a more favourable position. They are secured creditors, that is, they have a certain portion of the property of the company set aside for the purpose of meeting their debts, and with this property the ordinary creditors and the liquidator cannot interfere. They can realise their security without considering the liquidator. If the property secured is insufficient to meet their demands, they can realise their security and then prove as ordinary creditors for the balance of their debts. If, on the contrary, it realises more than the amount of the debts, with interest and costs, the balance must be handed over to the liquidator. It is now provided by statute that the payments of rates, taxes, wages, and compensation have precedence over debentures.

When all the affairs of the company have been arranged, and the liquidator has made his report to the Board of Trade and been released, an order is made by which the company is dissolved.

II. *Voluntary Winding-up.*—The proceedings in a voluntary winding-up are similar to those in a compulsory one, except that the liquidator is appointed by the company, and the court does not, of its own motion, interfere with any of the acts that are done. A voluntary winding-up may generally be resolved upon by a company for some other cause than inability to pay its debts.

III. *Winding-up under Supervision.*—When a voluntary winding-up has commenced, the court may, on just cause shown, intervene and control to a certain extent the acts of the liquidator. But unless a strong case is made out it will generally decline to interfere; and if it does so it will only place certain restrictions upon the voluntary liquidator, leaving the general proceedings, as far as possible, the same as in a voluntary liquidation.

In the second and third cases the liquidator is required to make a return of the final meeting of the company to the Registrar of Companies, and the company will be dissolved three months after the date of such return.

COMPANY PROMOTER. (See *Promoter.*)

COMPENSATING ERRORS. (Fr. *Erreurs qui dédommagent*, Ger. *Gegenfehler*, Sp. *Errores en compensación*, It. *Sbagli compensativi.*)

These are errors in book-keeping which are equalised by other errors in the opposite direction, thus not interfering with the agreement of the total balance.

COMPOSITION. (Fr. *Arrangement*, Ger. *Akkord, Vergleich*, Sp. *Acuerdo, arreglo*, It. *Accordo, transazione, concordato.*)

This is a payment of so much in the £ by a bankrupt or an insolvent, instead of the full amount owing.

COMPOUND INTEREST. (Fr. *Intérêt composé*, Ger. *Zinseszins*, Sp. *Interés compuesto*, It. *Interesse composto.*)

When money is borrowed at compound interest, it means that the interest as it becomes due is not paid to the lender, but that it is added to, and becomes part of the principal. It is called "compound" because each of the successive additions bear interest upon interest.

COMPOUND OPTIONS. (Fr. *Doubles options, primes*, Ger. *doppeltes Prämiengeschäft*, Sp. *Primas dobles*, It. *Opzioni composte, doppie.*)

(See *Options.*)

COMPOUNDING WITH CREDITORS. (Fr. *S'arranger avec les créanciers*, Ger. *sich mit seinen Gläubigern abfinden*, Sp. *Arreglarse con los acreedores*, It. *Accordarsi coi creditori.*)

This is an agreement of creditors to accept a composition of so much in the £ from a bankrupt or insolvent person, and to release the debtor from the balance of the full amount owing.

COMPROMISE. (Fr. *Compromis*, Ger. *Vergleich*, Sp. *Compromiso*, It. *Compromesso.*)

A compromise is the adjustment of differences by mutual concessions.

COMPULSORY WINDING-UP. (See *Companies.*)

COMPUTE A BILL. (Fr. *Calculer*, Ger. *Berechnen*, Sp. *Computar una letra*, It. *Calcolare la scadenza di una cambiale.*)

To compute a bill is to calculate the date upon which it will become due.

CONCESSIONS. (Fr. *Concessions*, Ger. *Konzessionen*, Sp. *Concesiones*, It. *Concessioni.*)

These are grants of certain privileges made by foreign states or governments to promoters of railways, mining companies, etc. The parties obtaining such concessions are called "concessionaires."

CONDITIONS OF SALE. (Fr. *Conditions de vente*, Ger. *Verkaufsbedingungen*, Sp. *Términos de venta*, It. *Condizioni di vendita.*)

When a sale by auction is contemplated, the conditions under which the sale is to take place are invariably set out in a document which is called the conditions of sale. It is the general practice for the conditions to be printed on the catalogue advertising the sale.

CONFIRMATION NOTE. (Fr. *Note de*

confirmation, Ger. *Empfangsbestätigung*, Sp. *Nota de confirmación*, It. *Bolletta di conferma.*)

This is a slip, either attached to or sent with an order or contract, so that the receiver may sign the slip as an acknowledgment that he has received and confirms the contract.

CONFLICT OF LAWS. (Fr. *Conflit de lois, droit international*, Ger. *das Völkerrecht*, Sp. *Conflicto de leyes, derecho internacional*, It. *Conflitto delle leggi, legge internazionale.*)

This is the name applied, mostly by American writers, to what is often known as Private International Law. It is concerned with the rights and obligations of private individuals when they are affected by the law of different countries which have independent jurisdictions. Since the laws of England, Scotland, India, South Africa, and Canada are dissimilar in many respects, questions arising between persons domiciled in different parts of the British Empire have to be decided in exactly the same manner as those arising between an Englishman and a foreigner.

By international comity any valid judgment obtained in one state is enforceable by proper legal process in another. Thus, a Frenchman who obtains a judgment against an Englishman in France will be able to gain satisfaction in England if the defendant is resident here. Similarly a proper English judgment will be enforced in France. Some countries place more or less restrictions upon this rule, and it is only possible to indicate the practice of the English courts in the matter.

The first thing to ascertain is whether the court can exercise jurisdiction. In some cases it is expressly precluded from doing so. No proceedings, for instance, can be instituted against a foreign sovereign, an ambassador, a diplomatic agent, or any person attached to the suite of the ambassador or diplomatic agent, unless the privilege attached to their position is waived; and no action will be entertained if it has reference to the determination of the title to, or the right to the possession of, land situated out of England, or to trespass upon such land. There is, likewise, no jurisdiction to entertain an action for the enforcement of the penal law of a foreign country. Subject to these exceptions, the court will assume jurisdiction as to any property, movable or immovable, situated in England, and also as to the following:—

(1) Actions *in personam.*
(2) Admiralty actions *in rem.*
(3) Divorce jurisdiction, and jurisdiction in relation to the validity of marriages and to legitimacy.
(4) Bankruptcy.
(5) Administration and succession.

An action *in personam*, that is, one against a person with the view to compel him to do a particular thing, such as the payment of damages for a breach of contract or for a tort, may be commenced against a defendant by the service of a writ, if he is in England, in whatever country the cause of action has arisen. It has been said that the courts of England "are more open to admit actions founded upon foreign transactions than those of any other European country." If the writ is served the action may go on. But if the defendant is out of England, the court will assume no jurisdiction at all, unless the case falls under one of the following exceptions :—

(1) Whenever the whole subject matter of the action is land situated in the jurisdiction (with or without rents or profits), or the perpetuation of testimony relating to land within the jurisdiction.

(2) Whenever any act, deed, contract, obligation, or liability affecting land or hereditaments situated within the jurisdiction is sought to be construed, rectified, set aside, or enforced in the action.

(3) Whenever any relief is sought against any person domiciled or ordinarily resident within the jurisdiction.

(4) Whenever the action is for the administration of the personal estate of any deceased person, who at the time of his death was domiciled within the jurisdiction, or for the execution (as to property situated in England) of the trusts of any written instrument, of which the person to be served with a writ is a trustee, which ought to be executed according to the law of England.

(5) Whenever the action is founded on any breach, or alleged breach, in England, of any contract, wherever made, which, according to its terms, ought to be performed in England, unless the defendant is domiciled or ordinarily resident in Scotland or Ireland.

(6) Whenever any injunction is sought as to anything to be done in England, or any nuisance in England is sought to be prevented or removed, whether damages are or are not also sought in respect thereof.

(7) Whenever the defendant who

is out of England is a necessary or proper party to an action properly brought against some other person who has been duly served with a writ in England.

The leave of the court must always be obtained before any writ can be issued against a defendant resident abroad, and when the defendant is neither a British subject nor within the British dominions, notice of the writ, and not the writ itself, must be served upon him. To a certain extent the exercise of its power by the court is discretionary, and any irregularity in the proceedings will render the whole procedure void. It will be seen that no action for a tort can be commenced unless the defendant is within the jurisdiction of the court at the time of the service of the writ.

An admiralty action *in rem* is one that is brought in the Admiralty Division of the High Court against a ship or other *res*, such as cargo or freight, connected with a ship. Its object is to satisfy the claim of a plaintiff against the ship or *res* by transfer, sale, or other mode of dealing. The foundation of the action is the arrest of the ship when it is within English waters, that is, within three miles of the coast of England.

The jurisdiction in matrimonial matters is grounded on domicil, though an exception is made in favour of the residence of one of the parties if the suit is for judicial separation alone, and not for divorce. The same is true of administration and succession. But the English courts will exercise no jurisdiction in cases of this kind, any more than in ordinary actions, if immovable property situated in any country outside England is affected. It can go no further than to decide the title to movable property in particular cases.

If the English courts assume jurisdiction, the rights and liabilities of the parties are subject to certain rules and constructions. All rights in relation to land are, in the main, governed by the law of the country where the land is situated. But the interpretation of a contract with regard to land, and the rights and obligations under it of the parties thereto, may by the agreement of the parties be determined by some other law than that of the country where the land is situated. Again, the will of a British subject may deal with land in the United Kingdom, when it is not made in accordance with English law, the special privilege of making a will in the form of the law in force in the place of residence or domicil being granted to British subjects by an Act of 1861, known as Lord Kingsdown's Act.

With respect to movables, an assignment is valid if the assignor has capacity to assign by his domicil, and the assignment is made in accordance with the law of the place where the movables are situated.

The greatest care is required in the wording of contracts between parties domiciled in different countries, especially when the place of performance of the contract itself is a third country. The rules to be observed by the courts in such a case may be stated shortly as follows :—

(1) No contract is valid in England, though valid in any foreign country, if its enforcement is contrary to an Act of Parliament or opposed to any English law of procedure.

(2) Capacity to contract is governed by the law of the domicil, except in the case of an ordinary mercantile contract, when the law applicable is that of the country where the contract is made, and in a contract concerning land, when the law of the place where the land is situated prevails.

(3) The form to be observed is that of the country where the contract is made.

(4) In the absence of the expressed intention of the parties as to the particular law which shall govern the construction of the contract, the following legal presumptions are applied:—

(*a*) The law of construction is that of the country where the contract is made, especially when the contract is to be performed wholly in the country where it is made.

(*b*) The law of construction is that of the country where it is to be performed, when the contract is made in one country, and is to be performed wholly or in part in another country.

(5) The validity of the discharge of the contract is to be governed by the law of the country which is held to be the proper law for the construction of the same.

Certain particular contracts are to be construed in accordance with well-established rules. The contract of affreightment is governed by the law of the flag, that is, the law of the country to which the ship belongs. That of average adjustment is governed by the

law of the place at which the common voyage terminates, that is

(*a*) When the voyage is completed in due course, by the law of the port of destination.

(*b*) When the voyage is not so completed, by the law of the place where the voyage is broken and the cargo is taken from the ship.

An underwriter is bound by the average adjustment properly taken according to the law of the place of adjustment; but an English insurer of goods on a foreign vessel is not affected by the law of the flag. There are also special rules as to foreign bills of exchange (*q.v.*). A foreign instrument is not a negotiable instrument in England unless it is negotiable both by the law of the country where it is issued, and also by the law of England. Lastly, the contract of agency is governed, in general, by the law of the country where the relationship of principal and agent is established.

CONSIDERATION. (See *Bill of Exchange, Contract.*)

CONSIDERATION-MONEY. (Fr. *Prix*, Ger. *Prämie, Entschädigung*, Sp. *Premio*, It. *Danaro equivalente, premio.*)

On the Stock Exchange, consideration-money is the amount named in a transfer of registered stock as being paid by the buyer to the seller; but the amount often differs from that actually received by the seller owing to a subsequent sale made by the buyer, the Stamp Act requiring in such cases that the consideration-money paid by the sub-purchaser shall be the one inserted in the deed, as regulating the *ad valorem* duty.

CONSIGN. (Fr. *Consigner*, Ger. *Konsignieren, in Konsignation senden*, Sp. *Consignar*, It. *Consegnare, spedire, trasmettere.*)

This is the usual business term used when speaking of the forwarding of goods from one place to another.

CONSIGNEE. (Fr. *Consignataire*, Ger. *Konsignatar*, Sp. *Consignatario*, It. *Destinatario, consegnatario.*)

This is the person to whom goods are consigned or entrusted; the receiver of goods.

CONSIGNMENT. (Fr. *Consignation*, Ger. *Konsignation, Sendung*, Sp. *Consignación*, It. *Consegna, invio, spedizione.*)

This term signifies the sending or the delivering of goods by one person to another, generally in another town or country, for a specific purpose. The sender is called the consignor, and the person receiving the goods is called the consignee, agent, or factor, who occupies a position of trust as far as his dealings with the goods are concerned.

The goods themselves are very frequently referred to as a consignment.

CONSIGNMENT NOTES. (Fr. *Notes de consignation*, Ger. *Konsignationsscheine*, Sp. *Notas de consignación*, It. *Bollette di spedizione, ricevute di spedizione, lettere di porto.*)

These are forms that are to be filled up when goods are sent by rail.

CONSIGNOR. (Fr. *Consignateur*, Ger. *Absender, Konsignant*, Sp. *Consignador*, It. *Consegnante.*)

A consignor is a person who sends goods to another.

CONSOLIDATED ANNUITIES. (Fr. *Rentes consolidées*, Ger. *konsolidierte Annuität*, Sp. *Rentas consolidadas*, It. *Rendite consolidate.*)

This term is applied to the consolidation or amalgamation of various annuities into one common debt. These are called "consols" on the Stock Exchange.

CONSOLS. (Fr. *Consolidés*, Ger. *konsolidierte Staatsrente*, Sp. *Fondos consolidados*, It. *Fondi consolidati.*)

The term "consols" is a contraction of "consolidated funds" and "consolidated stock." Towards the end of the seventeenth and in the early part of the eighteenth century the Government borrowed large sums of money at different times and pledged as security for the repayment of the same the proceeds of the customs, excise, stamps, and other sources of revenue. A certain portion of revenue was allocated to each part of the debt, and the rate of interest paid varied considerably. In 1751 all the various funds of the Government which were income were consolidated, and the various classes of the public debt were treated in the same manner, the rate of interest being also made uniform. The consolidated funds are now pledged as a whole for the payment of the interest on the consolidated stock.

CONSUL. (Fr. *Consul*, Ger. *Konsul*, Sp. *Cónsul*, It. *Console.*)

This is the name given to a public officer appointed by a Government to reside in some foreign country, in order to facilitate and protect the commercial relations between his own country and the country to which he has been sent.

A consul is not, generally, clothed with any diplomatic character, nor is he concerned with public affairs at all. He is appointed by the sovereign of the country for which he acts, and his right

to act in the country to which he is appointed is authorised by a document called an "exequatur," granted by the Foreign Office. A consul may be a native of the country which uses his services, or of the country in which he fulfils his duties, or of any third country, if he is domiciled in the country where he acts. Often he is a person engaged in trade, but some countries forbid their regular consular representatives to engage in mercantile transactions on their own account.

There are various grades of the consular service, and consuls themselves may be divided into consuls-general, consuls, vice-consuls, and consular agents. The rate of remuneration paid will depend upon many circumstances, and in some cases the position is honorary. But whether he is a salaried official or not, a consul is entitled to charge fees in respect of many of the duties of his office, which fees are known as consulage.

For the efficient performance of the work devolving upon him a consul should be able to speak with fluency the language of the country to which he is accredited, and should have a fair knowledge of its laws and customs, especially those which affect the interests of merchants and travellers. In general, it is the duty of a consul to watch over the commercial interests of the state whose servant he is, to see that the conditions of commercial treaties are properly observed, to give his best advice and assistance to the traders and other subjects of the country which he represents, to prevent their infringement of the laws, to reconcile their differences, to uphold their interests, and to render the condition of the subjects of the country employing him, within the limits of his consulship, as comfortable, and their transactions as profitable and secure as possible. In addition, some countries require their consuls to furnish yearly returns of the trade carried on at the various ports of their consulates, and information concerning the local trade and the state of the markets. Such information is valuable, as indicating to merchants and traders at home the chances of disposing of their various goods. A British consul is also a person to whom British seamen and other British subjects in distress may apply for assistance in returning to their own country.

In most civilised states the consul, since he does not enjoy the privileges accorded to ambassadors and diplomatic agents, is under the local law and subject to the local jurisdiction, and his residence is not held to be exempt from the authority of the local functionaries. But as a matter of comity it seems to be a generally recognised right that the official papers of the consulate are not liable to seizure, and that soldiers cannot be quartered in its buildings. For some purposes the consulate is held to be a part of the territory of the country which the consul represents, and certain legal acts done there are as valid as if done in the country itself. Marriages of British subjects, for instance, recorded in the books of the consulate, are perfectly regular since the passing of the Foreign Marriages Act, 1892.

In Mohammedan countries, and in the East generally, consuls are on a very different footing from that which they occupy in other states. This is the result of treaty stipulations. They exercise a certain amount of judicial power, as it is felt that it would not be safe to leave the decisions of disputes, civil or criminal, in which Europeans and Americans are concerned to the local courts. Throughout the Turkish Empire, for instance, England has a network of consular and vice-consular courts culminating in the court of the Consul-General at Constantinople. It is the same in China, Siam, and other parts of the East, and Japan submitted to a similar restriction until 1899. In order to obtain the privileges attached to this peculiar right, foreigners resident in any of the countries which possess these consular courts must register themselves, and comply with the regulations of the consulate.

England had, on the face of it, a very complete consular service prior to the outbreak of war in 1914, as there were British consuls, vice-consuls, or consular agents at all the chief ports and towns with which this country has commercial relations. The advisability of employing foreigners in these positions has been repeatedly questioned, and it is exceedingly probable that drastic changes will be made in the future. For the furtherance of British trading interests, there are also many commercial agents, specially appointed by the Government, who travel to various trading centres, both abroad and in the British Dependencies, and are available for consultation by business firms in respect of local industries. The experiment of sending

out these agents is a new one, and will no doubt be continued.

CONSULAGE. (Fr. *Droits de consulat*, Ger. *Konsulargebühren*, Sp. *Derechos consulares*, It. *Diritti consolari, tassa consolare.*)

These are the fees paid to a consul for the performance of certain duties.

CONSULAR. (Fr. *Consulaire*, Ger. *konsular*, Sp. *Consular*, It. *Consolare.*)

The adjective corresponding to the word "consul," and signifying everything that pertains to a consul.

CONSULAR FEES. (Fr. *Frais consulaires, droits consulaires*, Ger. *Konsulatsgebühren*, Sp. *Gastos consulares, derechos consulares*, It. *Diritti consolari, spese consolari.*)

These are the sums paid to a consul in return for services rendered by him in the performance of his functions.

CONSULAR INVOICES. (Fr. *Factures consulaires*, Ger. *Konsulatsfakturen*, Sp. *Facturas consulares*, It. *Fatture consolari.*)

These are invoices which must be made out and declared before the consuls of certain countries to which the goods named in the invoices are being exported. The principal of these countries are the United States, Portugal, Chili, Brazil, and other South American states. The United States do not require a consular invoice if the value of the goods does not exceed £20. The object of the formality is to insure the due observance of the laws of the country to which the goods are being sent, especially as to duties to be imposed. The forms of the invoices vary with the different countries, but all are alike in this respect, that on one side of the invoice there is a full and accurate description of the goods, and on the other side there is a declaration of the truth of the nature, quantity, and quality of the articles which are mentioned in the invoice.

As the particular form of consular invoices varies from time to time, it is only possible to be quite certain as to the formalities required to be observed by making inquiries of the nearest representative of the country to which the goods are being exported.

CONSULATE. (Fr. *Consulat*, Ger. *Konsulat*, Sp. *Consulado*, It. *Consolato, dignità consolare.*)

This is the name given to the office and residence of a consul, though the word is also sometimes used to signify the jurisdiction of a consul.

The consulate is not generally held to be ex-territorial, that is, not a part of the country in which it is actually situated, but for the performance of certain legal formalities it is as though it were so. Thus, marriages duly solemnised and recorded in the books of British consulates are as valid as though the contracts were entered into in England.

Special protection is granted to, and claimed for, consulates in Central and South America. They are places of refuge for foreigners during political disturbances, and are legally inviolable when floating the flags of their own countries.

CONSULSHIP.—(Fr. *Consulat*, Ger. *Konsulat*, Sp. *Consulado*, It. *Consolato, dignità consolare.*)

This is the office or term of office of a consul.

CONTANGO. (Fr. *Report*, Ger. *Report, Kurszuschlag, Kontango*, Sp. *Report*, It. *Riporto.*)

Contango is the Stock Exchange name for the charge made by brokers for carrying over a bargain from one fortnightly account to another instead of settling and closing it. It is possible that when a purchase has been made by a speculator no opportunity presents itself in the course of the fortnightly account of closing the bargain with a profit, though there are chances of profit if the account is kept open for a longer period. The practice is then for a fictitious sale to be effected, at the current market price of the stock bought, the difference between the buying price and the fictitious or carrying over price to be paid by the speculator, and the bargain to be kept open. For this privilege a certain rate of interest is paid for the money employed in the transaction, which will vary with the demands and requirements of the money market. It is the rate of interest thus charged which is the contango. The day for fixing the contango, the second day before settling day, is known as "contango day," or "continuation day."

CONTANGO DAY. (Fr. *Jour de report*, Ger. *Reporttag*, Sp. *Día de report*, It. *Giorno di riporto.*)

This is the first day of the Stock Exchange settlement, that is, the day on which arrangements are made by stock-brokers and their clients for the carrying over of transactions to the next account. It is sometimes called "making-up day" (*q.v.*).

CONTINGENCIES. (Fr. *Contingences*, Ger. *Möglichkeitsfälle*, Sp. *Contingencias*, It. *Contingenze, eventualità.*)

Circumstances which may possibly arise, but which are not certainties,

are known as contingencies. The corresponding adjective "contingent" is used in the following connections:—

(*a*) Contingent account—a provision made in some businesses to meet unforeseen or uncertain liabilities. It is in reality a reserve.

(*b*) Contingent liability—a liability which can only exist definitely upon the happening of some uncertain event. For example, the liability of an indorser upon a bill of exchange.

(*c*) Contingent remainder—a remainder, or chance of succession to the possession of certain property, depending upon events or conditions which may never happen or be performed.

CONTRA. (Fr. *Conire*, Ger. *dagegen, contre*, Sp. *Contra*, It. *Contro.*)

This is a Latin word, meaning "against," and when used in book-keeping it signifies "against" or "on the opposite side."

CONTRABAND. (Fr. *Contrebande*, Ger. *Konterbande*, Sp. *Contrabando*, It. *Contrabbando.*)

All commerce which is carried on contrary to the laws of a state is said to be contraband. In times of peace the word is generally applied to contraventions of the revenue laws which prohibit or restrict the importation of foreign goods. In time of war it means all kinds of goods which a belligerent forbids to be imported into an enemy country.

CONTRACT. (Fr. *Contrat*, Ger. *Vertrag*, Sp. *Contrato*, It. *Contratto.*)

"Every agreement and promise enforceable at law is a contract" (Pollock). It is not quite correct to define a contract as an agreement enforceable at law, for an agreement which cannot be enforced, because it does not fulfil the requirements of certain statutes, e.g., the Statute of Frauds, or the Sale of Goods Act, may still be a contract.

Contract is the result of a combination of two ideas—an agreement and an obligation. (In the case of a simple contract there is also the all-important element of a consideration.) To constitute an agreement there must be a meeting of two or more minds in one and the same intention. This is called a *consensus ad idem*. But a mere agreement is not sufficient to make a contract. Otherwise such agreements as an appointment of two friends to take a journey together, or to dine together, might give rise to an action at law. There must be, in addition, an intention to create a legal obligation, that is, the parties must have it in their minds that, if necessary, the matter in hand shall be dealt with by a court of justice.

The necessary elements of a valid contract are:—

(1) A communication by the parties to one another of their intention. This is offer and acceptance.

(2) Legal capacity to contract.

(3) Certain evidence, required by law, of the intention of the parties to affect their legal position. This is form, or consideration.

(4) Legality and possibility as regards the subject matter.

(5) An absence of any circumstance which might show that the agreement entered into by the parties was not genuine. There must be no taint of mistake, misrepresentation, or fraud.

If any one or more of these elements is wanting, the so-called agreement, which purported to be a contract, will be either

(*a*) Unenforceable, that is, valid in itself, but not capable of being proved in a court of justice, or

(*b*) Voidable, that is, capable of being affirmed or repudiated by one or other of the parties, according to his wishes; or

(*c*) Void, that is, destitute of all legal effect.

Classes of Contracts.—There are three classes of contracts in English law, contracts of record, contracts under seal, and simple contracts.

A contract of record is the name given to an obligation which arises from the judgment of a court of competent jurisdiction ordering something to be done or forborne by one of two parties in respect of the other. The term is not a happy one, because it suggests that the obligation springs from agreement, whereas it is really imposed upon the parties by some other third party.

A contract under seal is generally called a specialty contract or a deed. This is the only formal contract known to English law. (See *Deed.*)

A simple contract is often called a "parol" contract, and it makes no difference whether its terms are committed to writing or whether they are only made orally. It is the agreement arrived at between the parties which constitutes the contract. The name "parol" applies to both. The writing is in many cases unnecessary, and in others it is only used because it is

required by some statute as a condition precedent to proof in court.

Another division of contracts is into "executed" and "executory." An executed contract is one in which the object of the contract is at once performed, while an executory contract is one in which one of the parties binds himself to do, or not to do, a given thing at a future time.

Offer and Acceptance. — These are the two necessary elements in the formation of a contract. No matter how complicated the nature of an agreement may be, there must be a definite offer made by one party and an unqualified acceptance by the other before a contract is formed. If the terms are clearly stated the contract is said to be "express"; if, on the contrary, the offer and acceptance are to be inferred from the conduct alone of the parties, the contract is said to be "implied."

The following are the principal rules as to offer:—

(1) The terms of the offer must be certain, or capable of being made certain.

(2) The offer may be made either to a definite person or to individuals generally. There cannot, however, be any contract until the offer has been accepted by a definite person. The performance of the conditions prescribed in an advertisement offering a reward is a sufficient acceptance to conclude a contract.

(3) The person who makes the offer is at liberty to prescribe any terms of acceptance he pleases, and no matter how ridiculous these may appear, a strict compliance with them is necessary in order to make a contract.

(4) When the offer consists of various terms, care must be taken to bring the whole of the terms to the notice of the other party.

(5) The offeror must not attempt to bind the acceptor by any such term or terms as would dispense with a communication of acceptance.

(6) An offer can always be revoked until it has been accepted. It also lapses unless there is an acceptance within a reasonable time.

(7) An offer made by telegraph is an indication that an acceptance by telegraph is expected, or that a prompt reply is looked for.

The principal rules as to acceptance are:—

(1) The acceptance must be unconditional, and made in the manner and form prescribed in the terms of the offer. Any suggested variation amounts to a counter proposal.

(2) The acceptance must be made either within the time stipulated, or within a reasonable time.

(3) If the offer is made to a specified person, it can only be accepted by that person.

(4) The acceptance must be communicated to the person making the offer, either by words or by conduct.

(5) The acceptor must be unaware of the fact that the offer has been revoked, if indeed there has been a revocation at or before the time of his acceptance. It is immaterial how the knowledge of revocation is communicated.

Contract by Post.—When the parties to a contract make use of the post as a means of communication, the post is considered, *primâ facie*, as the agent of the first person making use of it, that is, of him who makes the offer. An offer sent by post is of no effect unless it reaches the other party, and when it has arrived at its destination it is always possible for the sender to revoke the offer by a later communication, however made, so long as there has been no acceptance. But the mere despatch of a subsequent letter of revocation which does not reach the acceptor until the offer has been accepted is of no avail.

On the other hand, an acceptance made by post is complete at the moment the letter accepting the offer is posted. And it makes no difference even if, in fact, the letter never reaches its destination. The post is not, *primâ facie*, the agent of the acceptor, and therefore the acceptor is not responsible for any default by the loss or delay of a letter. The person making the offer has chosen his own agent, and must take the whole responsibility upon himself.

Capacity of Parties.—Capacity to contract is governed by the law of the domicil. This rule is subject to two exceptions :—

(1) A person's capacity to bind himself by an ordinary mercantile contract is governed by the law of the country where the contract is made.

(2) The capacity to contract in respect of immovable property is governed by the law of the country where the property is situated.

Every person is presumed to have the capacity to contract, but this presumption is capable of being rebutted as regards some persons, while others

are disqualified by law. The capacity of an artificial person, such as a corporation, depends upon the charter or statute creating it.

Since the Naturalisation Act of 1870 (now repealed and replaced by the British Nationality and Status of Aliens Act, 1914) there has been no difference in the capacity to contract between a natural-born British subject and an alien, that is, a person who is not a subject of the British crown, except that the latter can acquire no property in a British ship. This, however, refers to times of peace. There can be no contract between a British subject and the subject of a state at war with this country unless the enemy subject has obtained a licence to trade. An alien enemy cannot sue in our courts, though he can be sued.

Foreign states and sovereigns, their ambassadors, and the officials of their households, may enter into contracts with British subjects, but they cannot be sued upon such contracts in England unless they are willing to acknowledge and submit to the jurisdiction of the English courts.

A person under the age of twenty-one is legally an infant. Prior to the Infants Relief Act, 1874, the contracts of an infant were never void. Excepting for "necessaries," his contracts were voidable only; he might affirm them or repudiate them at his option. (It may here be mentioned, since the point is frequently lost sight of, that infancy is no defence in an action of tort.)

No precise definition can be given of the term "necessaries," so as to cover all cases. A great deal depends upon the social position of the infant. It is clear also that the articles included in the term will vary with the advance of wealth and civilisation. Moreover, a tradesman acts at his peril who supplies an infant with what might be considered necessaries if the infant is already sufficiently supplied with articles of the same kind. As a corollary to his liability for necessaries, it has been held that a contract which is clearly for his benefit is binding on an infant, such as a contract of service or apprenticeship. Even when there are covenants in an apprenticeship deed not altogether to the infant's advantage, the contract as a whole may be enforced. In a modern case Mr. Justice Channell said: "The true question is whether the particular stipulation complained of is so unfair as to make the entire contract disadvantageous to the infant. You may find in any contract a clause which by itself is not to the advantage of the infant; but that is not enough; the contract, as a whole, must be disadvantageous."

By the first section of the Infants Relief Act of 1874 the following contracts of an infant are absolutely void:—

(*a*) For the repayment of money lent, or to be lent;

(*b*) For goods supplied, or to be supplied (other than contracts for necessaries);

(*c*) Accounts stated, that is, admissions of liability for money due.

By the second section of the same Act it is provided that a ratification, after full age, of any contracts made during infancy, shall have no binding effect, even if there is a fresh consideration for such ratification. This section has given rise to much difficulty. But it is, nevertheless, clear that in the case of contracts of continuing liability, such as a partnership, or as being a shareholder in a joint-stock company, an infant will be bound after attaining his majority unless he repudiates his liability within a short time of his coming of age.

Although the courts will make every effort to prevent an infant obtaining a benefit through his fraud, the infant will not be bound by a contract which has been entered into with a tradesman who was deceived as to his age. Without authority, express or implied, an infant cannot bind his parent or guardian, even for necessaries.

The common law as to the capacity of a married woman has become practically obsolete, and it is unnecessary to consider the state of things prior to the passing of the Married Women's Property Act, 1882. This Act has been amended in important particulars by two subsequent Acts, passed in 1884 and 1893, and in one minor matter by an Act passed in 1907. A married woman can now hold property as her own, and, with respect to that portion over which she has full control, it is possible for her to enter into contracts as if she were unmarried. It is immaterial whether she has or has not property of her own, or, as it is generally called, "separate property," at the time of entering into a contract.

There is no remedy against a married woman personally; she contracts with respect to her separate estate, and if she has no separate estate her creditors are without any remedy against her.

She may be possessed of ample means, but if her property is in the hands of trustees, and she is "restrained from anticipation," that is, forbidden to alienate or charge her property, a judgment obtained against her will be in most cases valueless so long as she remains a married woman. She cannot be committed upon a judgment summons, except in respect of contracts made before marriage, or of torts committed during marriage.

Unless she is engaged in trade, a married woman can never be made a bankrupt, and until 1914 it was only when she was trading alone that she was subject to the bankruptcy laws. Now, however, by the Bankruptcy Act, 1914, a married woman may be made a bankrupt if she is trading, either alone or in conjunction with her husband or other person; and, if she is adjudicated a bankrupt, even that part of her property which is subject to the restraint just mentioned may be taken possession of by the court for the benefit of the creditors. Her peculiar immunities cease as soon as she becomes a widow.

The old common law doctrine of the husband and wife being one person has been practically destroyed, so far as the power of contracting is concerned. A wife can, therefore, contract with her husband in respect of her separate estate just as with any other person.

So long as a husband and wife are living together the wife has an implied authority to bind her husband, acting as his agent, for necessaries for herself, and in household matters generally, But the authority is only an implied one, and may be rebutted by the husband's showing that he has forbidden her to pledge his credit. The authority continues as to necessaries for herself if the parties are living apart, without any fault on the part of the wife, and the husband neglects or refuses to maintain her.

The capacity of a corporation or a company to contract depends upon the purposes for which it is formed, as set forth in the statute, charter, or memorandum of association by which it is constituted. If it exceeds its powers in this respect it is said to act *ultra vires*, and any such contract entered into is absolutely void. As a general rule a corporation cannot bind itself except by a contract under seal. But this rule is subject to many exceptions. If the matter is one of slight importance, or of great urgency, the seal will be dispensed with. There is an increasing tendency to give validity to contracts made with corporations, and not under seal, which arise in the ordinary course of business.

The contract of a lunatic is voidable and not absolutely void, though his estate is always liable for the price of necessaries supplied to him. But in order that a lunatic may claim the benefit of repudiation of a contract into which he has entered, while in an unsound state of mind, it must be shown that his mental condition was known to the other party to the contract at the time of entering into it. In a leading case it was said: "A defendant who seeks to avoid a contract on the ground of his insanity must plead and prove not merely his incapacity, but also the plaintiff's knowledge of that fact, and unless he proves these two things he cannot succeed." During a lucid interval a lunatic has the same capacity of contracting as any other person, and he may also then ratify and confirm any contract entered into while insane.

A drunken person, who is in such a condition as not to understand what he is doing, is in the same position as to contracts as a lunatic.

By the Act to Abolish Forfeitures for Treason and Felony, passed in 1870, convicts are incapable of suing in an action or making any contract, except while they are lawfully at large under any licence. By the 6th section of the Act a convict is defined to be a person against whom judgment of death or of penal servitude has been pronounced.

Form and Consideration.—The deed is the only formal contract which is known to the English law. It may be used in any commercial or other transaction which is of the nature of a contract. But this rarely happens; indeed, its use is strictly confined to those cases in which the law has directed that sealing is indispensable. Of these cases the following are the principal:—

(*a*) Conveyances of land, legal mortgages, and certain leases which are to last more than three years.

(*b*) Contracts by which shares in joint-stock companies are transferred. It is a general rule for the articles of association of a company to require a deed for such transfer.

(*c*) Contracts by which British ships are transferred.

(*d*) Contracts for the sale of sculpture, together with the copyright in the same.

(*e*) Contracts entered into with corporations.

A deed is also necessary in order to make a gift, or a bond, of any legal effect.

Every contract not under seal, or which is not a contract of record, is called a simple contract. In order to be enforceable at law it must be supported by a consideration. At one time the fact of an agreement having been entered into and the existence of a consideration were the only requisites of a simple contract. But after the passing of the Statute of Frauds in 1678 it became necessary that certain contracts should be evidenced by writing. The writing itself does not affect the contract; the law only requires it as evidence of the fact that a contract has been entered into by the parties. Writing is always advisable in cases of difficulty and complication, but if a contract can be proved otherwise, it is enforceable in a court of law unless it falls within the class of those contracts which absolutely require the existence of writing to support them. Moreover, a defendant who intends to rely upon the defence that there is no evidence in writing, must specially plead it, or the absence of writing will not help him. (See *Frauds, Statute of.*)

Other contracts which must be evidenced by writing are:—

(*a*) Bills of exchange. This was necessary by the *lex mercatoria*, and was adopted by the common law. A statute of the reign of Anne required that promissory notes should also be in writing. Both are now governed by the Bills of Exchange Act, 1882.

(*b*) Assignments of copyright.

(*c*) Contracts of marine insurance.

(*d*) Acknowledgments of debts barred by the Statute of Limitations.

The existence of a document in writing does not dispense with consideration, unless that document is a deed. Considerations are of two kinds, good and valuable. A "good" consideration consists in natural love and affection. This is not sufficient to support a simple contract. The consideration required is what is known as valuable. A "valuable" consideration has been defined as "some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other." More shortly it may be defined as some return or equivalent for a promise made, to show that the promise was not made gratuitously. The simplest illustration is the payment of a sum of money for the purchase of goods, or for an undertaking to do some piece of work.

The requisites of a consideration are:—

(1) The consideration must be of some value, however slight, and must proceed from the person to whom the promise is made. Unless the consideration is one of such inadequate value as to raise a presumption of fraud, the contract will not be set aside by the courts.

(2) If the consideration consists in something to be done by one of the parties to the contract, it is necessary that the act should not be such as the promisor is already under a legal obligation to do.

(3) The consideration must not be of a vague and indefinite character. It must be something that the law can enforce if necessary.

(4) It must be lawful.

(5) It must not be a past benefit, unless it can be shown that the services rendered were at the request, express or implied, of the party benefited. The law will imply the request,

(*a*) Where the plaintiff has been compelled to do what the defendant was legally bound to do.

(*b*) Where the plaintiff has voluntarily done what the defendant was legally compellable to do, and the defendant has, in consideration of the same, expressly promised.

(*c*) Where the defendant has adopted the benefit of the consideration.

Legality.—No agreement is of any legal effect if it is unlawful in any of its terms, or if it contemplates the prosecution of anything which is unlawful in its results. It makes no difference whether the contract is under seal or only a simple contract. In each case such a contract is void.

It is not merely the liability to punishment, or other legal penalty, which makes an agreement unlawful. An agreement may also be null and void if it is opposed to public policy, or is expressly made void by statute law.

Any agreement to commit a crime is, of course, void, and so also is one to commit a civil injury, that is, an injury for which damages may be claimed in a court of law. Again, an agreement is equally invalid if it has for its object the payment of money, or the transfer of property, in aid of an illegal purpose. For example, it is a

criminal offence to compound a felony, that is, to refrain from prosecuting an offender. An agreement, therefore, to lend money for the purpose of applying it in compounding a felony is void. The holding of lotteries is a criminal offence. Any agreement, therefore, to subscribe to a lottery, or to pay a prize gained in the same to a winner is void. Again, all agreements which have for their purpose the defrauding of third parties are void. If, therefore, a man who is heavily indebted enters into an agreement with his creditors by which he agrees to pay them a certain portion of their debts in full satisfaction of the whole, he cannot favour one creditor at the expense of the rest. An agreement to pay a larger composition to one than to the others is void; that is, of course, unless all the others consent to such a thing being done.

Certain contracts have been made invalid by various Acts of Parliament. Such are those which offend against the provision of the Truck Acts, by which it is forbidden to pay the wages of workmen otherwise than in money, and the laws as to Sunday trading—now almost obsolete. Gaming and wagering contracts are invalid, and contracts for the sale of certain goods, such as game, intoxicating liquors, bread, and coal, are subject to special regulations.

Contracts made on the Stock Exchange for the sale and purchase of stocks and shares, which are not intended by the parties to result in legitimate business are, in the eye of the law, wagers, and consequently void. Also Leeman's Act, passed in 1867, renders void the sale of shares in a joint-stock banking company, unless the contract sets out in writing the numbers of the shares as stated in the register of the company. It has been the custom of the London Stock Exchange to disregard the provision of this Act, but such a custom cannot be upheld.

If one party to an unlawful agreement has paid money to the other party for the purposes of the agreement, he may repudiate his agreement and claim repayment of his money, unless it has already been appropriated by the party to whom it has been paid in accordance with the terms of the agreement.

Public Policy. — It is not easy to define "public policy," since the term must have different meanings at different times; but it may be broadly stated that the contracts which are held to be opposed to public policy are those which it is deemed undesirable to recognise on the ground that they are opposed to the public interest. At one time there was a strong disposition to interfere with contracts which were supposed to offend against public policy, but the reverse is now the case, and in 1891 the late Mr. Justice Cave said: "Judges are more to be trusted as interpreters of the law than as expounders of what is called public policy." Consequently, the number of contracts which are held to be illegal on this ground is now comparatively small.

Trading agreements made with aliens who are the natural-born subjects of a country at war with this country are invalid. The rule is different if a licence has been obtained from the Crown to trade with the enemy. Contracts entered into before the outbreak of hostilities between the subjects of different states are simply suspended during the continuance of the war, unless they are such as to be incapable of suspension, e.g., a partnership. A state of war cannot fail to create exceptional difficulties, and these difficulties can only be met by emergency legislation. It is useless, therefore, to lay down any code of rules which can be applicable in all cases.

Other contracts which are considered to be opposed to public policy are those which stipulate for the payment of penalties under certain conditions. Sometimes the parties to a contract agree as to the sum of money that is to be paid in case there is a breach of it, and give to the sum agreed upon the name of "liquidated damages." But the law will scrutinise agreements of this kind with great jealousy, and, following the principles of equity, will grant relief whenever it is clear from the facts of the case that the payment is, in spite of its name, not the amount of damages sustained, but in reality a much larger sum, and therefore a penalty.

Restraint of Trade.—Contracts which tend to place any undue restraint upon freedom of trade are regarded with suspicion. The reasons for holding contracts in general restraint of trade to be void were stated concisely in a case tried in 1837 :—

"(1) Such contracts injure the parties making them, because they diminish their means of procuring livelihoods and a competency for their families. They tempt improvident persons, for

the sake of gain, to deprive themselves of the power to make future acquisitions. And they expose such persons to imposition and oppression.

"(2) They tend to deprive the public of the services of men in the employments and capacities in which they may be most useful to the community as well as to themselves.

"(3) They discourage industry and enterprise, and diminish the products of ingenuity and skill.

"(4) They prevent competition and enhance prices.

"(5) They expose the public to all the evils of monopoly."

The history of the subject is extremely interesting, but too lengthy to be attempted in any work not specially devoted to the subject. By degrees, it was held that a partial restraint of trade might be allowed, provided there was a limit of time and space, and that there was also some consideration for the restraint. (It is an exception to the general rule as to deeds, that even though the agreement in restraint of trade is under seal, there must still be a consideration to support it.) What is a reasonable limit must depend upon the peculiar circumstances of each case, and especially upon the nature of the trade or profession which is affected. Thus, the following have been held good: a contract by a solicitor not to practise within 150 miles of London; by a surgeon not to practise within seven miles of a certain country town; by a publisher not to carry on his trade within 100 miles of the General Post Office, London. But a contract by a dentist not to carry on his practice within 100 miles of York was held to be bad.

Owing to the invention of railways, the telegraph, and the telephone, the courts are now inclined to give a more liberal construction to contracts of this kind than they would have done half-a-century ago. A business man is not now confined to a narrow limit, but may have connections in all parts of the world. He might, therefore, be a serious loser at various times if his clerks, agents, or employees were able to set up in business and compete with him. For this reason when an employee is taken into service in a firm with a large business connection it is generally made a condition of the contract of employment that he shall not enter into the same or a similar business to that carried on by his employer for a certain period, or within a limited district, after the termination of his agreement. A similar kind of agreement is entered into in most cases between the vendor and purchaser of the goodwill upon the sale of a business, the vendor covenanting not to compete with the purchaser for a certain time within a specified district. The object in both cases is to prevent undue competition. Unless the restraint imposed is considered, under all the circumstances, too harsh, the agreement will be held good.

Sometimes an agreement of this kind will be held to be partly good and partly bad. Thus, in one case the defendant covenanted with his employers that after he left their service he would not practise as a dentist in London, or in any other place in England or Scotland where they might have been practising. The agreement was held to be good as to London, but bad as to all other places.

One of the most recent as well as one of the most important expositions of the modern law as to contracts in restraint of trade is to be found in the case of *Nordenfelt* v. *Maxim-Nordenfelt Guns Co.*, 1894, A.C. 535. In that case a patentee and manufacturer of guns and ammunition for purposes of war covenanted with a company to which his patents and business had been transferred that he would not for twenty-five years engage, except on behalf of the company, either directly or indirectly, in the business of a manufacturer of guns and ammunition. It was held that although the covenant was unrestricted as to space, yet, having regard to the nature of the business and the limited number of customers, viz., the governments of this and other countries, it was not wider than was necessary for the protection of the company, nor injurious to the public interests of this country, and that it was therefore valid.

A very curious case in connection with this part of the subject is that of *Elliman* v. *Carrington*, 1901, 2 Ch. 275. The plaintiffs, who are the well-known manufacturers of an embrocation, sold a quantity of their goods to the defendants under a contract whereby the latter agreed not to sell them for less than a specified price, and also to procure a similar agreement from any retail dealers whom they might supply. The defendants failed to obtain such agreement from the retail dealers. It was held that the covenant in the contract was not in restraint of trade,

and that the plaintiffs were entitled to maintain an action against the defendants in respect of the breach of it.

In a case which came before the Court of Appeal in November, 1908, where a covenant in restraint of trade entered into with an infant was under consideration, it was stated that anything unusual in the covenant might cause the Court to modify the general propositions as laid down in the best known leading cases, especially if such covenants were entered into with infants, or with employees in the case of restraints imposed by employers. (See *Master and Servant.*)

Possibility of Performance.—The contract must be one which is capable of being performed at the time when it is made. An undertaking to perform an impossibility renders a contract void for want of sufficient consideration.

There are three kinds of impossibility:—

(1) Absolute impossibility. This is the case of an agreement to perform a thing which is incapable of performance by the laws of nature, as an undertaking to fly to the moon, or to circumnavigate the globe in an hour.

(2) Legal impossibility. This is the case where an act is positively forbidden by the law of the land.

(3) Actual impossibility. This is the most important of the three. It arises where parties have contracted as to a certain thing which, without their knowledge, is non-existent at the time of entering into the contract, or as to a state of affairs which has changed between the times of the formation and the performance of the contract. Thus in one case, two parties bargained as to a cargo which was supposed to be on a voyage. It subsequently transpired that it had ceased to exist owing to perils of the sea. It was held that the contract was void.

Many interesting points as to impossibility of performance arose out of the letting and hiring of seats for the Coronation in 1902. In one of the latest it was judicially decided that where money has been paid under a contract, the further performance of which has become impossible owing to the non-existence of the subject matter of the contract, the contract is not rescinded *ab initio*, but both parties are excused from any further performance under the contract. In any case if the executive steps in and hinders the performance of a contract, the contract is dissolved.

Of course a man may contract absolutely as to this third class, and if he does so he must submit to the consequences. But the terms of the contract would have to be very explicit to fix him with liability for every kind of failure, especially if the contract was one of a personal nature. It might be utterly impossible, under the circumstances, to secure the services of a deputy in cases of incapacity or illness.

Mistake.—Since the agreement of two minds in the same sense upon the same subject matter is a condition precedent to the formation of a contract, the parties must know what they are bargaining about, and if it can be shown that there was clearly a misapprehension on the one side or the other, the contract will be, in some cases, invalid or voidable. But the mistake which will affect the validity of a contract must not be confounded with the popular meaning of the word, nor does the operation of mistake extend beyond what are called mistakes of fact. Otherwise the majority of people would probably endeavour to avoid their liabilities on the ground that things had turned out contrary to their expectations, and that they had been mistaken.

No agreement, which in other respects contains all the ingredients of a valid contract, is invalid because of a mistaken construction of the law. A person who has full knowledge of all the material facts of a case cannot plead ignorance of the legal effects of an agreement. The maxim is *Ignorantia juris neminem excusat* (ignorance of the law excuses no man). Similarly, although money paid under a mistake of act may be recovered, money paid under a mistake of law is irrecoverable. Thus, in one case an action was brought to recover the price of goods sold. The defendant declared he had paid for them, but could not produce the receipt. He was, therefore, compelled to pay a second time; and when, a little later, the receipt turned up, he was unable to recover his money from the seller of the goods. The decision is apparently harsh, but it is based upon the principle that unless some limit is fixed contests in the courts might go on interminably. The doctrine that money paid by mistake under compulsion of legal process cannot be recovered will not be allowed to prevail if it appears that there has been an absence of *bona fides* on the part of the original creditor.

In some cases the courts will allow a mistake in a written agreement to be

rectified, if it is clearly made out that the agreement as it stands does not express the intentions of the parties.

The mistakes of fact which are sufficient to invalidate a contract, otherwise regular upon the face of it, are the following:—

(1) Mistake as to the subject matter of the contract. This may refer either to the existence of the subject matter at the time of the formation of the contract, or to its identity. Unless the parties are *ad idem*, there can be no contract.

(2) Mistake as to the parties to the contract. This arises when one of the parties intending to contract with one person makes an agreement with another. Certainty is one of the essentials of a valid contract, and a mistake of this kind renders the agreement invalid.

(3) Mistake as to the nature of the contract. The most familiar example of a mistake of this kind is where a blind or illiterate person is prevailed upon to sign a deed or other document, being told that it is something altogether different. The mistake, which may amount to fraud on the part of some person or other, arises from the fact that the mind of the signatory does not accompany the signature.

A very difficult point arises in the sale of goods, where the parties hold different views as to the nature and the quality of the thing sold. Unless, however, it is shown that the seller is in some way bound to the buyer, each party takes his own chance as to the bargain, and the contract holds good.

Misrepresentation.—Before any contract is entered into the parties will most probably have been in negotiation, and certain statements, inducing the contract, will have been made on one side or the other. In the case of certain contracts, e.g., insurance, the representations made are of the utmost importance, and the fullest disclosure of all material facts is required. If the statements turn out to be inaccurate, though not so to the knowledge of the person making them, there will arise what is called misrepresentation, and the contract will be voidable at the option of the person damnified, since his consent to the terms of the contract was obtained by representations which prevented him from having a full and proper knowledge of the facts. In order, however, that misrepresentation may be a ground for rescinding a contract, it must be one of fact and not of law, it must have been made by one of the parties to the contract, and the contract itself must have been induced by the other party relying and acting upon the misrepresentation.

Cases of misrepresentation arise very frequently, and as the facts are often complicated it is a difficult matter, without carefully sifting the whole evidence, to say what will suffice to avoid a contract on this ground. When a man intends to enter into a bargain he must use foresight and ordinary prudence, and he cannot expect much sympathy—the law certainly will not sympathise with him—if the bargain turns out to be less favourable than he imagined it would be, especially if, when he has had every opportunity of examining the whole matter for himself, he has nevertheless trusted blindly to the statements of others.

Fraud.—When a misrepresentation is made by a party with a full knowledge that it is untrue, or recklessly, not caring whether it is true or false, this is said to be fraud. The law upon the subject was finally settled by the House of Lords in *Derry* v. *Peek*, 1889, 14 A.C. 337. In that case the directors of a tramway company had stated in their prospectus that they had a right to use steam power in the working of their carriages. In point of fact, the right to use steam power was subject to the sanction of the Board of Trade, which the directors honestly believed they would obtain. The permission was not given. It was held that as the statement in the prospectus was made honestly, in the belief that it was true, there was no fraud.

Since this case was decided the position of directors has been changed by the Directors Liability Act, 1890, and though this Act is repealed, its chief provisions are incorporated in the Companies (Consolidation) Act, 1908. If a charge of fraud is now made against directors, it is not for the plaintiff to prove that the directors had no grounds for believing in the truth of the statements contained in the prospectus, but for the directors to show that they had good grounds for making them. As far as other persons are concerned, the law remains as it was laid down in *Derry* v. *Peek*.

Fraud is so far-reaching in its effect, and so infinitely varied in its form, that the courts have refused to lay down any definition of it which will cover all cases. As in misrepresentation, it must be remembered that in order to avoid

a contract on the ground of fraud, the fraudulent statement complained of must be one of fact and not of law, must have been made by one of the parties to the contract, and must have been the cause of the contract's being entered into. The misrepresentation need not be made directly to the person deceived. Not many years ago it was held that where a prospectus was issued for the purpose not merely of inviting persons to subscribe for shares, but also of inducing persons to purchase the shares of the company in the open market, the office of the prospectus was not exhausted by the allotment of the shares; and that any one who, having received a prospectus, afterwards purchased shares in the open market, relying upon the false representations contained in the prospectus, had a cause of action against the promoters for fraudulent misrepresentation. But if the buyer of shares did not, in fact, rely upon the false statements complained of, but was induced to buy for other reasons, no action would lie.

Since the state of a man's mind is a matter of fact, a person cannot shelter himself behind a declaration that he made a statement honestly believing it to be true, when in fact he is wilfully misrepresenting the state of his own mind. But this is a question of evidence.

If a contract has been induced by misrepresentation or fraud the injured party may elect to uphold the contract or to set it aside. The contract is not void, but voidable. If it is intended to uphold the contract, there is a right of action for damages sustained by the fraud or misrepresentation. If it is intended to avoid the contract notice must be given to the other parties. If any advantage has been taken under the contract it cannot be avoided, and the same is true if circumstances have so altered the state of affairs that the original position of all concerned cannot be restored.

Undue influence and duress are subjects closely allied to misrepresentation and fraud. The former consists in the improper exercise of a power possessed over the mind of one of the contracting parties by the other. The latter signifies actual or threatened violence, or a restraint of liberty. In either case the party coerced may avoid the contract, since the law will presume that his consent was not given freely. Subsequent ratification, however, when the undue influence or duress has been removed, will make the contract good in all respects.

Rights and Liabilities. — A contract gives rise to certain rights and liabilities. These rights and obligations cannot arise except between the parties to the contract. A third party cannot come in and demand the performance of anything, even though the contract is really made for his benefit. For example, if A. agrees with B., there being a consideration for the promise, that C. shall receive £50, C. cannot enforce the payment of this sum, since he is no party to the agreement. Similarly C cannot be bound by a contract made between A. and B. to do something for the benefit of either of them. The fact of an agent being employed to carry out an agreement is not an exception to the rule. The legal maxim is *qui facit per alium facit per se*, and the agent occupies the place of his principal, or employer, for many purposes.

What are the exact rights and obligations arising out of a contract is a question of evidence. If the contract is a verbal one, the intentions of the parties must be gathered from all the circumstances of the case. If the contract is one which requires writing to make it enforceable, the construction of the document is for the court. It must be carefully borne in mind that when all the terms of a contract are reduced to writing, no evidence can be given to vary them. The terms have been set out deliberately, and the rights and obligations given or imposed must be found within the four corners of the document.

Nevertheless, when it is necessary to give effect to the terms of a contract, whether of those which have been proved in the case of a verbal contract, or of those which are contained in a written document, certain rules of construction must be observed, of which the following are the principal:—

(1) The construction must be reasonable.

(2) It must be liberal.

(3) It must be favourable.

(4) Words must be construed in their ordinary sense.

(5) The whole context must be considered.

(6) The words of a contract must be construed most strongly against the contractor.

From a general consideration of these rules it is clear that the English courts lean strongly towards making a contract

effective, whenever they can see their way clear to do so, on the maxim *ut res magis valeat quam pereat*. If words have acquired a peculiar signification from their use in a certain locality or trade, their meanings will be recognised and effect will be given to them. Thus in one case it was shown that a thousand rabbits always signified twelve hundred. The existence of commercial and local customs will be noticed, unless they have been expressly excluded by the terms of the contract.

The rule as to the exclusion of oral evidence to vary a contract which is evidenced by writing does not extend to the case of what is called a "latent ambiguity," that is, a word or phrase which on its face appears perfectly clear, but which can be shown to be applicable to different matters.

At common law it was impossible to assign the rights acquired under a contract, as being a *chose in action*. This was not the rule in equity, and since the passing of the Judicature Act, 1873, the equitable prevails in all the courts. (See *Assignment*.)

Discharge of Contract.—A contract is said to be discharged when the contractual relationship is terminated, and the rights and liabilities arising out of it are extinguished. Other rights and liabilities may have arisen, but they are independent of the original contract.

Discharge may take place in one of the following ways:—

I. *Agreement*.—This may happen in one of three ways—by the substitution of a fresh agreement for the original one, by waiver, or by release. If the original contract was under seal the release must be effected by means of a deed. If the release is not one which is required to be under seal, it must be made for a sufficient consideration. In the case of an agreement made by promises of one party to the other, the consent of each to its alteration or cancellation will be consideration enough. No consideration is required for the cancellation of a bill of exchange.

A contract is said to be discharged by agreement if it comes to an end owing to the occurrence of an event, upon the happening of which it has previously been agreed that all rights and liabilities under it shall cease. This is generally so with an ordinary bond. A. binds himself by deed to pay to B. a sum of £500, but if B. does a certain act the bond is to become void. The performance of the act extinguishes the contract.

II. *Performance*.—By performance is meant the fulfilment of the terms of the contract in every respect. If a time is fixed for the performance it must be observed; if not, a reasonable time is to be allowed.

When the performance of a contract consists in the payment of a sum of money, the money paid, in order to make the discharge absolute, must be by what is called legal tender, unless the creditor dispenses with it. (See *Legal Tender*.)

If a cheque, bill, or note is accepted by a creditor in payment of money due, it will depend upon the circumstances of the case whether it was the intention of the parties to extinguish the existing contract by the transfer of such cheque, etc. If it was, then the creditor has a new contract in place of the old one, upon which he must sue in the event of the cheque being dishonoured. Generally, however, it is understood that the cheque is given conditionally, and that the agreement between the parties is that if the cheque is dishonoured the original contract is revived.

A contract is discharged when an agreement has been made by the parties to it that something shall be done or given in satisfaction of the existing right of action under the contract. This is called "accord and satisfaction." But accord without satisfaction does not bar the right of action. Therefore in the case of an ascertained debt the acceptance of a smaller sum of money is not satisfaction, but simply a reduction of the debt *pro tanto*, there being no consideration for the relinquishment of the unsatisfied part. But the payment of something else of a different nature (and even a negotiable instrument for a smaller amount), however insignificant its value, is a sufficient performance of the contract, and a good legal discharge.

Tender operates as a performance of a contract, if made strictly in accordance with the terms of the contract, but refused by the promisee. (See *Tender*.)

In connection with the subject of payment should be noticed the rules respecting "appropriation of payments." If a debtor owes more than one debt to his creditor, and pays to him a sum of money which is insufficient to liquidate the whole of the debts, the money must be appropriated by the creditor in the following manner:—

(1) To whichever debt the debtor

desires, provided the option is exercised at the time of payment.

(2) If no appropriation is made by the debtor, the creditor is at liberty to exercise his own option at any time.

(3) If there is a general running account between the parties, there is a presumption (though it may be rebutted) that the money paid has been appropriated to the various items in the order of date.

When two or more persons have jointly promised, each of them is liable on the contract, and the performance of the terms by any one of them is an extinguishment of the liability of the others. The contract is discharged by the performance. The one who has performed the contract can make his copromisors repay their share of the debt or liability. This right of contribution is confined to contract; there is no contribution in tort, except in the case of a libel contained in various newspapers, and under those sections of the Companies (Consolidation) Act, 1908, which have replaced the provisions of the repealed Directors Liability Act, 1890.

III. *Breach.*—On the breach of a contract the rights and liabilities under it are converted into a right of action for damages, or in certain cases for specific performance, or for an injunction.

The breach of a contract may be either total or partial. If it is total, the party who is injured may at once commence an action against the other party, even though the time for performance is not yet due, provided that the circumstances are such as to make it clear that the terms of the contract will not be carried out. The case which well illustrates this rule is that of *Hochster* v. *de la Tour*, 1853, 22 L.J., Q.B. 455. The plaintiff had been engaged by the defendant to act as his courier at a fixed salary, the duties to commence on June 1. Before that day arrived the defendant changed his mind, and told the plaintiff that he should not require his services. It was held that there was an immediate right of action, and that the plaintiff need not wait until June 1 to commence proceedings. The effects of a partial breach of contract will depend upon the peculiar circumstances of each case.

The most common relief afforded to an injured party for the loss which he has sustained through a breach of contract is damages. Since the main object in awarding damages is to place the injured party as far as possible in his original position, the measure of damages in contract is the amount of the loss which has been sustained through the breach of the contract. These can always be ascertained. Sometimes special losses are taken into consideration, and are recoverable from the defendant; but this is only the case when the defendant knew that such special loss would naturally arise from a breach of the contract, and undertook to be answerable for such loss. In addition to damages, the court may award interest upon a debt or a fixed sum of money awarded to a successful plaintiff in an action. The remedies of specific performance and injunction are applicable when it is clear that money damages are inadequate to compensate the injured party for the breach of the contract.

IV. *Lapse of Time.*—An action on a simple contract must be commenced within six years of the time when the cause of action arose, and within twenty years on a specialty contract. An action for the recovery of land must be commenced within twelve years from the time when the cause of action arose. (See *Limitations, Statute of.*)

V. *Merger and Estoppel.*—Merger is the substitution of a higher grade of contract for a lower, e.g., a specialty debt for a simple contract debt. Again, a judgment of a court of law is of a higher grade than a right of action. Thus, a judgment in favour of the plaintiff discharges the right of action, and supersedes it. Similarly, if judgment is given for the defendant, the judgment supersedes the right of action, and acts as an "estoppel," that is, debars the plaintiff from again suing the defendant for the same cause of action.

VI. *Impossibility.*—A contract is sometimes discharged by the impossibility of performance, which has arisen since the making of the contract. An interesting case on impossibility of performance is that of *Nickoll and Knight* v. *Ashton, Edridge & Co.*, 1901, 2 K.B. 126. By a contract made in October, 1899, the defendants sold to the plaintiffs a cargo of goods, to be shipped by a certain steamship at an Egyptian port during January, 1900, and to be delivered to the plaintiffs in the United Kingdom. The contract provided that, in case of prohibition of export, blockade, or hostilities preventing shipment, the contract or any unfulfilled part thereof should be cancelled. Towards

the end of 1899 the steamship was stranded through perils of the sea, without any fault on the part of the defendants, and was so damaged as to render it impossible for her to arrive at the port of loading during January, 1900. The plaintiffs sued for failure on the part of the defendants to ship a cargo under the contract. It was held, however, that the contract was to be construed as subject to an implied condition, that if at the time of its performance the steamship should, without any default on the part of the defendants, have ceased to exist as a ship fit for the purpose of shipping a cargo, then the contract should be treated as at an end.

In the case of bankruptcy the trustee has a right, under certain conditions, to disclaim any contracts entered into by the bankrupt. (See *Disclaimer*.)

CONTRACT NOTE. (Fr. *Note de contrat*, Ger. *Schlussschein*, Sp. *Nota de contrato*, It. *Nota di contratto*.)

This is a written agreement to supply or to purchase goods at a certain fixed price. It is, in fact, a brief statement of the terms of a contract.

CONTRACT NOTE, BROKER'S. (Fr. *Note de contrat de courtier*, Ger. *Schlussschein des Maklers*, Sp. *Nota de correduría*, It. *Nota di contratto di agente di cambio*.)

The memorandum or report of a transaction carried out by a broker for or on behalf of other persons is known as a broker's contract note. The term is commercially applied to the bought and sold notes, which are sent by the broker to the buyer and the seller respectively, containing a short record of the transaction. These notes are made out from the entries contained in the broker's contract book. It was long ago judicially decided that when the contract notes do not agree in their terms, the true effect of the contract itself is to be gathered from the broker's book.

Contract notes relating to the sale of goods are exempt from stamp duty. Those which have reference to dealings in stock or marketable securities must be stamped according to the scale which is set out in full under *Stamp Duties*.

The stamps used are adhesive ones, the penny one being the ordinary postage and revenue stamp, but the shilling stamp is specially appropriated to contract notes. The stamps must be cancelled by the persons who issue the notes. If the notes advise the purchase or sale of more than one kind of stock, stamp duty is payable upon each kind, as though separate contract notes had been issued for various transactions.

A broker who evades or attempts to evade the payment of stamp duty is liable to a penalty of £20.

CONTRIBUTORIES. (Fr. *Contribuants*, Ger. *Beitragende*, Sp. *Contribuyentes*, It. *Contribuenti*.)

All those persons who are liable to contribute to the assets of a joint-stock company in the event of its being wound-up are known under the general name of contributories.

No question of contribution arises if the capital of the company has been fully paid up. The liability of the shareholders is then at an end. And where the company is limited by guarantee, no person can be called upon to pay more than the amount owing upon his guarantee. Likewise no shareholder can ever be called upon to contribute anything beyond the balance remaining due upon the shares which he holds, or, in certain cases, which he has held within twelve months of the commencement of the winding-up. A fraudulent transfer, however, may not enable him to avoid all liability.

Contributories are divided into two classes, present and past members. The former include all those whose names are on the register of shareholders at the time of the commencement of the winding-up proceedings, and the latter are those who have been on the register within the twelve months previously. In practice the liquidator places them in two lists, known as the "A" list and the "B" list. The "A" list is settled as early in the winding-up as possible, but the "B" list is not fixed until it has been shown to the court that the present members, comprised in the "A" list, are unable to satisfy the debts of the company. They are the persons who are primarily liable, and they must be individually exhausted before any call is made upon the past members. Moreover, past members can in no case be made liable for debts which have been contracted since they ceased to be members.

The rule to be observed in respect of contributories has been judicially declared as follows: "You will apply all that you can get from the existing members in payment of the existing debts, no matter of what date. If after you have done that there remain debts unsatisfied, so that you have to resort

to the members who have passed away from the company within a year, then you will be compelled to classify the residuum of the debts so remaining, and ascertain what part of that residuum is to be attributed to past debts, that is, to debts which pre-existed the transfer made by past members—and what portion is to be attributed to the new debts which have arisen subsequently to the date of the last transfer. When you have ascertained the proportion which is attributable to debts which existed when the transfers were made, then if there have been several transfers within the year, you will be compelled of necessity to sub-divide that portion of the residuum into several portions according as you find that transfers have been made within the past year."

A contributory's estate does not escape liability by means of the death or bankruptcy of the contributory. His executor, administrator, or trustee, as the case may be, will be placed upon the list.

If there are debts owing by the company to a contributory, the latter cannot set those up in part or complete liquidation of the calls made upon him in competition with the ordinary creditors of the company. The calls must first be paid, and the contributory must prove his debt or debts in the winding-up. But any sum owing as dividends may be taken into account for the purpose of the final adjustment of the rights of contributories amongst themselves. Should a contributory, however, be bankrupt, the rule in bankruptcy prevails, and the trustee may set off against the calls any debt due from the company to the contributory.

Notice is given by the liquidator to every person who is placed upon the lists, and the notice states in what character or in respect of what liability he has been placed there. Any aggrieved contributory may apply to the court by summons, within twenty-one days of the service of the notice, to expunge his name from the list. The assets of the company, and not the liquidator personally, will be liable for the costs of a successful applicant.

CONTROLLER. (Fr. *Contrôleur*, Ger. *Kontrolleur*, Sp. *Registrador, interventor*, It. *Controllore, registratore.*)

This is a person who controls or checks the accounts of others by keeping a counter-roll or register.

CONVERTIBLE PAPER CURRENCY. (Fr. *Papier-monnaie convertible*, Ger. *konvertierbares Papiergeld*, Sp. *Papel moneda convertible*, It. *Carta monetata convertibile.*)

A paper currency is said to be convertible when the paper can be exchanged on demand for its full value in specie at the bank which issues it.

The advantages of a paper currency when convertible at any moment are:—

(1) Paper can be more securely conveyed from place to place than coin or bullion, and the cost is less.

(2) There is a saving in the wear and tear of coins.

(3) As paper money is numbered or otherwise marked, it is more easily recovered, if lost or stolen, than coins.

(4) The labour and the probable mistakes in counting are avoided.

(5) There is a saving in the cost of coining.

CONVERTIBLE SECURITIES. (Fr. *Valeurs convertibles*, Ger. *konvertierbare Papiere*, Sp. *Seguridades convertibles*, It. *Valori convertibili.*)

These are securities that are easily sold or converted into money. Such are consols, exchequer bills, railway stock, etc.

CONVEYANCING. (Fr. *Translation de propriété*, Ger. *Abtretung, Umschreibung*, Sp. *Traspaso ó traslacion de propiedad*, It. *Atto di cessione o alienazione.*)

This is the name given to that portion of the law which deals with the transfer of property from one person to another, and with the preparation of the documents and deeds which have reference to the same. The practice of conveyancing is concerned with the sale and purchase of interests in land, mortgages, leases, settlements, wills, partnership deeds, etc.

Before the passing of the Conveyancing Act, 1881, the law and practice connected with conveyancing was of an intricate and technical character, though much of its difficulty had been gradually removed during the fifty years preceding the passing of that Act. Formerly the work was in the hands of a special class of legal practitioners known as conveyancers. These have now almost disappeared, though a few barristers do still make a special study of the subject, and are employed in the drafting of important deeds. By statute, the work of conveyancing is practically limited to barristers and solicitors, unless the work is done by any person gratuitously. By section 44 of the Stamp Act, 1891, it is provided:—

"Every person who (not being a barrister, or a duly certificated solicitor, law

agent, writer to the signet, notary public, conveyancer, special pleader, or draftsman in equity), either directly or indirectly, for or in expectation of any fee, gain, or reward, draws or prepares any instrument relating to real or personal estate, or any proceeding in law or equity, shall incur a fine of fifty pounds.

"Provided as follows:—

(1) This section does not extend to—

(*a*) Any public officer drawing or preparing instruments in the course of his duty; or

(*b*) Any person employed merely to engross any instrument or proceeding.

(2) The expression 'instrument' in this section does not include—

(*a*) A will or other testamentary instrument; or

(*b*) An agreement under hand only; or

(*c*) A letter or power of attorney; or

(*d*) A transfer of stock containing no trust or limitation thereof."

This section is for the protection of the public; because, although the great difficulties have been removed, there still remain some intricate points in certain kinds of conveyancing with which no one but an expert can deal, particularly when the title to property is in question. As a solicitor is liable to pay damages to his client if he is proved to have been negligent in conducting any work entrusted to him, no one would think of permitting any person other than a solicitor to undertake conveyancing work in his behalf.

The scale of payments to be made for conveyancing are fixed by general orders issued under the provisions of the Solicitors Remuneration Act, 1881. These are, of course, subject to the terms of any special agreement as to charges made between the solicitor and his client.

COOPERAGE. (Fr. *Frais de tonnellerie*, Ger. *Küferlohn*, Sp. *Jornal de tonelero*, It. *Spese del bottaio.*)

This term is applied to the money paid to a cooper who attends on quays to repair casks, before or after shipment, or who opens them for sampling. Most dock companies have coopers of their own and make fixed charges according to the amount of work that is done.

CO-OPERATION. (Fr. *Coopération*, Ger. *Kooperation*, Sp. *Cooperación*, It. *Cooperazione.*)

The meaning of this word is "working together," though it has latterly acquired a technical meaning in commerce, being used to express the distinctive principles upon which certain trading associations, called Co-operative Societies, are formed. The main objects of these societies are:—

(1) To avoid the conflicting interests of capital and labour.

(2) To reduce the cost of distribution of commodities to a minimum.

(3) To dispense with middlemen.

(4) To avoid the losses incidental to trading upon a credit system.

(5) To provide pure and unadulterated goods.

The co-operative movement has made great strides in the last few years, and the number of societies is now more than 1,500 with a membership of over 2,500,000.

CO-PARTNERSHIP. (Fr. *Association, société en nom collectif*, Ger. *Teilhaberschaft*, Sp. *Sociedad, asociación en partes iguales*, It. *Compartecipazione, associazione.*)

This is the profit-sharing business scheme in which the employees are not only entitled to a share in the profits of the concern, but also to take part in its management.

COPEC. (See *Kopeck.*)

COPYHOLD. (Fr. *Tenure en vertu de copie du rôle de la cour seigneuriale*, Ger. *Zinslehen*, Sp. *Tenencia de tierras por censo ó por feudo*, It. *Proprietà fondiaria posseduta sotto certe condizioni.*)

This is an estate or right of holding land for which the holder, who is called the copyholder (Fr. *Tenancier par copyhold*, Ger. *Lassbesitzer*, Sp. *Enfiteuta, Censualista*, It. *Fittaiolo.*), can show no other title than the entry in the rolls of the manorial court made by the steward of the manor.

This tenure is of great antiquity. Originally the copyholders were nothing more than villeins, holding their lands at the will of the lord of the manor. But gradually they established a customary right to their estates, and copyholds are now but little distinguishable from freeholds, except that certain incidents are attached by custom, which vary with different manors, and the modes of conveyance and surrender are symbolical.

In Ireland there is no copyhold land, and the creation of copyhold tenure has been impossible in England since the reign of Edward I. Under certain conditions copyhold land may be enfranchised, and the holding turned into freehold, with all the incidents and customs of the manor destroyed.

When a copyholder becomes bankrupt

his trustee may either disclaim the land, or deal with it as if it had been surrendered, and convey it to any person he may appoint, who is to be admitted or otherwise invested without any intervening admission on the part of the trustee himself.

COPYING-PRESS. (Fr. *Presse à copier*, Ger. *Kopierpresse*, Sp. *Prensa para copiar*, It. *Macchina da copiare.*)

This is the name given to any contrivance by which copies of letters are taken.

COPYRIGHT. (Fr. *Droit d'auteur*, Ger. *Verlagsrecht*, Sp. *Derecho de autor*, It. *Diritto d'autore.*)

Copyright is the sole and exclusive liberty of printing or otherwise multiplying copies of an original work The work may be literary, artistic, or musical. If it is musical or dramatic, the copyright includes the sole and exclusive privilege of public performance of the same.

At common law there was no copyright in literary publications after publication, though there was before. The result was that if a person produced a work of imagination or reasoning, he could restrain another from publishing it, if by any chance that other happened to become acquainted with it, but if the author once gave it to the world he had no remedy against any one who chose to pirate it. Various statutes were passed to remedy this glaring injustice, but the whole were repealed and the law amended by the Copyright Act, 1842, which governed the copyright in books, and in dramatic pieces or musical compositions from that year up to 1912, when the Copyright Act, 1911, came into force.

Generally speaking, copyright subsists for the life of the author and a period of fifty years after his death; in photographs for fifty years from the making of the negative; but at any time after the expiration of twenty-five years, or, in the case in which copyright subsisted before the passing of the Act of 1911, thirty years from the death of the author of a published work, copyright in the work is not deemed to be infringed by the reproduction of the work for sale, if the person so reproducing proves that he has given notice in writing of his intention to reproduce the work, and that he has paid to, or for the benefit of, the owner of the copyright, royalties in respect of all copies of the work sold by him, calculated at the rate of 10 per cent. on the price at which he publishes the work.

If at any time after the death of the author of a literary, dramatic, or musical work, which has been published or performed in public, a complaint is made to the Judicial Committee of the Privy Council that the owner of the copyright in the work has refused to republish, or to allow the republication of the work, or the performance in public of the work, and that by reason of such refusal the work is withheld from the public, the owner of the copyright may be ordered to grant a licence to reproduce the work, or to perform the work in public, on such terms and subject to such conditions as the Judicial Committee thinks fit.

Copyright extends throughout the United Kingdom, and, subject to some qualifications, to all British possessions wherein the Copyright Act, 1911, has been adopted by the local legislature, or has been declared to be operative by an Order in Council. It is essential, in order that copyright should attach, that the subject matter, if a published work, was first published within such part of His Majesty's dominions as is subject to the law of copyright or, in the case of an unpublished work, that the author was, at the date of the making of the work, a British subject, or resident within such part of the King's dominions.

The owner of the copyright in any work may assign the right, either wholly or in part, and either generally or subject to limitations to any particular country, and either for the whole term of the copyright or for any part thereof, and may grant any interest in the right by licence, but no such assignment or grant will be valid unless it is in writing and signed by the owner of the right in respect of which the assignment or grant is made, or by his duly authorised agent.

There is no longer any necessity to register a work in order to be able to maintain an action for infringement of copyright, as was the case under the Act of 1842. Publication is a question of fact, and any unfair or improper copy of a work subjects the offender to an action for damages or to an injunction restraining him from continuing the offence. Proceedings may also be taken summarily in a police court, and the penalty inflicted, in case of conviction, will vary from 40*s.* to £50. No proceedings can be taken if more than three years have elapsed since the offence was first committed. The Act must be consulted as to what will not constitute an infringement of copyright.

The Act must also be consulted as

to the meaning of "literary, dramatic, musical, and artistic work."

The publisher of every book published in the United Kingdom must, within one month after the publication, send a copy to the British Museum, and, if required to do so within a year after publication, must also send copies to the Bodleian Library, Oxford; the University Library, Cambridge; the Library of the Faculty of Advocates, Edinburgh; the Library of Trinity College, Dublin; and, with some possible exceptions, the National Library of Wales. The penalty for non-observance is a fine not exceeding £5, and the value of the book.

The Customs Laws Consolidation Act was passed in 1876 to prohibit the importation into the United Kingdom of books "wherein the copyright shall be first subsisting, first composed, or written or printed in the United Kingdom, or printed or reprinted in any other country, as to which the proprietor of such copyright or his agent shall have given to the Commissioners of Customs a notice in writing, duly declared that such copyright subsists, such notice also stating when such copyright will expire." Lists of all such books are exposed at the custom houses in the chief ports of the kingdom, and the Commissioners have full power to confiscate, destroy, or otherwise dispose of all books imported contrary to the above section of the statute. This provision of the Act of 1876 is substantially reproduced in section 14 of the Act of 1911.

Efforts have been made at various times to give British authors protection in foreign countries for their works, and to foreign authors for works published and circulated in this country. At the Berne Convention, held in 1908, certain resolutions were passed, and the provisions in the Act of 1911 dealing with international copyright are largely the outcome of these resolutions, and now, by an Order in Council, provision may be made for the mutual protection of authors between this country and the country mentioned in the Order, so that they may obtain full rights outside their own territories. The United States was not a party to the Berne Convention, and special rules must be regarded if copyright is to be obtained in the American Republic. The work must be published simultaneously in the country of origin and in the United States, the production in the latter country being from type set up or manufactured there. There are also certain requirements as to registration which must be complied with. These points can only be ascertained by engaging an expert agent to conduct and to carry through the whole work of publication.

The open sale of pirated musical works, that is, musical works written, printed, or otherwise produced without the consent of the owner of the copyright, and the small chance of any proper redress against the infringers, led to the passing of the Musical (Summary Proceedings) Copyright Act, which came into force on July 22, 1902. Under the Act a court of summary jurisdiction, upon the application of the owner of the copyright in any musical work, may act as follows: If satisfied by evidence that there is reasonable ground for believing that pirated copies of such musical work are being hawked, carried about, sold or offered for sale, the court may, by order, authorise a constable to seize such copies without warrant and to bring them before the court, and on proof that the copies are pirated an order may be made for their destruction or delivery up to the owner of the copyright, if he applies for such delivery. Further, if any person hawks, carries about, sells, or offers for sale any pirated copy of any musical work, every such pirated copy may be seized by any constable without warrant, on the request in writing of the apparent owner of the copyright in such work, or of his agent thereto authorised in writing, and at the risk of such owner. On seizure of any such copies they shall be conveyed by such constable before a court of summary jurisdiction, and, on proof that they are infringements of copyright, shall be forfeited or destroyed, or otherwise dealt with as the court may think fit. This Act has been rendered more effective by another Act passed in 1906. These two Acts are now incorporated in the Act of 1911.

CORDAGE. (Fr. *Cordage*, Ger. *Tauwerk*, Sp. *Cordaje*, It. *Cordame, sartiame.*)

This is a general term for cords or ropes.

CO-RESPONDENT. (Fr. *Codéfendeur*, Ger. *Mitangeklagter*, Sp. *Copareciente*, It. *Coimputato.*)

The defendant in any legal proceedings is often known as the respondent, and if there is a joint respondent, he is generally designated the co-respondent.

CORNER. (Fr. *Accaparement, corner*, Ger. *Corner, Kneife, Ring*, Sp. *Acaparamiento, corner*, It. *Accaparramento, corner.*)

This word is of American origin, and

signifies the operations of a speculator or syndicate of speculators, by means of which the whole or the greater portion of a certain marketable commodity is drawn into the hands of the speculators, who are then in a position to dominate the market and fix their own prices. The process is not a difficult one, provided the speculators have sufficient capital at their disposal to buy up all possible supplies. Some corners have proved very successful, whilst others have been disastrous failures.

The principle of cornering is the same on the Stock Exchange. The promoters of a corner get into their hands the bulk of the shares issued by a certain company, and are then able to name their own prices before they will part with any of them. The "bears" are cornered when the securities they have sold are only obtainable from the persons to whom they have sold, who demand delivery, and are prepared to take up the securities purchased. There is often a combination on the part of "bulls" to buy up all the shares which the "bears" are selling, so that when these latter begin to cover, they have to pay a higher price than that at which they have sold. The "bulls" are then said to be "squeezing the bears." But if the "bulls" refuse to sell and demand delivery of the shares which they have purchased, the "bears" are said to be "cornered."

CORPORATION. (Fr. *Corporation*, Ger. *Korporation*, Sp. *Corporación*, It. *Corporazione, maestranza.*)

A corporation is an artificial person created by the law and endowed by it with the capacity of perpetual succession. It consists of collective bodies of men or of single individuals; the first are called corporations aggregate, the second corporations sole. The existence of a corporation is constantly maintained by the succession of new individuals in the places of those who die or are removed.

A corporation is considered as a distinct individual from the persons composing it. It is not the members who compose it, but the property of the corporation which is liable for its debts. The members may, however, be compelled to contribute to its assets.

It is the creation of an Act of Parliament, or of a charter of incorporation granted by the Crown. In addition to its peculiarity of perpetual succession, it possesses a distinctive name and a common seal.

In every Act of Parliament the term "person" includes any corporation, unless there is a declaration to the contrary.

The capacity of a corporation to contract is subject to certain limitations. (See *Contract.*)

COST AND FREIGHT. (C. & F.) (Fr. *Coût et fret*, Ger. *Kost und Fracht*, Sp. *Costo y flete*, It. *Spesa di costo e nolo.*)

Goods which are sold under this arrangement are not insured, but the price includes cost and freight only.

COST BOOK PRINCIPLE. (Fr. *Principe du livre des charges*, Ger. *Kostenbuchprinzip*, Sp. *Principio del libro de costos*, It. *Principio del libro dei costi.*)

This is the plan used in conducting mines in some parts of the country. The receipts and expenditure are kept closely posted, and the books are frequently balanced for the purpose of distributing profits, or of raising further capital, as the case may be, a meeting of those interested being called at stated intervals for that purpose. The shareholders in mines conducted on the cost book principle are usually entitled to withdraw from the concern at any time they please, provided they have paid up their proportion of the existing liabilities. When this has been done the names are struck off the book.

COST, FREIGHT, AND INSURANCE. (C.F.I., or more generally C.I.F.) (Fr. *Coût, fret, et assurance*, Ger. *Kost, Fracht, und Assekuranz*, Sp. *Costo, flete, y seguro*, It. *Costo, nolo, e assicurazione.*)

This is the price charged for goods when insurance is added to cost and freight.

COSTING. (Fr. *Trouver le coût*, Ger. *Den Kostenpreis herausziehen*, Sp. *Hallar el costo*, It. *Trovare il costo.*)

This is a method of arriving at the cost of an article or a piece of work by analysing and apportioning the amount spent on wages, material expenses, etc.

COULISSE. (Fr. *Coulisse, petite bourse*, Ger. *Coulisse*, Sp. *Bolsin*, It. *Coulisse, borsa non autorizzata.*)

The unofficial market on the Paris Bourse, consisting in the main of high-class firms and arbitrage houses is known by this name. It is a much larger organisation than the *agents de change*, or official members in the Parquet, but it is less responsible. The members are called "Coulissiers."

COUNCIL DRAFTS. (Fr. *Traites indiennes*, Ger. *indische Schatzscheine*, Sp. *Pagarés del gobierno*, It, *Tratte indiane.*)

Council drafts are drafts issued by the English Government upon the Indian Government, and payable at the banks of India. They are issued to prevent the frequent transmission of bullion from the one country to the other.

COUNTERCLAIM. (Fr. *Prétention opposée*, Ger. *Gegenforderung*, Sp. *Reclamo opuesto*, It. *Contropretesa.*)

In any action at law a defendant may not only rely upon any defence which he has to the plaintiff's claim, but may also set up any claim which he himself has against the plaintiff. This is known as a counterclaim. It is altogether independent of the original action, and need have nothing whatever to do with it, and it is to be carefully distinguished from a set-off (*q.v.*), which depends upon the claim and is urged in diminution of the same. If a defendant succeeds in his counterclaim, he is awarded the costs thereof, just as though he had brought a separate action, no matter what may be the fate of the original action.

COUNTERFEIT COIN. (Fr. *Fausses monnaies*, Ger. *falsches Geld*, Sp. *Monedas falsas*, It. *Moneta falsa.*)

This is the general name for all coins purporting to be coins of the realm, but which have not been issued by the Government.

COUNTERFOIL. (Fr. *Souche, coupon*, Ger. *Abschnitt, Gegenstück, Koupon*, Sp. *Contrahoja, matriz, talón*, It. *Cedoletta, stacco.*)

This is the detachable tally or memorandum to share certificates, cheques, passports, etc., containing a record of the issue of such certificates, cheques, or passports, and retained by the person issuing those documents.

COUNTING-HOUSE. (Fr. *Bureau, comptoir*, Ger. *Kontor*, Sp. *Oficina, escritorio*, It. *Ufficio, scrittoio.*)

The name of the house or room specially appropriated by merchants, traders, and manufacturers to the purpose of keeping their books, accounts, letters, and papers.

COUNTRY CLEARING. (Fr. *Virement*, Ger. *Abrechnung der Provinzbanken*, Sp. *Oficina de liquidación de provincias*, It. *Liquidazione di partite delle banche di provincia.*)

This is the system by which a country banker sends all cheques and drafts paid into his bank to his London agent for the purpose of collection, instead of sending each cheque or draft to the particular bank upon which it is drawn. (See *Bankers' Clearing House.*)

COUNTRY NOTES. (Fr. *Billets de banque de province*, Ger. *Banknoten der Provinzialbanken*, Sp. *Billetes de banco de provincia*, It. *Assegni vaglia, biglietti di banca di provincia.*)

Country notes are bank notes payable on demand, issued by any bank of issue, except the Bank of England.

COUPON. (Fr. *Coupon*, Ger. *Koupon*, Sp. *Cupón*, It. *Tagliando, cedola.*)

This is a cheque, or other piece of paper, cut off from its counterpart. It is derived from the French, *couper*, to cut. In a special sense coupons are warrants for interest payable on debentures, bearer securities, etc. They are attached in a sheet to the bonds, cut off as they fall due, half-yearly or at other intervals, and presented at the place indicated for payment.

COUPON SHEET. (Fr. *Feuille de coupons*, Ger. *Kouponsbogen*, Sp. *Lámina de cupones*, It. *Foglio di tagliandi, foglio di cedole.*)

A coupon sheet is a connected series of coupons given in advance with transferable bonds, in order that they may be cut off from time to time and presented for payment as the dividends fall due. The last portion of a coupon sheet is a form of certificate, called a "talon," which can be exchanged for a further series of coupons as soon as those on the coupon sheet have all been presented.

COURSE OF EXCHANGE. (See *Rate of Exchange.*)

COVER. (Fr. *Couverture*, Ger. *Deckung*, Sp. *Depósito*, It. *Deposito, caparra.*)

This is a deposit of money or marketable securities, such as bonds, scrip, certificates, etc., with a lender as a security for a loan, generally with a margin in value, to insure him against the risk of loss in the event of the default of the borrower. The term is most commonly applied to the deposit required by stockbrokers before entering into speculative transactions on behalf of a client. It is sometimes called "margin."

COVERING NOTE. (Fr. *Note en couverture, garantie*, Ger. *Deckungszettel, Garantie*, Sp. *Nota para cubrir, garantia*, It. *Nota per coprire, garanzia.*)

This is a form used by insurance companies undertaking to indemnify the insured should any damage happen between the time of the arrangement of the insurance and the issue of the policy.

COWRY. (Fr. *Cauris*, Ger. *Kauri*, Sp. *Moreta*, It. *Cauri, coury.*)

In the East Indies, and in many parts of Africa, the shells of one of the species *C. moreta*, about an inch long

are used as a substitute for coin, the value in India being about one-thirty-sixth of a farthing. These are called "cowry shells" or "cowries."

CRANAGE. (Fr. *Droits de grue*, Ger. *Krangeld*, Sp. *Derechos de grua, ó pescante*, It. *Diritti d' argano.*)

Cranage is the charge made at certain seaports for the hire of a crane when used for loading or unloading such goods from a ship as are too heavy for the ordinary tackle on board, or a charge made by dock companies for using their cranes for any purpose whatever.

CREDIT. (Fr. *Crédit*, Ger. *Kredit*, Sp. *Crédito*, It. *Credito.*)

In Political Economy, credit is the lending of wealth or capital by one individual to another, the lender being said to give, and the borrower to receive, credit.

In banking a credit is an entry in a banker's books, showing that a customer has a deposit, or deposits, with the banker.

In book-keeping a credit is an entry on the right-hand side of a ledger account, and to "credit" an account is to make an entry on that side.

In commerce credit generally means that a bargain has been agreed upon between two parties, one of whom, the seller, hands over certain goods to the other, the buyer, conditionally upon receiving his promise to pay in a certain definite time. At the end of this specified time, the seller becomes the creditor, and the buyer the debtor, if the money is not paid; and the former has a right of action against the latter which he can put into force. Credit has hence been defined as a "right of action against a person for a sum of money."

CREDIT FONCIER. (Fr *Crédit foncier*, Ger. *Bodenkreditanstalt*, Sp. *Credit foncier*, It. *Credito fondiario.*)

The meaning of this term is "credit on lands." The Credit Foncier is an institution in France, established in 1852, the object of which is to supply landed proprietors with the means of carrying out improvements by granting them loans of money on the security of their lands, to be repaid by equal instalments, so as to extinguish the debt within a certain period. On this principle certain societies have been formed in France, subject to certain conditions, and endowed with certain privileges. Their regulations are precisely defined by law, and they are not allowed to advance more than half the value of the property pledged or hypothecated. Similar companies had been established in Hamburg in 1782, and in Western Prussia in 1787.

CREDIT INDUSTRIEL. (Fr. *Crédit industriel*, Ger. *Kreditverein*, Sp. *Crédito industrial*, It. *Credito industriale.*)

This commercial society was established at Paris, in 1858, for the purpose of making advances, for a limited period, to persons engaged in industrial pursuits on goods, shares, bills, bonds, etc., to the extent of two-thirds of their marketable value. The liability of the shareholders is limited to the amount of their shares. The capital is 60,000,000 francs (£2,400,000), divided into 120,000 shares of 500 francs each.

CREDIT, LETTER OF. (Fr. *Lettre de crédit*, Ger. *Kreditbrief*, Sp. *Carta de crédito*, It. *Lettera di credito.*)

In banking this is a letter addressed by one person or firm to another, requesting the latter to pay to a third person the amount named in it, and debit it to the account between the parties, or draw on the first party for the amount.

A Circular Letter of Credit is one addressed to several bankers or merchants residing at different places.

CREDIT MOBILIER, SOCIÉTÉ GENERALE. (Fr. *Crédit mobilier*, Ger. *Mobiliarbank*, Sp. *Crédito mobiliario*, It. *Societá generale di credito mobiliare.*)

This society was established in France in 1852, upon the principle of limited liability. The capital was fixed at 60,000,000 francs (£2,400,000), divided into shares of 500 francs each. The operations of the society are directed principally into three fields:—

(1) To aid the progress of public works, and promote the development of national industry—making railways, managing gas companies, etc.

(2) For the buying up of shares and bonds of existing societies and companies, for the purpose of consolidating them into one common stock.

(3) For the transaction of general banking and brokerage operations.

The funds for the carrying out of these diverse operations are the capital of the company, and the deposits received by the society from the public.

CREDIT NOTE. (Fr. *Note de crédit*, Ger. *Kreditnote*, Sp. *Nota de crédito*, It. *Nota di credito.*)

A credit note is a document similar in form to an invoice, which is an advice, acknowledgment, or admission of indebtedness by a debtor to his creditor. The

term is used in the commercial world in connection with the note of allowance made by a seller in respect of goods returned, short weight, reduction of price, packages, etc.

CREDITOR. (Fr. *Créancier*, Ger. *Gläubiger*, Sp. *Acreedor*, It. *Creditore.*)

This is a person who gives credit to another, or believes or trusts in him. Commercially the term denotes a person to whom a sum of money is due.

CREDIT SALES. (Fr. *Ventes de crédit*, Ger. *Verkäufe auf Kredit*, Sp. *Ventas á crédito*, It. *Vendite a credito.*)

These are sales for which the time of payment is postponed. The purchaser is entered in the vendor's books as a debtor, and the price of the goods is a book debt.

CROSSED CHEQUE. (Fr. *Chèque barré*, Ger. *gekreuzter Check*, Sp. *Cheque cruzado*, It. *Cheque sbarrato.*)

This is a cheque which is crossed on the face of it by two parallel transverse lines, with or without the words "and Co." Such a cheque can only be paid legally through a banker. (See *Cheque.*)

CUM DIVIDEND. (Fr. *Dividende compris*, Ger. *inklusive Dividende*, Sp. *Dividendo incluso*, It. *Col dividendo.*)

The meaning of this phrase is "with the dividend," that is, the dividend which is due or accruing. When stock or shares are thus sold the buyer takes the benefit of the dividend that has to be distributed. When they are sold "ex div.," the seller disposes of the securities but retains the dividend upon them for himself.

CUM DRAWING. (Fr. *Tirage compris*, Ger. *inklusive Ziehung*, Sp. *Obligaciones con sorteo*, It. *L'estrazione compresa.*)

This term is used when bonds are dealt in at or near the time when a drawing takes place. It means that the securities are sold with any benefits that may arise from the drawing, and if the bonds are drawn for repayment at par, or at a premium, the buyer receives the profit.

CUM NEW. (Fr. *Nouvelle émission comprise*, Ger. *mit Bezugsrecht auf junge Aktien*, Sp. *Nueva emisión inclusa*, It. *Col nuovo, la nuova emissione compresa.*)

This signifies the right to claim any new shares or new issues of stock about to be issued in virtue of present holdings. Joint-stock companies, when increasing their capital, sometimes offer a number of new shares to each of the existing proprietors, and as such shares usually command a premium in the open market, shareholders often sell their right to the allotment by signing a letter of renunciation in the buyer's favour, by which means the former would secure the premium on the new shares without incurring any liability with respect to them. The original shares, if dealt in about that time, and sold with the right to claim the allotment of the new shares, would be quoted "cum new."

CUMULATIVE PREFERENCE STOCK AND SHARES. (Fr. *Actions privilégiées cumulatives*, Ger. *Aktien mit hinzugefügten Dividenden*, Sp. *Valores cumulativos de prioridad*, It. *Azioni e titoli cumulativi privilegiati.*)

These are securities upon which, if the guaranteed dividend cannot be paid in any one year, or any series of years, the dividend accumulates until it can be paid. Such accumulated dividend is entitled to payment before any dividend is paid either on the preference or ordinary shares in any succeeding year, the revenue for any year being first applied to payment of dividend for the current year, and then to payment of the arrears.

CURRENCY. (Fr. *Monnaie légale, monnaie circulante*, Ger. *Kurantgeld, umlaufende Münze*, Sp. *Moneda legal, moneda circulante*, It. *Moneta circolante.*)

This is the circulating medium of a country, by means of which sales and purchases are effected without having recourse to barter. Among civilised nations the precious metals, especially gold and silver, have come generally to be employed. As trade advanced, however, and commercial transactions became larger and more frequent, metal money was found to be inconvenient, and recourse was had to a paper currency. Also, in great national crises, paper frequently takes the place of a metallic coinage. Thus, after the beginning of the Great War, one pound and ten shilling notes became legal tender in the British Isles instead of gold and silver.

The authorised coinage of the United Kingdom consists of the following coins. Some of these are only issued on special occasions.

Coins.	Standard Weight. Grains.	Least Current Weight. Grains.	Remedy of Weight. Grains.
Gold:—			
Five Pound	616·37239	612·500	1·000
Two Pound	246·54895	245·000	0·400
Pound .	123·27447	122·500	0·200
Half-Sov.	61·63723	61·125	0·150

Coins.	Standard Weight. Grains.	Least Current Weight. Grains.	Remedy of Weight. Grains.
Silver:—			
Crown . .	436·36363	—	2·000
Dble. Florin	349·09090	—	1·678
Half-Crown	218·18181	—	1·264
Florin .	174·54545	—	0·997
Shilling .	87·27272	—	0.578
Sixpence .	43·63636	—	0·346
Groat or 4*d.*	29·09090	—	0·262
Threepence	21·81818	—	0.212
Twopence	14·54545	—	0·144
Penny .	7·27272	—	0·087
Bronze:—			
Penny .	145·83333	—	2·91666
Halfpenny	87·50000	—	1·75000
Farthing .	43·75000	—	0·87500

The remedy of weight is the amount of variation allowed in the fineness and weight of the coins when they are first issued from the Mint.

Standard gold contains eleven-twelfths of fine metal and one-twelfth of alloy, i.e., 22 carats fine, with 2 carats of alloy. Its fineness is represented by 916·6. Twenty troy pounds of standard gold are coined into 934 sovereigns and one half-sovereign, and one troy ounce is intrinsically worth £3 17*s.* 10½*d.* One ounce of pure gold is of the value of £4 4*s.* 11½*d.*

Standard silver consists of thirty-seven parts of pure silver, and three parts of alloy. Its fineness is represented by 925. One troy pound of standard silver is coined into 66 shillings.

Bronze is an alloy composed of ninety-five parts of copper, four parts of tin, and one part of zinc. (See *Par of Exchange*, *Tender*.)

CURRENCY BONDS. (Fr. *Bons américains*, Ger. *amerikanische Obligationen*, Sp. *Bonos americanos*, It. *Obbligazioni americane*.)

These are bonds which are issued by various American railway companies, the principal and interest being payable in the United States currency, that is, it is optional whether the bonds are paid in paper, silver, or gold.

CURRENCY OF A BILL. (Fr. *Temps à courir*, Ger. *Laufzeit eines Wechsels*, Sp. *Transcurso de una letra*, It. *Decorrenza di una cambiale*.)

The period between the date upon which a bill is drawn and that upon which it becomes due is known as the currency of a bill. When a bill is payable after sight the currency begins from the date of acceptance; when drawn after date, from the date of the bill.

CURRENT ACCOUNT. (Fr. *Compte courant*, Ger. *Kontokorrent*, Sp. *Cuenta corriente*, It. *Conto corrente*.)

This term is used in banking to signify the amount of money lodged by a person at a bank, which can be withdrawn or added to at any time, with or without interest.

CUSTOM. This word is used in two senses:—

1. (Fr. *Achalandage*, Ger. *Kundschaft*, Sp. *Parroquia*, It. *Clientela*), the turnover or trade of a business or concern, or the persons who regularly deal with the same.

2. (Fr. *Coutume, usage*, Ger. *Gebrauch, Gewohnheit, Herkommen*, Sp. *Costumbre, uso*, It. *Uso*), the undisputed usage which has the effect of unwritten law being observed universally in a trade or business, or other vocation.

CUSTOM HOUSE. (Fr. *Douane*, Ger. *Zollamt, Zollhaus*, Sp. *Aduana*, It. *Dogana, ufficio doganale*.)

This is the place appointed by the Government for the imposition and collection of duties upon the importation or exportation of certain commodities.

CUSTOM OF TRADE. (Fr. *Usage commercial*, Ger. *Kaufmannsbrauch*, Sp. *Costumbre del comercio*, It. *Uso commerciale*.)

This is a usage or custom which is universally recognised and understood as being established with respect to any particular trade.

CUSTOMS BILLS OF ENTRY. (Fr. *Reports maritimes*, Ger. *tägliche Berichte der Zollbehörde*, Sp. *Declaraciones de aduana*, It. *Listini doganali, bollettini marittimi di importazione ed esportazione*.)

These are the daily lists issued by the Customs authorities (to merchants and others subscribing), containing a summary of British shipping, useful for general information.

Bill "A" shows the ships' reports inwards, and contains a full list of the cargo in each of the different boats, classed under the various ports at which the vessels have arrived.

Bill "B" shows the exports, imports, and general shipping in the country. It gives a full list of all exported and imported goods, classed under their different headings, and enumerates the various ships arrived, those loading, and those leaving port.

CUSTOMS DEBENTURE. (Fr. *Certificat de prime*, Ger. *Rückzoll*, Sp. *Certificado de obligación hipotecaria*, It. *Certificato di obbligazione ipotecario*.)

This is a certificate issued by the

officers of customs that certain goods entitled to drawback have been entered and shipped for exportation. On it the exporter declares, in the presence of the official through whom the money is paid, that the goods have been actually shipped and are not intended to be re-landed in the United Kingdom, and that he is entitled to the drawback claimed.

CUSTOMS DECLARATION. Fr. *Déclaration en douane*, Ger. *Zollinhalts-Erklärung*, Sp. *Declaración de aduana*, It. *Dichiarazione doganale.*)

The sender of every parcel by post to or from the Channel Islands, any British dominion or colony, or any foreign country, is required to make out a Customs Declaration on a prescribed form. This form must contain an accurate statement of the nature and value of the contents of the parcel, the date of postage and the net weight of the articles contained in the parcel. If the parcel is destined to the continent of Europe, the Customs Declaration should be filled up in French and English, and accompanied by a Despatch Note.

CUSTOMS ENTRY. (Fr. *Déclaration à l'entrée*, Ger. *Zolldeklaration*, Sp. *Declaración de entrada*, It. *Dazio d'entrata.*)

This is a list given to the Customs authorities by the importer or shipper, showing the weight, value, and description of goods to be landed or shipped. (See *Entry.*)

CUSTOMS AND EXCISE DUTIES. (Fr. *Droits de douane et droits d'accise*, Ger. *Zölle und Steuern*, Sp. *Derechos de aduana y sisa*, It. *Dazi di dogana e di consumo.*)

The duties or taxes imposed upon goods entering the country are called "customs duties," while those imposed upon goods at the time of their manufacture in the country are known as "excise duties." Both form important parts of the national revenue, and are levied by Boards of Customs and Excise, each having a small army of officers to impose and collect the duties, while a custom house is to be found in every important seaport.

Customs and excise duties fall, in the first instance, on the merchant and manufacturer, but as they increase the prices of commodities, they are ultimately paid by the consumer.

For the accommodation of merchants there are large storehouses and vaults established at various parts of the country, called bonded warehouses, where goods subject to duty are allowed to remain until it is found convenient to remove them and pay the duties. Until they are removed, therefore, goods in bond, as they are called, can hardly be said to be imported, being in the same condition as goods lying in a foreign port. (See *Warehousing System.*)

CUSTOMS TARIFF. (Fr. *Tarif de douane*, Ger. *Zolltarif*, Sp. *Arancel aduanero*, It. *Tariffa dei dazi di dogana.*)

This is the list of the various articles that are liable to pay duty on importation. In the year 1840 over a thousand articles paid customs duties in this country. The number has been gradually reduced, so that there are not more than about fifty on the list at the present time. These are liable to variation and alteration by Act of Parliament whenever the state of the Exchequer is such as to demand or to permit of a change being made.

The chief of the articles upon which duties are charged are imported beers, playing cards, chicory, chloroform and similar spirits, cocoa, coffee, collodion, ethers, dried fruits, methylic alcohol (purified), naphtha (purified), spirits, liqueurs and cordials, tea, tobacco, cigars and snuff, varnish, wines.

No doubt there will be great changes in customs tariffs after the war.

CUTTING. (Fr. *Coupure, surpasser en prix*, Ger. *Abschnitt, überflügeln*, Sp. *Recorte, sobrepijar en precio*, It. *Ritaglio, sorpassare in prezzo.*)

This is a term which is used to indicate the reduction of a price to an unusual limit, with the object of underselling competitors.

D. This letter occurs in the following abbreviations:—

D/B, Day-book.
Dbk., Drawback.
d/d, Day's Date.
Dft., Draft.
Dis., Discount.
Div., Dividend.
Dr., Debtor.
d/s, Days' Sight.

DANDY NOTE. (Fr. *Ordre de livraison*, Ger. *Lieferungsschein*, Sp. *Orden de entrega*, It. *Mandato, ordine di consegna.*)

This is a delivery order from the custom house, requesting the warehouse officer to deliver to the searcher certain bonded or drawback goods named therein when they are required for exportation or ship's stores. The document is filled in by the exporter, and then passed at

the office of the Comptroller of Accounts. A "pricking note" is generally combined with a dandy note, the former serving as a shipping order for goods.

DATING FORWARD. (Fr. *Dater plus tard*, Ger. *später datieren*, Sp. *Poner fecha mas tarde*, It. *Datare piu tardi.*)

Dating forward is the practice adopted in some cases of dating invoices a considerable time in advance of the date upon which the goods are delivered.

DAY BOOK. (Fr. *Journal*, Ger. *Tagebuch*, Sp. *Diario*, It. *Giornale.*)

This name is often applied, though incorrectly, to the Waste Book, as being a record of the daily transactions of a business. In book-keeping it means the Sales Book, wherein are entered the sales on credit in chronological order. The Invoice Book, or that book in which credit purchases are recorded, is also sometimes called a Day Book.

DAY TO DAY LOANS. (Fr. *Emprunts de jour en jour*, Ger. *Geld auf tägliche Kündigung*, Sp. *Préstamos de dia en dia*, It. *Prestiti di giorno in giorno.*)

These loans consist of sums of money borrowed by bill-brokers, stock-brokers, and others at a fixed rate of interest for a single day, but the amounts may be renewed from day to day if both borrower and lender agree to continue the loan. These loans are sometimes referred to as "Day to Day Accommodations."

DAYS OF GRACE. (Fr. *Jours de grâce*, Ger. *Fristtage*, *Respekttage*, Sp. *Dias de gracia*, It. *Giorni di grazia.*)

This phrase is used in two senses :—

(1) The time of indulgence allowed to an acceptor for payment of a bill of exchange, or of a promissory note. No bill of exchange or promissory note, except those payable on demand or at sight, or unless it is specially stated on the bill or the promissory note that there are to be no days of grace allowed, is really payable in the United Kingdom until three days after its due date. (See *Bill of Exchange.*)

Where a bill is drawn in one country and is payable in another, the date of payment is calculated according to the law of the country in which the bill is payable. If, therefore, an English bill is payable in a country which does not allow days of grace, the date of payment is fixed by the instrument, but if a foreign bill is payable in England, three days of grace are allowed, unless it is a bill of the class which does not allow days of grace.

(2) The time of indulgence allowed for the payment of insurance premiums after they have become due.

DEAD ACCOUNT. (Fr. *Compte fictif*, Ger. *Konto eines Toten*, *Sachkonto*, Sp. *Cuenta imaginaria*, It. *Conto fittizio.*)

In banking, this is a term used to denote the money, stock, or other securities standing to the credit of a person deceased. In book-keeping, it is an account which deals with things as distinguished from persons, such as petty cash account, charges account, goods account, etc.

DEAD FREIGHT. (Fr. *Faux fret*, Ger. *Fautefracht*, *Ballastladung*, Sp. *Flete muerto*, It. *Nolo falso, nolo morto.*)

Dead freight is the sum paid for the empty space in a ship by a person who engages to load the vessel, but fails to make up a full cargo.

DEAD LETTER. (Fr. *Lettre mise au rebut, lettre retournée, lettre morte*, Ger. *unbestellbarer Brief*, Sp. *Carta rehusada*, It. *Lettera giacente, lettera non reclamata.*)

This is an undelivered and unclaimed letter, or one which has lost its force by lapse of time.

DEAD LETTER OFFICE. (Fr. *Bureau des rebuts*, Ger. *Abteilung für unbestellbare Briefe*, Sp. *Oficina de cartas detenidas*, It. *Ufficio della corrispondenza non reclamata.*)

The place which is known under this name is the department of the General Post Office, situated at Mount Pleasant, London, E.C., where undelivered letters are opened and returned to the senders, or otherwise disposed of.

DEAD LIGHT. (Fr. *Faux mantelet (de sabord)*, Ger. *Blenden der Käjutenfenster*, Sp. *Tapa de refuerzo*, It. *Imposta che chiude l'apertura della cannoniera.*)

This is the name that is given to the iron shutter which covers the port-hole of a ship.

DEAD LOANS. (Fr. *Emprunts irrécouvrables*, Ger. *tote Anleihen*, Sp. *Préstamos indefinidos*, It. *Prestiti indefiniti.*)

These are loans which have not been paid at the time agreed upon, or loans for which there is no specified time for payment.

DEAD RECKONING. (Fr. *Estime*, Ger. *Gissung*, Sp. *Estimación*, It. *Calcolo approssimativo.*)

This is the calculation made of a ship's position by means of the compass and log line—the former serving to point out the course on which the vessel sails, the latter the actual distance run. By making proper allowances for the variations of the compass, currents, etc., it is

possible to ascertain the position fairly well in any part of the world, without any observations of the sun or stars.

DEAD SECURITY. (Fr. *Mobilier mort*, Ger. *tote Sicherheit*, Sp. *Bienes sin valor, adelantos especulativos*, It. *Cauzione senza valore, sostanze materiali infruttifere.*)

This is an expression given by financiers to collieries, mills, manufactories, landed property, mines, machinery, and such properties which are worthless as a security unless they are worked.

DEAD WEIGHT. (Fr. *Poids mort*, Ger. *Schwergewicht*, Sp. *Peso muerto*, It. *Peso morto.*)

The dead weight is that portion of a ship's cargo which pays according to its weight, and not according to measurement, as coal, iron, etc. All vessels must carry a certain portion of dead weight either as cargo or as ballast to insure their stability.

DEALER. (Fr. *Marchand*, Ger. *Kaufmann*, Sp. *Tratante, comerciante*, It. *Mercante, commerciante.*)

A dealer is a person who deals on his own account and takes the risk of a market going against him when buying from, or selling to, other persons.

DEAR MONEY. (Fr. *Cherté de l'argent*, Ger. *Geldknappheit*, Sp. *Dinero escaso, dinero caro*, It. *Danaro o capitali scarsi.*)

Money is said to be dear when the floating supply of gold is scarce, and advances cannot be obtained, even on good securities, except at a high rate of interest, owing to the pressure in the money market, or a high bank rate.

DEATH DUTIES. (See *Estate Duty, Legacy and Succession Duty.*)

DEBENTURE. This word is used in two senses:—

(1) (Fr. *Certificat de prime*, Ger. *Rückzollschein*, Sp. *Tornaguia*, It. *Polizza di restituzione del dazio.*)

This is the name of the certificate given by the Custom House to the exporter of excisable goods, entitling him to receive drawback (*q.v.*).

(2) (Fr. *Obligation*, Ger. *Schuldschein, Obligation*, Sp. *Obligación*, It. *Obbligazione.*)

In its secondary sense the term "debenture" means a security given by a joint-stock company for money raised in addition to the capital subscribed by the shareholders. In form it is a charge or mortgage upon the undertaking or property of the company, bearing a fixed rate of interest, and either repayable within a fixed term of years or irredeemable during the existence of the company. A person to whom the interest and the principal money are secured is called a debenture-holder.

The above is what is commonly understood by the use of the word, but in common language "debenture" has acquired a much wider meaning. The absence of a precise definition has been judicially commented upon. Debenture has been applied to describe such an instrument as a railway mortgage or bond, and also a personal security, e.g., the Tichborne Bonds. The last-named, however, can have little or nothing in common with a debenture secured by mortgage, either from the point of value or from the point of the legal rights and remedies available to the debenture-holder.

Debenture is sometimes distinguished from debenture stock. In reality the holders of each stand very much in the same position. The difference is mainly in the mode of transfer. Ordinarily debenture bonds are only transferable in their entirety; debenture stock may be transferred in whole or in part, provided that such part does not involve a fraction of a stated amount. Stock is frequently made transferable in multiples of £10. There are also other peculiarities of transfer, the object being to secure identification.

There are many varieties of debentures, but two broad divisions stand out prominently:—

(*a*) Mortgage debentures, which give a charge upon the whole or a portion of the assets of the company;

(*b*) Debentures which give no such charge, and merely amount to a promise to pay on the part of the company. The former are much more common than the latter. Another classification is as follows:—

(*a*) Debentures payable to a registered holder.

(*b*) Debentures payable to bearer simply.

(*c*) Debentures payable to a registered holder, but with interest coupons payable to bearer.

(*d*) Debentures payable to bearer, but with power for the bearer to have them placed on a register and to have them at any time withdrawn therefrom. The first and third classes are generally known as "registered debentures," the second and fourth as "debentures to bearer." It has been held by the courts, in two well-known cases, that

debentures to bearer of limited companies are negotiable instruments in the full sense of the term, by the general custom of merchants.

The document which is the security of the debenture-holder sets out the terms of the contract entered into between the parties, and the conditions are invariably indorsed upon it. The precise form will depend upon the nature of the business carried on by the company, and the peculiar circumstances of the case.

Registered debentures are expressed to be payable to the registered holders of the same. If any change of ownership is to take place, they must be transferred as shares or stock, and the instrument of transfer must also be registered with the company. Debentures to bearer are payable to the bearer thereof, and are transferable by delivery. No holder is registered, and therefore the transfer stamp duty is avoided. But, on issue, debentures to bearer must be stamped at the rate of 10*s.* per cent. on the amount secured by them, whereas registered debentures, being liable to transfer duty, are only stamped at the rate of 2*s.* 6*d.* per cent.

For the greater security and protection of the debenture-holders the property of the company is frequently conveyed by way of mortgage to trustees to be held in trust for the holders. The deed by which this is effected is called a "covering" or a "trust" deed. If such a deed is in existence the debentures themselves should contain a condition incorporating its terms by reference. If property is comprised in the deed, other than freeholds or leaseholds, such as stock-in-trade, book debts, etc., it is the usual thing to make it subject to what is called a "floating charge." Such a charge allows the company to deal with its movable property in the ordinary course of business, so long as it is a going concern, which it could not strictly do in the absence of the charge. But as soon as a receiver is appointed, or the business of the company comes to a standstill, or there is a winding-up, the charge crystallises and becomes enforceable. A learned authority has said of a floating charge that it is "an equitable charge on the assets for the time being of a going concern. It attaches to the subject charged in the varying conditions in which it happens to be from time to time. It is of the essence of such a charge that it remains dormant until the undertaking charged ceases to be a going concern, or until the person in whose favour the charge is created intervenes. His right to intervene may, of course, be suspended by agreement. But if there is no agreement for suspension he may exercise his right whenever he pleases after default." Thus, for instance, when a company is carrying on business, and no receiver has been appointed or no winding-up order has been made, the fact that there is a floating charge does not give to the debenture-holder the right to require that any particular debt owing to the company shall be paid to him. And again, if a debt owing to the company has been garnisheed, the garnishee cannot refuse to pay the judgment creditor because he is aware that the company has issued debentures.

All debentures must be entered in the register of the company, but they are expressly excluded from registration as bills of sale. The subject of registration is thus dealt with in section 93–103 of the Companies (Consolidation) Act, 1908:—

93.—(1) Every mortgage or charge created after the first day of July nineteen hundred and eight by a company registered in England or Ireland and being either—

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

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

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

(*d*) a mortgage or charge on any land, wherever situate, or any interest therein; or

(*e*) a mortgage or charge on any book debts of the company; or

(*f*) a floating charge on the undertaking or property of the company—

shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the mortgage or charge, together with the instrument (if any) by which the mortgage or charge is created or evidenced, are delivered to or received by the registrar of companies for registration in manner required by this Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment

of the money thereby secured, and when a mortgage or charge becomes void under this section the money secured thereby shall immediately become payable:

Provided that—

(i) in the case of a mortgage or charge created out of the United Kingdom comprising solely property situate outside the United Kingdom, the delivery to and the receipt by the registrar of a copy of the instrument by which the mortgage or charge is created or evidenced, verified in the prescribed manner, shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself, and twenty-one days after the date on which the instrument or copy could, in due course of post and if despatched with due diligence have been received in the United Kingdom, shall be substituted for twenty-one days after the date of the creation of the mortgage or charge, as the time within which the particulars and instrument or copy are to be delivered to the registrar; and

(ii) where the mortgage or charge is created in the United Kingdom but comprises property outside the United Kingdom, the instrument creating or purporting to create the mortgage or charge may be sent for registration notwithstanding that further proceedings may be necessary to make the mortgage or charge valid or effectual according to the law of the country in which the property is situate; and

(iii) where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a mortgage or charge on those book debts; and

(iv) the holding of debentures entitling the holder to a charge on land shall not be deemed to be an interest in land.

(2) The registrar shall keep, with respect to each company, a register in the prescribed form of all the mortgages and charges created by the company after the first day of July nineteen hundred and eight and requiring registration under this section, and shall, on payment of the prescribed fee, enter in the register, with respect to every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge.

(3) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture-holders of that series are entitled *pari passu* is created by a company it shall be sufficient if there are delivered to or received by the registrar within twenty-one days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series the following particulars:—

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

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

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

(*d*) the names of the trustees, if any, for the debenture-holders; together with the deed containing the charge, or, if there is no such deed, one of the debentures of the series, and the registrar shall, on payment of the prescribed fee, enter those particulars in the register:

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

(4) Where any commission, allowance, or discount has been paid or made either directly or indirectly by the company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be sent for registration under this section shall include particulars as to the amount or rate per cent. of the commission, discount, or allowance so paid or made, but an omission to do this shall not affect the validity of the debentures issued:

Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this provision be treated as the issue of the debentures at a discount.

(5) The registrar shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of this section, stating the amount thereby secured, and the certificate shall be conclusive evidence that

the requirements of this section as to registration have been complied with.

(6) The company shall cause a copy of every certificate of registration given under this section to be indorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the mortgage or charge so registered:

Provided that nothing in this sub-section shall be construed as requiring a company to cause a certificate of registration of any mortgage or charge so given to be indorsed on any debenture or certificate of debenture stock which has been issued by the company before the mortgage or charge was created.

(7) It shall be the duty of the company to send to the registrar for registration the particulars of every mortgage or charge created by the company and of the issues of debentures of a series, requiring registration under this section, but registration of any such mortgage or charge may be effected on the application of any person interested therein.

Where the registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration.

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

(9) Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under this section to be kept at the registered office of the company: Provided that, in the case of a series of uniform debentures, a copy of one such debenture shall be sufficient.

94.—(1) If any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall within seven days from the date of the order or of the appointment under the powers contained in the instrument give notice of the fact to the registrar of companies, and the registrar shall, on payment of the prescribed fee, enter the fact in the register of mortgages and charges.

(2) If any person makes default in complying with the requirements of this section he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

95.—(1) Every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument, and who has taken possession, shall, once in every half-year while he remains in possession, and also on ceasing to act as receiver or manager, file with the registrar of companies an abstract in the prescribed form of his receipts and payments during the period to which the abstract relates, and shall also on ceasing to act as receiver or manager file with the registrar notice to that effect, and the registrar shall enter the notice in the register of mortgages and charges.

(2) Every receiver or manager who makes default in complying with the provisions of this section shall be liable to a fine not exceeding fifty pounds.

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

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

98. The registrar of companies shall keep a chronological index, in the prescribed form and with the prescribed particulars, of the mortgages or charges registered with him under this Act.

99.—(1) If any company makes default in sending to the registrar of companies for registration the particulars of any mortgage or charge created by the company, and of the issues of debentures of a series, requiring registration with the registrar under the foregoing provisions of this Act, then, unless the

registration has been effected on the application of some other persons the company, and every director, manager, secretary, or other person who is knowingly a party to the default shall on conviction be liable to a fine not exceeding fifty pounds for every day during which the default continues.

(2) Subject as aforesaid, if any company makes default in complying with any of the requirements of this Act as to the registration with the registrar of any mortgage or charge created by the company, the company and every director, manager, and other officer of the company, who knowingly and wilfully authorised or permitted the default shall, without prejudice to any other liability be liable on summary conviction to a fine not exceeding one hundred pounds.

(3) If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock requiring registration with the registrar under the foregoing provisions of this Act, without a copy of the certificate of registration being indorsed upon it, he shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding one hundred pounds.

100.—(1) Every limited company shall keep a register of mortgages and enter therein all mortgages and charges specifically affecting property of the company, giving in each case a short description of the property mortgaged, or charged, the amount of the mortgage or charge, and (except in the case of securities to bearer) the names of the mortgagees or persons entitled thereto.

(2) If any director, manager, or other officer of the company knowingly and wilfully authorises or permits the omission of any entry required to be made in pursuance of this section, he shall be liable to a fine not exceeding fifty pounds.

101.—(1) The copies of instruments creating any mortgage or charge requiring registration under this Act with the registrar of companies, and the register of mortgages kept in pursuance of the last foregoing section, shall be open at all reasonable times to the inspection of any creditor or member of the company without fee, and of any other person on payment of such fee, not exceeding one shilling for each inspection, as the company may prescribe.

(2) If inspection of the said copies or register is refused, any officer of the company refusing inspection, and every director and manager of the company authorising or knowingly and wilfully permitting the refusal, shall be liable to a fine not exceeding five pounds, and a further fine not exceeding two pounds for every day during which the refusal continues; and in addition to the above penalty as respects companies registered in England or Ireland, any judge of the High Court sitting in chambers, or the judge of the court exercising the stannaries jurisdiction in the case of companies subject to that jurisdiction, may by order compel an immediate inspection of the copies or register.

102.—(1) Every register of holders of debentures of a company shall, except when closed in accordance with the articles during such period or periods (not exceeding in the whole thirty days in any year) as may be specified in the articles, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that at least two hours in each day are appointed for inspection, and every such holder may require a copy of the register or any part thereof on payment of sixpence for every one hundred words required to be copied.

(2) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed of the sum of one shilling or such less sum as may be prescribed by the company, or, where the trust deed has not been printed, on payment of sixpence for every one hundred words required to be copied.

(3) If inspection is refused, or a copy is refused or not forwarded, the company shall be liable to a fine not exceeding *five pounds*, and to a further fine not exceeding *two pounds* for every day during which the refusal continues, and every director, manager, secretary, or other officer of the company who knowingly authorises or permits the refusal shall incur the like penalty.

The existence of this register of debentures and charges is a great boon to the public. The register was first established by the Act of 1862, but the defects of the Act were not removed until the passing of the Companies Act, 1900. The present provisions of the Act of 1908 are the consolidated ones of the Companies Acts of 1900 and 1907, now repealed.

The power to borrow upon debentures

is generally provided for by the memorandum or articles of association, though it is sometimes implied. If both are silent upon the subject a special resolution is necessary before debentures can be issued.

The rights of a debenture-holder who has a charge upon the property of a company are:—

(1) To sue for repayment of the principal and any interest which is owing.

(2) To present a winding-up petition against the company.

(3) To prove for the debt in the winding-up.

(4) To appoint a receiver.

The last of these is that most frequently resorted to by the debenture-holder; because a company may be merely in temporary difficulties from which a little judicious management may extricate it. And it will almost always be the fact that the security is good enough to allow of the business of the company being carried on without any undue risk to that security.

A debenture-holder is a secured creditor, and therefore he is preferred, as far as his security goes, to the general creditors of the company. But the payments which are to be made by reason of the Preferential Payments in Bankruptcy Amendment Act, 1897, now repealed and practically re-enacted by the companies (Consolidation) Act, 1908, must be met before any of the assets realised by the receiver, or otherwise, are distributed amongst the debenture-holders. (See *Preferential Payments.*)

DEBENTURE BONDS. (Fr. *Obligations amortissables*, Ger. *Obligationen*, Sp. *Obligaciones amortizables*, It. *Obbligazioni ammortizzabili.*)

Debenture bonds are those that are usually redeemable at the end of a specific time.

DEBENTURE STOCK. (Fr. *Obligations irremboursables*, Ger. *Schuldverschreibungen*, Sp. *Obligaciones irredimibles*, It. *Obbligazioni irredimibili.*)

Debentures that are usually irredeemable, and transferred by deed of assignment, are generally referred to as debenture stock.

DEBIT. (Fr. *Débiter, porter au débit de*, Ger. *debitieren, belasten*, Sp. *Debitar*, It. *Addebitare, segnare o portare a debito.*)

To debit is to charge a person or his account with the cost of anything, or to make some charge upon him for out-of-pocket or other expenses.

DEBIT NOTE. (Fr. *Note de débit*, Ger. *Debetnote*, Sp. *Nota de débito*, It. *Nota di debito.*)

When a firm returns goods, owing to some imperfection, or corrects an overcharge, it is usual to send a debit note, or invoice. In such cases a credit note should be received in return.

DEBT. (Fr. *Dette, créance*, Ger. *Schuld*, Sp. *Deuda*, It. *Debito.*)

A debt is a sum of money owed by one person to another, which is fixed in amount. In law the term "debt" has frequently a wider meaning, and may include an amount which remains to be ascertained by future valuation.

Debts are divided into three classes, debts of record, specialty debts, and simple contract debts. A debt of record is one which a creditor can enforce as a judgment of a court of record against a judgment debtor, by means of execution against his goods, or an order for committal, or proceedings in bankruptcy. Such a debt is final and cannot be disputed. A specialty debt is one by which a sum of money is acknowledged to be due by deed or an instrument under seal. Such a debt can be sued for within twenty years of the execution of the deed, and requires no consideration to support it. A simple contract debt is one that is not a debt of record or a specialty debt. It is created by a writing not under seal, by word of mouth, or by conduct. The right of action upon it is barred by the Statute of Limitations within six years of the right to sue accruing.

It is the duty of a debtor to seek out his creditor and pay him. The creditor is not under any obligation to make any demand before bringing an action for the recovery of the amount. But unless he brings his action within six or twenty years, according as the debt is a simple or a specialty one, the creditor cannot legally enforce his claim. The Statute of Limitations is against him. A debtor may, however, preclude himself from setting up the statute if he has paid anything in respect of the debt, allowed interest for the same, or given some signed acknowledgment of indebtedness within the six or twenty years, as the case may be, of action being brought.

A difficulty often arises when the debtor is beyond the seas, or out of the jurisdiction. If the debtor departs from England before the right to demand payment has accrued, the Statute of Limitations does not run in his favour, that is, the creditor can sue him upon

his return, no matter how many years he may have been away. But if the right has accrued before the debtor departs, the statute commences to run, and nothing can stop its doing so. The only remedy open to the creditor is to issue a writ, which stands good for twelve months, and then to renew it every six months after the lapse of the first twelve months, until it can be served upon the debtor. In certain cases a debtor can be served abroad, and judgment may be signed against him. But this right is very strictly guarded. (See *Conflict of Laws*.)

In the settlement of a debt there must be accord and satisfaction. The agreement of one party to take a sum less than the amount due from another is incomplete, seeing that there is no consideration for the abandonment of the remainder. But if payment is made in anything else than in money which is legal tender it is held that there is complete satisfaction as well as accord. Thus, if a creditor accepts £5 in payment for a debt of £20, he does not abandon his right to sue for the remaining £15, since there is no consideration for the relinquishment of the claim. But if he accepts something else, such as a cheque or a bill of exchange, or even some chattel, there is complete accord and satisfaction, and the debt is extinguished.

When a creditor is unable to obtain prompt payment of a debt, it is a general custom to employ an agent or a solicitor to do the work of collection. The person employed for this purpose is the agent of the creditor, and although it is the rule for the collector to demand payment of costs and expenses from the debtor, in addition to the amount of the claim, such an additional payment is not enforceable by law. It is the creditor alone who is responsible for any expenses which are incurred in this manner. When a solicitor, therefore, writes to a debtor and threatens him with legal proceedings unless the amount of the debt "together with —— my costs" are paid within a certain time, the debtor, if he owes the money, is quite safe in paying the debt and ignoring the costs. If the solicitor wants payment he must get the amount from the creditor.

When action has to be taken, a creditor should proceed in a county court if the amount is less than £20, and in the High Court if the claim exceeds £100. Between £20 and £100 proceedings ought to be taken in a county court, unless the facts are such that the debtor is unlikely to obtain leave to defend the action—supposing the proceedings are in respect of a liquidated sum—when it is quite as cheap, and much more expeditious, to proceed in the High Court, under what is known as Order XIV (*q.v.*).

DEBTOR. (Fr. *Débiteur*, Ger. *Schuldner*, Sp. *Deudor*, It. *Debitore*.)

This is the person who owes money to another

DEBTORS ACT, 1869. By this Act no person can be arrested or imprisoned for making default in payment of a sum of money, except in the following cases:—

(1) A penalty, or a sum of money in the nature of a penalty, other than a penalty under a contract.

(2) A sum recoverable summarily on conviction, and not as a civil debt, before a court of summary jurisdiction.

(3) A sum in the possession or under the control of a trustee or a person acting in a fiduciary capacity, and ordered to be paid by the court.

(4) A sum payable by an attorney in respect of costs, when the order is made to pay the sum on the ground of misconduct, or in payment of a sum when the order is made to pay the same in his character as an officer of the court.

(5) A sum payable for the benefit of creditors out of any salary or other income, in respect of the payment of which any court having jurisdiction in bankruptcy is entitled or authorised to make an order.

(6) A sum payable by virtue of an order made under the Act itself.

If a debtor fails to pay any debt or instalment of a debt, as to which an order for payment has been made under the Act, he may be imprisoned for any period not exceeding six weeks if it is proved that he has had the means to pay the same since the order was made and has refused to do so.

An application for committal is made by means of a judgment summons—to the judge of a county court if the sum does not exceed £50, otherwise to a judge of the High Court.

The imprisonment can in no case exceed one year. It does not extinguish the debt, but a debtor cannot be imprisoned a second time in respect of the same debt. The only remedy left to the creditor is an execution against the lands, goods, or chattels of the debtor.

If an action is pending in the High

Court, the amount in dispute being £50 or upwards, a plaintiff may at any time before final judgment obtain an order from a judge, on giving satisfactory evidence, for the imprisonment of a defendant for a period not exceeding six months, if there is reasonable ground to suppose that the defendant is about to quit the jurisdiction. The defendant can, however, obtain his freedom on giving security, not exceeding the amount claimed in the action, that he will not leave the country without the sanction of the court.

The Act of 1869 was amended in certain respects by the Bankruptcy Acts of 1883 and 1890, and has been further altered by the Bankruptcy Act of 1914. The law as to the imprisonment of fraudulent bankrupts is shortly as follows, as set out in section 154 of that Act.

Any person adjudged bankrupt or in respect of whose estate a receiving order has been made shall, in each of the cases following, be deemed guilty of misdemeanour:—

(1) If he does not to the best of his knowledge and belief fully and truly discover to the trustee all his property, real and personal, and how and to whom and for what consideration and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade (if any) or laid out in the ordinary expense of his family, unless he proves that he had no intent to defraud.

(2) If he does not deliver up to the trustee, or as he directs, all such part of his real and personal property as is in his custody or under his control, and which he is required by law to deliver up, unless he proves that he had no intent to defraud.

(3) If he does not deliver up to the trustee, or as he directs, all books, documents, papers, and writings in his custody or under his control relating to his property or affairs, unless he proves that he had no intent to defraud.

(4) If, after the presentation of a bankruptcy petition by or against him, or within six months next before such presentation, he conceals any part of his property to the value of ten pounds or upwards, or conceals any debt due to or from him, unless he proves that he had no intent to defraud.

(5) If, after the presentation of a bankruptcy petition by or against him, or within six months next before such presentation, he fraudulently removes any part of his property to the value of ten pounds or upwards.

(6) If he makes any material omission in any statement relating to his affairs, unless he proves that he had no intent to defraud.

(7) If, knowing or believing that a false debt has been proved by any person under the bankruptcy, he fails for the period of a month to inform the trustee thereof.

(8) If, after the presentation of a bankruptcy petition by or against him, he prevents the production of any book, document, paper, or writing affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law.

(9) If, after the presentation of a bankruptcy petition by or against him, or within six months next before such presentation, he conceals, destroys, mutilates, or falsifies or is privy to the concealment, destruction, mutilation, or falsification of any book or document affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law.

(10) If, after the presentation of a bankruptcy petition by or against him, or within six months next before such presentation, he makes, or is privy to the making of, any false entry in any book or document affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law.

(11) If, after the presentation of a bankruptcy petition by or against him or within six months next before such presentation, he fraudulently parts with, alters, or makes any omission, or is privy to the fraudulently parting with, altering or making any omission, in any document affecting or relating to his property or affairs.

(12) If, after the presentation of a bankruptcy petition by or against him, or at any meeting of his creditors within six months next before such presentation, he attempts to account for any part of his property by fictitious losses or expenses.

(13) If within six months next before the presentation of a bankruptcy petition by or against him, or in the case of a receiving order made under section 103 of the Bankruptcy Act, 1914, before the date of the order, or after the presentation of a bankruptcy petition

and before the making of a receiving order, he, by any false representation or other fraud, has obtained any property on credit and has not paid for the same.

(14) If, within six months next before the presentation of a bankruptcy petition by or against him, or in the case of a receiving order made under section 107 of the Bankruptcy Act, 1914, before the date of the order, or after the presentation of a bankruptcy petition and before the making of a receiving order, he obtains under false pretence of carrying on business, and, if a trader, of dealing in the ordinary way of his trade, any property on credit and has not paid for the same, unless he proves that he had no intent to defraud.

(15) If, within six months next before the presentation of a bankruptcy petition by or against him, or in the case of a receiving order made under section 107 of the Bankruptcy Act, 1914, before the date of the order, or after the presentation of a bankruptcy petition and before the making of a receiving order, he pawns, pledges, or disposes of any property which he has obtained on credit and has not paid for, unless, in the case of a trader, such pawning, pledging, or disposing is in the ordinary way of his trade, and unless in any case he proves that he had no intent to defraud.

(16) If he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to an agreement with reference to his affairs or to his bankruptcy.

(N.B.—Section 107 of the Act of 1914 is that which provides for proceedings being taken in bankruptcy in place of a committal under the Debtors Act, 1869.)

By section 13 of the Debtors Act of 1869, which is one of the sections of the Act of 1869 not repealed by the Bankruptcy Act, 1914, any person who is found guilty of any of the following offences is liable on conviction thereof to one year's imprisonment, with or without hard labour—

(1) If he incurs any debt or liability, and obtains credit under any false pretences or by means of any other fraud.

(2) If he makes any gift, delivery, or transfer of, or charge upon his property with intent to defraud his creditors.

(3) If he has concealed or removed any part of his property since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him.

DECIMAL SYSTEM. (Fr. *Système décimal*, Ger. *Dezimal-System*, Sp. *Sistema decimal*, It. *Sistema decimale.*)

This is the system by which weights, measures, money, etc., are regulated and calculated by decimal divisions. It is now adopted in the principal continental countries of Europe and in the United States of America. On account of the facilities which it offers for calculation it will doubtless in time supersede all the old and cumbrous methods; and as soon as that is effected in Europe it will be the first step towards the establishment of a universal and international system. The most perfect example of the decimal system is found in France, though the same principle obtains in the coinage of the United States, Belgium, Italy, Portugal, Spain, and other countries. In French measures of length the Greek words *deca*, *hecto*, *kilo*, and *myria* are prefixed to the higher denominations, the unit being the metre of 39·37 English inches. The lower denominations are marked by the Latin words *deci*, *centi*, and *milli*. In money the *franc* is the unit; a *décime* is the tenth part of a franc, and a *centime* the hundredth part. The coinage of the United States of America, made decimal in 1786, consists of the *eagle*, of ten dollars, the *dollar*, of ten dimes, and the *dime*, of ten cents; but, of these denominations, *dollars* and *cents* are the only ones commonly used. Many attempts have been made to introduce a decimal coinage into this country, but without success. The decimal system is now legally recognised in twenty-nine states, with a population of over 700 millions of people.

DECK CARGO. (Fr. *Cargaison de tillac*, Ger. *Deckladung*, Sp. *Cargamento sobre cubierta*, It. *Carico sopracoperta.*)

Deck cargo is that portion which is carried on deck, such as timber, cattle, etc.

DEED. (Fr. *Acte, titre*, Ger. *Dokument, Urkunde*, Sp. *Acta, titulo*, It. *atto, documento, scrittura.*)

This term signifies either:—

(1) A legal transaction, or

(2) The written document under hand and seal as evidence of such transaction.

A deed is sometimes termed a contract under seal, a specialty contract, or a formal contract.

Three things are essential to a deed, writing, sealing, and delivery. The

writing may be done with any instrument, but the article used for writing upon must not be wood or cloth. In practice, parchment is generally used if the matter is one of importance, and if there is any necessity for preserving evidence of the transaction for a long period; otherwise paper suffices. The ancient solemnity connected with sealing has passed away, and a wafer or a mere piece of sealing wax is enough for present day purposes. By touching the wafer or the wax a party to the deed adopts it as his seal. The importance of delivery cannot be over-estimated, for unless delivery takes place the deed is of no effect. Delivery may be actual, by handing over the instrument, or constructive, by speaking words which clearly indicate the intention of the party to deliver it. In practice, the wafer or seal is affixed beforehand, and execution is completed by the party placing his finger on the seal and saying, "I deliver this as my act and deed." It is not certain whether it is necessary for a deed to be signed, but no prudent person would ever dispense with the signature and be satisfied with the mere act of sealing. When a deed is delivered subject to a condition, that is, that the deed is not to take effect if the condition is not fulfilled, it is called an "escrow." This conditional delivery must be made to a person who is not a party to the deed.

The following are the distinctions between contracts under seal and simple contracts, in addition to the difference of form:—

(1) A contract under seal requires no consideration to support it. Hence, although a gratuitous promise is not legally binding, for example, a promise to subscribe to a particular fund, a similar promise, if made by deed, is binding upon the promisor. There is an exception, however, in the case of contracts in restraint of trade.

(2) A contract under seal will "merge" in itself, that is, swallow up, or supersede, a simple contract between the same parties, and containing the same terms.

(3) Statements made in a deed are absolutely conclusive against the person making them, unless duress or fraud is proved. No evidence is admissible to deny or to explain them, unless there is what is called a "latent ambiguity," that is, a word or phrase which on its face appears perfectly clear, but which can be shown to be applicable to different matters. This is technically known as "estoppel." In the same way if a deed is incomplete in any material part when it is delivered, it is void, and the omissions cannot be supplied. In the case of a simple contract, a statement is only presumptive evidence of its truth.

(4) A right of action arising out of a contract under seal is not barred for twenty years, with the exception of certain contracts with regard to land, which are barred at the end of twelve years. The period allowed for taking action in the case of a simple contract is six years only.

Deeds must be stamped within thirty days of their execution.

DEED OF ARRANGEMENT. (Fr. *Contrat d'arrangement*, Ger. *Vergleichsurkunde*, Sp. *Escritura de amigables componedores*, It. *Atto di concordato.*)

A deed of arrangement is one which purports to convey property to a trustee or trustees for the payment *pro ratâ* of the debts owing by an insolvent debtor. The object of a deed of arrangement is to prevent the publicity and trouble of bankruptcy proceedings.

A debtor will rarely execute a deed of this kind without first procuring the assent of the majority of his creditors, for by so doing he commits an act of bankruptcy (*q.v.*) upon which a petition for a receiving order may be filed. And if he does not secure the assent of the majority of his creditors, any one of the dissentients may present a petition within three months of the date of the deed. None of the assenting creditors can, however, take this course, for they have voluntarily relinquished their rights to the payment in full of their debts in consideration of the other assenting creditors doing the same thing. After the lapse of three months the deed is no longer available as an act of bankruptcy.

Sometimes instead of an assignment of the property of the debtor to a trustee, the creditors will assent to an arrangement for the payment of a portion of their debts at once, or to the payment in full by instalments, either absolutely or upon stated conditions.

Until 1888 deeds of arrangement might be made privately. But by the Deeds of Arrangement Act, 1887 (amended by another Act passed in 1890), provision was made for the publicity of assignments and arrangements. Amendments were made by the Bankruptcy and Deeds of Arrangement Act, 1913, but the law upon the subject

was consolidated by the Deeds of Arrangement Act, 1914, and the previous Acts repealed. Section 1 of the Act of 1914 is as follows:—

(1) A deed of arrangement to which this Act applies shall include any instrument of the classes hereinafter mentioned whether under seal or not—

(*a*) made by, for, or in respect of the affairs of a debtor for the benefit of his creditors generally;

(*b*) made by, for, or in respect of the affairs of a debtor who was insolvent at the date of the execution of the instrument for the benefit of any three or more of his creditors;

otherwise than in pursuance of the law for the time being in force relating to bankruptcy.

(2) The classes of instrument hereinbefore referred to are—

(*a*) an assignment of property;

(*b*) a deed of or agreement for a composition; and in cases where creditors of the debtor obtain any control over his property or business—

(*c*) a deed of inspectorship entered into for the purpose of carrying on or winding up a business;

(*d*) a letter of licence authorising the debtor or any other person to manage, carry on, realise, or dispose of a business with a view to the payment of debts; and

(*e*) any agreement or instrument entered into for the purpose of carrying on or winding-up the debtor's business, or authorising the debtor or any other person to manage, carry on, realise, or dispose of the debtor's business with a view to the payment of his debts.

Every deed of arrangement must be registered in the same manner as a bill of sale within seven days of its first execution, otherwise it is void. It must be stamped with a 10*s*. deed stamp, and an additional stamp at the rate of 1*s*. per £100, or fraction thereof, upon the value of the property passing, or the amount of the composition which is to be paid. There is also an *ad valorem* duty charged for filing the deed of £1 per £1,000, or fraction thereof, with a maximum of £5, payable upon the value of the property passing, or the amount of the composition which is to be paid.

Registration is effected in the following manner. A true copy of the deed, and of every schedule or inventory annexed to it or referred to in it, must be presented to the Registrar within seven days. It must be accompanied by two affidavits, one verifying the time of execution, and containing a description of the residence and occupation of the debtor, and of the place or places where his business is carried on; and the other, made by the debtor himself, stating the total estimated amount of the property and liabilities included under the deed, the total amount of the composition (if any) payable thereunder, and the names and addresses of the creditors. The register is open to public inspection upon payment of a fee of one shilling.

For further particulars as to registration the Act of 1914 must be consulted.

Unless a deed of arrangement is duly registered, it is wholly void—not merely voidable or void as against a particular person. This has always been the law upon the subject. Fraud also is good ground for avoiding such a deed. And now, by section 3 of the Act of 1914, the following provisions are imposed:—

(1) A deed of arrangement, which either is expressed to be or is in fact for the benefit of a debtor's creditors generally, shall be void unless, before or within twenty-one days after the registration thereof, or within such extended time as the High Court or the court having jurisdiction in bankruptcy in the district in which the debtor resided or carried on business at the date of the execution of the deed may allow, it has received the assent of a majority in number and value of the creditors of the debtor.

(2) The list of creditors annexed to the affidavit of the debtor filed on the registration of the deed of arrangement shall be *primâ facie* evidence of the names of the creditors and the amounts of their claims.

(3) The assent of a creditor for the purposes of sub-section (1) of this section shall be established by his executing the deed of arrangement or sending to the trustee his assent in writing attested by a witness, but not otherwise.

(4) The trustee shall file with the Registrar of Bills of Sale at the time of the registration of a deed of arrangement, or, in the case of a deed of arrangement assented to after registration, within twenty-eight days after registration or within such extended time as the High Court or the court having jurisdiction in bankruptcy in the district in which the debtor resided or carried on business at the date of the execution of the deed may allow, a statutory declaration by the trustee that the requisite majority of the creditors of the debtor have assented to the deed of

arrangement, which declaration shall, in favour of a purchaser for value, be conclusive evidence, and, in other cases, be *primâ facie* evidence, of the fact declared.

(5) In calculating a majority of creditors for the purposes of this section, a creditor holding security upon the property of the debtor shall be reckoned as a creditor only in respect of the balance (if any) due to him after deducting the value of such security, and creditors whose debts amount to sums not exceeding ten pounds shall be reckoned in the majority in value but not in the majority in number.

The following sections as to the duties of trustees under deeds of arrangement are of importance:

11.—(1) The trustee under a deed of arrangement shall, within seven days from the date on which the statutory declaration certifying the assent of the creditors is filed, give security in the prescribed manner to the registrar of the court having jurisdiction in bankruptcy in the district in which the debtor resided or carried on business at the date of the execution of the deed, or, if he then resided or carried on business in the London bankruptcy district, to the senior bankruptcy registrar of the High Court, in a sum equal to the estimated assets available for distribution amongst the unsecured creditors as shown by the affidavit filed on registration, to administer the deed properly and account fully for the assets which come to his hands, unless a majority in number and value of the debtor's creditors, either by resolution passed at a meeting convened by notice to all the creditors, or by writing addressed to the trustee, dispense with his giving such security.

Provided that, when such a dispensation has been so given, the trustee shall forthwith make and file with the Registrar of Bills of Sale a statutory declaration to that effect, which declaration shall, in favour of a purchaser for value, be conclusive evidence, and in other cases be *primâ facie* evidence of the facts declared.

(2) If a trustee under a deed of arrangement fails to comply with the requirements of this section, the court having jurisdiction in bankruptcy in the district in which the debtor resided or carried on business at the date of the execution of the deed, on the application of any creditor and after hearing such persons as it may think fit, may declare the deed of arrangement to be void or may make an order appointing another trustee in the place of the trustee appointed by the deed of arrangement.

(3) A certificate that the security required by this section has been given by a trustee, signed by the registrar to whom it was given and filed with the Registrar of Bills of Sale, shall be conclusive evidence of the fact.

(4) All moneys received by a trustee under a deed of arrangement shall be banked by him to an account to be opened in the name of the debtor's estate.

(5) In calculating a majority of creditors for the purposes of this section, a creditor holding security upon the property of the debtor shall be reckoned as a creditor only in respect of the balance (if any) due to him after deducting the value of such security, and creditors whose debts amount to sums not exceeding ten pounds shall be reckoned in the majority in value but not in the majority in number.

12. If a trustee acts under a deed of arrangement—

(*a*) after it has to his knowledge become void by reason of non-compliance with any of the requirements of this Act or any enactment repealed by this Act; or

(*b*) after he has failed to give security within the time and in the manner provided for by this Act;

he shall be liable on summary conviction to a fine not exceeding £5 for every day between the date on which the deed became void or the expiration of the time within which security should have been given, as the case may be, and the last day on which he is proved to have acted as trustee, unless he satisfies the court before which he is accused that his contravention of the law was due to inadvertence, or that his action has been confined to taking such steps as were necessary for the protection of the estate.

13.—(1) Every trustee under a deed of arrangement shall, at such times as may be prescribed, transmit to the Board of Trade, or as they direct, an account of his receipts and payments as trustee, in the prescribed form and verified in the prescribed manner.

(2) If any trustee fails to transmit such account, he shall be liable on summary conviction to a fine not exceeding £5 for each day during which the default continues, and the judge of the High Court to whom bankruptcy business has been assigned may, for the purpose of

enforcing the provisions of the last preceding sub-section, exercise, on the application of the Board of Trade, all the powers conferred on the court by sub section 5 of section 105 of the Bankruptcy Act, 1914, in cases of bankruptcy.

(3) The accounts transmitted to the Board of Trade in pursuance of this section shall be open to inspection by the debtor or any creditor or other person interested on payment of the prescribed fee, and copies of or extracts from the accounts shall, on payment of the prescribed fee, be furnished to the debtor, the creditors, or any other persons interested.

(4) In this section the expression "trustee" shall include any person appointed to distribute a composition or to act in any fiduciary capacity under any deed of arrangement, and the expression "prescribed" means prescribed by rules under the Bankruptcy Act, 1914.

14. Every trustee under a deed of arrangement shall, at the expiration of six months from the date of the registration of the deed, and thereafter at the expiration of every subsequent period of six months until the estate has been finally wound up, send to each creditor who has assented to the deed a statement on the prescribed form of the trustee's accounts and of the proceedings under the deed down to the date of the statement, and shall, on his affidavit verifying his accounts transmitted to the Board of Trade, state whether or not he has duly sent such statements, and the dates on which the statements were sent; and if a trustee fails to comply with any of the provisions of this section, the High Court may, for the purpose of enforcing those provisions, exercise on the application of the Board of Trade all the powers conferred on the court by sub-section 5 of section 105 of the Bankruptcy Act, 1914, in cases of bankruptcy.

15.—(1) Where in the course of the administration of the estate of a debtor who has executed a deed of arrangement, or within twelve months from the date when the final accounts of the estate were rendered to the Board of Trade, an application in writing is made to the Board by a majority in number and value of the creditors who have assented to the deed for an official audit of the trustee's accounts, the Board may cause the trustee's accounts to be audited, and in such case all the provisions of the Bankruptcy Act, 1914, relating to the institution and enforcement of an audit of the accounts of a trustee in bankruptcy (including the provisions as to fees) shall, with necessary modifications, apply to the audit of the trustee's accounts, and the Board shall have power on the audit to require production of a certificate for the taxed costs of any solicitor whose costs have been paid or charged by the trustees, and to disallow the whole or any part of any costs in respect of which no certificate is produced.

(2) The Board of Trade may determine how and by what parties the costs, charges, and expenses of and incidental to the audit (including any prescribed fees chargeable in respect thereof) are to be borne, whether by the applicants or by the trustee or out of the estate, and may, before granting an application for an audit, require the applicants to give security for the costs of the audit.

16. At any time after the expiration of two years from the date of the registration of a deed of arrangement, the court having jurisdiction in bankruptcy in the district in which the debtor resided or carried on business at the date of the execution of the deed, may, on the application of the trustee or a creditor, or on the application of the debtor, order that all moneys representing unclaimed dividends and undistributed funds then in the hands of the trustee or under his control be paid into court.

17. If a trustee under a deed of arrangement pays to any creditor out of the debtor's property a sum larger in proportion to the creditor's claim than that paid to other creditors entitled to the benefit of the deed, then, unless the deed authorises him to do so, or unless such payments are either made to a creditor entitled to enforce his claim by distress or are such as would be lawful in a bankruptcy, he shall be guilty of a misdemeanour.

18. The power to appoint a new trustee or new trustees under section 25 of the Trustee Act, 1893, may, in the case of a deed of arrangement, be exercised either by the High Court or by the court having jurisdiction in bankruptcy in the district in which the debtor resided or carried on business, and the provisions of that section shall apply accordingly.

19.—(1) Where a deed of arrangement is void by reason that the requisite majority of creditors have not assented thereto, or, in the case of a deed for the

benefit of three or more creditors, by reason that the debtor was insolvent at the time of the execution of the deed and that the deed was not registered as required by this Act, but is not void for any other reason, and a receiving order is made against the debtor upon a petition presented after the lapse of three months from the execution of the deed, the trustee under the deed shall not be liable to account to the trustee in the bankruptcy for any dealings with or payments made out of the debtor's property which would have been proper if the deed had been valid, if he proves that at the time of such dealings or payments he did not know, and had no reason to suspect, that the deed was void.

(2) Where a receiving order is made against a debtor under sub-section 5 of section 107 of the Bankruptcy Act, 1914, this section shall apply if the receiving order was made after the lapse of three months from the execution of the deed.

20. When a deed of arrangement is void by reason of this Act for any reason other than that, being for the benefit of creditors generally it has not been registered within the time allowed for the purpose by this Act, the trustee shall, as soon as practicable after he has become aware that the deed is void, give notice in writing thereof to each creditor whose name and address he knows, and file a copy of the notice with the Registrar of Bills of Sale, and, if he fails to do so, he shall be liable, on summary conviction, to a fine not exceeding £20.

21. Where a deed of arrangement is avoided by reason of the bankruptcy of the debtor, any expenses properly incurred by the trustee under the deed in the performance of any of the duties imposed on him by this part of this Act shall be allowed or paid him by the trustee in the bankruptcy as a first charge on the estate.

DEED OF ASSIGNMENT. (Fr. *Assignation, cession*, Ger. *Abtretungsurkunde*, Sp. *Escritura de cesión*, It. *Atto di assegnazione, atto di cessione.*)

This is a deed by which an insolvent debtor gives up the whole of his property for the benefit of his creditors, to be realised, as far as possible, in satisfaction of their claims upon him.

DEED OF INSPECTORSHIP. (Fr. *Contrat d'inspection*, Ger. *Bankrotterklärung*, Sp. *Contrata de inspección*, It. *Scrittura d'ispezione.*)

A deed of inspectorship is one by which an insolvent trader places his business in the hands of his creditors, who appoint trustees, called inspectors, for the purpose of carrying on the business or winding it up for their general benefit.

DEFACING COIN. (Fr. *Dépréciation criminelle de monnaie*, Ger. *Entwertung von Münzen*, Sp. *Contraseña de moneda*, It. *Guasto, deprezzamento doloso di moneta.*)

This is a criminal offence, which is constituted by sweating, bending, chipping, drilling, stamping, or otherwise injuring the current coins of the realm.

DEFAULTER. (Fr. *Défaillant*, Ger. *Ausbleibender, Wortbrüchiger*, Sp. *Contumaz rebelde.* It. *Debitore moroso.*)

This is a person who makes default. The word is most commonly used, commercially, in connection with transactions on the Stock Exchange, for a member who is unable to meet his obligations is declared a defaulter. A notice to that effect is read out to all the members of the Exchange after their attention has been called by three strokes of a wooden hammer upon the rostrum. In the slang of the Exchange a defaulter, after the performance, is said to be "hammered." By the rules of the Stock Exchange liquidators are appointed to deal with the estate of the defaulter. They are known as the official assignees. Transactions which are open at the time of default are at once closed at current prices, and debts owing to the defaulter are paid over to the official assignees. The proceeds are divided amongst the creditors.

By this method of dealing with a defaulter's estate, the hammered member is saved from going through the Bankruptcy Court, unless there are unsatisfied creditors outside the Exchange. The members who are creditors must bear any loss which falls upon them; and if the defaulter pays 10*s.* in the £, and his conduct has been satisfactory, he is re-admitted a member of the Exchange. If bankruptcy proceedings are taken by outside creditors, the trustee is only entitled to claim from the official assignees any private assets which may have been handed to them by the defaulter.

DEFENDANT. (Fr. *Défendeur*, Ger. *Angeklagter*, Sp. *Demandado, acusado*, It. *Accusato, imputato.*)

This is a person who is accused or sued in an action, and who opposes the charge made against him.

DEFERRED ANNUITY. (Fr. *Rente*

viagère différée, Ger. *aufgeschobene Leibrente*, Sp. *Renta diferida*, It. *Rendita vitalizia differita.*)

An annuity is said to be deferred when it is payable after the expiration of a certain agreed number of years, or after a certain specified time. When once it has commenced to run it may be either perpetual, or it may be limited to terminate on the happening of a particular event. The present value of such an annuity must depend on many contingencies, and if the proposed annuitant dies before the first payment becomes due the whole is lost.

Deferred annuities—old age pay—can be purchased at any Post Office Savings Bank. The rates are given in the *Post Office Guide*.

DEFERRED BONDS. (Fr. *Titres différés*, Ger. *aufgeschobene Obligation, Obligationen*, Sp. *Títulos diferidos*, It. *Obbligazioni o titoli differiti.*)

These are bonds which bear a gradually increasing rate of interest up to a certain rate agreed upon, when they are exchanged for active bonds bearing a fixed rate of interest payable in full from the date of issue.

DEFERRED STOCK OR SHARES. (Fr. *Capital différé*, Ger. *ausgesetzte Schuld*, Sp. *Capital diferido*, It. *Capitale differito.*)

The capital of a joint-stock company is frequently divided into various classes, some of which have a preference over others. That stock or those shares which do not partake of the profits of a business until the prior claims have been satisfied is or are known as "deferred." Founders' shares in joint-stock companies are often of this kind.

By the Regulations of Railways Act, 1868, railway companies have special powers granted to them, under certain conditions, for converting their ordinary stock into two classes, preferred ordinary and deferred ordinary.

DEFICIENCY. (Fr. *Bon pour déficient*, Ger. *Manko, Leckage*, Sp. *Vale por deficencia*, It. *Deficienza, abbuono per deficienza.*)

This is a term used by the customs for an allowance made by them on wines and spirits on their being examined for delivery from a Government warehouse. The allowances are of three kinds:—

(*a*) Ordinary (Fr. *Concession ordinaire*, Ger. *gewöhnlicher Abzug*, Sp. *Concesión usual*, It. *Abbuono, tara solita*), to cover losses from natural causes, such as absorption or evaporation.

(*b*) Special (Fr. *Concession spéciale*, Ger. *besonderer Abzug*, Sp. *Concesión especial*, It. *Abbuono speciale*), to meet any further waste due to such causes as porous timber, slack hoops, defective stoves, or damp stowage.

(*c*) Chargeable (Fr. *Déficient à payer*, Ger. *Zahlbarer Unterschied*, Sp. *Diferencia á pagar*, It. *Differenza da pagare*), a deficiency over ordinary and special allowance on which duty is paid but generally remitted.

DEFICIENCY BILLS. (Fr. *Avances provisoires*, Ger. *kurze Anleihen*, Sp. *Pagarés*, It. *Prestiti provvisori per deficienza d'introiti.*)

These are bills representing loans for short periods advanced to the Government by the Bank of England.

DEL CREDERE COMMISSION. (Fr. *Ducroire*, Ger. *Delcredereprovision*, Sp. *Comisión del credere*, It. *Provvigione premio del credere.*)

The phrase *del credere* is borrowed from the Italian. A *del credere* commission denotes an additional premium charged by a factor or agent, in consideration of which he guarantees the solvency of the purchaser, and becomes personally liable for the price of the goods sold. An agreement to sell upon such a commission need not be evidenced in writing, since it has been held that although the undertaking may result in a liability to pay the debt of another person, that is not the immediate object for which the consideration is given, but merely the appointment of an agent.

DELIVERY BOOK. (Fr. *Livre d'expédition*, Ger. *Lieferungsbuch*, Sp. *Libro de entregas*, It. *Libro di spedizioni e consegne.*)

A delivery book is one in which are entered full particulars of goods forwarded by railway or carrier. The entries are signed by the carman or other person who receives the goods, which thus form receipts for the same.

DELIVERY ORDER. (Fr. *Ordre de livraison*, Ger. *Lieferschein*, Sp. *Orden de entrega*, It. *Mandato, ordine di consegna.*)

This is a written or printed document, made out and signed by the owner of goods stored at a warehouse, dock or wharf, authorising the transfer of such goods to the person named therein. A delivery order is a negotiable instrument, and may be used as a security to bankers and others for advances made by them upon the goods; it must then, however, be lodged at the place named,

and the goods concerned thus transferred to the name of the lender.

The former stamp duty of one penny on a delivery order for goods of the value of 40*s*. and upwards was abolished by the Finance Act, 1905.

DEMAND DRAFT. (D/D). (Fr. *Traite à vue*, Ger. *Sichtwechsel*, Sp. *Libranza á presentación, letra á la vista*, It. *Tratta a vista o a presentazione.*)

A demand draft is a bill of exchange, payable at sight, i.e., on presentation. It does not need any acceptance.

DEMONETISE. (Fr. *Démonétiser*, Ger. *entwerten, ausser Kurs setzen*, Sp. *Retírar de circulación*, It. *Ritirare dalla circolazione.*)

Coins are said to be demonetised when they are removed from the rank of a legal tender to that of "token money." (See *Tender, Token Money.*)

DEMURRAGE. This word has two meanings:—

(1) (Fr. *Surestarie*, Ger. *Liegegeld*, Sp. *Estadías*, It. *Controstallie.*)

Demurrage is a charge made by the owner for the detention of a ship by a merchant, in loading or unloading, beyond the time specified in the charter-party or other agreement with the owner. It is usually stipulated in charter-parties that the freighter may detain the ship for a certain number of days, called lay or running or working days, for loading or unloading, and for a limited time thereafter on paying so much per day for demurrage. During the receiving or discharging of the cargo the merchant is liable for all detention from ordinary causes, even though these are inevitable or beyond his control, whilst the shipowners have the risk of all interruptions from the moment the loading or unloading is completed.

(2) (Fr. *Retard*, Ger. *Lagergeld*, Sp. *Demora*, It. *Dimora.*)

The detention of barges, railway wagons, etc.

DEMY. (Fr. *Carré*, Ger. *Postpapier*, Sp. *Cuadrado*, It. *Carta di piccolo formato.*)

This is the name given to a size of *writing* paper 22 in. × 15½ in.: of *printing* paper, 22 in. × 17½ in.; and of *drawing* paper, 22 in × 17 in.

DEPENDENCIES. (Fr. *Actif susceptible d'accroissement*, Ger. *mögliche Aktiva*, Sp. *Créditos probables*, It. *Crediti probabili.*)

These are assets which are likely to accrue, but which cannot now be exactly determined—such as the profits from an adventure, or a partnership, dividends to be received on stocks and shares, and so on.

DEPOSIT. (Fr. *Dépôt, arrhes*, Ger. *Angeld, Depositum*, Sp. *Depósito*, It. *Deposito.*)

This word is used in various senses, and means:—

(1) Goods or securities placed by one person with another for safe keeping. It is one of the six classes of bailment.

(2) Money placed by one person with another as security for the fulfilment of an agreement, or in part payment on a sale, or as earnest to bind a contract. A deposit is invariably required on the sale of land, or any interest therein, generally 10 per cent. of the purchase price. If the purchaser fails to complete his contract, the vendor is entitled to retain the deposit. Not even the trustee in bankruptcy can reclaim the deposit, should the purchaser fail in carrying out the contract through bankruptcy proceedings being taken against him.

(3) Money lodged with a banker at a fixed rate of interest, either as a permanent investment or for some definite period. The account of the same is kept separate from the ordinary or current account of the depositor. The banker gives a deposit note as a receipt. This document needs no stamp. With respect to his deposit the depositor's right against the banker is simply that of a creditor.

(4) Title-deeds of land placed as security for the repayment of a loan, and creating what is known as an equitable mortgage, when there is no writing in existence to satisfy the 4th section of the Statute of Frauds.

DEPOSIT ACCOUNT. (Fr. *Compte de dépôt*, Ger. *Depositenkonto*, Sp. *Depósito en cuenta*, It. *Conto di deposito.*)

This is an account where sums of money are deposited with bankers, discount houses, and others, at a fixed rate of interest, and withdrawals from the account can only be made upon giving so many days' notice.

DEPOSIT BILL. (Fr. *Billet d'abandon de tabac à priser*, Ger. *Abtretungsschein*, Sp. *Guia de decomiso*, It. *Lettera di deposito e abbandono di tabacco da naso.*)

This is a document used when snuff is abandoned and delivered to the Crown. The bill is filled in with full particulars of the snuff to be abandoned, and is lodged with the Customs at the port of deposit, together with a signed statement that on receipt of the drawback it is intended to abandon the snuff to the Crown.

DEPOSIT RECEIPT. (Fr. *Certificat de dépôt, mandat de dépôt*, Ger. *Depositenschein*, Sp. *Certificado de deposito*, It. *Certificato di deposito.*)

A deposit receipt is a receipt given by bankers, discount houses, and others, for money deposited with them, either at call, or at notice, specifying the interest to be paid and the notice to be given before the money is withdrawn.

DEPOSITOR. (Fr. *Déposant*, Ger. *Deponent, Hinterleger*, Sp. *Depositante*, It. *Deponente.*)

This is the person who makes a deposit.

DEPOT. (Fr. *Dépôt, magasin*, Ger. *Dépôt, Niederlage, Bahnhof*, Sp. *Dépôt, depósito*, It. *Deposito, magazzino, stazione.*)

A depot is a place of deposit, a storehouse, a military station, or a railway terminus.

DEPRECIATION. (Fr. *Dépréciation*, Ger. *Abschreibung, Entwertung*, Sp. *Depreciación*, It. *Deprezzamento.*)

The meaning of this term is diminished value. It is most commonly used in commerce to signify the decline in value of any property, especially buildings, machinery, and plant, which is the natural result of continued usage, lapse of time, and the introduction of fresh methods and new machinery, etc., in any particular business.

An allowance must be made in every business for depreciation, otherwise the fixed capital of the concern will be continually reduced until it reaches a vanishing point. The proper allowance to be made varies with every business and its amount will not always be the same for every year. In book-keeping depreciation is made a charge against the revenue of the business.

DERELICT. (Fr. *Navire abandonné*, Ger. *verlassenes Schiff*, Sp. *Buque abandonada*, It. *Derelitto, nave abbandonata.*)

This is a boat, ship, or goods found abandoned at sea.

By an Act of 1896, every master of a British ship is compelled to notify the existence on the high seas of any floating derelict vessel to Lloyd's. (See *Lloyd's.*)

DESIGNS. (See *Patents.*)

DEVIATION. (Fr. *Changement de route*, Ger. *Abweichung*, Sp. *Desviación de la via*, It. *Deviazione della via.*)

Any divergence from the terms and conditions specified in a policy of marine insurance which thereby discharges the underwriters from their risk, is known as deviation. The only deviations allowed are for the purpose of getting provisions, avoiding capture, repairing damage, and saving life. (See *Charter-party.*)

DEVISEE. (Fr. *Légataire*, Ger. *Vermächtniserbe, Vermächtnisnehmer*, Sp. *Legado*, It. *Legatario.*)

This is the person to whom real estate is given by will. The words of gift generally used are "devise and bequeath," the latter being technically applicable to personal property alone.

DEVISOR. (Fr. *Légateur*, Ger. *Erblasser*, Sp. *Testador*, It. *Testatore.*)

The person who makes a gift of real estate by a will is a devisor.

DIES NON. (Fr. *Jour férié*, Ger. *kein Geschäftstag*, Sp. *Declaración de día festivo*, It. *Feria.*)

This is a Latin phrase which means a day upon which, owing to some particular circumstance or event, no business can be transacted.

DIFFERENCES. (Fr. *Différences*, Ger. *Unterschiede*, Sp. *Diferencias*, It. *Differenze.*)

This is a term used on the Stock Exchange in connection with transactions in which the operator has no intention of taking up or delivering the stocks or shares dealt in. It is a pure gambling speculation, and the settlement is arrived at by paying or receiving the amount of the rise or fall at the next settling day.

DIME. (Fr. *Dime*, Ger. *Dime*, Sp. *Dime*, It. *Dime, decima parte del dollaro.*)

This is a silver coin of the United States, equal to ten cents. It is the tenth part of a dollar, and its value in English money is about fivepence.

DIRECT EXCHANGE. (Fr. *Change direct*, Ger. *direkter Kurs*, Sp. *Cambio directo*, It. *Cambio diretto.*)

The exchange operations between two countries are said to be direct when there is no reference to any third country.

DIRECT TAXES. (Fr. *Contributions directes*, Ger. *direkte Steuern*, Sp. *Contribuciones directas*, It. *Imposte dirette.*)

These are fixed taxes which are imposed upon and payable directly by individuals.

DIRECTOR. (Fr. *Administrateur, directeur*, Ger. *Direktor*, Sp. *Director*, It. *Direttore.*)

In general, this term is used to signify one who has the chief management of a scheme, design, or undertaking. More particularly, a director is one of a number of persons chosen by a plurality of votes from among the body of proprietors to conduct the affairs of some joint-stock undertaking, as a bank, a railway, an insurance company, or the like. The whole of the directors together form the board of directors.

Directors are in a sense trustees for the company, but the essential distinction between trustees and directors has been judicially declared as follows: "A trustee is a man who is the owner of the property, and deals with it as principal, as owner and master, subject only to an equitable obligation to account to some persons to whom he stands in relation of trustee, and who are his *cestuis que trustent*. The same individual may fill the office of director and also be a trustee having property, but that is a rare, exceptional, and casual circumstance. The office of director is that of a paid servant of the company. A director never enters into a contract for himself, but he enters into contracts for his principal, that is, for the company of whom he is a director, and for whom he is acting. He cannot sue on such contracts, nor be sued on them, unless he exceeds his authority." But they are especially trustees of the powers committed to them—they are the particular agents of the company. They can only exercise the powers conferred upon them by the memorandum and articles of association.

The number, powers, and method of election of the directors are provided for by the articles of association. If no directors are named therein the subscribers of the memorandum of association are the directors until others are appointed. The remuneration of the directors is similarly provided for—sometimes to be paid out of the profits of the company, sometimes out of the company's funds.

Owing to the passing of the Registration of Names Act, 1916, which required that certain particulars should be forthcoming as to the partners concerned in businesses, the Companies (Particulars as to Directors) Act, 1917, became a necessity, and under it certain particulars respecting the directors are required to be set out in the annual summary.

There is no legislative enactment requiring directors to be possessed of any share or shares in their company, but a share qualification is almost invariably provided for in the articles of association, since the London Stock Exchange requires it as a condition precedent to granting a quotation for the shares. It was a common practice on the part of promoters, etc., to evade this regulation of the Stock Exchange by presenting shares to nominees of their own. But now sections 72 and 73 of the Companies (Consolidation) Act, 1908, have endeavoured to prevent any evasion by the following enactments:—

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

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

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

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

(3) This section shall not apply to a private company nor to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business.

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

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

(3) If after the expiration of the said period or shorter time any unqualified person acts as a director of the company, he shall be liable to a fine not exceeding five pounds for every day between the expiration of the said period or shorter time and the last day on which it is proved that he acted as a director.

A director, who is appointed for a limited time, cannot be removed from his position until that time has elapsed, unless there is a special provision in the articles of association to that effect. Similarly he cannot resign.

Liability of Directors.—The directors are personally liable for all acts which are *ultra vires* the company, and they may be responsible for acts which are *intra vires* the company, and yet *ultra vires* the directors. They must, like agents, never place themselves in a position where their duties and their interests are in conflict, otherwise they may be called upon to refund any moneys expended by them, even though the expenditure may appear to be for the benefit of the company. Their duties cannot be delegated.

If the directors or any of them have been parties to the issue and publication of a fraudulent prospectus, any person damnified may bring an action against them for the loss which he has sustained. The action was one for deceit, but after the passing of the Directors Liability Act, 1890, a great change was made in the liability of directors. This Act was somewhat amended by the Companies Act, 1907, and the whole of the provisions are now contained in section 84 of the Companies (Consolidation) Act, 1908. The defences to an action are three, but the burden of proof lies on the defendants, whereas in an action for deceit the burden of proof is upon the plaintiff. The defences are:—

(1) That the directors, etc., believed that the statements contained in the prospectus were true, or had reasonable grounds for doing so, and that they retained the belief up to the time of the allotment of the shares, debentures, or debenture stock, as the case may be.

(2) That the statements set forth were made from the reports or valuations of duly qualified and competent persons, e.g., engineers, valuers, accountants, or other experts, or that they were copied from some official document.

(3) Any director may show that he withdrew his consent to the prospectus, and gave public notice of the fact.

Directors are civilly liable for gross negligence in the performance of their duties, for misfeasance and for breach of trust. They may also render themselves liable to a criminal prosecution under section 84 of the Larceny Act, 1861, which runs as follows: "Whosoever being a manager, director or public officer of any body corporate or public company shall make, circulate or publish, or concur in making, circulating or publishing any written statement or account which he shall know to be false in any material particular with intent to deceive or defraud any member, shareholder, or creditor of such body corporate or public company, or with intent to induce any person to become a shareholder or partner therein, or to intrust or advance any property to such body corporate or public company, or to enter into any security for the benefit thereof, shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the court to any of the punishments which the court may award as hereinafter last mentioned, i.e., penal servitude for any period between three and seven years, or imprisonment with or without hard labour (and with or without solitary confinement) for a period not exceeding two years.

DIRECTORATE, DIRECTORSHIP. (Fr. *Directorat, direction*, Ger. *Direktorium, Vorstand*, Sp. *Directorio, dirección*, It. *Direzione, direttorato.*)

This term means either:—

(1) The office of a director, or

(2) The body of directors.

DISCHARGED BANKRUPT. (Fr. *Failli déchargé*, Ger. *entlassener Fallit*, Sp. *Fallido descargado*, It. *Fallito scaricato.*)

A bankrupt is said to be discharged when he has been liberated by the court from all liability as to his debts. Any person who has been adjudicated bankrupt may apply for his discharge as soon as his public examination has been concluded. The court will exercise its discretion as to granting, suspending, or refusing the same. (See *Bankruptcy.*)

DISCLAIMER. (Fr. *Désaveu*, Ger. *Verleugnung, Widerspruch*, Sp. *Denegacion*, It. *Sconfessione, ritrattazione.*)

This term is used to signify a renunciation of rights or liabilities.

The word is most frequently used in connection with bankruptcy proceedings. When the property of a bankrupt has passed into the possession of his trustee, all the rights and obligations attached to the same pass along with it.

As the obligations might cause a serious drain upon the assets, the trustee is allowed to disclaim land of any tenure, which is burdened with onerous covenants, contracts, shares, stocks, and every other kind of property which is either unsaleable or not easy to dispose of. The disclaimer must be made in writing, signed by the trustee, and within twelve months of the first appointment of the trustee, or if the property does not come to his knowledge within a month of his appointment, then within twelve months of such knowledge. This period may be extended by leave of the court. But any person interested may apply to the trustee, and compel him to decide within twenty-eight days of the service of a notice upon him whether he intends to disclaim or not. If the trustee fails to arrive at a decision his right to disclaim will be lost. The rights and liabilities attached to any property are determined from the date of the disclaimer, and the trustee is discharged from all personal liability in respect of the same.

Leaseholds cannot be disclaimed without the leave of the court, except in the following cases:—

(1) Where the premises have not been sub-let, or a mortgage or charge created on the lease; and

(*a*) The rent reserved and the real value of the premises is less than £20 per annum; or

(*b*) The estate is being administered as a small bankruptcy; or

(*c*) The lessor has been served with a notice of the intention of the trustee to disclaim, and has not given notice to the trustee that he requires the matter to be brought before the court.

(2) Where the premises have been sub-let, or a mortgage or charge created on the lease, and the trustee has served the lessor and the sub-lessee or the mortgagee, as the case may be, with a notice of his intention to disclaim, and one of the parties has, within fourteen days of the service of the notice, required that the matter shall be brought before the court.

No disclaimer of leaseholds is of any validity until it has been filed in the court.

The liquidator of a joint-stock company has no power to disclaim, since he does not become personally liable for the rents and covenants of leases, and a trustee under a deed of arrangement has no such power, such a trustee succeeding entirely to the whole of the rights and obligations attached to the property comprised in the deed. For this reason it is very rare for leaseholds to be included in deeds of arrangement.

A tenant is said to disclaim when he repudiates the relationship existing between himself and his landlord. Such a disclaimer terminates the tenancy, and renders it impossible for the tenant to set up any defence in an action for ejectment. The disclaimer must be very clear and unambiguous in order to act as a repudiation.

A trustee may, if he has never acted, disclaim his trusteeship as to the whole of his trust. Though no formal act is necessary such a disclaimer is generally made by deed.

DISCOUNT. (Disct.) (Fr. *Escompte*, Ger. *Diskonto*, *Skonto*, Sp. *Descuento*, It. *Sconto*.)

Discount is an allowance made on a bill, or any other debt not yet become due, in consideration of present payment.

This allowance, in the case of a cash discount, depends upon three things:—

(*a*) The period of credit which is generally allowed in a particular trade;

(*b*) The length of the unexpired period of credit at the time when payment is made;

(*c*) The rate per cent. allowed.

The calculation is invariably made as though the allowance to be made was interest upon the sum payable. Thus, if discount is allowed for twelve months at the rate of 5 per cent. upon a debt of £100, the sum of £5 is deducted and the debt is liquidated by the payment of £95. This is what is called banker's discount. In a true calculation of discount, however, the problem is this—What sum will, at the given rate of interest, at the end of the given period, amount to the value of the deferred payment? This is ascertained by finding the amount of £1 for the given time, and dividing the given sum by that amount. The quotient is the correct answer. For example, to find the true discount of £100 to be paid twelve months hence, at the rate of 5 per cent. The amount of £1 is £1·05. Divide £100 by £1·05 and the quotient is £95 4*s*. 9½*d*. Hence the true discount is £4 15*s*. 2½*d*., and not £5 as in banker's discount.

It is thus seen that when a tradesman allows £5 on a debt of £100, he is giving more than 5 per cent. discount. The creditor is the gainer. Similarly when a banker discounts a bill of £100 and pays the holder £95 for it, the

banker will at the maturity of bill, on receiving £100 for it, obtain more than 5 per cent. for the money he has advanced. As a matter of fact, his gain is about $5\frac{5}{19}$ per cent.

The rate of discount varies according to the demand for money, and, in the case of bills, according to the character and credit of the persons who are parties to them.

In some trades an allowance is made, called a trade discount, according to the particular class of trade or goods and irrespective of any time of payment. The rate varies with the extent of the trade done by a particular customer. This method enables a trader to issue what are known as "list prices," which are applicable to all buyers, and the adjustment in prices is made after purchases have been effected. When proving a debt in bankruptcy or in the winding-up of a company, a creditor is bound to deduct all trade discounts, but he is not compelled to allow more than 5 per cent. on the net amount of his claim, which he may have agreed to allow for cash payment.

The term is also applied to the depreciation in value of any investment. Thus, if the market value of a railway share, upon which £100 has been paid, is only £90, it is said to be at a discount of 10 per cent. Conversely, if the market value is higher than the nominal value, it is said to be at a premium.

DISCOUNT, BANK RATE OF. (Fr. *Taux de l'escompte*, Ger. *Bankdiskont*, Sp. *Descuento bancario*, It. *Tasso bancario di sconto.*)

This is the rate charged by the Bank of England for discounting the bills of its customers.

DISCOUNT HOUSES. (Fr. *Bureaux d'escompte*, Ger. *Diskontohäuser*, Sp. *Casas de descuento*, It. *Case di sconto, banchi di sconto.*)

Discount houses are those which make it their chief business to discount bills of exchange.

DISCOUNTING A BILL. (Fr. *Escompter*, Ger. *diskontieren*, Sp. *Descontar*, It. *Scontare una cambiale.*)

This signifies the purchase of a bill of exchange by a banker or other person at a settled price, less than the face value of the bill, such price depending upon the rate of discount at the time of the transaction, and upon the credit and reputation of the various parties to the bill.

It is with bills of exchange that the word "discount" is most familiarly used, and the operation of discounting bills is one of the most common and important functions of modern banks. Bills are, in fact, the stock-in-trade of banks, and they are bought and sold with the same readiness as the goods of an ordinary trader. If there is a large supply of good bills, they are the most eligible of banking investments, because their date is fixed, and it is known almost to a certainty when the money advanced, together with interest, will be repaid. The banker who takes a bill charges his profit at the time of the advance, and he is, therefore, the gainer whether the customer draws out the money or not. And it often happens that all the parties to a bill are customers of the same bank. In such a case numerous transactions, by means of cheques, may take place, and there will be nothing but a transfer of credits from one account to another during the time that the bill is running, and the banker will not be called upon to find one single penny in actual coin. The same thing takes place by means of the system of the Clearing House, when the various bankers are members of it.

The rate of discount will depend upon the condition of the money market, and upon the Bank Rate of the Bank of England.

The discount is not calculated upon the principle of true discount, but the customer is charged interest at the discount rate upon the face value of the bill. Discount is more profitable than interest, and the profit rapidly increases with the advance of the rate of discount. Thus, suppose a money lender advances a loan at 25 per cent. interest. For each £100 advanced he would, at the end of the year, receive £125. But suppose he discounts a bill for £100 at the same rate. The advance would be £75, and in return he would receive £25 as interest for the £75, that is, $33\frac{1}{3}$ per cent. The following table shows the difference in profit per cent. in trading by way of interest and discount.

Interest.	*Discount.*	*Interest.*	*Discount.*
1	1·010101	8	8·695652
2	2·040816	9	9·890109
3	3·092783	10	11·111111
4	4·166666	20	25·000000
5	5·263157	40	66·666666
6	6·382968	50	100·000000
7	7·526881	100	Infinite

The discounting of a bill must be carefully distinguished from the pledge or deposit of a bill as security. A discounter is a holder for full value, and

he is entitled, on the maturity of the instrument, to recover from any of the parties the amount of the same, in the absence of any such defences as fraud, etc. The position of a pledgee is different. If he sues a third party he sues as trustee for the pledgor, as regards the difference between the amount he has advanced and the amount of the bill. If the pledgor could have sued on the bill, the pledgee is able to recover the whole. But if the title of the pledgor is in any way defective, the pledgee cannot recover more than the amount of his advance, and only then if he has taken the bill without notice of the defect in the title of the pledgor.

DISCRETIONARY ORDER. (Fr. *Ordre facultatif*, Ger. *Vertrauensorder*, Sp. *Autorización discrecional*, It. *Autorizzazione discrezionale.*)

This is an order sent by a speculator to a stockbroker, accompanied by the usual amount of cover, telling him to purchase a certain amount of stock, and leaving to his judgment the stock to purchase.

DISEMBARKMENT. (Fr. *Débarquement*, Ger. *Ausladung*, Sp. *Desembarcación*, It. *Sbarco.*)

Disembarkment is the act of landing goods which have been placed on board a ship.

DISHONOUR. (Fr. *Ne pas faire honneur à*, Ger. *nicht honorieren*, Sp. *Deshonrar*, It. *Disonorare.*)

In commerce, dishonour means the refusal to accept a bill of exchange, or to pay the same when it falls due.

When a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged, provided that—

(1) Where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission shall not be prejudiced by the omission.

(2) Where a bill is dishonoured by non-acceptance and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment unless the bill shall in the meantime have been accepted.

The following fifteen rules (as set out in section 49 of the Bills of Exchange Act, 1882) must be observed in giving notice of dishonour, in order that the notice may be valid and effectual:—

(1) The notice must be given by or on behalf of the holder, or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill.

(2) Notice of dishonour may be given by an agent either in his own name, or in the name of any party entitled to give notice whether that party is his principal or not.

(3) Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given.

(4) Where notice is given by or on behalf of an indorser entitled to give notice as hereinbefore provided, itenures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given.

(5) The notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payment.

(6) The return of a dishonoured bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonour.

(7) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the bill will not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

(8) Where notice of dishonour is required to be given to any person, it may be given either to the party himself, or to his agent in that behalf.

(9) Where the drawer or the indorser is dead, and the party giving notice knows it, the notice must be given to the personal representative, if there is one, with reasonable diligence.

(10) Where the drawer or the indorser is bankrupt, notice may be given either to the party himself or to the trustee in bankruptcy.

(11) Where there are two or more drawers or indorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others.

(12) The notice must be given within a reasonable time after the bill is dishonoured. In the absence of special circumstances notice will not be deemed to have been given within a reasonable time unless—

(*a*) Where the person giving and the person to receive notice reside in the same place the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill.

(*b*) Where the person giving and the person to receive notice reside in different places the notice is sent off on the day after the dishonour of the bill, if there is a post at a convenient hour on that day, and if there is no such post on that day then by the next post thereafter.

(13) Where a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice to his principal. If he gives notice to his principal he must do so within the same time as if he were the holder, and the principal upon receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

(14) Where a party to a bill receives due notice of dishonour, he has after the receipt of such notice the same period of time for giving notice to antecedent parties that the holder has after the dishonour.

(15) Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post office.

Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the notice must be given with reasonable diligence.

By section 50 of the Bills of Exchange Act, 1882, notice of dishonour is dispensed with—

(*a*) When, after the exercise of reasonable diligence, notice cannot be given to or does not reach the drawer or indorser sought to be charged.

(*b*) By waiver express or implied. Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice.

(*c*) As regards the drawer in the following cases, viz.:—

(1) Where the drawer and the drawee are the same person.

(2) Where the drawer is a fictitious person or a person not having capacity to contract.

(3) Where the drawer is the person to whom the bill is presented for payment.

(4) Where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill.

(5) Where the drawer has countermanded payment.

(*d*) As regards an indorser in the following cases, viz.:—

(1) Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the bill.

(2) Where the indorser is the person to whom the bill is presented for payment.

(3) Where the bill was accepted or made for his accommodation.

The acceptor of a bill is not entitled to any notice of dishonour in order to make him liable upon it.

DISPATCH MONEY. (Fr. *Bon pour vive expédition*, Ger. *Vergütung für schnelle Ladung*, Sp. *Boletín de espedición*, It. *Abbuono, uscita al noleggiatore.*)

This is a chartering term for an allowance of so much a day or so much an hour, sometimes granted by the owners of a vessel to the charterer when the latter has loaded or unloaded a vessel before the stipulated lay days are over.

DISPATCH NOTE. (Fr. *Bulletin d'expédition*, Ger. *Versandschein, Paketadresse*, Sp. *Nota de expedición*, It. *Bollettino di spedizione.*)

This is a printed document which should be filled up in writing and forwarded with a parcel sent by post to a foreign country.

DISSECTION. (Fr. *Dissection*, Ger. *Zerlegung*, Sp. *Disección*, It. *Separazione, scomposizione.*)

This is a term in accounts, especially in those of the drapery trade, which is applied to the separation of the accounts of sales and purchases into the various departments of the business.

DISSEISE. (Fr. *Déposséder, dessaisir*, Ger. *widerrechtlich aus dem Besitze setzen*, Sp. *Desembargar*, It. *Spossessare.*)

To disseise is to deprive a person of the seisin or possession of an estate of freehold.

DISSEISIN. (Fr. *Dépossession*, Ger. *widerrechtliche Besitzentsetzung*, Sp. *Deposesión*, It. *Spossessione, spogliazione.*)

This is the act of depriving a person of the seisin or possession of an estate of freehold.

DISSOLUTION OF PARTNERSHIP. (Fr. *Dissolution*, Ger. *Auflösung*, Sp. *Disolución*, It. *Scioglimento di societa.*)

When a firm is broken up, there is said to be a dissolution of partnership, and this may happen either by the voluntary retirement of one or more partners, or by operation of law. For the grounds of dissolution, and the notices that are required to be given, both publicly in the *Gazette*, and privately to those persons who have had business relations with the firm, see *Partnership*.

DISTRAIN. (Fr. *Saisir*, Ger. *pfänden*, Sp. *Embargar*, It. *Sequestrare*.)

To distrain is to seize goods in satisfaction of rent due. The word is sometimes used, though incorrectly, to describe the levying of an execution for the satisfaction of a judgment debt. The two things are quite distinct in their nature, and the rights of an execution creditor are far more limited than those of a distrainor for rent.

DISTRAINOR. (Fr. *Saisissant, huissier*, Ger. *Pfänder*, Sp. *Aguacil judicial*, It. *Usciere giudiziario*.)

This is the person who makes a distraint, or seizure, of the goods of another for rent due.

DISTRAINT or **DISTRESS.** (Fr. *Saisie*, Ger. *Pfändung*, Sp. *Embargo*, It. *Sequestro*.)

In law, this means the act of distraining, or seizing, goods for rent due.

This summary method of procedure, without the intervention of a court of law, gives an enormous power to a landlord, and as it is likely to be abused unless very stringently regulated, various statutes have been passed to keep it properly checked. Any illegality or irregularity will render the distrainor liable to heavy damages.

In order that a right to distrain may exist there must exist the relationship of landlord and tenant between the distrainor and the holder of the premises. The rent must likewise be ascertainable, and some rent must be actually due at the time when the distraint is levied. If it has been agreed that the rent shall be paid in advance, the right to distrain arises as soon as the day for payment has passed. It is often provided in long leases that the last instalment of rent shall be paid some days before the termination of the lease, in order that the landlord may have this right up to the end of the term.

The landlord is the proper person to distrain. But this includes not only the actual legal owner of the premises who let them to the tenant, but any person who has such a property in the same as to entitle him to possession on the termination of the tenancy. Thus, a tenant who sub-lets can distrain, and so can a mortgagee. But it is a rare thing for a landlord to distrain personally. The usual practice is to employ a bailiff, who must be certificated by a county court judge, and who is authorised by some document in writing signed by the landlord.

Generally speaking, a distraint cannot be levied elsewhere than on the premises demised to the tenant, and in some cases during the time the tenancy lasts. Thus, if a notice to quit is given and a tenant holds over, there is no right of distraint for rent which is in arrear at the termination of the tenancy. This is the law as far as tenancies for less than a year are concerned; but if the tenancy is for years the right of distraint may be exercised during the six months following the termination of the tenancy by reason of a statute passed in the reign of Anne. That is also a reason why there is often a stipulation in long leases for the payment of the last instalment of the rent before the termination of the lease, already referred to. But if, the rent being in arrear, the tenant fraudulently or clandestinely removes his goods for the purpose of preventing a distraint, the landlord may follow and take them from the place to which they have been removed within thirty days after such removal. If, however, a sale has taken place in the meantime to a *bonâ fide* purchaser, the goods cannot be seized. But the tenant must still have an interest in the premises at the time the distraint is made, even though he removed them to prevent a distraint, otherwise the landlord will be too late. Thus, in one case, a tenant removed his goods on the last day but one of his tenancy, and it was held that although the goods were removed "fraudulently and clandestinely," the landlord could not follow and seize them after the tenancy had come to an end.

A distraint cannot be made except between sunrise and sunset. As rent is not legally due until the completion of the day upon which it is payable, no distraint is possible until after sunrise on the day after it falls due.

A landlord cannot distrain for more than six years' arrears of rent, unless the tenant has within that time given a written acknowledgment of previous rent being due. If the holding is an agricultural one, only one year's rent can be distrained for, subject to an extension if it has been customary to

defer payment for three or six months. In the case of a bankrupt tenant, a landlord may distrain after the commencement of the bankruptcy, but his claim is only available for six months' rent accrued due prior to the adjudication. If he distrains within three months of the receiving order being made, he must pay the preferential creditors out of the proceeds of the distraint, and become a preferential creditor himself as to any loss he sustains. For whatever balance of rent remains due after a distraint for the six months, the landlord must prove in the bankruptcy proceedings as an ordinary creditor. A distraint against the estate and effects of a company which is being wound up, otherwise than voluntarily, is void. The court may, however, on the application of the landlord or other person, give liberty to distrain, or direct payment of such rent after the commencement of the winding-up, if it is shown that possession has been retained for the benefit of the winding-up.

In levying a distraint the outer door of a house cannot be broken, but if the outer door is open, the person distraining may break the inner doors, or locks, if necessary, to reach goods which are distrainable. If a window is open, entrance may be made through it, and the window itself may be opened further. The breaking or removal of a pane of glass to undo a fastening constitutes the distrainor a trespasser. A fence may be climbed over to get through an open door. A landlord or his agent may not force the padlock of a barn nor the outer door of a granary or stable for the purpose of distraining for rent, and he must not break open gates nor knock down fences to effect his purpose but he is justified in opening doors and locks by turning the key, lifting the latch, drawing the bolt, or using any of the usual methods adopted for gaining access. In every case where the distrainor can enter without committing a trespass or using force, he is justified in his action. The forcible expulsion of a person lawfully distraining from the premises which he has entered will deprive the tenant of his immunity from having his outer door broken in order to regain admittance. The distrainor must call a constable to see that no breach of the peace is committed.

The general rule of law has always been that a landlord is entitled to seize all goods found on the demised premises, whether they are the property of the tenant or of a third person. A lodger first received protection under the Lodgers Protection Act, 1871, by which he was enabled to claim his own goods on taking certain steps specified in the Act. But a great change has been effected by the Law of Distress Amendment Act, 1908, which came into force on the 1st July, 1909. The extreme powers of the landlord have been felt to be a hardship in multitudes of cases, and there has been a desire for many years to put some limit upon them. The Bill was introduced too late in 1908 to permit of a thorough discussion of the amendments in the law which were proposed, and in the end the Act as passed was rather the result of a compromise. This Act provides that the goods of a third party and of an under-tenant shall under certain circumstances be privileged from distress, though there is no intention to bring distraint and execution down to the same level. (See *Execution.*) For example, the right to distrain is still to be applicable to goods which are claimed by the wife of a tenant, to goods covered by a bill of sale, to goods obtained under a hire-purchase agreement, and to goods on the premises under such circumstances as to make the tenant of the premises the apparent owner of the same. Moreover, there is a further exception made by the Agricultural Holdings Act, 1908, which is referred to below. There can be no doubt that the intention of the Act is to protect innocent parties who cannot help themselves, and it will probably be extended at no distant date. As it stands at present some of its clauses are most unfortunately worded, and it seems to open the door to much litigation.

The following goods are absolutely privileged from distress:—

(1) Things in actual use. The seizure of these might lead to a breach of the peace.

(2) Fixtures which having been removed cannot be restored to their original condition. At common law sheaves of corn and growing crops could not be distrained: they are now distrainable by statute.

(3) Goods delivered to a person in the way of his trade. The reason of this is that no undue restraint ought to be placed upon trade and commerce.

(4) Perishable goods. Things taken in distraint are really a pledge, and if they cannot be restored they may not be seized. For the same reason loose

money cannot be taken, but it can be seized if it is in a bag, so that the identical coins are able to be restored.

(5) Animals *ferae naturae*. But dogs, deer in a park, birds in cages, etc., are distrainable.

(6) Goods in the custody of the law, as, for instance, a sheriff who has taken possession under a writ of execution.

(7) The goods of an ambassador.

(8) The goods of a lodger. As stated above, this exception is by virtue of the Lodgers Protection Act, 1871, an Act which has been repealed and re-enacted in a fuller form by the Act of 1908. But a lodger must pay any rent that is due from him to his immediate landlord, and for which his landlord would have had the right to distrain. (In any case of difficulty, the lodger should apply to the nearest police court.)

(9) Wearing apparel, bedding, etc., to the value of £5, unless the tenant is holding over, and has refused for seven days to give up possession.

(10) Agricultural machinery.

(11) Frames, looms, etc., used in woollen, cotton, or silk manufacture.

(12) Gas meters belonging to a gas company incorporated by Act of Parliament.

(13) Railway rolling stock in any works belonging to the tenant of the works.

Things which are conditionally privileged can only be taken if the other goods on the premises are insufficient to satisfy the claim of the landlord. Such things are—

(1) Tools of trade. It would be contrary to public policy to allow these to be taken. Of course if they are in actual use they are absolutely privileged.

(2) Beasts of the plough and sheep. Colts, steers, and heifers are not exempt from seizure, nor are beasts of the plough, if the only other subject of distraint is growing crops. Beasts of the plough can always be taken for poor-rates, whether there are other things on the premises or not.

For the protection of agriculturists, the 29th section of the Agricultural Holdings Act, 1908, protects the live stock of any third person which has been brought on to an agricultural holding, as defined by the Act, to be fed at a fair price, so long as there is other sufficient things to distrain upon. Price does not necessarily mean money in this instance. An agreement known as "milk for meat" is sufficient to satisfy the section.

Entry and seizure having been effected, an inventory must be made of so much of the goods as will be sufficient on sale to pay the amount of the rent due. At the foot of the inventory a notice is added to the effect that if the tenant or the owner of the goods does not, within five days after the making of the distraint, replevy the same, they will be appraised and sold to pay the arrears of rent owing by the tenant. The inventory and notice must be served personally on the tenant, or left at the house, or other most conspicuous place on the premises charged with the rent for which the distraint is made. Unless the inventory and notice are duly served the seizure is invalid, and any subsequent sale of the goods will be illegal. The distrainor is entitled to remove the goods, and must keep them in safe custody, but it is usual to leave some person in possession to prevent a removal.

The fees that a bailiff is entitled to charge are given under *Bailiff*.

The tenant has a right to replevy, or redeem, the goods seized up to the time of their sale, upon payment of the costs incurred. The distrainor has no power to sell before the expiration of five complete days after the seizure, and these five days may be extended to fifteen if the tenant makes a request in writing to that effect of the distrainor, and gives security for the extra expenses incurred. There is no obligation upon the landlord to have the goods sold by auction, unless the tenant makes a written demand for this to be done, and the same rule applies to appraisement.

In a technical sense replevin is really a re-delivery of goods, which have been distrained upon, to the tenant or the owner, security being given that an action will be prosecuted against the distrainor for an alleged illegality or irregularity in the levying of the distraint. Proceedings must be taken in the county court, and may be commenced any time after the distraint has been levied before the goods are removed for sale. The registrar of the court will fix the amount of the security that must be given, and this may be either by way of a deposit of money, or of a bond with sureties. As soon as the security is completed the registrar issues a warrant to the high bailiff of the county court directing him to deliver the goods to the tenant or the owner. The action comes