begins to keep house.

(5) If execution against him has been levied by seizure of his goods under process in an action in any court, or in any civil proceedings in the High Court, and the goods have been either sold or held by the sheriff for twenty-one days; Provided that, where an interpleader summons has been taken out in regard to the goods seized, the time elapsing between the date at which such summons is taken out and the date at which the proceedings on such summons are finally disposed of, settled, or abandoned, shall not be taken into account in calculating such period of twenty-one days.

(6) If he files in the court a declaration of his inability to pay his debts, or presents a bankruptcy petition against himself.

(7) If a creditor has obtained a final judgment against him for any amount, and, execution thereon not having been stayed, has served on him in England, or, by leave of the court, elsewhere, a bankruptcy notice under the Act of 1914, and he does not, within seven days after service of the notice, in case the service is effected in England, and in case the service is effected elsewhere, then within the time limited in that behalf by the order giving leave to effect the service, and he does not, within seven days, either comply with the

requirements of the notice or satisfy the court that he has a counter-claim, set-off, or cross-demand which equals or exceeds the amount of the judgment debt or sum ordered to be paid, and which he could not set up in the action in which the judgment was obtained, or the proceedings in which the order was obtained. For the purposes of this paragraph and of the section of the Act of 1914 referring to bankruptcy notices, any person who is, for the time being, entitled to enforce a final judgment or final order, shall be deemed to be a creditor, who has obtained a final judgment or final order.

(8) If the debtor gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts. (N.B.—This notice may be either verbal or in writing.)

With regard to the second and the third of the acts of bankruptcy, it is the fraud implied in the conveyance which makes it contrary to law. If it were not so, a person with many creditors, seeing that insolvency was impending, might easily defeat the aim of an equitable division of his property by preferring one or more creditors, and leaving the rest totally unprovided for. A fraudulent preference of this kind made any time within three months before the bankruptcy is liable to be set aside. Conveyances of property made for valuable consideration are unaffected by the Act, and a *bonâ fide* voluntary conveyance or gift, although it may be set aside, will not of itself furnish ground for presenting a petition.

The fourth act of bankruptcy refers to the actions of a debtor in using any method to keep out of the way of his creditors, either by absenting himself from his usual place of abode, or remaining secluded there and denying himself to all persons.

There is one other act of bankruptcy to be found in section 107 of the Act of 1914, which provides that where an application is made, under sect. 5 of the Debtors Act, 1869, by a judgment creditor to a court having bankruptcy jurisdiction for the committal of a judgment debtor, the court may decline to commit and may make a receiving order. In such a case, the judgment debtor is deemed to have committed an act of bankruptcy.

ACT OF GOD. (Fr. *Acte de Dieu, force majeure*, Ger. *Fügung Gottes, höhere Gewalt*, Sp. *Acto de Dios, fuerza mayor*, It. *Caso fortuito, forza maggiore.*)

This is a phrase always met with in bills of lading. It signifies some unforeseen accident or natural cause which could not have been prevented by any reasonable foresight.

No person is legally liable for any loss arising through an Act of God.

ACT OF HONOUR. (Fr. *Acte d'intervention, intervention*, Ger. *Intervention, Notadresse*, Sp. *Acto de intervención*, It. *Accettazione per onore o per intervento.*)

This term is used when a person, not already liable upon it, accepts or pays a dishonoured bill of exchange, after protest, for the honour of (that is, to save the reputation of) the drawer, or one of the indorsers.

ACTIO PERSONALIS MORITUR CUM PERSONA. This is a legal maxim which signifies that a personal action dies with the person. The operation of the rule is now limited to torts, that is, to wrongs independent of contract, which are not triable by criminal process, and even this limitation has been further narrowed by statutes.

Causes of action arising out of a contract are quite as much "personal" actions as those arising out of a tort, but with the exception of actions for breach of promise of marriage (unless special damage is proved), and for purely personal contracts, such as the hiring of a servant, etc., the maxim does not apply to them. If one of the parties to a contract dies, and an action has to be brought subsequently upon the contract, the executor or the administrator of the deceased person is entitled to sue or is liable to be sued upon it. But the rule was the opposite as regards torts. No matter how great the injury done or suffered, the death of either party at once put an end to any cause of action.

The statutory exceptions to the common law rule, so far as the real and personal estate of a deceased person are concerned, are contained in two Acts of Parliament, one of the reign of Edward III, and the other of the reign of William IV. The combined effect of these statutes, and the judicial interpretation of them, is that executors and administrators have now the same rights of action, and are liable themselves to be sued in the same manner, as the deceased testators or intestates. The injury must have been done within six months before the date of the death, and the action brought within six months after the time when the executors or administrators have entered upon their office.

The most general and important exception, however, is that created by the passing of what is known as Lord Campbell's Act, in 1846. This Act, which was amended by another Act passed in 1864, provides that the personal representatives of a deceased person can sue for damages for the benefit of his near relatives if his death was caused by circumstances of such a character that he would himself, if he had lived, have had a cause of action on account of the injuries received by him. Action must be taken within six months of the death by the representatives of the deceased, otherwise those parties who would benefit by the damages awarded, if any, are entitled to bring an action themselves.

By the Employers Liability Act, 1880, and the Workmen's Compensation Act, 1906, a right of action, or the right to an award on arbitration, is given to the dependants of a working man killed in the ordinary course of his employment.

The maxim is not applicable in Scotch law, because the right of action transmits against the representatives of a wrong-doer, in so far as they benefit by the succession to the deceased. Likewise a claim for damages transmits to the representatives of the sufferer.

ACTION. (Fr. *Action, procès*, Ger. *Klage, Prozess*, Sp. *Acción, proceso*, It. *Azione, processo.*)

An action is defined as "a civil proceeding commenced by writ, or in such other manner as may be prescribed by rules of court." It may be taken, under certain conditions, either in the High Court or in the proper county court. (The "proper" county court is, generally speaking, that of the district in which the defendant resides, or in which the cause of action, or a part thereof, arose. It is only by leave that an action can be tried elsewhere.) But a plaintiff must be careful to choose the county court if the action can properly be tried there, or he may find himself deprived of the costs of the proceedings, even though he happens to be successful in establishing his claim. By sect. 116 of the County Courts Act, 1888, it is enacted, "with respect to any action brought in the High Court which could have been commenced in the county court, the following provisions shall apply: if in an action founded on contract the plaintiff shall recover a sum less than twenty pounds, he shall not be entitled to any costs of the action, and if he shall recover a sum of twenty pounds or upwards, but less than fifty pounds (see *infra*), he shall not be entitled to any more costs than he would have been entitled to if the action had been brought in a county court; unless a Judge of the High Court certifies there was sufficient reason for bringing the action in that court, or unless the High Court or a Judge thereof at Chambers shall by order allow costs." If the action is one of tort, that is, in respect of a civil action which arises independently of contract, the same rule applies, but the amounts are ten and twenty pounds respectively, instead of twenty and fifty, that is, High Court costs are allowed if a judgment for twenty pounds or upwards is given, county court costs if the judgment is for a sum between ten and twenty pounds, and no costs if the amount awarded is under ten pounds. An action may be commenced in the High Court, and afterwards remitted to a county court. This frequently happens in actions of contract, where the claim does not exceed £100, unless one of the parties can show good reason why the case should not be sent for trial to a county court, and also in chancery proceedings, for the jurisdiction of county courts in chancery cases is applicable where the value of the matter in dispute does not exceed £500. Cases are also sometimes remitted on the application of one of the parties when the other party is unable to give security for the payment of costs likely to be incurred if he proves unsuccessful in the action. In the winding-up of joint-stock companies, the jurisdiction of those county courts which have the right to hear such matters extends to those companies whose capital does not exceed £10,000. There are a few cases, especially actions for breach of promise of marriage, libel, and slander, which *must* be commenced in the High Court, although they may afterwards be remitted to a county court.

By an Act passed in 1903, which came into force in 1905, the jurisdiction of the county courts was extended to £100, instead of £50 as formerly, and consequently "one hundred" must now be read in place of "fifty" in the section quoted above.

The division of the High Court in which proceedings are to be taken will depend upon the nature of the matter in dispute. Many matters connected with shipping, such as salvage, bottomry, and the mortgages of ships, must be

dealt with in the Admiralty Division. Those which have reference to trusts, the administration of the estates of deceased persons, partnership questions, patents, trade-marks, and a few others, especially those dealing with charges on land, must be dealt with in the Chancery Division. The winding-up business of companies is conducted by one or more of the Chancery Judges in turn. But as to the bulk of the disputes which can arise out of commercial matters, action must be taken in the King's Bench Division, or, if commenced in another division, it will be transferred there. A special court, called the Commercial Court, has been established in this Division for the trial of causes "arising out of the ordinary transactions of merchants and traders; amongst others, those relating to the construction of mercantile documents, export or import of merchandise, affreightment, insurance, banking, and mercantile agency and mercantile usages."

An action is commenced in the High Court by a writ of summons, which is a command to the defendant to appear and to answer to a claim made by the plaintiff. The nature of the claim is briefly stated in the indorsement of the writ. The writ must be served personally or through an agent who has authority to accept service, though, in special cases, other modes of service must be resorted to. (See *Writ.*) Within eight days of the service of the writ, the defendant must make up his mind whether he will allow judgment to go against him by default or contest the claim. If he resolves upon the latter course he must enter an appearance. The sequel will depend upon the nature of the indorsement and the defence which is set up. In some cases, especially in actions on bills of exchange, or for the amount due for goods sold and delivered, the whole matter may be quickly disposed of by what is known as a specially indorsed writ and procedure under Order XIV. But if this course is not possible, the plaintiff will, after a summons for directions which fixes the procedure to be adopted, generally deliver a document called a statement of claim, in which the particulars of his cause of action against the defendant will be set forth more fully than in the indorsement of the writ. The defendant, in turn, will deliver his defence, and in addition will state any counter-claim or set-off which he desires to raise against the plaintiff. A counterclaim is a distinct cause of action set up by the defendant against the plaintiff. It need not have any connection whatever with the subject-matter of the plaintiff's claim. A set-off is a kind of defence, stating the cause or reason by which the plaintiff's claim should be held to be satisfied to the extent of the set-off. To this defence and counterclaim (if any) the plaintiff sometimes replies. These are called the pleadings in the action. Many other steps may be taken before the case comes on for trial. If there are documents to which reference ought to be made, each party must allow the other to inspect and to take copies of them, and he may be compelled to declare on affidavit (*q.v.*) what documents he has in his possession relating to the subject-matter of the action. Again, in order to clear the ground and leave the issue to be tried as simple as possible, either the plaintiff or the defendant may obtain an order to put certain interrogatories to his opponent, that is, questions as to matters relevant to the case in dispute, which questions must be answered on oath, and may be used at the trial. In due course the trial takes place, all the points raised by the parties in the pleadings are adjudicated upon, and judgment is pronounced.

A plaintiff may always discontinue his action and a defendant may always apply to withdraw his defence before the case comes on for trial. This is only allowed upon terms, generally the payment of the costs incurred, although other conditions may in certain cases be imposed.

Instead of taking proceedings to the High Court in London, it is always possible to proceed in the provinces in the different Assize Courts, to which the judges of the High Court go down at stated times and try all cases, civil and criminal, arising within the district of the court.

The judgment depends entirely upon the nature of the claim. If the plaintiff fails to make out his case, judgment is given against him, and he is generally condemned in the costs of the proceedings. If he succeeds, he obtains an order for relief, varying according to circumstances. In most cases of contract the relief takes the form of an award of damages in money. But it is open to the court in some cases, for example, the sale of goods, to decree what is known as specific performance,

that is, to make an order that the contract itself shall be performed according to its terms. It may also order, if it thinks fit, that the contract shall be rescinded. In partnership actions the judgment may order a dissolution of the partnership, and an account to be taken of the transactions between the partners. Another form of relief is injunction, which is the opposite of specific performance. The defendant is thereupon ordered to refrain from doing certain things which he has claimed to have a right to do. This is the ordinary form of judgment, either alone or in addition to an account, which a successful plaintiff obtains in cases of patents, copyright, etc. In cases of interpleader the court decides which of two parties is entitled to goods, etc., which are held by a third and independent person.

A judgment would be of little or no value unless the court gave special means of enforcing it. If it consists of an order to do, or to refrain from doing, certain things, the party in default renders himself liable, unless he obeys the order, provided that it has been served upon him, to have a writ of attachment issued against him for contempt of court, and he may then be ordered to be imprisoned during the court's pleasure, or until he obeys the judgment. But if the judgment is an award of money damages, a writ of execution is the usual mode in which it is enforced. The most common form is that known as a writ of *fi. fa.*—a contraction of *fieri facias*—which commands the sheriff to seize and to sell the goods of the debtor in satisfaction of the debt. If the order commands that the lands of the debtor are to be seized, it is called a writ of *elegit*. When satisfaction cannot be obtained in either of these ways, and the debtor is entitled to receive money from any source, there is a method of attaching his interest by what is known as equitable execution. A receiver is appointed who is empowered to collect the debt and to take what is necessary to meet the claims of the creditor. Again, if it appears that there are debts owing to the debtor, a garnishee order may be obtained, under which the debtors of the debtor will be compelled to pay over the amount of their debts to the creditor instead of to the debtor, and will obtain a discharge for so doing. If the debtor is entitled to any stocks, shares, etc., a charging order will sometimes be granted, which will have the effect of preventing him from dealing with the same without due notice to the creditor. If all these means fail, a judgment creditor will sometimes serve a bankruptcy notice on the judgment debtor; and, if this is not complied with, there is an act of bankruptcy (*q.v.*) committed upon which bankruptcy proceedings may be instituted. Before proceeding to this extremity, a judgment creditor will carefully consider what amount of satisfaction he is likely to derive from this course of action.

Lastly, if a debtor is contumacious, and refuses to pay his judgment debts, and if it is proved that he has had the means of doing so since the date of the judgment, he may be brought up before the court upon a judgment summons, and sentenced to a term of imprisonment for any period not exceeding six weeks.

When action is taken in a county court, the proceedings are commenced by what is called a plaint, or, in certain cases where the claim is for a liquidated amount, by a default summons. This kind of summons is issued by leave of the registrar upon an affidavit showing cause. There is a special procedure with respect to actions on bills of exchange, and there are special rules to be observed in cases under the Employers Liability Act and in arbitrations under the Workmen's Compensation Act. The last two must be commenced in a county court. But generally the steps in a county court action, except that there are no formal pleadings as in the High Court, are similar to those in a High Court action, and judgments may be enforced in the same manner as detailed above.

An appeal may be brought from a decision of the High Court to the Court of Appeal, and afterwards from the Court of Appeal to the House of Lords. From a county court an appeal lies to a Divisional Court of the King's Bench Division, a tribunal which is composed of two or three judges. There is no appeal, without the leave of the county court judge, in cases where the subject matter in dispute is of less value than £20, and in all cases the appeal must be from the decision of the judge upon a point of law. By the County Court Bill, which has been before Parliament for several sessions, it has been proposed to extend this right of appeal, both on points of law and of fact, and not to limit the sum in dispute to £20. No appeal from a county court can go beyond the Divisional Court, that is, to the Court of

Appeal or afterwards to the House of Lords, without special leave. Appeals under the Workmen's Compensation Act go direct from the county court to the Court of Appeal.

With the exception of ambassadors and their suites, the English courts have, in general, jurisdiction—and therefore an action at law can be maintained—over all persons resident in this country, in respect of all transactions therein. If an alien settles in England and has a fixed determination of making his permanent home here, he is said to possess an English domicil (*q.v.*), and it is immaterial whether he intends to become a naturalised citizen or not. Aliens who are not domiciled are subject in all respects to the law of England, so long as they are resident here; and it is the general opinion, although the point is not quite free from doubt, that their capacity to enter into the ordinary mercantile contracts is governed by the law of this country when the contracts are made in England. In other matters the capacity to contract is determined by the law of the domicil. For example, a domiciled Frenchman cannot contract a valid marriage in England unless he has the capacity to do so by the law of France.

When, however, a contract is made between two persons with respect to a transaction to be carried out in another country, two other questions arise: (1) In which country is an action to be brought for breach of the contract? (2) What are the rights and liabilities which arise under the contract?

In the first place, it must be noticed that the English courts will refuse to entertain any jurisdiction as to any contract concerning land abroad. This is on the ground that it would be impossible to give effect to a judgment which might not be in harmony with the ideas and the law of the country in which the land was situated. Thus, if a dispute arises as to immovable property, that is, land, in France, the parties must resort to the French courts for a settlement of their differences, even though the disputants are resident in England. The same rule applies if the land is in Scotland or Canada, for since the systems of law of these countries are different from the law of England, their law is considered as much foreign law as the law of France, although each of them forms a part of the British Empire.

A contract relating to movable property is valid in all parts of the world, if it is valid by the law of the country where it is made; and for this purpose a contract is presumed to have been made at the place where the acceptance of an offer is signified. Therefore, if a contract is made abroad between two aliens, or between an Englishman and an alien, who afterwards take up their residence in this country, an action may be brought upon it in the English courts. But if the plaintiff alone is resident in England, the possibility of bringing an action in an English court will depend upon whether service of the writ can be effected upon the defendant. The cases in which this can be done are fully set out in Order XI of the Rules of the Supreme Court. If the English courts refuse to entertain jurisdiction, the plaintiff must have recourse for any remedy to the courts of the country in which the defendant resides. (See *Conflict of Laws.*)

In case of a tort committed abroad, the English courts will assume jurisdiction, if both parties are in this country, and the act complained of is illegal by the law of England and also wrongful by the law of the country in which it was committed.

When an action is brought in a foreign country and judgment obtained against a defendant who is resident in England and has no property in the country where the judgment is pronounced, an action may be brought upon the judgment in this country, and, unless any irregularity is proved, it will be enforced here. The action upon the foreign judgment must be brought, in England, within six years of the date of the judgment, as it is considered in no other light than as a simple contract debt. An English plaintiff who obtains a judgment in an English court can obtain similar satisfaction in the majority of civilised states.

ACTIVE BONDS. (Fr. *Titres au porteur*, Ger. *Aktivobligationen*, Sp. *Seguridades al portador*, It. *Titoli al portatore.*)

These are bonds which bear a fixed interest, payable in full from the date of issue. Most negotiable bonds are of this kind.

ACTIVE CIRCULATION. (Fr. *Circulation effective*, Ger. *Notenumlauf*, Sp. *Circulación efectiva*, It. *Circolazione effettiva.*)

This is a banking expression, and has reference to the notes of a bank of issue which are actually in the hands of the public.

ACTIVE PARTNER. (Fr. *Associé*

gérant, Ger. *geschäftsführender Teilhaber*, Sp. *Socio gerente*, It. *Socio gerente.*)

An active partner is one who takes a working part in the business or trading concern which in part belongs to him. A partner who simply provides capital, and takes no active part whatever in the business, is called a dormant or sleeping partner, or he may be a limited partner under the Limited Partnership Act, 1907. (See *Partnership.*)

ACTUARY. (Fr. *Actuaire*, Ger. *Aktuar*, *Gerichtsschreiber*, Sp. *Actuario*, It. *Attuario.*)

An actuary is a person skilled in the calculation of the value of life annuities and insurances from mortality tables and upon mathematical principles, and in the preparation of reports, etc., in connection with insurance matters generally.

He is also a person who makes the periodical actuarial report required by the Assurance Companies Act, 1909. This report, which must be made every five years in accordance with certain forms set out in the Act, is a *résumé* of the financial condition of the company. A copy of the report must be deposited with the Board of Trade within six months of its preparation, and a printed copy must be forwarded to every shareholder and policy-holder of the company upon application.

The Institute of Actuaries has its offices at Staple Inn Hall, W.C.; and the Faculty of Actuaries in Scotland is located at 14, Queen Street, Edinburgh.

AD REFERENDUM. (Fr. *Contrat provisoire, ad referendum*, Ger. *zu weiterer Erwägung*, Sp. *Contrato provisorio*, It. *Contratto provvisorio.*)

The meaning of this Latin phrase is "to be further considered." Ad referendum contracts are sometimes made by public companies and others, and the term then means that a contract has been signed for the supply of certain articles, but that there are some minor points left to be settled, which require further consideration.

AD VALOREM. (Fr. *De la valeur, sur la valeur*, Ger. *nach dem Werte*, Sp. *Ad valorem*, It. *Secondo il valore, ad valorem.*) Latin, "according to value."

(1) A customs *ad valorem* duty is a percentage charge made upon the value of certain goods, and not upon their weight or quantity.

(2) An *ad valorem* stamp duty is a duty payable in respect of certain documents, and varies with the value of the subject matter dealt with by the document.

ADHESIVE STAMPS. (See *Stamp Duties.*)

ADJUDICATION ORDER. (Fr. *Déclaration de faillite*, Ger. *Fallimentsanzeige*, Sp. *Mandato de adjudicación*, It. *Sentenza dichiarativa del fallimento.*)

This is an order made in bankruptcy proceedings against a debtor upon a resolution passed by the creditors, by which the debtor is adjudged a bankrupt and his property vested in a trustee for the benefit of the creditors. The court may be induced to adjudge a debtor a bankrupt even when the creditors have come to no decision on the subject at their meetings, and also

(*a*) If the creditors hold no meeting at all.

(*b*) If a proposed composition or scheme of arrangement falls through.

(*c*) If the debtor has absconded and failed to give a proper account of his affairs.

An adjudication order must be duly advertised in the *Gazette.*

Under certain circumstances, an adjudication may be annulled.

ADJUSTMENT. (Fr. *Règlement d'avaries*, Ger. *Havarieaufmachung, Seeschadenberechnung*, Sp. *Ajuste de averias*, It. *Stima dell' avaria.*

This term is used in marine insurance to signify the exact amount of indemnity to which the insured is entitled under the policy, when all deductions and proper allowances have been made. The policy is generally indorsed by the underwriters as follows:—

"Adjusted this loss at — per cent., payable at —."

ADMEASUREMENT. (Fr. *Mesurage*, Ger. *Ausmessung*, Sp. *Cabida*, It. *Misura, misurazione.*)

This word means the measurement made in order to ascertain the tonnage of a ship.

ADMINISTRATION, LETTERS OF. (See *Executor, Will.*)

ADMINISTRATION ORDER. (Fr. *Gestion*, Ger. *Konkurs*, Sp. *Gestión*, It. *Mandato di amministrazione.*)

This is an order made by the court in the case of small bankruptcies for the summary administration of the estate of the debtor. (See *Bankruptcy.*)

ADMINISTRATOR. (Fr. *Administrateur*, Ger. *Verwalter*, Sp. *Administrador*, It. *Amministratore.*) (See *Executor.*)

ADVANCE. (Fr. *Avance*, Ger. *Vorschuss*, Sp. *Adelanto*, It. *Anticipazione.*)

This is a prepayment usually sent by merchants, brokers, or agents to the consignor of goods upon receipt of invoice

or the bill of lading. The term is also applied to money lent by a banker to tradesmen and others for business purposes.

ADVANCE NOTES. (*Fr. Billets d'avance*, Ger. *Vorschussanweisungen*, Sp. *Vales de adelantos*, It. *Boni di anticipazione.*)

Advance notes are drafts upon the owner or agent of a vessel given by the master to the seamen when they sign their articles of agreement. Advance notes are, as a rule, for a month's wages; and, as they are payable three days after the sailing of the ship, they enable the seamen to leave some provision for their relatives ashore.

ADVENTURE, BILL OF. (Fr. *Aventure*, Ger. *Avanturbrief*, *Spekulation*, Sp. *Recibo provisorio*, It. *Avventura.*)

This is a document signed by a merchant which states that the goods on board a vessel are the property of another, who is to run all risk, the merchant only binding himself to account for the produce.

ADVICE. (Fr. *Avis*, Ger. *Avis*, *Bericht*, Sp. *Aviso*, It. *Avviso.*)

In commerce, the word "advice" is used to signify information or instructions respecting trade communicated by letter. Thus, an advice is generally sent by one banker, or merchant, to another, to inform him of the drafts or bills drawn upon him, with full particulars of their amount, date, and the persons to whom they are payable. This document, which is also termed a "letter of advice," prevents mistakes, and at times enables forgeries to be detected; for, when bills of exchange are presented for acceptance or for payment, either can be refused for want of advice.

The term is also used to signify an opinion of counsel or others, a commercial report, or a notification of the arrival or the despatch of goods.

ADVICE NOTE. (*Fr. Note d'avis*, Ger. *Benachrichtigungszettel*, Sp. *Nota de aviso*, It. *Biglietto d'avviso.*)

An advice note is a letter giving its receiver information that some particular transaction either has been or is about to be effected on his behalf. It is usual to send an advice note as to the arrival of consignments, the despatch of goods, the payment of accounts, and the shipment of goods.

AFFIDAVIT. (Fr. *Affirmation (déposition) sous serment*, Ger. *eidliche Bestätigung*, Sp. *Declaración jurada*, It. *Deposizione giurata.*)

This is a written declaration, given on oath, before a person in authority, as a consul, mayor, magistrate, or notary public. But the usual person before whom an affidavit is sworn is a solicitor, who has been appointed a Commissioner for Oaths (*q.v.*). The person making the affidavit, called the deponent, must confine himself to facts within his own knowledge, or if he swears to his belief that certain statements are true, he must give the grounds of his belief. The document must be signed by the deponent, and attested by the person before whom it is sworn.

It must be stamped with a 2*s.* 6*d.* stamp, which may be an adhesive one.

The usual fee of the Commissioner for Oaths is 1*s.* 6*d.*, with an additional 1*s.* for every exhibit. (An exhibit is any document referred to in the affidavit which is intended to be a part of the affidavit itself, but is not set out at length in the document.)

The word "affidavit" is Low Latin, and means "has pledged his faith." It was at one time usual to commence the document thus: Affidavit N.M. etc.

An affidavit must be in a prescribed form, and must be sworn and filed according to certain rules. These are matters, however, for the practitioner.

Affidavits are frequently sworn in a most haphazard fashion, the deponent being quite careless as to the accuracy of the statements contained therein. It ought to be recollected, however, that a person who swears a false affidavit is guilty of perjury, and may be prosecuted for such offence under the Perjury Act, 1911. (See also *Statutory Declaration.*)

AFFREIGHTMENT. (Fr. *Affrètement*, Ger. *Mieten*, Sp. *Fletamento*, It. *Noleggio.*)

This word is gradually becoming obsolete, although it was at one time quite commonly used to signify the contract under which goods were shipped for carriage from one port to another.

AFTER DATE. (A/d.) (Fr. *De date*, Ger. *a Dato*, Sp. *Fecha*, It. *A (certo tempo) data.*)

This phrase is very frequently met with in bills of exchange and promissory notes, these documents being generally drawn payable at a certain period "after date," unless they are to be payable "after sight," or "on demand."

AFTER SIGHT. (Fr. *De vue*, Ger. *(nach) Sicht*, Sp. *Vista*, It. *A (certo tempo) vista.*)

This phrase is written on bills of exchange when the same are to be made

payable at a certain fixed time after presentation to the drawee for acceptance. The acceptor should insert the date of his acceptance upon an "after sight" bill, in order that the holder may be aware of the date upon which the bill becomes payable. The insertion of the date avoids the necessity of giving evidence as to the date of presentment.

AGE ADMITTED. (Fr. *Âge reconnu*, Ger. *Alter bewiesen*, Sp. *Edad admitida*, It. *Età ammessa.*)

It is generally important in the case of life insurance policies that the insurer should have accurate information as to the age of the insured, and such knowledge is often a condition precedent to the payment of the sum insured when the same becomes due. In many cases, the age is ascertained and certified at an early stage; and if this is done, the policy is indorsed with the words "age admitted."

AGENDA. (Fr. *Agenda*, Ger. *Geschäftsordnung*, *Agenda*, Sp. *Agenda*, It. *Ordine del giorno*, *agenda.*)

A list of the business to be done at a certain meeting is known by this name.

AGENT. (Fr. *Représentant*, Ger. *Agent*, Sp. *Representante*, It. *Agente*, *rappresentante.*)

An agent is a person who is employed to do anything in the place of another. The employer is called the "principal." Employment and agency are sometimes confounded, but the former is a much wider term than the latter, which is used in commercial law to signify employment for the purpose of bringing the employer into legal relationship with third parties.

Any person who possesses the legal capacity to contract may appoint an agent to do any act for him, unless the circumstances are such that the personal services of the principal are imperatively demanded. But it is not necessary that the agent should be a person having legal capacity to contract on his own account. Thus an infant may be appointed agent.

Although there is no necessity in the creation of agency that any consideration should move from one party to the other, the agent is generally paid for his services by salary or commission.

Agents are divided into three classes: (*a*) General; (*b*) Particular; (*c*) Universal.

A general agent has authority to do anything which comes within the limits of the position in which he has been placed by his principal. For example, if he is placed in management of a house of business, he has an implied authority to bind his principal by doing anything which comes within the ordinary scope of the business.

A particular agent is appointed to do a special thing. He has no authority to bind his principal in any other matter than that for which he is engaged, and persons who deal with him are bound to ascertain the extent of his authority.

A universal agent is invested with unlimited authority. Such an agent is rarely met with in commercial transactions.

The principal classes of mercantile agents are: Auctioneers, Brokers, Factors, Masters of Ships, Partners, and Servants.

There is no particular form required for the appointment of an agent, though in order to make the agency binding upon the principal and the agent the ordinary rules of contract are applicable. (See *Contract.*) Frequently agents are appointed by mere word of mouth, and often without any express arrangement at all. In this latter case, the contract of agency is an implied one. But writing is advisable except in the simplest cases. Care should be taken, however, to include in the document all the terms of the agency, on the ground that parol evidence cannot be given to vary a written contract. If the agency is one that is not capable of being performed within a year, it must be evidenced by writing. An agent who is appointed to contract under seal must be appointed by a "power of attorney," and the agent of a corporation ought to be appointed by deed, unless the matter for which he is engaged is one of trifling importance or of pressing necessity, or unless the corporation is a trading one.

The most familiar instances of implied agency are the agencies of a servant, a wife, or a partner. These are, however, always of a limited character. They are often known as "agencies by estoppel," because the party bound by the contract is prevented or "estopped" by law, or by conduct, from denying the existence of the agency.

Ratification. When an agent has exceeded his authority in such a manner that his principal could not be bound by the contract, the principal may afterwards adopt the transaction provided the agent has contracted as agent and not as principal. This is called ratification. The principal will then

be in the same position as he would have been in the absence of any irregularity, and will be entitled to the benefit of the contract, or be liable for the losses which may arise out of it, as though he had previously authorised the making of it. But if a person contracts in his own name without disclosing that he acts as agent and without authority so to act, but with the intention in his own mind of making the contract on behalf of another person, that other person cannot ratify the contract. This point was decided in the case of *Keighley, Maxted, & Co.* v. *Durant*, 1901, A.C. 240.

The contract must be made on behalf of a principal who is in existence at the time that it is made. A person cannot, for instance, act as agent for a joint-stock company which has no legal existence when the contract is entered into. Any attempt to bind a non-existent principal is an impossibility. The contract is a nullity, and cannot be ratified.

Mutual Duties.—(1) *Agent to Principal.* The agent must carry out the work which he has undertaken to do, according to the terms imposed by the agreement, verbal or written. He must also use ordinary skill or diligence in doing his work. The amount of skill and diligence will depend upon whether the agency is a paid or a gratuitous one, and the exercise of the necessary amount of skill and diligence is a question of fact depending upon the circumstances of each case. Any losses which fall upon the principal through the negligence or lack of skill on the part of the agent must be made good by the latter. For example, if an insurance broker fails to effect a proper insurance, he must recoup his principal for any loss which arises through his failure. Similarly, if an agent gives credit without having authority to do so, and the principal loses the price of his goods, etc., through the default of the purchaser, the amount of the loss must be paid by the agent.

Although a principal chooses his own agent, and must use ordinary foresight in his selection, and is liable to third parties for the acts or defaults of his agent, he has a remedy over against the agent if the agent has represented to him that he possesses qualifications for the work or business upon which he has been engaged, which he knows that he has no right to claim, or has undertaken work for which he knows that he is unfitted.

An agent must acquaint his principal immediately with all matters which come to his notice in connection with the business in hand.

Proper accounts must be kept of all transactions entered into by the agent, and rendered to the principal on demand. All moneys received must be handed over, and no deductions must be made except for remuneration and, if agreed, necessary expenses.

As an agent and a principal stand in a fiduciary capacity towards each other, anything in the shape of using his position as agent for his own benefit is forbidden. Thus, an agent who is employed to sell property cannot sell it to himself, nor can one appointed to buy property sell that which belongs to himself, except with the knowledge and consent of the principal. If such a thing happens, the seller or the purchaser, as the case may be, is entitled to repudiate the sale or the purchase. The agent must hand over all profits made, and must not derive any secret profit from the business. If a bribe has been given to the agent, the principal may recover it from him. The principal may likewise repudiate the contract, and sue for damages for any loss which he has sustained through the improper payment of money. Criminal proceedings have also become possible since the passing of the Prevention of Corruption Act, 1906.

The agent must himself do the work which he has contracted to carry out, in accordance with the common law maxim, *Delegatus non potest delegare.* He cannot delegate his authority to another person, unless with the consent of the principal, or, where he has an implied authority to do so, by the recognised usage and custom of the particular business.

(2) *Principal to Agent.* The duty of the principal is to pay the agreed remuneration or commission, and, in most cases, all necessary expenses incurred in the transaction of the business. He must also indemnify the agent against the consequences of all lawful acts done in pursuance of the authority conferred, and likewise for wrongful acts done against a third party, where the agent has acted *bonâ fide*, and was not aware of the wrongful nature of the act.

Relation of Principal and Agent to Third Parties.—There are three cardinal rules relating to transactions with an agent who acts with authority to bind his principal.

(1) If the contract is made with an

agent who is known to be such, and who names his principal at the time the contract is made, there is, *primâ facie*, no contract with the agent at all. But, of course, the agent may, if he chooses, make himself personally liable as a contracting party, and the third party may likewise give credit exclusively to the agent. In such a case there is no remedy over against the principal.

There are three exceptions to this rule :—

(*a*) In a contract under seal made by an agent, even though the fact of the agency is stated in the deed, owing to a technical rule of law it is the agent and not the principal who is the party to sue or to be sued upon it.

(*b*) When a merchant resident abroad purchases goods in England through an agent who is resident in this country, the seller, in the absence of any express evidence to the contrary, contracts with the agent, and not with the principal.

(*c*) If an agent is a party to a bill of exchange in his own name, the principal is not liable upon the instrument. But "where a party signs a bill as drawer, indorser, or acceptor, and adds words to his signature indicating that he signs for or on behalf of his principal, or in a representative capacity, he is not personally liable thereon."

(2) If a contract is made with an agent who is known to be such, but who does not name his principal at the time the contract is made, the agent is, *primâ facie*, liable on the contract as well as the principal, since it could not be expected that any one would give credit to a person whose name was unknown to him. But where it is clear on the face of the contract that the agent did not pledge his personal credit, although he did not name his principal, he will not be personally liable. Evidence of custom may, however, be given to show that the agent is the proper person to be charged.

(3) If a contract is made with a person who, though really an agent, is not known to be such at the time of entering into the contract, the undisclosed principal is, as a rule, bound by the contract and entitled to enforce it, as well as the agent with whom the contract was made. But the third party must make his election within a reasonable time of discovering who the real principal is, and there must not have been any dealing with the agent of such a character as to prejudice the principal in his relations with the agent, and to lead him to believe that the agent alone is to be held liable.

Misrepresentation and Fraud of Agent—If the unauthorised acts of an agent are not ratified, and the agent contracted as agent, though he cannot be held liable as a principal, since he did not contract as such, he is liable to an action for damages for breach of an implied warranty of authority. If he has fraudulently misrepresented his authority he can be sued for the fraud.

Where an agent has contracted on behalf of a non-existent person as his principal, he is personally liable upon the contract ; for example, where a contract has been made on behalf of a company not yet incorporated.

If an agent has committed a fraud in the course of his agency, it is optional on the part of the party injured to sue the agent or the principal. But if the act is one done in excess of the authority of the agent, then the agent alone is liable.

Termination of Agency.—The relationship of principal and agent may be terminated by

(1) Agreement of the parties.
(2) Effluxion of time.
(3) Completion of the business.
(4) Revocation by the principal.
(5) Renunciation by the agent.
(6) Death or insanity of the principal or the agent.
(7) Bankruptcy of the principal.

In the case of (4), the agency cannot be terminated in a summary fashion if the contract of agency has been created for the benefit of the agent, and the benefit has not been reaped. Thus, if an agent is appointed for a definite time at a fixed salary, the agency cannot be put an end to without some compensation being paid to the agent for the loss which he will sustain by the revocation. Similarly in the case of (5), the agent on renouncing must compensate the principal for any loss which may arise out of the renunciation.

Notice of a revocation of authority must be given to all persons who have had dealings with the agent on the principal's behalf, otherwise the principal will be bound by future transactions between such persons and his former agent.

AGENT DE CHANGE. (Fr. *Agent de Change*, Ger. *Fondsmakler*, Sp. *Corredor de bolsa*, It. *Agente di cambio.*)

This is the French name for a stock-broker. The Agents de Change are the official members of the Paris Bourse, and

are sixty in number. (See *Coulisse, Parquet.*)

AGIO. (Fr., Ger. and Sp. *Agio*, It. *Aggio.*)

This term is used to express the difference between the value of the metallic and the paper currency in a country, or between the metallic moneys of different countries.

AGREEMENT. (Fr. *Accord, convention*, Ger. *Übereinkommen*, Sp. *Acuerdo*, It. *Accordo.*) (See *Contract.*)

ALIEN. (Fr. *Étranger*, Ger. *Ausländer*, Sp. *Extranjero*, It. *Straniero.*)

A person who is the subject of a foreign nation. Thus, a Frenchman who settles in England, and has not been naturalised, is an alien. It does not signify that a foreigner has made up his mind to choose this country as his permanent abode. Although he acquires what is known as a domicil (*q.v.*) here, he is still an alien.

An alien cannot own a British ship, or any share in the same, but in all other respects he has had, since the Naturalisation Act of 1870, which, although repealed, is practically re-enacted as far as the points under consideration are concerned by the British Nationality and Status of Aliens Act, 1914, the same rights to property as a natural-born British subject. He is not qualified, however, to exercise any municipal, parliamentary, or other franchise, and he cannot hold any political office.

As to the manner in which an alien may acquire British citizenship, see *Naturalisation.* As to his rights as an employee, see *National Insurance.*

By the Alien Act of 1905, an attempt was made to check the immigration of undesirable foreigners. For various reasons, the Act has not met with the success which was anticipated. There is little doubt that legislation of a drastic character will be promoted at an early date.

ALL RIGHTS RESERVED. (Fr. *Tous droits reservés*, Ger. *alle Rechte vorbehalten*, Sp. *Derechos de propiedad*, It. *Riservati tutti i diritti.*)

This is a term put upon books by an author, signifying to the public that the copyright is reserved, and that proceedings will be taken against any person doing anything which infringes that copyright.

ALLOCATE. (Fr. *Répartir*, Ger. *anweisen*, Sp. *Repartir*, It. *Aggiudicare, assegnare.*)

To allocate is to allot or assign a thing to a person; most generally used to signify the allotment of shares in a company. Also to apply money for a particular purpose. (See *Appropriation of Payments.*)

ALLOCATION. (Fr. *Répartition*, Ger. *Anweisung*, Sp. *Repartimiento*, It. *Aggiudicazione, assegnazione.*)

This term signifies the act of allotment.

ALLOCATUR. (Fr. *Allocation, répartition*, Ger. *Kostenbescheinigung, Zuteilung*, Sp. *Adjudicación, aprobación de gastos*, It. *Aggiudicazione, repartizione, certificato delle spese.*)

The certificate of allowance of costs granted by the taxing master of the court is known as the allocatur. When there is an order to tax costs in any proceedings, this certificate must be obtained by the successful party in the suit, in order to add the amount to the judgment debt before execution can be levied with respect to the costs.

ALLONGE. (Fr. *Allonge*, Ger, *Allonge, Zusatzstück*, Sp. *Allonge*, It. *Coda, aggiunta, allunga.*)

This is a slip of paper attached to a bill of exchange, providing space for additional indorsements when the back of the bill itself is full of names. Being regarded as a part of the original bill, it need not be stamped.

Some of the foreign codes require that the first indorsement on the allonge shall commence on the bill itself and end on the allonge. This is intended as a precaution against fraud; otherwise an allonge might easily be taken from one bill and attached to another.

ALLOT. (Fr. *Répartir*, Ger. *zuteilen*, Sp. *Repartir*, It. *Assegnare, aggiudicare, distribuire.*)

To allot is to distribute in shares.

ALLOTMENT. (Fr. *Répartition*, Ger. *Zuteilung*, Sp. *Repartición*, It. *Aggiudicazione, ripartizione.*)

This is the act of allotting or distributing stock, shares, debentures, or bonds in a joint-stock company in response to applications for the same, or in pursuance of contracts already entered into with regard to them.

Prior to 1901, nothing was required in the allotment of shares beyond the elements which go to the formation of a simple contract—application, acceptance, and communication to the applicant within a reasonable time. The result was that many companies went to allotment when the applications for shares were such as altogether to exclude the possibility of the company being able to conduct any business at all.

The present statutory requirements

as to allotment (when the company is a public one), embodying the provisions of the Companies (Consolidation) Act, 1908, are as follows :—

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

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

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

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

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

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

(4) If the conditions aforesaid have not been complied with on the expiration of forty days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within forty-eight days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per centum per annum from the expiration of the forty-eighth day :

Provided that a director shall not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part.

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

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

(7) In the case of the first allotment of share capital payable in cash of a company which does not issue any invitation to the public to subscribe for its shares, no allotment shall be made unless the minimum subscription (that is to say) :—

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

(*b*) if no amount is so fixed and named, then the whole amount of the share capital other than that issued or agreed to be issued as fully or partly paid up otherwise than in cash—

has been subscribed and an amount not less than five per cent. of the nominal amount of each share payable in cash has been paid to and received by the company.

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

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

All the ordinary rules of contract apply to the allotment of shares.

The letter of allotment informs the applicant of the numbers of the shares which have been allotted to him. Where the nominal amount of the allotment is less than £5, a stamp duty of one penny is imposed ; for greater amounts the duty is sixpence.

ALLOTMENT NOTES. (Fr. *Notes de crédit*, Ger. *halbe Löhnung*, Sp. *Vales provisorios*, It. *Note di credito.*)

These are documents signed by seamen, authorising their employers to pay periodically a part of their wages, limited to one-half, whilst on a voyage, to a savings bank or to some near relative.

ALLOTTEE. (Fr. *Souscripteur*, Ger. *angenommener Zeichner*, Sp. *Suscriptor*, It. *Aggiudicatario, assegnatario.*)

An allottee is a person to whom shares

in some public company or concern are allotted.

ALL-ROUND PRICE. (Fr. *Prix inclusif*, Ger. *Preis in Bausch und Bogen*, Sp. *Precio inclusivo*, It. *Prezzo totale, prezzo tondo.*)

This is a price which includes all items usually charged as extras over the cost price.

AMALGAMATION. (Fr. *Réunion, fusion*, Ger. *Amalgamierung, Vereinigung*, Sp. *Fusión, amalgamación*, It. *Fusione, unione.*)

When two or more companies or businesses are combined so as to form one, there is said to be an amalgamation.

AMORTISEMENT or **AMORTISATION.** (Fr. *Amortissement*, Ger. *Tilgung*, Sp. *Amortización*, It. *Ammortizzazione.*)

In law, this means the alienation of lands in mortmain, that is, a transfer in perpetuity to a corporation or to a charity. In finance, it signifies the redemption of bonds or shares, by means of annual drawings from a sinking fund, or the complete extinguishment of a loan by a single payment out of some special fund set aside for the purpose.

ANCHORAGE. (Fr. *Droits d'ancrage*, Ger. *Ankergeld*, Sp. *Derechos de ancoraje*, It. *Diritti di ancoraggio.*)

These are the dues imposed on ships for anchoring in certain ports or harbours.

ANKER. (Fr. *Anker*, Ger. *Anker*, Sp. *Cuarterola*, It. *Anker.*)

An anker is a Dutch liquid measure, equal to about ten English gallons.

ANNUITANT. (Fr. *Rentier*, Ger. *Renteninhaber*, Sp. *Rentista*, It. *Tenitore di rendita.*)

An annuitant is a person who is in receipt of an annuity.

ANNUITY. (Fr. *Annuité*, Ger. *Annuität, Leibrente*, Sp. *Anualidad*, It. *Annualità, rendita annua.*)

This is a sum of money payable yearly during a specified time, or for the lifetime of a certain individual, or in perpetuity. It may be created either during the lifetime of the donor or by will. If created by will it ranks and abates as a general legacy. Duty is payable upon the value of the interest of the annuitant calculated according to fixed tables, and is payable in four annual instalments, which are due when the first four payments of the annuity are made. Annuities are likewise subject to estate duty to the extent to which any beneficial interest accrues by survivorship on the death of a person, but a single survivorship annuity is exempt if it is less than £25.

An annuitant may prove against the estate of a bankrupt to the extent of the present value of his annuity, whether it is for life or for a term of years.

ANTE-DATE. (Fr. *Antidater*, Ger. *vordatieren*, Sp. *Antedatar, anticipar la fecha*, It. *Antidatare.*)

When the date upon a cheque, letter, or other document is earlier than that on which the cheque, letter, or document was written, the same is said to be ante-dated. (See *Bill of Exchange.*)

APPRAISE. (Fr. *Evaluer*, Ger. *abschätzen*, Sp. *Apreciar*, It. *Apprezzare, stimare, valutare.*)

The literal meaning of this word is to set a price upon, to value with a view to sale, or otherwise.

APPRAISEMENT. (Fr. *Expertise*, Ger. *Schätzung* (*Abschätzung*) *durch Sachverständige*, Sp. *Aprecio, justiprecio*, It. *Estimazione.*)

The meaning of this word is setting a price or a value upon anything with a view to its sale or otherwise.

APPRAISERS. (Fr. *Évaluateurs*, Ger. *Abschätzer*, Sp. *Tasadores, apreciadores*, It. *Apprezzatori, estimatori.*)

Persons employed to value property, who are duly licensed for that purpose, are called appraisers. The cost of a licence is £2 per annum. Any person acting as appraiser without a licence is liable to a penalty of £50.

On an appraisement or valuation the duty payable is as follows :—

	£	*s.*	*d.*
Where the amount of the appraisement does not exceed £5 . . .	0	0	3
Ditto £10 . . .	0	0	6
Ditto £20 . . .	0	1	0
Ditto £30 . . .	0	1	6
Ditto £40 . . .	0	2	0
Ditto £50 . . .	0	2	6
Ditto £100 . . .	0	5	0
Ditto £200 . . .	0	10	0
Ditto £500 . . .	0	15	0
Where the amount exceeds £500	1	0	0

APPRENTICE. (Fr. *Apprenti*, Ger. *Lehrling*, Sp. *Aprendiz*, It. *Apprendista.*)

An apprentice is a person who is bound by contract to serve another in some trade or calling, the latter being under the obligation to teach the apprentice the said trade or calling. The contract is made by deed only, generally spoken of as the apprentice's indentures, and the stamp duty is 2*s.* 6*d.*, it being immaterial whether a premium is paid or not. Indentures of parish and marine apprentices are exempt from stamp duty.

Any person over the age of seven may bind himself as an apprentice, and he must be a party to the deed, the father having no authority to bind his infant child by an apprenticeship deed, but the father is often added as a party. The duties and rights of the parties will generally be set forth in the deed, but in any case the master must give proper instruction to the apprentice throughout the agreed term.

Apprenticeship is terminated by efflux-ion of time, by the coming of age of the apprentice, by the death of either the master or the apprentice, or by the mutual consent of all the parties to the deed. Justices of the peace may also cancel the indentures on complaint or proof of wilful misconduct or disobedience. If the misconduct is on the part of the master, an order may be made calling upon him to refund some portion or the whole of any premium that has been paid.

Apprentices in any trade, who are guilty of any misdemeanour, miscarriage, or bad conduct in their master's service, are liable to imprisonment with hard labour for any period not exceeding three months, or to an abatement of wages. They must not absent themselves from work without reasonable excuse, otherwise they will be compelled to give satisfaction for the same.

On the ground that the failure of consideration must be total and not partial in order to entitle a party to a contract to recover money paid, there is no right to reclaim any portion of the money paid as premium if the master dies during the term of apprenticeship. The apprentice has had the benefit of some portion of the contract. An exception is made in the case of the bankruptcy of the master. By sect. 34 of the Bankruptcy Act, 1914, it is enacted :—

(1) Where at the time of the presentation of the bankruptcy petition any person is apprenticed or is an articled clerk to the bankrupt, the adjudication of bankruptcy shall, if either the bankrupt or apprentice or clerk gives notice in writing to the trustee to that effect, be a complete discharge of the indenture of apprenticeship or articles of agreement ; and if any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the trustee may, on the application of the apprentice or clerk, or of some person on his behalf, pay such sum as the trustee, subject to an appeal to the court, thinks reasonable out of the bankrupt's property, to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf, and to the time during which he served with the bankrupt under the indenture or articles before the commencement of the bankruptcy, and to the other circumstances of the case.

(2) Where it appears expedient to a trustee, he may, on the application of any apprentice or articled clerk to the bankrupt, or any person acting on behalf of such apprentice or articled clerk, instead of acting under the preceding provisions of this section, transfer the indenture of apprenticeship or articles of agreement to some other person.

APPROPRIATION OF PAYMENTS. (See *Contract, Discharge of.*)

ARBITRAGE. (Fr. *Arbitrage*, Ger. *Arbitrage, Wechselarbitrage*, Sp. *Arbitraje*, It. *Arbitraggio.*)

This term is applied in the English Stock Exchange and French Bourse to the calculation of the relative simultaneous values of any particular stock on the market, in terms of the quotations on one or more other markets, and to the business founded on such calculations. In the strict sense arbitrage may be defined as a traffic consisting of the purchase, or sale, on one Stock Exchange, and simultaneous, or nearly simultaneous, re-sale, or re-purchase, on another Stock Exchange of the same amount in the same stocks or shares. Government stocks, British Consols excepted, are the chief subjects of arbitrage. Other branches of arbitrage, dealing with bullion, coin, or bills, fall within the business of bullion dealers and bankers.

ARBITRAGERS. (Fr. *Arbitrageurs*, Ger. *Arbitrageurs*, Sp. *Arbitrajadores*, It. *Arbitri.*)

This is the name that is given to those persons who are skilled in arbitrage business.

ARBITRATION. (Fr. *Arbitrage*, Ger. *Shiedsgericht*, Sp. *Arbitraje*, It. *Arbitraggio.*)

Arbitration is the act of settling a dispute by referring it to one or more neutral persons nominated by the disputants, whose decision, when written out and signed, is known as the award.

This method has grown in public estimation during the last fifty years, and at the present time many disputes of the class which were formerly decided by the courts are now privately disposed of, and the award made by the arbitrator has the same effect as a judgment when it is taken up. If there is a contract in writing between parties,

it is frequently made one of the terms of the contract that all disputes shall be referred to arbitration. This effectually prevents one of the parties proceeding by ordinary legal methods, that is, in the courts, if there is an objection to this course of action by the other party or parties. But if such proceedings are commenced in court, the other party or parties must take objection at once, for if anything more is done than entering an appearance to the writ of summons, it will generally be considered that this arbitration clause has been waived.

By the common law an agreement between parties to refer a dispute to arbitration, to the exclusion of the jurisdiction of the courts, was void on the grounds of public policy. But now a dispute may be referred to arbitration either by the consent of the parties out of court, or by order of the court. The law upon the subject has been codified by the Arbitration Act, 1889, of which the following are the main provisions :—

References by Consent out of Court.—(1) A submission (which is defined as a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not), unless a contrary intention is expressed therein, is irrevocable, except by leave of the court or a judge, and has the same effect in all respects as if it were made an order of court.

(2) In submissions, unless a contrary intention is expressed therein, the following things are implied :—

(*a*) If no other mode of reference is provided, the reference is to be to a single arbitrator.

(*b*) If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.

(*c*) The arbitrators are to make their award within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators, by any writing signed by them, may from time to time enlarge the time for making the award.

(*d*) If the arbitrators have allowed the time or extended time to expire without making an award, or have delivered to any party to the submission, or to the umpire, a notice in writing, stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.

(*e*) The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire by any writing signed by him may from time to time enlarge the time for making his award.

(*f*) The parties to the reference, and all persons claiming through them respectively, must, subject to any legal objection, submit to be examined by the arbitrators or umpire, on oath or affirmation, in relation to the matters in dispute, and must also, subject as aforesaid, produce before the arbitrators or umpire all books, deeds, papers, accounts, writings, and documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrator or umpire may require.

(*g*) The witnesses on the reference are to be examined on oath or affirmation, if the arbitrators or umpire think fit.

(*h*) The award is final and binding on the parties to the arbitration.

(*i*) The costs of the reference and award are in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner those costs or any part of them are to be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client.

(3) Where a submission provides that the reference is to be to an official referee, any official referee to whom application is made shall, subject to any order of the court or a judge as to transfer or otherwise, hear and determine the matters agreed to be referred.

(4) If any party to a submission, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to such legal proceedings may at any time after appearance, and before delivering any pleadings, or taking any other steps in the proceedings, apply to that court to stay the proceedings, and that court or a judge thereof if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission, and that the applicant was,

at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

(5) In any of the following cases :—

(*a*) Where a submission provides that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator :

(*b*) If an appointed arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties do not supply the vacancy ;

(*c*) Where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator, and do not appoint him ;

(*d*) Where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy ;

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire, or third arbitrator.

If the appointment is not made within seven clear days after the service of the notice, the court or a judge may, on application by the party who gave the notice, appoint an arbitrator, umpire, or third arbitrator, who shall have the like powers to act in the reference and make an award as if he had been appointed by the consent of all parties.

(6) Where a submission provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless the submission expresses a contrary intention :—

(*a*) If either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place ;

(*b*) If, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent.

The court may, however, set aside any appointment made in pursuance of this section.

(7) The arbitrators or umpire acting under a submission have power, unless a contrary intention is expressed by the submission,

(*a*) To administer oaths to and take affirmations of the parties and witnesses appearing ;

(*b*) To state an award as to the whole or part thereof in the form of a special case for the opinion of the court ; and

(*c*) To correct in an award any clerical mistake or error arising from any accidental slip or omission.

(8) Any party to a submission may sue out a writ of *subpoenâ ad testificandum*, or a writ of *subpoenâ duces tecum* (see *Subpoena*), but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action.

(9) The time for making an award may from time to time be enlarged by order of the court or a judge, whether the time for making the award has expired or not.

(10) In all cases of reference to arbitration the court or a judge may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrators or umpire.

Where an award is remitted, the arbitrators or umpire shall, unless the order otherwise directs, make their award within three months after the date of the order.

(11) Where an arbitrator or an umpire has misconducted himself, the court may remove him and may set aside any arbitration or award that has been improperly procured.

(12) An award on a submission may, by leave of the court or a judge, be enforced in the same manner as a judgment or order to the same effect.

References under Order of Court.—(13) Subject to Rules of Court and to any right to have particular cases tried by a jury, the court or a judge may refer any question arising in any cause or matter (other than a criminal proceeding by the Crown) for inquiry or report to any official or special referee.

The report of an official or special referee may be adopted wholly or partially by the court or a judge, and if so adopted may be enforced as a judgment or order to the same effect.

(14) In any cause or matter (other than a criminal proceeding by the Crown),

(*a*) If all the parties interested who are not under disability consent: or,

(*b*) If the cause or matter requires any prolonged examination of documents or any scientific or local investigation which cannot in the opinion of the court or a judge conveniently be made before a jury or conducted by the court through its other ordinary officers: or,

(*c*) If the question in dispute consists wholly or in part of matters of account: the court or a judge may at any time order the whole cause or matter, or any question or issue of facts arising therein, to be tried before a special referee or arbitrator respectively agreed on by the parties, or before an official referee or officer of the court.

(15) In all cases of reference to an official or special referee or arbitrator under an order of the court or a judge in any cause or matter, the official or special referee or arbitrator shall be deemed to be an officer of the court, and shall have such authority, and shall conduct the reference in such manner, as may be prescribed by Rules of Court, and subject thereto as the court or a judge may direct.

The report or award of any official or special referee or arbitrator on any such reference shall, unless set aside by the court or a judge, be equivalent to the verdict of a jury.

(16) The court or a judge shall, as to references under order of the court or a judge, have all the powers which are conferred by the Act on the court or a judge as to references by consent out of court.

General.—(17) The court or a judge may order that a writ of *subpoenâ ad testificandum*, or of *subpoenâ duces tecum* shall issue to compel the attendance before an official or special referee, or before any arbitrator or umpire, of a witness wherever he may be within the United Kingdom, or a writ of *habeas corpus ad testificandum* to bring up a prisoner for examination.

(18) Any referee, arbitrator, or umpire may, at any stage of the proceedings, under a reference, and shall, if so directed by the court or a judge, state in the form of a special case for the opinion of the court any question of law arising in the course of the reference.

(19) Any order made under the Act may be made on such terms as to costs, or otherwise, as the authority making the order thinks just.

(20) Any person who wilfully and corruptly gives false evidence before any referee, arbitrator, or umpire, shall be guilty of perjury, as if the evidence had been given in open court, and may be dealt with, prosecuted, and punished accordingly. (Also see *Award.*)

ARBITRATION OF EXCHANGE. (Fr. *Arbitrage de change*, Ger. *Wechselarbitrage*, Sp. *Arbitraje de cambio*, It. *Arbitrato del cambio.*)

This means calculating the proportional rates between two countries, through intermediate places, to see whether direct or indirect drafts and remittances are the more advantageous. For instance, a merchant here having to remit money to Paris at a time when the exchange is unfavourable, may find, on calculation, that it will be more advantageous to make the payment through Amsterdam to Paris, than to send it there direct. When only one intermediate place is concerned, it is termed simple arbitration; when more than one, compound arbitration.

ARBITRATOR. (Fr. *Arbitre*, Ger. *Schiedsrichter*, Sp. *Arbitro*, It. *Arbitro.*)

This is the person who is appointed to settle any dispute between parties, more especially when it is desired to avoid legal procedure. (See *Arbitration.*)

ARCHITECT. (Fr. *Architecte*, Ger. *Baumeister*, Sp. *Arquitecto*, It. *Architetto.*)

The person who is engaged in the designing and the superintendence of construction of buildings is generally known as an architect.

There is no special qualification required for anyone who wishes to practise as an architect, but the Royal Institute of British Architects and the Society of Architects have done much to advance the status, and to elevate the standard of those who are engaged in the profession. The former society was founded in 1834, incorporated by Royal Charter in 1837, and received a new charter with additional powers in 1887. It publishes a *Journal* and a *Calendar.* The offices are situated at 9, Conduit Street, Hanover Square, W. The latter Society was founded in 1884, and incorporated in 1893. Members are admitted by examination. It publishes *The Architects' Magazine* monthly, and a *Year Book* annually. The offices are at 28, Bedford Square, W.C.

An architect is simply an agent, and the general principles of agency are applicable to him. He must use proper

skill, as representing himself capable of doing what is generally required from an architect, and he will be liable in an action for damages for negligence. In many building transactions it is customary to pay the builder by instalments, according to the amount of work done. Payment is made upon the certificate of the architect. Any carelessness in giving a certificate, as to either the quantity or the quality of the work, will be a clear case of negligence.

There is no fixed scale of remuneration, though a charge of 5 per cent. on the cost of the building is the usual one.

ARE. (Fr. *Are*, Ger. *Ar*, Sp. *Area*, It. *Ara*.)

The Are is the unit of the decimal French measure of surface. It is a square, the side of which is 10 metres, or 32·809 English feet in length. The hectare of 100 ares is generally used in the measurement of land. It is equal to 2·47, or nearly two and a half English statute acres.

ARREARS. (Fr. *Arrérages*, Ger. *Rückstände*, Sp. *Atrasos*, It. *Arretrati*.)

Arrears are the amount which remain unpaid after the proper time of payment.

ARTICLES OF ASSOCIATION. (Fr. *Statuts sociaux*, Ger. *Gesellschaftsstatuten*, Sp. *Articulos de asociación*, It. *Statuto o atto constitutivo della società*.)

The rules and regulations which specify the mode of conducting the business of a joint-stock company, the number and qualification of the directors, and generally the whole internal organisation of the company are known under the comprehensive term of articles of association.

The articles of association of a company are supplementary to the memorandum of association, and every person who has any dealings with a company, whether as a member or a creditor, or otherwise, is presumed to have notice of the contents of both the memorandum and the articles, as far as regards the external position of the company.

In the Companies Act, 1862, model articles of association were supplied by the well-known Table A. This table was revised in 1906, and it is now reproduced, with very slight changes, in the Companies (Consolidation) Act, 1908. This Table A formed no part of the Act of 1862, and is no part of the Act of 1908. The table is practically never used in its complete form. In joint-stock companies of any size, it is almost always ignored.

The articles are required to be drawn in separate paragraphs, numbered consecutively. The number will vary according to the nature of the business of the company, and no general rule can be laid down as to what they should contain, though it is the ordinary course for clauses to be inserted which regulate the general business of the company in reference to the division of its capital, the issue of shares, increase of capital, calls, forfeiture for non-payment, etc., borrowing powers, general meetings, voting, directors and their qualification, powers, duties, etc., dividends, accounts, audits, notices, arbitration clause, and the distribution of the assets on the winding-up of the company.

The articles must be printed, must bear the same stamp as a deed, viz. 10*s*., and must be signed by the subscribers of the memorandum of association. The signature of each subscriber must be witnessed by some person other than a subscriber. Each member of the company is entitled to a copy of the memorandum and articles on payment of 1*s*.

The articles of association are controlled by the memorandum of association, which is the instrument indicating the purposes for which the company is established. "The memorandum is, as it were, the area beyond which the action of the company cannot go; inside that area the shareholders may make such regulations for their own government as they think fit." Hence, if the sphere of action of the company is exceeded by the terms of the articles, the latter will be inoperative to the extent of the excess, and nothing done under the articles can be ratified.

The articles of association may be altered by special resolution, and a company cannot contract itself out of its power of making such alteration. The power of alteration is now curtailed, so far as foreign interests of a company are concerned, by the Companies (Foreign Interests) Act, 1917. Under this Act no change can be made without the consent of the Board of Trade. It is not an objection to such an alteration that the effect may be retrospective. Thus, in one case the original articles of a company provided that the company should have a lien upon all shares "not being fully paid held by such member." The vendor of the company had been paid in fully-paid shares, but a nominee of the vendor, to whom some of the vendor's shares had been allotted, owed money to the company. By special resolution the company altered their articles by striking out the words "not being fully paid." The effect

of the alteration was to charge the fully paid-up shares of the nominee with the payment of his debt. It was held that this could be done.

The articles of association are delivered to the Registrar of Joint-Stock Companies at the same time as the memorandum of association, and he registers both upon the payment of the fees required. Any special resolution altering them must be printed and annexed to the original articles, and a copy must be filed with the Registrar within fifteen days of the passing of the same. A fee of 5*s.* is payable at the time of the filing of the resolution.

AS PER ADVICE. (Fr. *Suivant avis*, Ger. *laut Bericht*, Sp. *Según aviso*, It. *Secondo avviso.*)

This is a phrase frequently written on a bill of exchange. Its meaning is that notice has already been sent to the drawee that the bill which he now receives would be drawn upon him.

ASSAY or **ASSAYING.** (Fr. *Essayage*, Ger. *Metallprüfung*, *Münzprobe*, Sp. *Ensayo*, It. *Assaggio.*)

This means the examination or the weighing of a thing accurately. The term is chiefly applied when an ore or an alloy is tested in order to discover the amount of metal which it contains.

By law silver-plate must be made of a certain degree of fineness in Great Britain, and each article made has to be assayed, and, if approved, stamped at the Goldsmiths' Hall. Assays of gold jewellery are made in a similar manner, which is a guarantee of their quality. It is also a matter of great commercial importance to test the degree of fineness of such things as coin and bullion.

ASSAY-MASTER. (Fr. *Essayeur*, Ger. *Münzwardein*, *Münzprüfer*, Sp. *Ensayador*, It. *Assaggiatore.*)

This is the person who determines the amount of gold and silver in coin or bullion.

ASSETS. (Fr. *Actif*, Ger. *Aktiva*, Sp. *Activo*, It. *Attivo.*)

This term has three meanings :—

(1) The goods or estate of a deceased person available to pay his debts and legacies.

(2) The property of a deceased or insolvent person.

(3) The entire property of every description belonging to, or in the possession of a merchant or a trading association.

The word is derived from the old French *assetz*, meaning "enough."

When considered from a legal point of view, assets are said to be of two kinds, legal and equitable. The former consist of the property which creditors might make available in a court of law for the payment of the debts of a deceased person, which property had devolved upon the personal representative of the deceased for that purpose, by virtue of his office. The latter consist of the property which could only be made available for the payment of debts in the Court of Chancery. This distinction becomes of great importance when many and competing claims have to be considered. For example, an executor can only exercise his right of retainer, that is, the retention of the amount of a debt due to himself from the deceased in priority to any other debts of equal degree, out of the legal assets which have come into his possession.

There is another useful and convenient sub-division of the different classes of assets, when they are considered from a mercantile point of view :—

(1) *Fixed Assets.*—These consist of possessions in the form of freehold land and buildings, house property, plant, machinery, and such like things.

(2) *Intangible Assets.*—Included in this class are such things as goodwill, patents, trade marks, designs, and copyright.

(3) *Floating or Circulating Assets.*—These are represented by book debts, stock-in-trade, stores, raw material, bills receivable, etc.

(4) *Liquid Assets.*—Under this head are included invested funds, surplus cash with bankers, cash in hand, etc.

ASSIGN. (Fr. *Céder*, Ger. *zedieren*, Sp. *Asignar*, It. *Assegnare.*)

This word means to make over to another, by means of a deed of assignment, money, goods, or other property.

ASSIGNEE. (Fr. *Cessionnaire*, Ger. *Assignator*, Sp. *Asignatario, cesionario*, It. *Assegnatario, cessionario.*)

The person to whom any right or property is assigned is called the assignee.

ASSIGNMENT. (Fr. *Cession*, Ger. *Abtretung*, *Zession*, Sp. *Cesión*, It. *Cessione.*)

The term "assignment" has two meanings. It may be either the transfer of any right or property, or the document by means of which such transfer is made.

The transfer of land is carried out by means of a deed. The transfer of movable property may be made by deed, by instrument in writing, or by

a simple transfer of possession, according to the statute law governing each. At common law transfer of possession was sufficient. The deed must, of course, be properly stamped. (See *Stamp Duties*.) The duty is an *ad valorem* one. In order to comply with the requirements of the Finance (1909-10) Act, 1910, when the value of the subject matter is under £500, it is now usual to insert the following clause in the deed: "And it is hereby declared that the transaction hereby effected does not form part of a larger transaction or of a series of transactions exceeding in the aggregate the sum of £500," and then the *ad valorem* duty is reduced to 10*s*. per cent.

A *chose in action*, that is, a right to a thing, as distinguished from the thing itself, was not assignable at common law, but could only be enforced by one of the original parties to the contract. This was not the rule in equity, and since the passing of the Judicature Act, 1873, the equitable rule prevails in all the courts. A debt or legal *chose in action* is now assignable, and the assignee is enabled to sue in his own name for the benefit of the same, provided (1) that the assignment is absolute, and not by way of charge only; (2) that it is in writing and signed by the assignor; and (3) that notice of the assignment is given in writing to the debtor, or to a trustee holding the funds assigned. But although the benefit of a contract can be assigned in this manner, the assignee can only acquire the rights which were possessed by the assignor. Therefore, if a debtor has a counter-claim or a set-off against his creditor, and the creditor assigns his rights to a third person, the assignee will only be able to enforce so much of the claim as the original creditor could have done and will be bound to allow the counter-claim or set-off. This is called an assignment "subject to the equities." In the same way, if a creditor has only a defective title to anything he purports to assign, the assignee's title, after the assignment, is affected with the same defect.

Special provision has been made for the assignment of rights arising out of certain *choses in action*, e.g., policies of insurance, shares in joint-stock companies, debentures, etc., either by Act of Parliament or by articles of association. In order that the assignment may be effectual these provisions must be strictly complied with.

Assignability must not be confounded with negotiability.

The assignment of obligations arising out of a contract is not allowed, except with the consent of the party to whom the performance is due. This is called "novation." In point of fact a new contract is made when this takes place, and fresh parties are substituted for those who were originally bound. There are exceptions to this rule, but they are mainly statutory, and in the case of land there are certain obligations or liabilities which always "run with the land," that is, bind the holder for the time being.

Irrespective of the acts of the parties assignments of rights and obligations may take place through the death or bankruptcy of one or both of them. In the case of death the personal representative, either executor or administrator, succeeds to the position of the deceased, acquires his rights and is answerable for his liabilities, to the extent of the estate that has been left. An executor or administrator may render himself personally responsible to any extent if there is an agreement in writing (and a consideration) to satisfy the fourth section of the Statute of Frauds. The chief exception to this rule is that which has reference to contracts for personal services, such as the employment of a servant or an apprentice. Death puts an end to such a contract, since it is assumed to be an implied condition of the contract that no substitute shall be allowed to fill the place of the original promisor or promisee. In the case of bankruptcy also the trustee acquires all the rights and is responsible, to the extent of the property obtained, for the liabilities of the debtor.

As to an assignment for the benefit of creditors, see *Deed of Arrangement*.

ASSIGNOR. (Fr. *Cédant*, Ger. *Assignant*, *Zedent*, Sp. *Cedente*, *girante*, It. *Cedente*.)

The assignor is the person who makes an assignment or transfer of property from himself to some other person.

ASSIGNS. (Fr. *Cessionnaires*, Ger. *Cessionnare*, Sp. *Cesionarios*, It. *Cessionari*.)

This word is frequently used to indicate two or more assignees.

ASSURANCE. (See *Insurance*.)

AT CALL. (Fr. *A l'appel*, Ger. *auf Verlangen*, Sp. *A la demanda*, It. *Alla domanda*.)

Money is said to be at call when it is

deposited with bankers and others on such terms that its repayment can be demanded without any notice.

AT PAR. (Fr. *Au pair*, Ger. *zum Nennwert*, Sp. *Al par*, It. *Alla pari.*)

Stocks or shares are said to be "at par," when their market value and their nominal value are the same.

AT SIGHT. (Fr. *A vue*, Ger. *bei Sicht*, Sp. *A la vista*, It. *A vista.*)

This term is written on bills of exchange or promissory notes when they are drawn payable on demand. Days of grace (*q.v.*) do not attach to bills payable at sight.

ATS. These three letters are the first of the words "at the suit," and formerly in pleading it was customary to cite an action by naming first the defendant and afterwards the plaintiff, thus, "Jones ats. Smith." At the present day, except in proceedings in the Mayor's Court, London, the proper method is to give first the name of the plaintiff and afterwards that of the defendant, with the letter *v.* (a contraction for "versus") between, thus, "Smith *v.* Jones."

ATTACHMENT. (Fr. *Saisie, arrêt*, Ger. *Beschlagnahme*, Sp. *Embargo, secuestro*, It. *Arresto, sequestro.*)

There are two senses in which the word "attachment" is used, namely, attachment of persons and attachment of debts. The former takes place when an order of a court of record has been disobeyed. The person in default is seized and is kept in custody—not, of course, in the same manner and subject to the same discipline as criminal offenders—at the pleasure of the court for so long a period as is directed or until he has purged his contempt. The latter takes place when a judgment creditor is unable to obtain payment of his debt directly from the debtor, and is compelled to take proceedings by means of which he compels any debtor of his own debtor to pay the debt owing directly to him (the judgment creditor) instead of to the judgment debtor. Of course, when payment is obtained by this process of attachment, the debtor is exonerated from his indebtedness to the judgment debtor. This attachment of debts is generally carried out by what are known as garnishee proceedings. (See *Garnishee.*)

ATTESTATION. (Fr. *Attestation*, Ger. *Bescheinigung, Beglaubigung*, Sp. *Testificación*, It. *Attestato.*)

In order to lend additional force to certain documents, if they are ever in dispute, the person who signs the same will procure some other person or persons to signify, by adding their name or names, that the signature of himself is genuine and made under such circumstances that its validity ought not to be called in question. This is known as attestation.

At common law there was no necessity for a signature to be witnessed, and attestation is only compulsory now where it has been made so by statute. Even in the case of a deed, unless there is this legal obligation imposed, the signatures need not be attested, although it is not advisable to omit the formality. Again, even when attestation is essential, one witness is sufficient unless there is some statutory provision to the contrary.

No special words are required in attesting. It has become common, however, to use certain well-known forms in certain cases. Thus, in the case of a will, the attestation clause is almost invariably that given in the article *Will* (*q.v.*). In the case of deeds, the usual words are "Signed, sealed, and delivered by the above-named A.B. in the presence of . . . . . ," the attesting witness then adding his name, address, and occupation. In many cases, the word "witness" alone is used. Care should always be taken when a deed is signed by an illiterate person, who makes his "mark." The attestation clause suggested to meet the requirements of the case is the following: "Signed, sealed, and delivered by the above-named A.B., he having signed by a mark in consequence of being unable to sign his name, in the presence of us, the deed having first been read over and explained to him when he appeared perfectly to understand the same." This form presupposes two witnesses at least, but it is easily adaptable to the case where there is one only. It is obvious that a similar clause can be used with the necessary modifications when the deed is signed by a blind person. In agreements and documents not under seal, it is usual to use the words: "Witness to the signature of A.B." In attesting the execution of a document under seal by a company, the following form is used: "The common seal of the X. Y. Company, Ltd., was hereunto affixed in the presence of

A. B. }
C. D. } Directors.
E. F., Secretary.

ATTESTED COPY. (Fr. *Copie certifiée*, Ger. *beglaubigte Abschrift*, Sp. *Copia certificada*, It. *Copia verificata.*)

It is not always possible or convenient

to produce an original document, even when the same is required in a court of law. If, then, a copy is made of the original, and if the same is examined and collated by two persons who certify it as a correct copy, adding a signed declaration to that effect on the copy, this copy, which is known as an attested copy, may generally be given in evidence in place of the original. The following is a form of attestation which can be used at the foot of an attested copy: "We have carefully examined the foregoing with the original document and attest it to be a true copy thereof." The persons who sign will add their addresses and descriptions together with the date. Attested copies are also known as "certified copies."

ATTORNEY, POWER OF. (Fr. *Pouvoir, mandat*, Ger. *Vollmacht*, Sp. *Poder, mandato*, It. *Procura, mandato*.)

A power of attorney is a formal document which authorises one person to act for, or on behalf of, another. In business, such documents are much used to obtain payments from persons living in remote districts, or in foreign countries, without the necessity of the creditor appearing in person.

The authority of the attorney (Fr. *Avoué*, Ger. *Anwalt*, Sp. *Procurador*, It. *Procuratore*) must be strictly defined by the deed appointing him. The attorney is, in fact, the special agent of the person who grants the power. By the general law of agency, the authority is determined by the death or insanity (*inter alia*) of the donor. To prevent difficulties arising out of acts done by an attorney in the name of his principal after the termination of his authority by operation of law, and without the knowledge of the attorney and the person with whom the attorney is dealing, it has been enacted by sects. 8 & 9 of the Conveyancing Act, 1882, that a power executed under a power of attorney will be permanently effectual in favour of a purchaser, if the power of attorney is given for valuable consideration and expressed to be irrevocable, and will be effectual for a fixed time, whether given for a valuable consideration or not, if expressed to be irrevocable for a specified time, not exceeding one year from the date of the instrument.

The stamp required is a 10*s*. one.

There are, however, certain powers which are less heavily taxed, viz. :—

	s.	*d.*
Power to receive prize-money or wages	1	0
Power for sale, transfer, or acceptance of any Government funds not exceeding £100 . .	2	6
Power for receipt of dividends or interest of any stock, if for one payment only	1	0
Power for same in any other case	5	0
Proxy to vote at a meeting .	0	1

The following is a common form of a power of attorney :—

"Know all men by these presents that I, A. B. of etc., have made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint C. D. of etc., to be my true and lawful attorney for me in my name and behalf to ask, demand, sue for, enforce payment of and receive and give effectual receipts and discharges for all moneys, securities for money, debts, legacies, goods, chattels, and personal estate, of or to which I am now or may hereafter become possessed of or entitled to, or which are or may become due, payable, or transferable to me from or by any person or persons whomsoever. And upon receipt of any moneys under or by virtue of these presents, to pay the same to or deposit the same with any banker, broker, or other person on my behalf, and to lay out or invest the same or any part thereof in such stocks, funds, shares, or securities as he my said attorney shall think fit. And for the purposes aforesaid, or any of them, to sign my name to, and make, execute, and do on my behalf any cheques, contracts, agreements, deeds, transfers, assignments, instruments, and things whatsoever. And generally to act in relation to my estate and effects as fully and effectually in all respects as I myself could do, I hereby undertaking to allow, ratify, and confirm everything which my said attorney shall do or suffer by virtue of these presents. And I declare that this power shall be irrevocable for —— calendar months computed from the date thereof.

"In witness whereof I have hereunto set my hand and seal this first day of January, 1916.

"Signed, sealed, and delivered by the above-named A. B. in the presence of . . ."

The appointor signs and seals the power, and two witnesses must add their names and descriptions.

AUCTION. (Fr. *Enchère*, Ger. *Auktion, Versteigerung*, Sp. *Almoneda, subasta*, It. *Asta, incanto*.)

The method of selling property by competition is known as an auction.

It is said to have originated in ancient Rome, and to have been introduced for the purpose of disposing of spoils of war. Sales by auction are now conducted on different principles according to the custom affecting particular trades, localities, or effects. The most general mode is for a professional man, called an auctioneer, to offer the property for sale to persons assembled by advertisement, who compete for the purchase by bids, or offers of sums of money; and the person who bids last, or bids the highest amount, is declared to be the purchaser. Sales of this nature are governed by conditions which bind both the seller and the purchaser. These conditions are printed in the particulars of sale, or the catalogues of the articles to be sold. In a Dutch auction, the auctioneer commences by naming a high price, and gradually reduces it until some person closes with his offer. The Scotch term for an auction is "roup."

To prevent puffing, an Act was passed in 1867, with regard to sales of land by auction, making it necessary for a vendor to state in the particulars of sale whether the land is to be sold without reserve, or subject to a reserve price, or whether a right to bid is reserved.

The 58th section of the Sale of Goods Act, 1893, deals with sales of goods by auction.

"(1) Where goods are put up for sale by auction in lots, each lot is *primâ facie* deemed to be the subject of a separate contract of sale:

"(2) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner. Until such announcement is made, any bidder may retract his bid:

"(3) Where a sale by auction is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any other person; any sale contravening this rule may be treated as fraudulent by the buyer:

"(4) A sale by auction may be notified to be subject to a reserved or upset price, and a right to bid may also be reserved expressly by or on behalf of the seller.

"Where a right to bid is expressly reserved, but not otherwise, the seller, or any one person on his behalf, may bid at the auction."

In the case of a sale of land, or of an interest in land, there must be a note or memorandum in writing made to satisfy sect. 4 of the Statute of Frauds; and in the case of a sale of chattels, if any one article is sold for a price of £10 or upwards, there must also be a note or memorandum in writing to satisfy sect. 4 of the Sale of Goods Act, 1893.

As soon as the contract is completed, it is usual for the purchaser to pay a deposit, the amount and the time for payment of which are usually provided for in the terms of sale. The deposit is not merely a pledge, but it is a payment on account of the purchase-money. If the purchaser fails to complete the purchase, the vendor can retain the deposit and claim damages for the non-fulfilment of the contract. If the vendor is in default, the deposit must be returned to the purchaser, who has likewise a right of action against the vendor for breach of contract.

AUCTIONEER. (Fr. *Commissaire-priseur*, Ger. *Auktionator*, *Ausrufer*, *Versteigerer*, Sp. *Vendutero*, *Corredor de almoneda*, It. *Venditore all' incanto*, *venditore d'asta*.)

An auctioneer is a person licensed to conduct a sale of goods or other property by public auction for a reward, generally in the form of a commission. A woman may act as an auctioneer.

The cost of an auctioneer's licence is £10 per annum. The licence expires on the 5th July of each year; and if it is intended to renew it, the renewal must take place at least ten days *before* that date. The penalty for acting as an auctioneer without a licence is £100; for purporting to carry on business as such, £20. The holder of an auctioneer's licence may act as an appraiser or house-agent without any further payment; and as the licence is personal to the auctioneer, he may carry on his business at several different places. By an Act of 1845, an auctioneer is bound to put up in a public position in his sale-room, during the sale, his full name and address.

No licence is required by a person for the sale of goods and chattels under a distress for rent, nor for sales under the provisions of the Small Debts Acts of Scotland and Ireland.

The auctioneer is primarily the agent of the seller, and his authority may be revoked at any time before a sale takes place, unless the rights of third parties would suffer. After the sale he is presumed to be the agent of the purchaser for the purpose of signing the note or memorandum required by the Statute

of Frauds or by the Sale of Goods Act. This is a presumption which may, however, be rebutted.

The duties of an auctioneer are :—

(1) To obey the instructions of his principal.

(2) To carry out his duties himself, and not to delegate them to any clerk, unless he has authority, or unless there is a special custom for him to do so.

(3) To store and to keep the goods entrusted to him with proper care.

(4) To use his best efforts to obtain the highest price possible for the property sold.

(5) To receive the purchase-money in cash for goods sold by him before they are allowed to pass into the hands of the purchaser. (N.B.—In the case of a sale of land the auctioneer has only authority to receive the deposit, and not the whole of the purchase-money.)

If the auctioneer fails in any of these duties he is liable to an action for negligence on the part of the seller. He is, moreover, personally liable upon contracts which he was not authorised to make, or may sue upon them, unless he has disclosed the name of his principal. For example, without special instructions he has no power to warrant the goods which he sells. But he cannot successfully sue upon a contract which he has signed as agent.

An auctioneer who advertises the sale of certain goods by auction does not, by means of that advertisement alone, enter into any contract or warranty with the persons who attend the sale that the goods shall actually be sold. The advertisement is simply an invitation to come and offer. But where a sale is advertised without reserve, and some of the goods are put up and bid for, there is a binding contract between the auctioneer and the highest bidder that the particular goods shall be knocked down to him.

For his remuneration the auctioneer has a lien upon the goods in his possession. The scale of remuneration is either fixed by special contract or is according to the custom of the business. The usual scale of commission is: On the sale of land, 5 per cent. on the first £100; 2½ per cent. up to £5,000; and 1½ per cent. above that sum. On the sale of furniture, etc., 5 per cent. up to £500, and 2½ per cent. on the remainder. Where a sale is under a distress for rent, the rate of commission is fixed by the Distress for Rent Rules, 1888. (See *Bailiff*.) The cost of advertisements must be specially provided for. If no sale takes place, the commission payable is calculated upon the reserve.

An auctioneer may, in the course of his business, be liable for what is known in law as conversion, which has been defined as "an unauthorised act which deprives another of his property permanently or for an indefinite time." The liability depends upon whether the goods are dealt with for the purpose of passing the property in them, or whether there is simply a settling of the price or the performance of some other act which makes the auctioneer a mere intermediary between the supposed owner and the purchaser. For the former, the auctioneer is liable, for the latter, not. In the case of *Cochrane* v. *Rymill* (40 L.T. Rep. 744) it was said in the course of the judgment: "The defendant had possession of these goods; he advertised them for sale; he sold them, and transferred the property in them, and therefore from beginning to end he had control over the property; and unless we are prepared to hold contrary to all the definitions of conversion which have been laid down, we must hold that such acts amount to conversion. But the auctioneer will not be held guilty of conversion if he has not claimed to transfer the title nor purported to sell, but has simply re-delivered the chattels to the person to whom the man from whom he received them told him to deliver them."

The Auctioneers' Institute of the United Kingdom (Incorporated) is an association of auctioneers, valuers, and land, estate, and house agents, formed for the purpose of promoting the efficiency and usefulness of its members. There are seven district branches in England and Wales. Lectures are given monthly during the winter, and examinations are held once a year. The offices of the Institute are at 34, Russell Square, W.C.

AUDIT. (Fr. *Audition*, Ger. *Bücherrevision*, Sp. *Ajuste de cuentas*, It. *Verificazione d'un conto*.)

An audit is an examination of the accounts of any business concern by a person who hears or sees the statement, and who verifies the same by reference to vouchers, etc.

The object of an audit is to see that the accounts truly represent the state of affairs of the concern, and, if they are correct, the auditor usually signs a declaration to that effect.

AUDITOR. (Fr. *Censeur*, Ger. *Bücher-revisor*, Sp. *Contador, revisor de cuentas*, It. *Revisore, verificatore.*)

An auditor is a person who audits accounts. Such a person has also the right of examining, and hearing the explanations of persons who are responsible for the accounts under examination.

The employment of an auditor or of auditors is gradually becoming compulsory in many affairs, and various Acts of Parliament have been passed which contain "audit provisions." The principal of these have reference to Public Health, Municipal Corporations, Sheriffs, Local Government Bodies, Educational Authorities, Lunacy, Railway Companies, Oxford and Cambridge Universities, the Housing of the Working Classes, Building Societies, Friendly Societies, and Trustee Savings Banks.

The most important instance of the employment of auditors, however, is in connection with joint-stock companies, and several important cases have clearly set forth the duties and the liabilities of auditors. In the main these duties and liabilities are imposed in every kind of employment.

An auditor is, in fact, a kind of agent, and as such he comes within the general law applicable to agents. He must do his work with proper care and skill, and if damage results from his negligence he is liable to an action at the instance of any person who is damnified.

In quite recent times, Lord Justice Lindley has laid down the law as to the duties of auditors with great clearness. "Auditors are, in my opinion, bound to see what exceptional duties, if any, are cast upon them by the articles of the company whose accounts they are called upon to audit. Ignorance of the articles and of exceptional duties imposed by them would not afford any legal justification for not observing them. . . . It is no part of an auditor's duty to give advice either to directors or shareholders as to what they ought to do. An auditor has nothing to do with the prudence or imprudence of making loans with or without security. It is nothing to him whether the business of a company is being conducted prudently or imprudently, profitably or unprofitably. It is nothing to him whether dividends are properly or improperly declared, provided he discharges his own duty to the shareholders. His business is to ascertain and state the true financial position of the company at the time of the audit, and his duty is confined to that. But then comes the question: How is he to ascertain that position? The answer is: By examining the books of the company. But he does not discharge his duty by doing this without inquiry and without taking any trouble to see that the books themselves show the company's true position. He must take reasonable care to ascertain that they do so. Unless he does this, his audit would be worse than idle farce. Assuming the books to be so kept as to show the true position of a company, the auditor has to frame a balance sheet showing that position according to the books, and to certify that the balance sheet presented is correct in that sense. But his first duty is to examine the books not merely for the purpose of ascertaining what they do show, but also for the purpose of satisfying himself that they show the true financial position of the company. An auditor, however, is not bound to do more than exercise reasonable care and skill in making inquiries and investigations. He is not an insurer; he does not guarantee that the books do correctly show the true position of the company's affairs; he does not even guarantee that his balance sheet is accurate according to the books of the company. If he did he would be responsible for an error on his part, even if he were himself without any want of reasonable care on his part—say, by the fraudulent concealment of a book from him. His obligation is not so onerous as this. Such I take to be the duty of the auditor: he must be honest—i.e., he must not certify what he does not believe to be true, and he must take reasonable care and skill before he believes that what he certifies is true. What is reasonable care in any particular case must depend upon the circumstances of that case. Where there is nothing to excite suspicion, very little inquiry will be reasonably sufficient, and, in practice, I believe, business men select a few cases at haphazard, see that they are right, and assume that others like them are correct also. Where suspicion is aroused more care is obviously necessary; but, still, an auditor is not bound to exercise more than reasonable care and skill even in a case of suspicion, and he is perfectly justified in acting on the opinion of an expert where special knowledge is required. But an auditor is not bound to be suspicious as distinguished from reasonably

careful." In accordance with these principles it was held, in the case of the *Kingston Cotton Mills Co.* (1896), 2 Ch., 279, that auditors who, without any ground for suspicion, had accepted and acted upon the certificate of the manager of the company as to the amount and value of the stock of the company (the manager being an old and trusted servant of the company, of high character and competence, and trusted by all who knew him), were under no liability for the balance sheet drawn up, and upon which the directors declared a dividend, though the valuation was proved to have been false to the knowledge of the manager.

Since 1901 auditors have been necessary in the case of all joint-stock companies. The law is set forth in certain sections of the Companies Acts of 1900 and 1907 respectively ; and these sections are now repealed and re-enacted in the Companies (Consolidation) Act, 1908. The names and the addresses of the auditors must appear in the prospectus of the company (sect. 81), and the other sections dealing with auditors, their appointment and duties, are as follows:—

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

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

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

"(4) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a shareholder to the company not less than fourteen days before the annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to the shareholders, either by advertisement or in any other mode allowed by the articles, not less than seven days before the annual general meeting :

"Provided that if, after notice of the intention to nominate an auditor has been so given, an annual general meeting is called for a date fourteen days or less after the notice has been given, the notice, though not given within the time required by this provision, shall be deemed to have been properly given for the purposes thereof and the notice to be sent or given by the company may, instead of being sent or given within the time required by this provision, be sent or given at the same time as the notice of the annual general meeting.

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

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

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

"113.—(1) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors.

"(2) The auditors shall make a report to the shareholders on the accounts examined by them, and on every balance sheet laid before the company in general meeting during their tenure of office, and the report shall state—

"(*a*) whether or not they have obtained all the information and explanations they have required; and

"(*b*) whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company.

"(3) The balance sheet shall be signed on behalf of the board by two of the directors of the company or, if there is only one director, by that director, and the auditors' report shall be attached to

the balance sheet, or there shall be inserted at the foot of the balance sheet a reference to the report, and the report shall be read before the company in general meeting, and shall be open to inspection by any shareholder.

"Any shareholder shall be entitled to be furnished with a copy of the balance sheet and auditors' report at a charge not exceeding sixpence for every hundred words.

"(4) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated, or published, or if any copy of a balance sheet is issued, circulated, or published without either having a copy of the auditors' report attached thereto or containing such reference to that report as is required by this section, the company, and every director, manager, secretary, or other officer of the company who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding fifty pounds.

"(5) In the case of a banking company registered after the fifteenth day of August eighteen hundred and seventy-nine—

"(*a*) if the company has branch banks beyond the limits of Europe, it shall be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as have been transmitted to the head office of the company in the United Kingdom; and

"(*b*) the balance sheet must be signed by the secretary or manager (if any), and where there are more than three directors of the company by at least three of those directors, and where there are not more than three directors by all the directors."

An auditor's report is generally in some such form as the following—

"To the Shareholders of the A. B. Company, Limited.

"Ladies and Gentlemen,—

"I have audited the above balance sheet, and have obtained all the information and explanations I have required. Apart from the fact that I consider that the amount set aside as depreciation on machinery and plant to be insufficient, the above balance sheet is, in my opinion, properly drawn up so as to exhibit a true and correct view of the state of the company's affairs, according to the best of my information and the explanations given to me, and as shown by the books of the company. "I am,

"Your obedient servant,

"C. W., *Auditor*."

The remuneration to be paid to an auditor is always a matter of agreement, the amount depending upon the nature and extent of the audit. The general rule is to pay one inclusive fee.

AUTHOR'S PROOF. (Fr. *Épreuve*, Ger. *Druckprobe*, Sp. *Cuartillas de pruéba*, It. *Prova d'autore*.)

This is a copy of any printed matter sent to an author after the errors of the compositor have been corrected.

AVERAGE. (Fr. *Moyenne*, Ger. *Durchschnitt*, Sp. *Promedio*, It. *Media*.)

If any number of quantities are added together, and divided by the number of quantities, the quotient is the average. or the mean, as it is sometimes called. If, for example, five vessels contain respectively 7, 10, 6, 4, and 8 quarts of any liquid, these figures added together make 35, which, divided by 5, gives 7 as the average; that is, if each vessel contained 7 quarts the total quantity would be 35.

The word thus used as an arithmetical term is quite modern, though it has quite obscured the original meaning it had, viz., in connection with marine insurance.

AVERAGE. (Fr. *Avarie*, Ger. *Havarie*, Sp. *Avería*, It. *Avaria*.)

The original meaning of this word, and the one which it still retains in commerce, is damage or loss by sea. In a secondary sense it signifies a proportionate distribution among the underwriters or shipowners of the loss which has been sustained.

It appears that the traders of the Hanseatic League were the first to introduce the practice of marine insurance into England; and the term "average" is derived from them. The Norse word for sea is *haf*. The low Latin *averagium* is, without doubt, an adaptation by the Lombards of the English average. (See *Marine Insurance*.)

AVERAGE BOND. (Fr. *Assurance contre le jet à la mer*, Ger. *Havarieakte*, Sp. *Obligación de avería*, It. *Obbligazione di avaria*.)

This is a bond taken out by the captain of a vessel which has incurred a general average loss, and signed by the consignees of the cargo before any delivery is made to them, thereby binding them to pay their proportion of average as soon as it has been ascertained.

AVERAGE CLAUSE. (Fr. *Clause de jet à la mer*, Ger. *Havarieklausel*, Sp. *Cláusula de avería*, It. *Clausola di avaria*.)

This is a clause in a marine insurance policy, which provides that some articles shall be free from average unless general,

and that others shall be free from average if under a certain percentage named.

AVERAGE DUE DATE. (Fr. *Echéance moyenne*, Ger. *Durchschnittsverfalltag*, Sp. *Vencimiento medio*, It. *Scadenza media.*)

When various accounts fall due on separate dates, it is sometimes convenient to be able to determine on what date one single payment can be made so as to settle up the whole. This date is called the "average due date," or sometimes the "equated time."

AVERAGE, GENERAL. (Fr. *Avarie générale*, Ger. *allgemeine Havarie*, Sp. *Avería gruesa*, It. *Avaria generale.*)

"All loss which arises in consequence of extraordinary sacrifices made, or expenses incurred, for the preservation of the ship and cargo comes within general average, and this must be borne proportionably by all who are interested."

The term is applied to the apportionment of loss which takes place. The law applicable to apportionment is generally determined by the agreement of the parties; but if not, that of the port of destination of the ship prevails. In order to render the practice in general average uniform, a set of rules, known as the York-Antwerp Rules, were drawn up in 1877, and these are becoming generally adopted, especially in marine insurance policies, when the adjustment of losses has to be made between underwriters and not between individual consignors of goods and the shipowner. A new set of rules was suggested at a conference held in Glasgow in the autumn of 1901.

General average implies that the whole adventure has been in jeopardy.

In order that general average may arise there must have been,

(*a*) A loss incurred intentionally;

(*b*) The avoidance of a danger common to the interests of all parties;

(*c*) An absolute necessity for some sacrifice to be made;

(*d*) The preservation of the ship and some portion of the cargo; and

(*e*) No default on the part of the person whose interest has been sacrificed.

AVERAGE, PARTICULAR. (Fr. *Avarie particulière*, Ger. *besondere Havarie*, Sp. *Avería particular*, It. *Avaria speciale o particolare.*)

Any loss occasioned through damage to the ship or the cargo, which is not for the benefit of all parties, or which has arisen through accident, is known as particular average. Loss of an anchor, damage to goods by sea-water, and the falling of goods overboard are examples. Losses of this kind remain where they fall, and must be borne by the owners of the goods or by the insurance companies, if they have been insured. But no compensation can be claimed from any other persons whose goods are on board.

If the loss is a partial one the amount of it is estimated by deducting the sale price of the damaged goods from the original market value.

AVERAGE STATEMENT. (Fr. *Dispache*, Ger. *Dispache*, Sp. *Estado de averías*, It. *Regolamento dell' avaria.*)

This is the statement made by an average stater or adjuster, when a claim is made in case of general average. It sets forth the amount of contribution to be paid by the various parties who have been concerned in the sea adventure, and whose goods have been saved by the sacrifice made.

AVERAGE STATER OR ADJUSTER. (Fr. *Dispacheur, Régulateur des avaries*, Ger. *Dispacheur*, Sp. *Tasador de averías*, It. *Liquidatore dell' avaria.*)

This is a person skilled in marine insurance affairs, who, when the insured are claiming indemnity for loss, is employed to prepare statements of the averages previous to their being adjusted by the underwriters, such statements often being of a most elaborate and intricate character, requiring great skill and experience in drawing them up.

AVERAGING. (Fr. *Donner pour prix commun*, Ger. *Durchschnittspreis*, Sp. *Fijar un término medio*, It. *Fissare un prezzo medio.*)

This is the system by which a speculator increases his transactions at a higher or a lower figure when the price moves against him, so that the average price of the whole will be higher or lower than that at which he originally purchased or sold. A bull (*q.v.*) would average by buying a further quantity as the price fell away, and a bear (*q.v.*) by selling a further quantity as the price rose against him.

AVOIRDUPOIS. (Fr. *Avoir-du-poids*, Ger. (*Englisches*) *Handelsgewicht*, Sp. *Peso comun*, It. *Misura inglese di peso.*)

Avoirdupois is the name given to the system of weights used, both in England and in America, in general commerce. The ounce contains 437½ grains. The value of the grain is set forth in the Act of Parliament, 5 Geo. IV, c. 74, in the following words: "A cubic inch of distilled water weighed in air, by brass

weights, at the temperature of 62° of Fahrenheit's thermometer, the barometer being at 30 inches, is equal to 252 grains and four hundred and fifty-eight thousandth parts of a grain." The pound avoirdupois contains 7,000 such grains.

AWARD. (Fr. *Jugement arbitral*, Ger. *Schiedsrichterspruch*, Sp. *Decisión arbitral*, It. *Sentenza degli arbitri.*)

An award is the finding or decision of an arbitrator or arbitrators, or their umpire, on matters in dispute between parties, before or after litigation.

There is no special form required by law in which an award should be made, nor need the award be in writing; but a written award is necessary where there has been a written submission, unless a contrary intention is expressed in the submission.

The award must embody the decision of the arbitrator or umpire himself, though its form may be settled by another person, e.g., the solicitor of the arbitrator. If there are more arbitrators than one, the award must be signed by each of them, and this must be done at the same time and in one another's presence.

The award must be made within three months of the submission to arbitration, unless the time is extended by notice given by the arbitrator or umpire to the parties. It is not usual for the award to be delivered except upon payment of the costs of the arbitrator or umpire. The amount of the costs may be fixed by the arbitrator himself if the submission does not otherwise provide, and the court will not interfere unless the amount is excessive.

In the absence of any misconduct on the part of the arbitrator or umpire, or of an excess of authority which invalidates the whole arbitration, the award is a final and conclusive judgment on all matters referred by the submission as between the parties, and the court will not interfere with it either by altering or amending it.

An award requires a stamp of 10*s.* This was fixed by the Revenue Act, 1906. Prior to that date there had been *ad valorem* duties imposed, varying from 3*d.* for awards where the amount or value did not exceed £5, to £1 15*s.* 0*d.* where the amount or value exceeded £1,000.

The award has the same legal effect as a judgment of the court and, if it is not satisfied, bankruptcy proceedings may be founded upon it.

As stated above, there is no specia form in which an award should be drawn up. The following, however, may serve as a specimen :—

"To all to whom these presents shall come, I A. B. of etc. send greeting. Whereas by an agreement in writing bearing the date of etc. and made between C. D. of etc. of the one part and E. F. of etc. of the other part, the said parties agreed to refer all matters and difference between them to me (*here set out in detail all the matters in dispute*). Now know ye that I the said A. B. having taken upon myself the burthen of the said arbitration, and having heard and duly considered all the allegations and evidence of the said respective parties of and concerning the said matters in difference and so referred as aforesaid, do make and publish this my award in writing of and concerning the said matters so referred to me, and do hereby award that (*here state in full the whole decision of the arbitrator*).

"In witness whereof I have hereunto set my hand this 15th day of June, 1916.

"A. B."

"Witness, X. Y. of etc."

B. This letter occurs in various abbreviations. The following are the principal :—

B/E, Bill of Exchange.
B/L, Bill of Lading.
B/P, Bill of Parcels, or Bills Payable.
B.P.B., Bank Post Bill.
B/R, Bills Receivable.
B/S, Bill of Sale.

BACK-BOND. (Fr. *Hypothèque*, Ger. *Hypothek*, Sp. *Hipoteca*, It. *Ipoteca.*)

This is a bond given by one who is the absolute owner of a property so as to reduce his right to that of a trust, his original right being stipulated to be given back on payment of the money borrowed on the bond.

BACKED-NOTE. (Fr. *Permis d'embarquement*, Ger. *Ladeschein*, Sp. *Guía*, It. *Permesso d'imbarcare.*)

This is a shipping term for a receiving note bearing the indorsement of a shipbroker. It is an authority for goods to be brought in barges alongside a ship, and for the officer in charge of the vessel to take them on board.

BACKWARDATION. (Fr. *Déport*, Ger. *Deportgeschäft*, Sp. *Interés que paga el bajista*, It. *Deporto, interesse pagato da chi giuoca al ribasso.*)

There is said to be a backwardation on securities when they can be bought cheaper for the account than for money.

The term is also used to represent the rate of interest, either of so much per share, or so much per cent., charged or allowed for carrying forward a bear transaction to the next settlement.

BAGGAGE. (Fr. *Bagages*, Ger. *Gepäck*, Sp. *Equipaje*, It. *Bagaglio.*)

This is a general term used to denote luggage, wearing apparel, personal effects, etc., which are taken on board ship by passengers, and even for their accommodation and use during a voyage. In America, the word is also used to denote luggage carried by land.

BAIL. This word is used with a twofold meaning :—

1. To indicate the person (Fr. *Garant*, Ger. *Bürge*, Sp. *Fiador judicial*, It. *Garante*) who undertakes to go surety for the appearance of another in a court of law to answer a charge made against him, so that this other person may enjoy his freedom whilst awaiting his trial; and

2. To indicate the security (Fr. *Caution*, Ger. *Bürgschaft*, Sp. *Seguridad*, It. *Cauzione, garanzia*) given for such re-appearance.

The word is derived from the low Latin, *baila*, a nurse, or the Old French *bail*, a guardian or tutor.

BAIL-BOND. (Fr. *Caution*, Ger. *Bürgschaftsschein*, Sp. *Garantia*, It. *Cauzione.*)

This is the name of the bond given by a prisoner and his surety upon the prisoner being bailed.

BAILEE. (Fr. *Dépositaire*, Ger. *Depositar*, Sp. *Depositario*, It. *Depositario.*)

A bailee is a person to whom goods are delivered in trust under a contract.

BAILER or **BAILOR.** (Fr. *Déposant*, Ger. *Deponent*, Sp. *Fiador*, It. *Depositante.*)

This is a person who delivers goods to another in trust under a contract, to be held until reclaimed by the depositor.

BAILIFF. (Fr. *Huissier, intendant*, Ger. *Gerichtsvollzieher, Verwalter*, Sp. *Alguacil del juzgado*, It. *Usciere, birro, fattore o agente di campagna.*)

The literal meaning of this word is one who has goods placed under his bail or control. The modern meanings are :—

(1) An agent, or an overseer acting on behalf of a superior. The word is derived from the middle Latin *ballivus*, from the classical Latin *bajulus*, and signifies a burden-bearer. In this sense it is now usually applied in particular to a land steward.

(2) A legal officer, acting under the sheriff, who is employed for the purpose of making arrests, levying executions, or distraining for rent. The sheriff himself is the King's bailiff, and his county is called his bailiwick.

A bailiff of a county court is one who acts under the supervision and direction of an official of the court, called the High Bailiff. No person can act as such without obtaining a certificate of fitness from a county court judge, and the certificate will be cancelled if the judge is satisfied that there has been any irregularity or misconduct on the part of the bailiff. The bailiff must produce his certificate if called upon to do so by any person upon whose goods he levies an execution or a distress.

The fees to which a county court bailiff is entitled are set out in the following table. The table itself, together with a list of the certified bailiffs of the district, must be posted up in every county court office.

TABLE OF FEES, CHARGES, AND EXPENSES.

I. *Distresses for rent where the sum distrained for is more than* £20.

For levying distress : 3 per cent. on any sum exceeding £20 and not exceeding £50 ; 2½ per cent. on any sum exceeding £50 and not exceeding £200, and 1 per cent. on any additional sum.

For man in possession, 5*s.* per day ; the man to provide his own board in every case.

For advertisements, the sum actually and necessarily paid.

For commission to the auctioneer : on sale by auction, 7½ per cent. on the sum realised not exceeding £100 ; 5 per cent. on the next £200 ; 4 per cent. on the next £200, and on any sum exceeding £500, 3 per cent. up to £1,000, and 2½ per cent. on any sum exceeding £1,000. A fraction of £1 is in all cases reckoned as £1.

Subject to settlement by the registrar in case of dispute, reasonable fees, charges, and expenses are allowed where the distress is withdrawn, or where no sale takes place, and for negotiations between landlord and tenant respecting the distress.

For appraisement (*q.v.*) on the written request of the tenant, whether by one broker or more, 6*d.* in the £ on the value as appraised, in addition to the amount of the stamp.

II. *Distresses for rent where the sum distrained for does not exceed* £20.

For levying distress, 3*s.*

For man in possession, 4*s.* 6*d.* a day ; the man to provide his own board in every case.

For appraisement, on the written

request of the tenant, whether by one broker or more, 6*d*. in the £ on the value as appraised, in addition to the amount for the stamp.

For all expenses of advertisements, if any, 10*s*.

Catalogues, sale and commission, and delivery, 1*s*. in the £ on the net produce of the sale.

Subject to settlement by the registrar in cases of dispute, if the goods are removed at the request of the tenant, the reasonable expenses attending such removal are also allowed.

BAILMENT. (Fr. *Depôt, rémise*, Ger. *anvertrautes Gut, Deposit*, Sp. *Depósito*, It. *Deposito*.)

This is the name given to the delivery of a thing by one person to another in trust for some special object or purpose, and upon a contract, express or implied, to conform to the object or purpose of the trust.

Lord Holt divided bailments into six classes: *depositum, mandatum, commodatum, vadium, locatio rei*, and *locatio operis faciendi*. Of these the first two are for the benefit of the bailor alone, the third for the benefit of the bailee, and the remainder for the mutual benefit of the bailor and the bailee.

(1) *Depositum*. This is the delivery of goods to be taken care of for the bailor, the bailee receiving nothing for his trouble, e.g., the common case of one neighbour asking another to take care of articles of value during the absence of the former from home. The bailee has no right to use the articles deposited, except at his own risk, and must return them on demand. Whilst they are under his charge he is only responsible for gross negligence, and the question of the amount of negligence will generally depend upon the particular facts of the case. Thus, a bailee cannot be held responsible for a theft of the goods deposited, which happened through no fault of his own, nor for loss arising out of the action of third parties, nor for the consequences of a mere accident, such as fire. In a recent case the plaintiff brought an action to recover damages for the loss of an overcoat through the negligence of the defendant, a restaurant keeper. It appeared that the plaintiff entered the restaurant for the purpose of dining, and that a waiter took his overcoat from him, without being requested to do so, and hung it on a peg behind the plaintiff. The coat was stolen. It was held that there was evidence to warrant a verdict for the plaintiff on the ground that there was evidence from which a jury might find that the defendant was a bailee of the overcoat, and that he had been guilty, through his servant, of negligence while it was in his custody. On the other hand, where an author sent a manuscript play to a theatrical manager, and the latter lost it, in the absence of any evidence of wilful negligence it was held that the manager could not be held responsible for the loss.

If money is deposited for safe custody, as distinguished from money deposited by way of a loan, no right of action to recover the same arises until a demand has been made by the depositor, and therefore the Statute of Limitations, which allows six years within which an action arising out of a simple contract must be commenced, only runs from the date of the demand.

(2) *Mandatum*.—This is the delivery of goods for the purpose of something being done with them, the bailee not being remunerated for his trouble. Unless there is a special undertaking on the part of the bailee to be responsible for the goods handed to him, he is only liable, as in the case of *depositum*, for gross negligence. But he must use any special skill that he happens to possess. In an old case a horse was delivered to the defendant by the plaintiff in order that the former should ride it and show it for sale. It was proved that the defendant was a person conversant with horses; and in an action brought by the plaintiff for injuries sustained by the horse through the negligent riding of the defendant, it was held that the defendant was liable, although he did not receive any reward for his services.

(3) *Commodatum*.—This is the lending of an article or articles to be returned in the same condition as at the time of the loan, reasonable wear and tear excepted. If the article or articles to be returned are not the identical ones lent, but others of equal value, e.g., postage stamps or money, the bailment is said to be *mutuum*, and not *commodatum*.

Since the benefit of such a bailment is for the bailee alone, he is responsible for the slightest negligence. But if the articles perish by inevitable accident he will be excused. This is only true as to *commodatum*. In *mutuum*, on the other hand, the right of property and the risk pass immediately upon delivery to the bailee, and he must restore the

equivalent to the bailor whatever happens.

It is the duty of the bailor to inform the bailee of any known defects in the articles deposited.

The bailee has no lien upon the goods lent to him for any antecedent debts due to him, and he is not entitled to retain them until the bailor pays the expenses to which he has been put in connection with their custody.

(4) *Vadium.*—This is the contract of pawn. (See *Pawn* and *Pawnbroker.*)

(5) *Locatio rei.*—This is the deposit of goods upon hire. The degree of negligence for which a hirer is answerable is intermediate between that of the first two and the third of the class of bailments. The test may be laid down to be the degree of care which might be expected from a prudent man in dealing with his own property. The terms of the bailment will generally be indicated in the hiring agreement, and the bailee must not do anything inconsistent with these terms, otherwise the bailment is at an end.

There is an implied warranty on the part of the letter that the goods hired are reasonably fit for the purpose for which they are supplied, and that they are free from all unreasonable defects. (See *Hire Purchase.*)

(6) *Locatio operis faciendi.*—This is the deposit of goods upon which labour is to be expended, and for which the bailee is to be remunerated. Bailees of this class include wharfingers, carriers, etc. The measure of liability in this class of bailment is generally the same as that in the case of *locatio rei*, but this may be increased by reason of the known or professed skill of the bailee.

BALANCE. (Fr. *Balance, Solde d'un compte*, Ger. *Saldo, Unterschied in der Rechnung*, Sp. *Saldo*, It. *Saldo.*)

This, in banking accounts and commercial statements, is the difference between the two sides of an account, or the sum required to make the debtor and the creditor sides equal in amount.

In the weekly report of the Bank of England it is called the "rest."

BALANCE OF TRADE. (Fr. *Balance du commerce*, Ger. *Handelsbilanz*, Sp. *Balanza del comercio*, It. *Bilancia del commercio.*)

This term is used to express the difference between the money value of the exports and the imports of a particular country. The balance is erroneously, and without meaning, said to be in favour of, or against a country according as the exports or the imports are in excess of each other. The balance of trade regulates the rate of exchange, but it is impossible to draw conclusions from it either as to the positive gain of a country, or as to its gain relatively to that of the country with which the balance arises.

"There is," says M'Culloch, "no jugglery in commerce. Whether it is carried on between individuals of the same country, or of different countries, it is, in all cases, founded on a fair principle of reciprocity. Those who will not buy need not expect to sell, and conversely. It is impossible to export without making a corresponding import. Nothing is obtained from a foreigner gratuitously; and, hence, when restraints are placed upon importations, there is, by the very act, a similar restraint placed upon exportations to an equivalent amount in value. All that the exclusion of foreign commodities ever effects is the substitution of one sort of demand for another.

"It has been said that when we drink ale and stout we consume the produce of British industry, whereas, when we drink port or claret we consume the produce of the industry of the Portuguese or French, to the obvious advantage of the foreigner and the prejudice of our own fellow-countrymen; but this is not so. We either send directly to Portugal or France an equivalent in British produce, or we procure bullion and send that bullion to the Continent to pay for the wine. Hence, it is as clear as the sun at noonday, that the Englishman who drinks only French wine gives, by occasioning the exportation of a corresponding amount of British corn, hardware, leather, or other produce, the same encouragement to the industry of his countrymen that he would were he only to consume British produce."

It is immaterial whether money or native produce is given in exchange for imported goods. At the same time, it must be understood that when money is given, there must exist some active industry in the country by which the money is realised. As a general question in commerce it is of no consequence what is the nature of the industry by which the money is produced. It may consist in:—

(1) Raising superabundant crops, or other raw produce, such as meat, for export, as in the case of Australia, New Zealand, and Canada.

(2) Manufacturing raw and comparatively valueless materials into articles of value and demand, as in the case of the United Kingdom.

(3) Carrying goods from one country to another, as is again the case with the United Kingdom.

Unless a country possesses one or more of these branches of industry it is without the means of paying for imported articles, and must retire from the field of general commerce.

The United Kingdom has not a large enough area to export superabundant crops of grain; but it possesses, in an extraordinary degree, the means of manufacturing raw materials, such as cotton, wool, flax, minerals, etc., into articles of exchange; and it derives no inconsiderable profit from the carriage of commodities.

British manufactured goods, therefore, pay for imports of foreign articles, including bullion, or the raw material of money; and these, again, in a manufactured state, are a fund for the payment of still further imports. Thus, the wealth of the country has increased, and is still on the increase.

The attainment of a favourable balance of trade was, for many years, regarded as an object of the greatest importance. The precious metals, in consequence of their being used as money, were long regarded as the only real wealth that could be possessed by individuals or by nations; and as countries without mines could only obtain supplies of these metals by exchanging exported products for them, it was concluded that, if the value of the commodities exported exceeded that of those imported, the balance would have to be paid by importing an equivalent amount of the precious metals, and conversely. A very large proportion of the restraints imposed upon freedom of commerce during the last three hundred years grew out of this notion, which was called the "mercantile system."

The importance of possessing a favourable balance being universally admitted, every effort was made to retain it; and nothing seemed so effectual for this purpose as devising schemes to facilitate the export and to hinder the import of almost all products that were not intended for future export, except gold and silver.

It is now conceded, on all hands, that gold and silver are but commodities in the ordinary sense of the word; that, considered as such, there is nothing exceptional about them; and that it is in no respect necessary to interfere, either to encourage their importation, or to prevent their export, for they are the least profitable of all merchandise.

The proper business of a wholesale merchant consists in carrying the various products of the different countries of the world from those places where their value is least to those where it is greatest; or, what amounts to the same thing, in distributing them according to the effective demands.

It is clear that there can be no motive to export any kind of produce unless it is intended to import goods of a greater value; and so an excess of exports over imports, instead of being an indication of advantageous commerce, is exactly the reverse. As the late Professor Thorold Rogers said: "A vast excess of imports over exports does not mean that the country is spending more than it receives, but just the contrary, receiving more than it spends, and receiving it in the most advantageous manner."

The truth is that unless the value of imports exceeds the value of exports, foreign trade cannot be carried on. Were this not the case, that is, were the value of exports always greater than the value of imports, merchants would lose on every transaction with foreigners, and trade with them would speedily be abandoned.

It is almost impossible to compare the real value of imports with the real value of exports. The value of an exported commodity is estimated at the moment of its being sent abroad, and before its cost is increased by the expense of transporting; whereas, the value of a commodity imported in its stead is estimated after it has arrived at its destination; and, consequently, after its cost has been enhanced by the expense of freight, the cost of insurance, and the profits of the importer.

Even when a balance is due from one country to another, it is not always evident from the fact that one country is sending gold to the other. The laws which regulate the trade in bullion are not in any degree different from those which regulate the trade in other commodities. Bullion is exported only when its exportation is an advantage, or when it is more valuable abroad than at home.

The value of the imports of the United Kingdom has been vastly in excess of that of the exports for nearly half a century. The large excess of the

imports is accounted for in the following manner. It includes :—

(1) The interest on British capital invested abroad. It is computed that the amount of capital so employed exceeds three thousand millions sterling.

(2) The cost of carriage, which is largely carried on by this country, the profit of which amounts to over seventy millions annually.

(3) Sundry payments and earnings, such as trade profits.

BALANCE SHEET. (Fr. *Bilan, balance,* Ger. *Bilanz, Rechnungsabschluss,* Sp. *Balance,* It. *Bilancio.*)

A balance sheet is a commercial document showing a summary and balance of accounts. Every man of business, even if only for his own satisfaction, makes up a balance sheet annually. The document should show :—

(1) The value of all goods, etc., possessed by the merchant ;

(2) The money debts owing to him ;

(3) The value of other property belonging to him ; and

(4) A complete list of all debts and other obligations due by the merchant.

"A full and fair balance sheet must be such a balance sheet as to convey a truthful statement as to a company's position. It must not conceal any known cause of weakness in the financial position, or suggest anything which cannot be supported as fairly correct in a business point of view."

By statute every limited banking company, and every insurance company, deposit, provident or benefit society, must, before it commences business, and also on the first Mondays of February and August in each year, make a statement of its capital, liabilities and assets, in a prescribed form. A copy of the same must be posted in a conspicuous place in the registered office of the company, and in every branch or place where the business of the company is carried on.

As to auditors and the balance sheet of a company, see sect. 113 of the Companies (Consolidation) Act, 1908, which is set out in the article, *Auditor.*

BALANCING BOOKS. (Fr. *Établir une balance,* Ger. *Bücherabschluss,* Sp. *Abalanzar los libros,* It. *Bilancio di chiusura o di verificazione.*)

By this term is understood the periodical closing and adjusting of all accounts in the ledger by bankers, merchants and traders, for the purpose of ascertaining the profits or losses made during a certain period.

BALE. (Fr. *Balle, colis,* Ger. *Ballen,* Sp. *Bala, fardo,* It. *Balla, collo.*)

The word bale really means a ball; but it is generally used to indicate a large parcel of merchandise bound up and held together by cordage or iron strips, or wrapped up in canvas, tarpaulin, etc.

BALLAST. (Fr. *Lest,* Ger. *Ballast,* Sp. *Lastre,* It. *Zavorra.*)

This term, which is derived from two Anglo-Saxon words, *bat,* a boat, and *läst,* a load, may mean either :—

(1) Heavy matter placed in the hold of a ship to keep it steady when it has no cargo, or when the cargo is of low specific gravity ; or

(2) The sand or gravel laid between railway sleepers to give them solidity.

BANCO. (Fr. *Banco,* Ger. *Banko,* Sp. *Banco,* It. *Banco.*)

The literal meaning of this word is a bench or a bank. It is a term used to distinguish the standard money in which a bank keeps its accounts from the current money of the place.

BANCO, SITTING IN. (Fr. *Pleine assise,* Ger. *Kollegialgericht,* Sp. *Reunión en pleno,* It. *Riunione, seduta plenaria.*)

This is the term applied to the judges at the Law Courts when sitting together in a superior court of common law, as distinguished from a judge sitting at Nisi Prius, or on circuit. The principal business of courts in banco is now carried on in the Divisional Courts of the High Court, which consist sometimes of two, and at others of three judges, of the King's Bench Division.

BANK. (Fr. *Banque,* Ger. *Bank,* Sp. *Banco,* It. *Banca.*)

A bank was originally a bench set up in the market-place for the exchange of money. In a commercial sense it is an establishment where money is received on deposit, to be repaid on demand, or otherwise as may be arranged, and where loans are negotiated, bills discounted, and other financial business conducted. Bankers also act as monetary agents for customers not engaged in business, receiving payments from dividends and other sources, and taking charge of valuable property and securities. Some banks are banks of issue, that is, they are empowered, under certain restrictions, to issue notes payable on demand. In many cases, especially with joint-stock banks, a small interest is paid by the bank for deposits of a permanent character, which can be employed to advantage. The deposits, over and above a certain

sum which a banker must have at hand to meet daily claims, are advanced in various ways as loans. The best and safest mode of employing such funds is considered to be in the discounting of good mercantile bills of exchange; that is, bills representing *bonâ fide* transactions of trade and commerce. A banker sometimes makes advances upon the deposit of exchequer bills or other government securities, railway debentures, bills of lading, dock warrants, and such like. If depositors have the power of demanding the amount of their deposits without notice from the banker, while he usually makes his advances for a fixed or definite period, it is evident that he must always have on hand a considerable sum uninvested, or invested in such a manner, as, for instance, in the public funds, that it can be immediately realised to meet such claims. The amount necessary for this purpose is known as the banking reserve. Sometimes a run is made upon a bank, either from some feeling of distrust in the bank itself, or from the occurrence of a commercial panic, and depositors eagerly desire the return of all their deposits. To prepare for this possibility, there must be a far larger reserve than would in ordinary cases be required; and the surplus over the amount likely to be needed under ordinary circumstances is generally deposited in the Bank of England.

In banks of issue, where the banker is at liberty to issue bank notes to a certain amount, it is evident that the profit derived therefrom is equal to the interest upon the difference between the average amount of notes in circulation and the amount of specie required to be kept to meet them, less the expense of their manufacture. If, however, a banker was obliged to keep dead stock or bullion equal to the amount of his notes in circulation, he would make no profit. But for a banker in good credit, it is considered that a fourth or a fifth part of this sum is usually sufficient.

Besides serving as places for the safe custody of money, and allowing interest on deposits, banks are of great use in affording a safe and rapid means of transference of money from one place to another. A debtor in Edinburgh or Dublin pays to his banker there the sum which he wishes to convey to his creditor in London. The banker, for a small commission, furnishes him with a draft, or letter of credit for the amount on a banker in London, from whom the creditor, on presenting the draft, receives the sum of money. With the increased facilities of transit and means of communication, it is also possible to transmit sums of money through the agency of banks to nearly every part of the world.

The primary division of banks is that just noticed, viz., banks of deposit and banks of issue. Another division, according to their formation, is into joint-stock banks and private banks. Owing to various circumstances, however, private banks are rapidly diminishing in number; and even the number of separate joint-stock banks is on the decline, through the amalgamations which have taken place in recent years. The Bank of England is a peculiar corporation, and differs in many respects from all other banks. (See *Bank of England.*)

In Scotland the system of banking developed more quickly than in England. The Bank of Scotland was instituted in 1695, one year after the foundation of the Bank of England. There are two other banks incorporated by charter—the Royal Bank, in 1727, and the British Linen Company, in 1746—seven joint-stock, but no private banks. It was at one time customary to allow interest on current accounts, but this custom is now practically abolished. Interest is now paid only on fixed deposits for one month and upwards. One pound notes are circulated, as well as notes for any number of pounds without a fraction. These notes, which are issued by a branch Scotch bank, are only payable at the head office.

In Ireland there is the National Bank, established in 1783, with powers somewhat akin to those of the Bank of England, nine joint-stock banks, and two private banks. Of the nine joint-stock banks six are banks of issue. Notes for one pound, and for any exact number of pounds, are in circulation. These notes are payable at the place of issue, as well as at the head office when issued at a branch of the bank. On this account the branches of Irish banks are compelled to keep sufficient gold in hand to meet their own notes.

Banker and Customer.—The relationship between a banker and his customer is simply that of debtor and creditor; but by the custom of bankers there is added the additional obligation on the part of the banker of repaying the debt owing when called upon to do so by the draft or order of the customer.

The banker is in no sense a trustee

of the money which he receives from his customer. He has, in fact, bought the money and can use it in any way he pleases, and the customer has only the right to demand back an equivalent sum, either on demand or at a time mutually agreed upon in the case of a deposit. If this were not so, a customer might call upon the banker to account for any profits made by the latter in using the deposit for the purposes of his business.

From the fact that the relationship is merely that of debtor and creditor, it follows that a banker might, if he chose, take advantage of the Statute of Limitations, and refuse to refund any sum which has been deposited with him for six years and never operated upon by the customer. It is, however, the practice of bankers, when funds are lying at their banks which are legally their own money, not to inquire for claimants to the same, but at the same time not to insist on their legal rights under the Statute of Limitations against claimants who make good their claims. It is generally supposed that the "unclaimed balances" held by bankers amount to a very large sum, and various suggestions have been made as to the manner in which they should be utilised for the public benefit. No satisfactory scheme, however, has yet been put forward to meet the case.

The obligation to pay on demand throws a serious liability upon the banker, for if the latter fails to honour a draft of the customer when there is a balance lying at the bank in his favour, whether actually or through arrangements as to an overdraft, the banker is liable in an action for damages for the injury done to the credit of the customer.

A banker may not disclose the state of a customer's account without justifiable cause. What cause is justifiable will depend upon the circumstances of each particular case. But the knowledge of a banker is not privileged, and he may be compelled to give evidence of his knowledge in a court of law. Also the entries in the books of the bank may be called for, though in order to prevent the inconvenience arising from the actual production of the books, certified copies of the entries may be put in evidence, in accordance with the provisions of the Bankers Books Evidence Act, 1879.

The duty and authority of a banker to pay cheques drawn upon him by a customer are determined by (*a* countermand of payment, (*b*) notice of the customer's death, and (*c*) notice of an available act of bankruptcy.

Plate, jewels, and other valuables are often deposited with a banker for safe custody. This is a case of bailment, and the liability of the banker will depend upon the circumstances under which the articles are deposited, and whether the banker is a gratuitous bailee or a bailee for hire. The articles deposited must be returned to the depositor, and if by any chance the banker delivers the articles placed with him for safe custody to an unauthorised person, he may be liable in an action for damages for conversion. The true extent of the banker's liability has never been accurately determined. Since it is a well-known fact that a banker is a person who has the goods of others in his possession, these goods will not fall within the "order and disposition" clause of the Bankruptcy Act, in case the banker becomes bankrupt. They must be returned to the depositor.

If a banker misappropriates any deposits of a customer, he may be indicted for larceny.

Bankers' Lien.—Lien, which is the right to retain possession of a thing until a claim is satisfied, extends to bankers by the Law Merchant. Therefore a banker has a right to retain all securities deposited in his hands by a customer for his general balance, unless there is a special contract to the contrary. He may also go further, and realise the securities in order to pay himself out of the proceeds, in the same manner as a pawnee.

Bank Manager.—The bank manager is the general agent of the bank, and the bank is responsible for every act done by the manager within the scope of his authority, even for a fraud which is committed in the course of business.

This is so important a point, that the judgment in the leading case of *Barwick* v. *English Joint - Stock Bank*, 1867, L.R. 2 Ex. 259, where an action was successfully brought against a bank for damages caused by certain false representations made by the manager to the plaintiff, is worth quoting: "With respect to the question whether a principal is answerable for the act of his agent in the course of his master's business and for his master's benefit, no sensible distinction can be drawn between the case of fraud and the case of any other wrong. The general rule is that the master is answerable for every such wrong of the

servant or agent as is committed in the course of the service and for the master's benefit, though no express command or privity of the master be proved. That principle is acted upon every day in running-down cases. It has been applied also to direct trespass to goods, as in the case of holding the owners of ships liable for the act of masters abroad improperly selling the cargo. It has been held applicable to actions of false imprisonment, in cases where officers of railway companies, entrusted with the execution of by-laws relating to imprisonment and intending to act in the course of their duty, improperly imprison persons who are supposed to come within the terms of the by-laws. It has been acted upon where persons employed by the owners of boats to navigate them and to take fares have committed an infringement of a ferry, or such like wrong. In all these cases, it may be said, as it was here, that the master has not authorised the act. It is true he has not authorised the particular act, but he has put the agent in his place to do that class of acts, and he must be answerable for the manner in which the agent has conducted himself in doing the business which it was the act of his master to place him in."

BANK BILL. (Fr. *Billet de banque*, Ger. *Bankzettel*, Sp. *Billete de banco*, It. *Biglietto bancario.*)

This is a bill of exchange issued or accepted by a bank.

BANK CHARTER. (Fr. *Privilège de la banque*, Ger. *Bankprivilegium*, Sp. *Privilegio de banco*, It. *Privilegio della banca.*)

This is the name given to the special charter of incorporation under which the Bank of England enjoys its peculiar privileges.

BANK HOLIDAYS. (Fr. *Fêtes légales*, Ger. *Bankfeiertage*, Sp. *Fiestas anuales*, It. *Feste legali, vacanze bancarie.*)

By an Act of Parliament passed in 1871, certain days were appointed as holidays. In England and Ireland they are Easter Monday, the Monday in Whitsun week, the first Monday in August, the 26th December (or, alternatively, the 27th December, if the 26th falls on a Sunday), and any other day appointed as such by royal proclamation. In Scotland, the following days are statutory bank holidays: New Year's Day, Christmas Day (or, if either of these falls on a Sunday, the next following Monday), Good Friday, the first Monday in May, and the first Monday in August. Days appointed by royal proclamation as bank holidays apply to Scotland as well as to England and to Ireland.

BANK, JOINT-STOCK. (Fr. *Banque anonyme, banque par actions*, Ger. *Aktienbank*, Sp. *Banco de acciones*, It. *Banca per azioni.*)

A bank in which the capital is subscribed by the shareholders as distinguished from a private bank, in which the capital is provided by the sole proprietor or by the partners.

Every bank which originally consisted of more than six members was called a joint-stock bank, and was founded on the principle of unlimited liability. The oldest of this class are the London and Westminster, founded in 1834, the London Joint-Stock, 1836, the Union, 1839, and the London and County, also 1839. But owing to the restrictions of the Companies Act, 1862, which prohibited the establishment of any banking company, unless registered under the Act, or formed in pursuance of some special Act or of letters patent, consisting of more than ten persons, and the provisions of the Companies Act, 1879, the majority of joint-stock banks have now become registered, and the principle of limited liability applies to them as to joint-stock companies, and the Companies (Consolidation) Act, 1908, is the statutory enactment which governs them.

The limitation of liability of a registered joint-stock bank does not extend to the note issue in the case of banks of issue.

BANK MANAGER. (See *Bank.*)

BANK NOTES. (Fr. *Billets de banque*, Ger. *Banknoten*, Sp. *Billetes de banco*, It. *Biglietti di banca.*)

Bank notes are promissory notes issued by a bank, payable to bearer on demand. They differ from ordinary promissory notes in various respects, the chief being that they may be reissued after payment. But this is not the practice of the Bank of England. Their notes are never reissued, but after payment in are cancelled, kept in safe custody for five years, and then destroyed.

By the Bank Act, 1892, if a Bank of England note has not been presented for payment within forty years of its issue, the Bank is empowered to write off the amount under certain conditions mentioned in the Act.

The privilege of issuing bank notes is exclusively reserved to the Bank of England for the City of London and

within a circle of three miles round, and the monopoly within a sixty-five mile radius is only shared by those banks which enjoyed the right of issuing notes up to 6th May, 1844, and have not since lost their privileges. Bank of England notes are not subject to stamp duty—those of a country banker are, the scale being fixed by the Stamp Act, 1891.

No notes may be issued for a less sum than five pounds in England. (The issue of £1 and 10*s*. Treasury notes in 1914 was occasioned by the outbreak of the Great European War, and sanctioned by a special Act of Parliament. It remains to be seen whether they will become a permanent part of our currency.) In Scotland and Ireland, notes may be issued, by banks of issue, for any number of pounds, from one upwards.

Bank of England notes are legal tender in England for sums above £5, except at the Bank itself or at one of its branches. They are not legal tender in Scotland or Ireland, although they circulate with the utmost freedom. Country notes are not legal tender, and a country banker is not bound to accept his own notes. even in payment to himself. Of course, if he refused to pay them when presented, he could be sued in a court of law for their amount.

Since bank notes are negotiable instruments, the finder of a lost note is entitled to retain it against the whole world, except the rightful owner, and any one who takes such a note from the finder *bonâ fide* and for value can retain it even against the lawful owner. The same thing applies to a note which has been stolen and afterwards negotiated, provided the holder has taken it in good faith and given value for it. There is not much efficacy in the so-called "stopping the payment" of bank notes. If notice is given to a bank that notes have been lost or stolen, it may be possible to trace the channels through which they have passed since they were last in the possession of the rightful owner, but a *bonâ fide* holder is in no way prejudiced or liable to restore them.

Bank notes are often cut into halves and remitted by post under different covers. The halves must be pasted together before being presented for payment. This mutilation does not affect the negotiability of the notes, whereas a banker would refuse payment of a cheque or a bill which had been cut or torn and then pasted together again.

BANK OF DEPOSIT. (Fr. *Banque de dépôt et consignation*, Ger. *Depositenbank*, Sp. *Banco de depósito*, It. *Banca di deposito*.)

A bank of deposit receives money, at an agreed rate of interest, on condition that a certain prescribed notice shall be given previous to withdrawal of the same. By this plan, the necessity of keeping a large sum on hand, earning no interest, is avoided; there is no necessity to prepare for a sudden emergency; and the capital can be invested in securities paying a higher rate of interest than is given by the public funds or other securities which can be immediately realised.

BANK OF ENGLAND. (Fr. *Banque d'Angleterre*, Ger. *Bank von England*, Sp. *Banco de Inglaterra*, It. *Banca d' Inghilterra*.)

The Bank of England, which is the largest and most important banking establishment in the world, was projected by William Paterson, a Scotsman, and it received its charter of incorporation in the year 1694. It was constituted as a joint-stock company with a capital of £1,200,000, that sum being lent at interest to the Government of the day.

According to its charter, the management of the Bank of England is committed to a governor, deputy governor, and twenty-four directors, elected by the stockholders. At first the charter of the bank was for eleven years only; but in consequence of the great services it has rendered to the Government at various times, its charter has been renewed again and again, the last time being under the Bank Charter Act, 1844. The original capital of £1,200,000 was gradually augmented until, in the year 1816, it reached the sum of £14,553,000, upon which the stockholders draw dividends, and at this sum it still remains. The profits of the bank arise out of traffic in bullion, discounting bills, interest on loans, allowances for managing the public debt, and so on.

The bank has, besides, at different times, paid other dividends, under the name of bonuses. A bonus is a sum of money derived from the division of a fund which has been allowed to accumulate or to remain for use in case of emergency. The emergency having passed, the fund has been divided, and such bonuses of the Bank of England have varied from five to ten per cent.

The Bank of England differs from any other bank in this country, inasmuch as it is the banking house of the

Government. All the money drawn in the form of taxes or otherwise for the public service is consigned to the bank, while all drafts for the public service are likewise made on it.

A special advantage conferred on the Bank of England is the privilege of being the only bank in London, or within sixty-five miles of it—subject to a slight exception—which may issue notes payable to bearer on demand, its notes being a legal tender by any one except itself for sums of upwards of £5.

BANK OF ISSUE. (Fr. *Banque de circulation*, Ger. *Notenbank*, Sp. *Banco de emisión*, It. *Banca di emissione.*)

A bank of issue is one which issues its own notes payable to bearer on demand. The Bank of England has a monopoly in the issue of notes in London and within a circle of three miles round. Beyond three miles and within sixty-five miles, the monopoly is shared with banks established before 1844. After the sixty-five mile limit, the monopoly is shared with all banks established before 1844, which have not since lost their privileges.

Shareholders in a bank of issue are liable for the amount of notes outstanding, in case of the insolvency of the bank, although the bank itself may have been registered with limited liability under the Companies Acts.

BANK POST BILLS. (Fr. *Mandats de Banque*, Ger. *Bankanweisungen*, Sp *Giros al portador*, It. *Vaglia bancari a termine.*)

These are bills which can be obtained at the Bank of England and any of its branches, free of charge for any sum of money, between £10 and £1,000, payable to order, upon depositing the sum for which the bill is required. Such bills are payable seven days or sixty days after sight, and are not subject to days of grace.

The following is the form of such a bill :—

"BANK OF ENGLAND POST BILL.
No ———

London, January 1, 1916.

At seven days' sight I promise to pay this my Sole Bill of Exchange to Samuel Johnson, or order, one hundred pounds sterling, value received of Thomas Robinson.

For the Governor and Company of the Bank of England,

£One Hundred. A.—— B.—."

The seven days' interest for the use of the money is accepted by the Bank as sufficient remuneration for their part in the transaction.

These bills originated in 1738 in consequence of the frequent robberies of the mail, the object being that in case the mail was robbed the owner of the bill might have time to give notice of the robbery, and prevent payment being made to an unauthorised person.

BANK, PRIVATE. (Fr. *Banque privée*, Ger. *Privatbank*, Sp. *Banco privado*, It. *Banca privata.*)

A private bank is one carried on by an individual, or by a number of persons not exceeding ten in number. When the bank is carried on by more than one person, it is simply an ordinary partnership. The law of partnership applies in case of insolvency, and each partner is liable to the creditors of the bank to the full extent of his property. Owing to the large amount of capital required for banking purposes, no private bank has been established for many years.

BANK RATE. (Fr. *Agio de banque*, Ger. *Bankdiskont*, Sp. *Tipo bancario*, It. *Aggio bancario, tasso della banca.*)

The bank rate is the price at which the Bank of England expresses its willingness to grant loans, or to discount bills of exchange. The rate is fixed at the weekly meeting of the directors of the Bank, held each Thursday.

Periodical financial conditions of the money market will cause the rate to vary from time to time, but the main reason for the variation is the supply of, and demand for, gold. Gold will always tend to go in the direction where it can be most profitably employed, and it is of the utmost importance for the Bank to take care that its reserve stock of gold and bullion is not too far reduced, seeing that it is upon that reserve that our whole commercial system practically depends.

BANK RETURN. (Fr. *Etat de banque*, Ger. *Bankausweis*, Sp. *Estado del banco*, It. *Bollettino della banca.*)

This is the weekly report issued by the Bank of England, every Thursday afternoon, showing the financial condition of the Bank. The form and the details of the report are prescribed by the Bank Charter Act of 1844. In the return are shown the amount of notes in circulation, the stock and bullion in reserve, and such other matters as enable city men to judge of the state of the money market and of its probable tendency.

The following is a copy of the return for the week ending Wednesday, June 23, 1909 :—

Issue Department.

Dr.	£
Notes issued . . .	57,706,245
Cr.	
Government debt . .	11,015,100
Other securities . .	7,434,900
Gold coin and bullion .	39,256,245
	£57,706,245

Dr. *Banking Department.*	£
Proprietors' capital .	14,553,000
Rest	3,107,086
Public deposits . . .	13,409,696
Other deposits . . .	44,890,022
Seven-day and other bills	47,660
	£76,007,464

Cr.	£
Government securities .	15,368,812
Other securities . .	30,707,163
Notes unemployed . .	28,328,680
Gold and silver coin . .	1,602,809
	£76,007,464

The first item mentioned in the return, notes issued, means the amount of Bank of England notes circulating in the country, or held in reserve by different banks.

The Government debt is the amount owing to the Bank of England by the Government. It was originally £1,200,000, the first capital of the bank, when it was established in 1694. It has stood at its present total, £11,015,100, since 1816.

"Other securities" are the interest bearing investments, selected by the directors. These vary in value from time to time.

The gold coin and bullion item sufficiently explains itself.

In the banking department the proprietors' capital is the same as what is known as the share capital in joint-stock banks. It has remained invariable since 1816.

The "rest" is the reserve kept by the bank for the payment of dividends to the proprietors. It is always maintained at a total exceeding three millions, and the excess over that sum is the amount paid half-yearly in dividends.

Under the head of public deposits are included the moneys paid in on account of the Exchequer, the Savings Banks, the Commissioners of the National Debt, the Paymaster-General, etc. The Bank of England being the banking house of the nation, all national revenues are paid in by the various collectors as soon as they are received.

The item "other deposits" includes all other sums paid into the bank by various Government offices, the deposits of different banks, and the ordinary banking accounts of individuals.

Seven-day and other bills are known as bank post bills. They represent the money paid into the bank for bills which have been issued.

"Government securities" consist of consols, exchequer bills, treasury bonds and other securities for the due payment of which the Government is responsible. The taxes are a pledge for the fulfilment of the obligation created.

"Other securities" are the investments, etc., made at the discretion of the directors.

The notes are those Bank of England notes which are obtained from the Issue Department, and for which gold coin and bullion are exchanged.

BANK STOCK. (Fr. *Actions de banque*, Ger. *Bankaktien*, Sp. *Acciónes de banco*, It. *Azioni bancarie.*)

This is the capital of the banking department of the Bank of England. When the bank was established in 1694, the amount of its capital was £1,200,000, but it has gradually increased, and since 1816 it has stood at the sum of £14,553,000. Any amount of bank stock may be purchased, provided it does not involve the fraction of a penny.

BANKER. (Fr. *Banquier*, Ger. *Bankier*, Sp. *Banquero*, It. *Banchiero.*)

A banker is a person employed in the business of banking.

The general duties of a banker, his mode of transacting business, and his relationship to the customers of the bank are given under *Bank.*

For the consideration and discussion of matters of interest to bankers, and for the purpose of affording opportunities for the acquisition of a knowledge of the theory of banking, the Institute of Bankers was founded in 1879. Papers on banking and financial subjects generally are read from time to time, and discussions take place before the Institute, whose official publication is the *Journal of the Institute of Bankers.* There is an annual examination for the certificate of the Institute, which attracts a large number of candidates. The offices are situated at 34, Clement's Lane, Lombard Street, E.C.

BANKERS BOOKS EVIDENCE ACT, 1879. (See *Pass Book.*)

BANKERS' CHEQUES. (Fr. *Chèques*, Ger. *Bankierchecks*, Sp. *Talones bancarios*, It. *Tratte dei banchieri.*)

These are cheques issued by one

banker upon another, as an easy means for the transmission of money.

BANKERS CLEARING HOUSE. (See *Clearing House.*)

BANKER'S LIEN. (See *Bank.*)

BANKING. (Fr. *Banque*, Ger. *Bankiergeschäfte*, Sp. *Banca*, It. *Sistema bancario.*)

Banking is the business of a banker, such as lending money, receiving deposits, issuing notes, and discounting bills. (See *Bank.*)

BANKING HOURS. (Fr. *Heures de la banque*, Ger. *Bankstunden*, Sp. *Horas bancarias*, It. *Ore di banca.*)

These are the hours during which banking business is transacted. The usual time is between 10 a.m. and 4 p.m., with a half-holiday on one day in the week. But in recent years many London banks have opened at 9 a.m.; and on and after the 1st December, 1915, the closing hour was fixed at 3 p.m. The banking hours are naturally very limited in small towns and villages, and the banks in such places give a clear notification of the days and hours during which business is carried on.

BANKRUPT. (Fr. *Failli*, Ger. *Bankrottierer*, Sp. *Quebrado*, It. *Fallito.*)

In colloquial language, a bankrupt is a person who is unable to pay his just debts. Legally, he is a person who has been adjudicated a bankrupt by the Court of Bankruptcy.

BANKRUPTCY. (Fr. *Faillite*, Ger. *Bankrott*, Sp. *Quiebra*, It. *Fallimento.*)

By bankruptcy is meant the state of being, or the act of becoming, a bankrupt.

The modern law of bankruptcy is based upon the principle that if a person becomes hopelessly involved in difficulties, and is unlikely to be able to meet his obligations at any time, some effort should be made to extricate him from that position. This is accomplished by dividing the debtor's property equitably among his creditors, and releasing him, under certain conditions, from all future liability as to his past debts and obligations. When his discharge has been obtained, a bankrupt may not, except on a new consideration, make a binding promise to pay any debts contracted by him prior to his bankruptcy and from which bankruptcy legislation has released him.

The first statute relating to bankruptcy was passed in the reign of Henry VIII, and since that time various other statutes have been passed to alter and amend the law relating to the subject. The greatest change in modern times, however, was made by the Bankruptcy Act, 1883, which, with various amending Acts, remained in force until the passing of the Bankruptcy Act, 1914. This last-mentioned Act is now the ruling statute, but it has to be borne in mind that, although it professes to consolidate the law upon the subject of bankruptcy, certain sections of the older Acts are still unrepealed and must be referred to for particular points.

The courts which administer the law of bankruptcy are the High Court for bankruptcies within the metropolitan district, and the various county courts, if they have had jurisdiction conferred upon them, for bankruptcies within the area of their divisions. A special judge is appointed for the bankruptcy work in London, and he is assisted by officials who are called registrars in bankruptcy. The Board of Trade is also entrusted with very important powers and duties in connection with bankruptcy proceedings.

In considering where proceedings should be commenced, the residence or the place of business of the debtor is a most important factor. If he has resided or carried on business within the metropolitan district for a longer period during the preceding six months than anywhere else, or if he is resident abroad, or if his place of residence is unknown, the High Court is the proper place in which to present the petition. Otherwise the county court of the district in which he has resided or carried on business for the longest period during the said six months must be selected.

Who may be made Bankrupt.—As a rule any person who has the capacity to contract may be made bankrupt. It is doubtful whether an infant can be made bankrupt at all, the better opinion being that he cannot. If an infant is a member of a partnership firm which is made bankrupt, the infant will be excluded from the proceedings in bankruptcy. But the whole of the partnership assets will be available for the partnership debts. The infant's separate estate, however, will not be touched. A married woman is now liable to be made bankrupt, as far as her separate estate is concerned, if she is carrying on a trade, whether separately from her husband or not, as though she was a *feme sole ;* and if she is made a bankrupt, her separate estate, even though there is a restraint on anticipation, may be taken possession of in respect of her indebtedness. When a final judgment

or order for any amount is obtained against a married woman, whether it is or is not expressed that the amount is to be payable out of her separate property, the judgment or order is available for bankruptcy proceedings by bankruptcy notice. Unless, however, she is engaged in trade, a married woman cannot be made bankrupt at all. A lunatic, so found by inquisition, can be made bankrupt if the act upon which the petition is founded was committed during a lucid interval, or if his committee (that is, the person who has charge of the lunatic's estate), or the court consents to such a course being taken. A convict may be adjudicated a bankrupt, even after conviction.

Aliens are subject to the bankruptcy laws as well as British subjects. But in order that a petition may be presented against an alien, it must be shown :—

(*a*) That he is domiciled in England, or

(*b*) That he has ordinarily resided, or had a dwelling-house or place of business, in England within a year of the presentation of the petition. It was held, however, by the House of Lords, in the case of *Cooke* v. *Vogeler & Co.* 1901, A.C. 102, that there was no jurisdiction to make a receiving order against a foreigner resident abroad who, without coming into the jurisdiction, had in this country had a place of business, contracted debts, and acquired assets, and had executed abroad an assignment of his property for the benefit of his creditors. This decision, however, has been altered by the provisions of the Bankruptcy Act, 1914; and now an alien is subject to the English bankruptcy jurisdiction if he has traded in this country by himself or through an agent, or if he is a member of a firm carrying on business in England, whether he has been here or not.

A joint-stock company cannot be made bankrupt ; it must be wound up, and the same remark applies to a partnership registered under the Companies (Consolidation) Act, 1908. Although a dead man cannot be made bankrupt, his estate may be administered in bankruptcy.

The Petition.—In order that proceedings in bankruptcy may be taken against a person, it is necessary that a petition should be presented to the proper court, either by the debtor himself or by a creditor, and that a receiving order should be made upon the petition. This cannot be done unless an act of bankruptcy has been committed, that is, unless the debtor has been guilty of some act or default which is deemed to be evidence of his insolvency. The various acts of bankruptcy are set out in the Bankruptcy Act, 1914. (See *Act of Bankruptcy.*) In addition to the petition of the debtor or a creditor, the court may, upon an application for the committal of a judgment debtor, make a receiving order against him instead of committing him.

In order that a creditor may petition the following conditions must be fulfilled :—

(1) The debt owing by the debtor to the petitioning creditor (or to two or more creditors if the petition is presented jointly) must amount to £50 at least.

(2) The debt must be an ascertained or liquidated sum, payable immediately or at some future certain date.

(3) The act of bankruptcy relied on must have been committed within three months previous to the presentation of the petition.

(4) The debtor must be a person who is liable to be made a bankrupt by the law of England.

If the debtor is the petitioner, the court will generally make a receiving order at once. But this is not always the case. In the case of *In re Betts*, 1901, 2 K.B. 39, it appeared that the debtor, with the intention of evading committal orders made against him upon judgment summonses, presented a bankruptcy petition against himself, upon which a receiving order was made. He had previously at short intervals and with the same object presented two other bankruptcy petitions upon which receiving orders had been made, and was an undischarged bankrupt under three bankruptcies. It was held that the presentation of the petition by the debtor under such circumstances was an abuse of the process of the court, and that no receiving order ought to be made.

If the petition is presented by a creditor, an affidavit must be filed verifying the facts contained in the petition, a copy of the petition must be served on the debtor, and then the petition will be heard after an interval of not less than eight days from the date of the service. On the hearing the court will make a receiving order or dismiss the petition as it thinks fit.

Whoever presents the petition must pay the stamp duty of £5, and make the

deposit required by the bankruptcy rules. This is in order to cover the necessary expenses. If no such deposit was required, the court would be flooded with debtors' petitions.

The Receiving Order.—When the court is satisfied with the proof of the facts alleged in the petition, and the debtor is unable to urge any valid reason why the petition should be dismissed, it will make a receiving order against him. The order is served upon the debtor and advertised in the *Gazette.*

The effect of the order is to make the Official Receiver, who is a public officer appointed by the Board of Trade, the receiver of the property of the debtor. It deprives the creditors of all remedies, except in the bankruptcy, against the property or person of the debtor, unless they are secured creditors, or their debts are not provable in bankruptcy. The court has, moreover, power to stay all proceedings in any action which may be pending at the date of the petition.

After the making of a receiving order, the court may, from time to time, for any period not exceeding three months, order that the letters, telegrams, and other postal packets addressed to the debtor shall be re-directed and delivered through the Post Office to the Official Receiver, or to the trustee of the debtor's estate, or otherwise as the court itself may direct.

Statement of Affairs.—The debtor must deliver a statement of his affairs to the Official Receiver. It must be in a prescribed form. It must be prepared and delivered within three days from the date of the receiving order, if the receiving order is made on the petition of the debtor, and within seven days of the date of the receiving order, if the petition has been presented by a creditor. For the purpose of making the statement as clear and full as possible, the Official Receiver may require and compel the personal attendance of the debtor.

Meetings of Creditors.—The making of a receiving order must be carefully distinguished from an adjudication of bankruptcy. Whether this course is to be adopted or not will be decided at one of the meetings of the creditors. In many cases there is but one meeting, and this, the first of a series if there are several, must be held, as a rule, within fourteen days after the date of the receiving order. The principal matter for consideration will be the statement of affairs presented by the debtor, a summary of which, together with any observations upon it made by the Official Receiver, will have been supplied previously to each of the creditors. The debtor must be present, unless good cause is shown to the contrary, at the first meeting at least.

The creditors who are entitled to take part in the proceedings are those who have proved their debts, that is, satisfied the Official Receiver that they have *bonâ fide* legal claims against the estate of the debtor. They may take part either personally or by proxy. (See *Proof of Debts.*)

Three courses are open to the creditors :—

(1) They may agree to accept a composition in satisfaction of their debts. This is always advisable when there is nothing suspicious in the conduct of the debtor, as it saves all the costs of the bankruptcy proceedings.

(2) They may agree to a scheme for the arrangement of the affairs of the debtor. The acceptance or rejection of any such scheme as may be offered by the debtor will depend upon the special circumstances of each case.

(3) They may resolve that the debtor shall be adjudged a bankrupt.

A resolution for the adoption of the first or second course must be carried by a majority in number and a three-fourths majority in value of the creditors present who have proved their debts. A bare majority in value is sufficient to carry out the third course. In each case the consent of the court must be obtained, and if the composition or the scheme of arrangement is accepted and approved the receiving order is rescinded. (See *Deed of Arrangement.*)

In addition to the resolution of the creditors that a debtor shall be adjudged a bankrupt, there are other reasons which will induce the court to pronounce an adjudication, viz. :—

(*a*) If the creditors at their meeting pass no resolution.

(*b*) If the creditors hold no meeting at all.

(*c*) If the composition or scheme of arrangement falls through.

(*d*) If the debtor has absconded and failed to give a proper account of his affairs.

Notice of the adjudication of bankruptcy must be duly advertised in the *Gazette.*

Public Examination.—This is an ordeal through which every debtor must go,

unless the receiving order made against him has been rescinded, or unless he is suffering from such mental or physical affliction or disability as to make him unfit, in the opinion of the court, to attend. The date is fixed by the Official Receiver as soon as possible after the debtor has delivered his statement of affairs. The examination is held in open court, and the evidence is taken on oath. Any questions may be put to the debtor by the Official Receiver as to his conduct, his dealings and his property, and the same privilege is granted to any creditor who has proved his debt. Notes of the examination are taken down in writing, are read over to and signed by the debtor, and may thereafter be used in evidence against him, that is, if criminal proceedings are instituted against the bankrupt by reason of his conduct in the management and disposal of his property. The examination may be adjourned, and cannot be declared closed until after the first meeting of the creditors, or the time appointed for the same if the creditors do not, in fact, meet.

The Trustee.—The Official Receiver acts for the protection of the property of the debtor, being in the position of a receiver (*q.v.*), until a trustee is appointed, or acting in that capacity during any interval when there is no trustee. The trustee is generally appointed by the creditors, subject to the approval of the Board of Trade. Sometimes the creditors first of all appoint a committee of inspection (*q.v.*), consisting of from three to five members, and the selection of the trustee is left in their hands. In any case, the trustee must give satisfactory security for the due performance of his duties. As soon as the appointment is made, the whole of the debtor's property passes from the Official Receiver, and vests in the trustee. This is by operation of law. No actual transfer is necessary.

The duties of the trustee are given under the head of Trustee in Bankruptcy.

Realisation of the Debtor's Property.—The property which is available to the trustee for the payment of the debts of the bankrupt consists of:—

(1) His movable property, wherever situated. The only deductions allowed are the tools of the bankrupt's trade, and the wearing apparel and bedding of himself, his wife and his children, to the value of £20.

(2) His immovable property, that is, land and leaseholds, situated within the jurisdiction. That situated elsewhere will not pass to the trustee until a conveyance has been made to him by the bankrupt acting, if necessary, under the order of the court.

(3) Goods belonging to other persons which are, at the commencement of the bankruptcy, in the possession, order, or disposition of the bankrupt. But in order that they may be taken it must be shown that the goods are held in possession in the course of trade or business, with the consent of the true owner, and under such circumstances as to lead to the inference that the bankrupt is the reputed owner. (See *Reputed Ownership.*)

The title of the trustee dates back to the commencement of the bankruptcy and continues until the discharge is granted. And for the purposes of the Act the bankruptcy is held to have commenced at the time of the commission of the act of bankruptcy upon which the petition was founded, and if there are more acts than one then at the time of the commission of the first of such acts within three months of the presentation of the petition.

Certain transactions, however, are "protected." Thus, *bonâ fide* payments to creditors, and conveyances for valuable consideration, made prior to the receiving order, are perfectly valid, and a *bonâ fide* conveyance for value, during the continuance of the bankruptcy, of any property which has been acquired by the bankrupt, is also valid, unless the trustee has previously intervened. Formerly this rule as to the validity of a conveyance of property during the continuance of a bankruptcy was only applicable in the case of personal property. The purchaser got no valid title when the property conveyed was real estate. This was known as the rule in *Cohen* v. *Mitchell*, 1890, 25 Q.B.D. 262. Under the new bankruptcy law, there is now no distinction between real and personal property conveyed by an undischarged bankrupt *bonâ fide* and for valuable consideration. The purchaser gets a good title in each case. Again, the personal earnings of a bankrupt, so far as they are required for the maintenance of himself, his wife, and his family, are safe from the hands of the trustee, as well as any right of action to recover damages for a tort, which affects the bankrupt personally and not his estate. But if the debtor is in the enjoyment of an official salary or

pension, the court may order a portion of the same to be set aside for the benefit of the creditors. If the bankrupt is a beneficed clergyman, the trustee in bankruptcy may apply for a sequestration order; and if this is granted, the profits of the benefice will be devoted to the payment of the bankrupt's debts, the debtor being allowed a stipend out of the same equal to that which might have been paid to a curate duly licensed to serve the benefice in case the bankrupt had been non-resident.

If the bankrupt has a "power of appointment," that is, a right to direct the disposal of any property given to him under any will or settlement, and the power is exercisable by him in his own favour, the court will compel him to exercise the power, and the trustee will take the benefit. But the trustee can make no claim upon property which the bankrupt holds in trust for others, nor upon property which has been settled upon the bankrupt by another person—but not by himself—with a proviso that the same shall pass over to others in case of bankruptcy. It would be contrary to public policy for a man or a woman to be allowed to tie up his or her own property and then to rush into extravagance without the creditors having any opportunity of obtaining payment of their debts.

Invalid Assignments of Property.—In addition to the property which devolves upon a trustee, in accordance with what has just been stated, it may happen that the trustee will be entitled to other property of which the bankrupt has made assignments within a period which renders such assignments invalid. It has been already stated that fraudulent preferences made within three months of the date of the receiving order are liable to be set aside. But there are other transactions which may be declared invalid though dating much further back. The principal of these are voluntary settlements. A voluntary settlement is one which is made in consideration of natural love and affection; and, although such a consideration is designated "good" in law, it is not "valuable." Settlements made for a valuable consideration, which includes marriage, cannot be set aside except on the ground of fraud. The voluntary settlements affected by the bankruptcy law are (1) those made within two years; (2) those made within ten years of the bankruptcy. The first are absolutely void against the trustee; and so are the second, unless it is shown that at the time of making the settlement the bankrupt was perfectly solvent without taking into consideration the property included in the settlement.

An illustration will make this clearer. A. is entitled to, or owns, certain property. If at any time he parts with the same to a *bonâ fide* purchaser, or makes a settlement of it in favour of another person from whom he receives what is equivalent to a valuable consideration—something which is not illusory or a cloak for fraud—the settlement is good, and the trustee in bankruptcy has no claim upon the property. The same rule holds good if the settlement is made before, and in consideration of marriage. But if, for example, after marriage A. settles his property upon his wife, without taking any value for it, the settlement is absolutely void if it is made within two years of the commencement of bankruptcy proceedings against him, and it is also void if made within ten years, unless A. can clearly prove that at the time he made the settlement his remaining property was sufficient to meet the whole of his existing liabilities. By the new bankruptcy law, protection is extended in the case of property settled upon a wife or children after marriage, if the property has accrued to the settlor after marriage in right of his wife.

An invalid assignment cannot be set aside if the property has been transferred by the assignee to a third person for a valuable consideration.

If a creditor has issued execution against the property of the debtor, he cannot retain the benefit of his execution if a receiving order is made before the execution is completed, or while the money realised by the sale of the debtor's goods still remains in the hands of the sheriff.

The above are the principal points to be borne in mind as to invalid assignments of property. For further details, sects. 42–44 of the Bankruptcy Act, 1914, must be consulted.

Disclaimer.—Some of the property of the debtor may be saddled with considerable burdens, and the retention of it would diminish, rather than increase, the total amount of money realisable for distribution amongst the creditors. The trustee is entitled in such a case within certain limits and with proper permission, to disclaim the property. The disclaimer relieves the

trustee from all responsibility with respect to it. (See *Disclaimer*.)

Secured Creditors.—A creditor who holds a mortgage, charge, or lien upon any of the property of the bankrupt is said to be "secured." If the security is of a valuable character, it is the best course for the secured creditor to take no steps whatever in the bankruptcy proceedings on his own initiative. He is certain to get his money in any event. The trustee cannot interfere with his security, unless he is willing to pay its estimated value together with an addition of twenty per cent. of such value. But if for any reason it is not considered advisable to stand by quietly, the secured creditor has various courses open to him. He may give up his security and prove in the bankruptcy for the whole of his debt, or he may realise his security, and, if it is insufficient to meet his claim, prove for the difference, or he may assess the value of his security and prove for the deficiency. At a meeting of the creditors, if the second course has been adopted, the secured creditor can only vote in respect of any balance due to him, and not on account of his whole debt. The creditors who are not protected by securities are called "unsecured creditors."

The question of proving their debts by creditors is fully dealt with in the article entitled *Proof in Bankruptcy*.

Distribution of Property.—When the trustee has realised the whole or a substantial portion of the debtor's property, it is his duty to divide the same rateably among the creditors who have proved their debts, after making certain deductions for expenses and preferential claims.

The first of these preferential claims are the expenses connected with the bankruptcy proceedings. They must be paid in full if the assets are sufficient to meet them.

The next are the claims governed by the Preferential Payments in Bankruptcy Act, 1888, the terms of which, although now repealed, have been re-enacted and enlarged by the Bankruptcy Act, 1914. They are, (*a*) all rates and taxes due and payable within the twelve months prior to the commencement of the bankruptcy, not exceeding in the whole one year's assessment; and (*b*) the wages and salaries of clerks and workmen employed by the bankrupt, limited, in the case of a clerk, to services rendered during the preceding four months and not exceeding £50, and in the case of a workman to two months' service and £25. If the bankrupt is a beneficed clergyman, a curate has a preferential claim to the extent of four months' stipend, not exceeding £50. Under the Workmen's Compensation Act, 1906, any award made under that Act before the date of the receiving order is a preferential claim also to the extent of a sum not exceeding £100. Again, all contributions payable under the National Insurance Act, 1911, by the bankrupt, in respect of employed contributors or workmen in an insured trade during four months before the date of the receiving order, must be preferentially provided for. How the claim of an apprentice is met in the case of the bankruptcy of the master is set out in the article *Apprentice*. By the Friendly Societies Act, 1896, a registered society has a preferential right as regards any claim for money which has come into the hands of any of its officers, if they become bankrupt.

The position of the landlord of the bankrupt is peculiar. If he distrains—and he has no preferential claim unless he does so—within three months of the receiving order, he must pay the preferential creditors out of the proceeds of the distress, and if he suffers any loss he becomes a preferential creditor to the extent of that loss. As against other creditors he can distrain for the whole rent due to him. But if he distrains after the commencement of the bankruptcy he can only do so as to six months' rent accrued due prior to the date of the order of adjudication. He is in the position of an ordinary creditor as to any balance.

The residue of the property, if any, in the hands of the trustee is payable to the creditors in proportion to their debts. It has been said that a creditor must prove his debt before he is entitled to any dividend. The trustee must be satisfied that the debt is one which is legal and ought to be admitted. If any dispute arises as to the admission or rejection of a debt there is a right of appeal to the court.

Small Bankruptcies.—When it is clear that the value of the estate of the debtor is less than £300, the court may order it to be summarily administered. The Official Receiver acts as trustee throughout, and the proceedings are modified in several respects. Expedition and a saving of expense are thus attained. If again it appears that the whole indebtedness of a person is not more than £50, the court may make an administration

order — bankruptcy proceedings not being possible—and compel the debtor to pay the whole or a portion of his debts, either at once or by instalments.

Discharge of Bankrupt.—A bankrupt may apply to the court for an order of discharge any time after being adjudged bankrupt. In considering the application, the court will take into account the whole of the facts laid before it, and especially the report of the Official Receiver as to the conduct of the bankrupt and the manner in which he has managed his affairs. It may then refuse an order of discharge absolutely, grant it subject to certain conditions or after a fixed time, or, unless there are statutory reasons to the contrary, grant it immediately.

The court must refuse the order of discharge if the debtor has committed any criminal offence against the bankruptcy laws. (See *Debtors Act*, 1869.) And it must also refuse the order, or suspend it for at least two years, or suspend it until the bankrupt has paid a dividend of 10*s*. in the £, or grant it subject to the debtor's consenting to judgment being entered up against him for any part of his unpaid provable debts, in the following cases :—

(*a*) When the assets are insufficient to pay a dividend of 10*s*. in the £ to the unsecured creditors, unless this is due to circumstances for which the debtor cannot be held responsible. This period of two years' suspension may be reduced, if the only offence alleged against the bankrupt is his inability to pay 10*s*. in the pound.

(*b*) When proper books of account have not been kept during the three years preceding the bankruptcy.

(*c*) When the bankrupt has continued to trade after knowing that he was insolvent.

(*d*) When debts have been contracted with no reasonable prospect of an ability to pay them.

(*e*) When a loss or a deficiency of assets has not been satisfactorily accounted for.

(*f*) When the insolvency has been brought about by rash and hazardous speculation, unjustifiable extravagance in living, gambling, or culpable neglect of business.

(*g*) When a creditor has been put to unnecessary expense by a frivolous and vexatious defence to an action properly brought against the bankrupt.

(*h*) When the bankrupt has within three months preceding the date of the receiving order incurred unjustifiable expense by bringing a frivolous or vexatious action.

(*i*) When the bankrupt, being unable to pay his debts, has given an undue preference to any creditor within three months of the date of the receiving order.

(*j*) When the bankrupt has within three months preceding the date of the receiving order incurred liabilities with a view of making his assets equal to 10*s*. in the £ on the amount of his unsecured liabilities.

(*k*) When there have been previous bankruptcy proceedings against the debtor, or when he has previously made a composition with his creditors.

(*l*) When the bankrupt has been guilty of any fraud or fraudulent breach of trust.

So long as he remains undischarged, a bankrupt suffers from a considerable number of disabilities. He cannot

(1) Sit or vote in the House of Lords, or any committee thereof, or be elected as a Scotch or Irish representative peer ;

(2) Be elected to, or sit or vote in, the House of Commons ;

(3) Be appointed, or act as, a justice of the peace ;

(4) Be elected, or hold the office of mayor, alderman, or councillor ;

(5) Be elected, or sit as, a guardian of the poor, overseer, member of a school board, highway board, or burial board ;

(6) Be elected, or sit as, a county councillor.

If a person is adjudicated a bankrupt whilst holding any of the last three positions, the office will at once become vacant. The disqualification lasts for five years from the date of the discharge. If the adjudication is annulled the disqualification ceases at once, and it also ceases at once if the debtor obtains his discharge with a certificate to the effect that the bankruptcy was caused by misfortune, without any misconduct on his part.

It is an offence, punishable with one year's imprisonment, for an undischarged bankrupt to obtain credit, either alone or jointly, to the extent of £10 from any person without informing such person of the fact that he is an undischarged bankrupt. To constitute this offence, it is not necessary to prove an intent to defraud on the part of the debtor. Also it is a criminal offence if an undischarged bankrupt attempts to trade in any name other than that in which he was adjudicated a bankrupt,

without disclosing the fact to his new creditors.

One of the reasons for the suspension of the discharge is the chance that the bankrupt may become entitled to property in the meantime, which property will pass to the trustee and be divisible among the creditors. As soon, however, as the discharge takes effect the debtor is released from all debts provable in bankruptcy except :—

(1) Debts due to the Crown ;

(2) Debts incurred through fraud, or through a fraudulent breach of trust ;

(3) Judgment debts in an action for seduction, in affiliation proceedings, or in a matrimonial cause.

If an order of discharge is made to take effect after a certain period, no further application to the court is necessary. As soon as the time fixed has elapsed the discharge is complete.

Annulment of Adjudication.—If a debtor makes an arrangement with his creditors after the adjudication, or if he pays his debts in full, the court will annul the adjudication, and the debtor will be placed in the same position in which he would have been if no bankruptcy proceedings had been taken.

Private Arrangements.—These are often made between the debtor and his creditors in order to save the trouble, expense, and publicity of bankruptcy proceedings. The usual method is for an assignment of the property of the debtor to be made to a trustee or to trustees, and in consideration of the assignment the debtor is discharged from all claims which his creditors have against him. The property is realised and a dividend is paid to the creditors. Registration of the assignment is necessary. It is important that all the creditors should join in the assignment, for only those who are parties to it are bound by it. If one creditor objects, and his debt amounts to £50 or upwards, he can present a petition in bankruptcy, since the assignment is an act of bankruptcy. If bankruptcy proceedings ensue, the arrangement is of no effect. (See *Deed of Arrangement.*)

Under the new Bankruptcy Act, 1914, there are numerous provisions relating tc many matters which are of particular importance to practising lawyers, but which do not always concern the ordinary laymen. However, it may be stated that a bankrupt will, in future, be in a very delicate and difficult position if he has brought on his insolvency by gambling or hazardous speculation, if he has committed certain offences within six months of the date of his adjudication, especially in the shape of destruction of books, etc., connected with his affairs, and if, having previously been made a bankrupt, he has failed to keep an accurate account of his dealings for the two years prior to his later bankruptcy. For a detailed account of these offences, see sects. 154–160 of the Act.

BARGAIN. (Fr. *Marché, contrat*, Ger. *Geschäft*, Sp. *Negocio*, It. *Affare, negozio.*)

This term may mean :—

(1) A contract or agreement concerning the sale of anything ;

(2) Any agreement or stipulation ;

(3) A purchase made on favourable terms.

It is derived from the French *barguigner*, to haggle.

BARGAIN AND SALE. (Fr. *Marché, cession*, Ger. *Cession, Kauf und Verkauf*, Sp. *Ajuste, convenio*, It. *Contratto e vendita.*)

This, in English law, is a contract whereby property, either real or personal, is transferred from one person to another for a valuable consideration. The word "assignment" is, however, generally used for the transfer of personal property ; consequently, bargain and sale may be described as a contract whereby real estate, lands or tenements, whether in possession or in remainder, are conveyed from one person to another for a consideration.

BARRATRY. (Fr. *Baraterie*, Ger. *Baratterie*, Sp. *Barateria*, It. *Baratteria.*)

This word, which is derived from the French *barrateur*, a deceiver, has two meanings :—

(1) In marine insurance, much the commoner use of the term, it signifies any wrongful act wilfully committed on the part of the master of the ship, or any of the crew, with intent to defraud the owner, charterer, or insurer, whether by running away with the ship, sinking her, unlawfully deserting her, or embezzling the cargo. This is one of the risks usually insured against in marine policies of insurance. The exception, "danger of the seas and fire," often introduced into a bill of lading, does not except liability for barratry, and unless there is an express exemption, shipowners are liable to the owners of the cargo for damage arising from this cause.

(2) Barratry is also a common law misdemeanour, consisting in exciting

and stirring up quarrels between the subjects of the King, either at law or otherwise. It is punishable with fine or imprisonment. It must be distinguished from "maintenance," which is the officious intermeddling in suits which do not concern the party, by lending pecuniary or other assistance for the carrying on of the same, and from "champerty," which is an illegal bargain made between one of the parties to a suit and a third party, whereby it is agreed that the latter shall share in the proceeds of the suit if successful, in consideration of affording financial support for continuing it. Each of these offences is a misdemeanour.

BARREL. (Fr. *Baril*, Ger. *Fass*, Sp. *Barril*, It. *Barile*, *fusto*.)

A measure of capacity; also the name of a wooden vessel used for the purpose of storing liquids.

The measure varies greatly in different countries of Europe and America, and its variation depends not only upon the locality, but upon the nature of the liquid. In the old English measures a barrel contained 31½ gallons of wine, 32 of ale, and 36 of beer. The French standard barrel, the *barrique* or cask of Bordeaux, contains 50 English gallons, and the Italian *barile* varies from 7 to 31 English gallons. Solids are in many cases sold by the barrel. Thus, a barrel of butter contains 224 lbs. In America the barrel expresses a certain weight of an article: a barrel of flour contains 196 lbs., of beef, 200 lbs., and of soap, 256 lbs.

BARRISTER. (Fr. *Avocat*, Ger. *Advokat*, Sp. *Abogado*, It. *Avvocato*.)

This is the name given to a pleader at the English and Irish Bars, the corresponding Scotch title being advocate.

In order to attain to the dignity and the privileges of a barrister, a candidate must be a male over the age of twenty-one, and must conform to all the rules and regulations of the Inns of Court. There are four Inns—the Inner Temple, the Middle Temple, Lincoln's Inn, and Gray's Inn—and from the Under Treasurer of any one of these societies full particulars may be obtained as to the methods which must be adopted in order that admission may be obtained into what is generally designated the higher branch of the legal profession.

After being proposed by two barristers of the Inn to which he seeks admission, and complying with certain prescribed conditions, a candidate must pay the necessary fees, which amount, roughly, to about £150 in all, pass the requisite examinations, and eat the prescribed number of dinners in hall for a period of three years, or twelve terms in all. There are four terms in each year. A difference is made in this last-named requisite, according as the candidate is or is not a university man—three dinners a term being necessary in the former case, six in the latter. At the end of his studentship days, the candidate is "called," and he is thenceforth entitled to appear as an advocate, if retained for that purpose, in any of the law courts of England and Wales. There is no restriction as to appearance at any court of summary jurisdiction, that is, an ordinary police court, nor at any county court; but no barrister may, by the etiquette of the profession, appear at any assizes or quarter sessions which are not on his circuit, unless he is paid a special fee and has a junior of the circuit with him.

The question of calling is entirely in the hands of the benchers, who constitute the ruling body of the Inn, and although there is a right of appeal from the decision of the benchers to the judges, it is practically useless to hope for success in any such appeal. A barrister may be disbarred or suspended for misconduct, also subject to a similar right of appeal, but otherwise he cannot divest himself of his status without the express permission of the benchers.

A barrister may appear in any court, and no one but a barrister may appear on behalf of a litigant in the High Court or at assizes, except in certain bankruptcy appeals. At quarter sessions this rule may be relaxed if the regular attendance of members of the Bar is very small. Then solicitors are entitled to practise. In county courts solicitors may plead as well as barristers. Whenever he appears in court, a barrister must wear a wig, gown, and bands. This does not apply to courts of summary jurisdiction, in which no special costume is required.

In pleading, a barrister must rely entirely upon the instructions in his brief. He is not supposed to act upon any extraneous knowledge of facts which he may possess; and when he has once been retained in a case, he is entitled to be briefed, by the etiquette of the profession, in all proceedings connected with the same. In practice, however, this procedure is much relaxed.

Although the rule is not strictly enforced, it is the general practice for