

twelve months, or desires to be discharged from his office, or refuses or is unfit to act, or is incapable of acting, then the person or persons nominated for the purpose by the instrument creating the trust or (if there is no such person, or no such person able and willing to act), the surviving or continuing trustee or trustees, or the personal representatives of the last surviving or continuing trustee may by writing appoint another person or other persons to be a trustee or trustees in the cases mentioned. A *cestui que trust* should never be appointed a trustee of the fund of which he is a beneficiary, nor a husband trustee for his wife, for the interest of a trustee should not conflict with his duty; and a person who has the power of appointing a new trustee may not nominate himself—for a man himself is not a proper judge of his own qualifications for the office.

A trustee may retire if there are two or more trustees continuing, but he cannot do so leaving the trust fund in the hands of one trustee. Another must be appointed in his place so as to make the number at least two, though that number may be increased.

In all cases of difficulty recourse can be had to the Chancery Division for the appointment of a trustee. The court can also, if requested to do so by a person creating a trust, or by a trustee or beneficiary, appoint a judicial trustee either jointly with another, or as sole trustee, and can give him directions how to act, fix his remuneration, and order his accounts to be audited yearly.

Trustees may reimburse themselves out of their trust funds for all expenses properly incurred by them, but unless otherwise directed by the instrument creating the trust their services and office must be gratuitous. There must not be the slightest suspicion of any profit made or advantage taken through dealing with the trust property. For example, a sale of property to the trustee himself is always regarded with suspicion, and is likely to be impeached. Again, if trustees deal with the money of their *cestuis que trustent*, they are accountable for any profit made by them, and responsible for any loss which may arise. Also, if they mix trust money with their own, and any transactions take place with the mixed fund, it is the money of the trustee which is presumed to be utilised for the purpose, whilst the money of the *cestuis que trustent* is held to be intact, so long as

there is sufficient left of the mixed fund to cover the same.

By several modern statutes certain indemnities have been given to trustees in order to lighten the burdens placed upon them by judicial decisions. Thus, by the Trustee Act, 1893, in the case of signing receipts for conformity, a trustee is relieved unless a loss has arisen through his own act or wilful default. And where a breach of trust has been instigated by a *cestui que trust*, his interest can be impounded towards recouping the trustee. By the later Trustee Act, 1896, where it appears to the court that a trustee is or may be personally liable for any breach of trust whenever it occurred, but has acted honestly and reasonably and ought fairly to be excused for the breach, and for omitting to obtain the directions of the court in the matter in which he has committed such breach, the court may relieve the trustee either wholly or in part from personal liability. But a prudent man will not rely on these indemnity clauses and powers of obtaining recoupment or relief. He should in all cases act strictly in accordance with his duties, remembering that if a wrong is done he may have to bear all losses himself, for between wrongdoers there is no contribution, and the *cestuis que trustent* may claim against him alone, and leave out his co-trustee. If the friction between the different parties becomes great, the safest course for the trustee who disapproves of the contemplated breaches of trust to adopt, is to take measures to have the trust funds paid into court, and to free himself from the trust.

When all the purposes for which a trust was created have been fulfilled, and before a final distribution of the property is made, the trustees should submit their accounts to the beneficiaries, and obtain a formal release from them. They are entitled to do this at the expense of the trust estate. The release should set out all that has been done in respect of the estate, and should be by deed.

A trustee of any property, whether for the use or benefit of a private person, or for any public or charitable purpose, is liable to be convicted of a misdemeanour and sentenced to penal servitude if he is found guilty of converting or appropriating any part of the trust property to his own use and benefit. No prosecution can be instituted without the consent of the Attorney-General.

The legislature has very wisely made provision for a judicial trustee in recent years, in order to avoid the difficulties of trustees in general, and also to avoid as far as possible the losses which frequently occur in the administration of estates. The judicial trustee is an official appointed by the Judicial Trustee Act, 1896. Under the Act power is conferred upon a judge of the High Court or any county court judge possessing jurisdiction, in any case where application is made by a person creating a trust, or by any trustee or beneficiary under an existing trust, to appoint a fit and proper person as a judicial trustee, whose duty it is to administer the trust either alone or in conjunction with another person. Also if a good cause is shown a judicial trustee may be appointed to act in the place of existing trustees. The trustee is remunerated at a fixed rate out of the trust funds. The duties imposed upon him are prescribed by the court, but his main duty is that of rendering yearly accounts of his trust in a prescribed manner.

Supplementary to this Act of 1896, an Act was passed in 1906 for the appointment of a public trustee, the great object being to protect estates of small value, which are likely to be squandered in various ways. The Act came into force on the 1st January, 1908. It provides in the first place for the establishment of the office of a public trustee, a corporation sole with perpetual succession and a common seal. Subject to certain rules the public trustee is to act—(a) in the administration of estates of small value; (b) as a custodian trustee; (c) as an ordinary trustee; (d) as a judicial trustee; (e) as an administrator of the property of a convict under the Forfeiture Act, 1870. He is empowered to act either alone or jointly with any person or body of persons in any capacity to which he is appointed, and has all the powers, duties, and liabilities, and has also, generally speaking, all the rights and immunities of a private trustee acting in a similar capacity. He has the right to decline, absolutely or except on certain conditions, to accept any trust, but this right cannot be exercised only on the ground of the small value of the property. Trusts which involve the carrying on of business, the administration of the affairs of a debtor under a deed of assignment, or similar trusts, are not ordinarily within his province, and he can never act in respect of trusts

created solely for religious or charitable purposes.

The Act is too lengthy for any detailed information to be given as to its working. Enough, however, has been said to point out how the legislature has attempted to meet the public requirements of trusteeship by the appointment of a public official who will be bound to perform his duties fairly and honestly, and who will no doubt be considered as a boon by the poorer classes of the community. As the public trustee is bound to supply all necessary information on the subject, any person may confidently appeal to him for directions if it is considered that the case is one which calls for his interference.

The service rendered by the public trustee will not be gratuitous to the public. Certain fees will be demanded, but these are not of a heavy nature and need cause no feeling of alarm in the minds of those people who are anxious to obtain security for the small funds which are to be held in trust.

Trustee Investments.—1. The following are the investments which are authorised by the Trustee Act, 1893:—

(a) In any of the parliamentary stocks, or public funds, or Government securities of the United Kingdom.

(b) On real or heritable securities in Great Britain or Ireland (but not on equitable or second mortgages, leaseholds, or on mortgages of unlet houses).

(c) In Bank of England or Bank of Ireland stock.

(d) In India $3\frac{1}{2}$ per cent. and 3 per cent. stock, or in any other capital stock which may be issued by the Secretary of State in Council of India, under the authority of an Act of Parliament, and charged on the revenues of India.

(e) In any securities the interest of which is for the time being guaranteed by Parliament.

(f) In consolidated stock created by the Metropolitan Board of Works, or by the London County Council, or in debenture stock created by the receiver of the metropolitan police.

(g) In the debenture, guaranteed, or preference stock of any railway in Great Britain or Ireland, incorporated by special Act of Parliament, which has during each of the ten years preceding the investment paid a dividend of not less than 3 per cent. per annum on ordinary stock.

(h) In the stock of any railway or canal company of Great Britain or Ireland, whose undertaking is leased in perpetuity

or for not less than 200 years, at a fixed rental to such a railway company as is mentioned in sub-s. (g), either alone, or jointly with some other railway company.

(i) In the debenture stock of any railway company in India the interest on which is paid or guaranteed by the Secretary of State in Council of India.

(j) In the "B" annuities of the Eastern Bengal, the East Indian, and the Scinde Punjaub and Delhi railways, and any like annuities which may be created on the purchase of a railway by the Secretary of State in Council of India, and charged on the revenues of India, and authorised by Act of Parliament to be accepted by trustees in lieu of any stock held by them in the purchased railway; also in deferred annuities comprised in the register of holders of annuity, Class D, and annuities comprised in the register of annuitants, Class C, of the East Indian Railway Company.

(k) In the stock of any railway in India upon which a fixed or minimum dividend in sterling is paid or guaranteed by the Secretary of State in Council of India, or upon the capital of which the interest is so guaranteed.

(l) In the debenture, guaranteed, or preference stock of any trading water company in Great Britain or Ireland which is incorporated by special Act of Parliament, or by royal charter, and which has, during the ten years preceding the investment, paid a dividend of not less than 5 per cent. on its ordinary stock.

(m) In nominal or inscribed stock issued, or to be issued, by the corporation of a municipal borough, having, according to the last census, a population exceeding 50,000, or by any County Council, under the authority of an Act or provisional order.

(n) In nominal or inscribed stock issued, or to be issued by any commissioners incorporated by Act to supply water, and having a compulsory power of levying rates over an area having, according to the last census returns, a population exceeding 50,000, provided that during the ten years preceding the rates levied by the commissioners have not exceeded 80 per cent. of the amount authorised by law to be levied.

(o) In any of the stocks, funds, or securities for the time being authorised for the investment of cash under the control or subject to the order of the High Court.

To the above list must now be added War Loan Stock.

The trustees may from time to time vary any of these investments.

2. Under the powers of the Act trustees may invest in any of the above securities, even though they are redeemable and the price is in excess of the redemption value. But no price exceeding the redemption value must be paid for any of the stocks mentioned in sub-sections (g), (i), (k), (l) and (m) above, which are liable to be redeemed within fifteen years of the date of purchase at par or at some fixed rate, or when the price exceeds 15 per cent. above par or the fixed rate. Any stock, fund, or security purchased in accordance with the power of the Act may be held until redemption.

3. Every power conferred upon trustees as to investment may be exercised at their discretion, but always subject to any consent required by the instrument, if any, creating the trust with respect to the investment of the trust funds.

4. The powers conferred by the Act are in addition to any conferred by the instrument creating the trust.

5. Where there is a power given to trustees to invest in real securities, they may, unless specially forbidden by the instrument creating the trust, invest—

(a) On mortgage of property held for an unexpired term of not less than 200 years, and not subject to a reservation of rent greater than a shilling a year, or to any right of redemption or to any condition for re-entry, except for non-payment of rent; and

(b) On any charge, or mortgage of any charge, made under the Improvement of Land Act, 1864.

6. If there is a power conferred by the instrument creating the trust to invest in the mortgages or bonds of any railway or any other description of company, the trustees are empowered, unless the contrary is expressed, to invest in the debenture stock of the railway or company.

7. Trustees are not chargeable with a breach of trust for lending money on the security of property merely because of the proportion borne by the amount of the loan to the value of the property, at the time when the loan was made, provided that the court thinks that in making the loan they were acting upon the report as to the value of the property of a person whom they reasonably

believed to be a competent surveyor, or of a valuer instructed and employed independently of the property, whether such surveyor or valuer carries on business in the locality where the property is situate or elsewhere, and that the amount of the loan does not exceed two-thirds of the value of the property as stated in the report, and that the loan was made upon the advice of the surveyor or valuer expressed in the report. In lending upon leaseholds trustees are not guilty of a breach of trust because they have dispensed with the investigation of the title of the lessor, nor because in buying or lending money on property they have accepted a shorter title than they might have required, provided the title accepted is such as a person acting with ordinary prudence and caution would have accepted.

8. If trustees improperly advance money on a mortgage security which would at the time of the investment be a proper investment in all respects for a smaller sum than is actually advanced thereon, the security is held to be an authorised investment for the smaller sum, and the trustees are only liable to make good the sum advanced in excess together with such interest.

TRUSTEE IN BANKRUPTCY. (Fr. *Syndic de la faillite*, Ger. *Massenverwalter*, Sp. *Sindico de la quiebra*, It. *Sindaco del fallimento, curatore della massa*.)

This is the person appointed by the creditors of a debtor who has been adjudicated a bankrupt to manage the estate of the bankrupt during the liquidation of his affairs. Until the appointment is made the Official Receiver acts in that capacity. The trustee is often assisted by a committee of inspection, also elected by the creditors from their own number, who likewise serve the purpose of watching over the administration, and of seeing that everything is carried out in the general interest of all parties concerned. The main duties of a trustee are to realise the estate, by getting in all the assets available, to disclaim unprofitable contracts, to examine into the character of the bankrupt's dealings, to keep accurate accounts, and to distribute dividends. At the close of his labours he is to report to the Board of Trade, from whom he obtains his discharge.

As a business man may easily be called upon hurriedly to act as trustee in bankruptcy, it is as well that he should be fully acquainted with the statutory requirements attached to the office. The

following sections of the Bankruptcy Act, 1914, are important, and are set out *in extenso* :—

19.—(1) Where a debtor is adjudged bankrupt, or the creditors have resolved that he be adjudged bankrupt, the creditors may by ordinary resolution appoint some fit person, whether a creditor or not, to fill the office of trustee of the property of the bankrupt; or they may resolve to leave his appointment to the committee of inspection herein-after mentioned.

A person shall be deemed not fit to act as trustee of the property of a bankrupt where he has been previously removed from the office of trustee of a bankrupt's property for misconduct or neglect of duty.

(2) The person so appointed shall give security in manner prescribed to the satisfaction of the Board of Trade, and the Board, if satisfied with the security, shall certify that his appointment has been duly made, unless they object to the appointment on the ground that it has not been made in good faith by a majority in value of the creditors voting, or that the person appointed is not fit to act as trustee, or that his connection with or relation to the bankrupt or his estate or any particular creditor makes it difficult for him to act with impartiality in the interests of the creditors generally.

(3) Provided that, where the Board make any such objection they shall, if so requested by a majority in value of the creditors, notify the objection to the High Court, and thereupon the High Court may decide on its validity.

(4) The appointment of a trustee shall take effect as from the date of the certificate.

(5) The official receiver shall not, save as by this Act provided, be the trustee of the bankrupt's property.

(6) If a trustee is not appointed by the creditors within four weeks from the date of the adjudication, or, in the event of there being negotiations for a composition or scheme pending at the expiration of those four weeks, then within seven days from the close of those negotiations by the refusal of the creditors to accept, or of the court to approve, the composition or scheme, the official receiver shall report the matter to the Board of Trade, and thereupon the Board of Trade shall appoint some fit person to be trustee of the bankrupt's property, and shall certify the appointment.

(7) Provided that the creditors or the

committee of inspection (if so authorised by resolution of the creditors) may, at any subsequent time, if they think fit, appoint a trustee, and, on the appointment being made and certified, the person appointed shall become trustee in the place of the person appointed by the Board of Trade.

(8) Where a debtor is adjudged bankrupt after the first meeting of creditors has been held, and a trustee has not been appointed prior to the adjudication, the official receiver shall forthwith summon a meeting of creditors for the purpose of appointing a trustee.

37.—(1) The bankruptcy of a debtor, whether it takes place on the debtor's own petition or upon that of a creditor or creditors, shall be deemed to have relation back to, and to commence at, the time of the act of bankruptcy being committed on which a receiving order is made against him, or, if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to, and to commence at, the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within three months next preceding the date of the presentation of the bankruptcy petition; but no bankruptcy petition, receiving order or adjudication shall be rendered invalid by reason of any act of bankruptcy anterior to the debt of the petitioning creditor.

(2) Where a receiving order is made against a judgment debtor in pursuance of section one hundred and seven of this Act, the bankruptcy of the debtor shall be deemed to have relation back to, and to commence at, the time of the order, or if the bankrupt is proved to have committed any previous act of bankruptcy, then to have relation back to, and to commence at, the time of the first of the acts of bankruptcy proved to have been committed by the debtor within three months next preceding the date of the order.

48.—(1) The trustee shall, as soon as may be, take possession of the deeds, books, and documents of the bankrupt, and all other parts of his property capable of manual delivery.

(2) The trustee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the bankrupt, be in the same position as if he were a receiver of the property appointed by the High Court, and the court may, on his application, enforce such acquisition or retention accordingly.

(3) Where any part of the property of the bankrupt consists of stock, shares in ships, shares, or any other property transferable in the books of any company, office, or person, the trustee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt.

(4) Where any part of the property of the bankrupt is of copyhold or customary tenure, or is any like property passing by surrender and admittance or in any similar manner, the trustee shall not be compellable to be admitted to the property, but may deal with it in the same manner as if it had been capable of being and had been duly surrendered or otherwise conveyed to such uses as the trustee may appoint; and any appointee of the trustee shall be admitted to or otherwise invested with the property accordingly.

(5) Where any part of the property of the bankrupt consists of things in action, such things shall be deemed to have been duly assigned to the trustee.

(6) Subject to the provisions of this Act with respect to property acquired by a bankrupt after adjudication, any treasurer or other officer, or any banker, attorney, or agent of a bankrupt, shall pay and deliver to the trustee all money and securities in his possession or power, as such officer, banker, attorney, or agent, which he is not by law entitled to retain as against the bankrupt or the trustee. If he does not, he shall be guilty of a contempt of court, and may be punished accordingly on the application of the trustee.

76.—The official name of a trustee in bankruptcy shall be "the trustee of the property of _____ a bankrupt" (inserting the name of the bankrupt), and by that name the trustee may, in any part of the British dominions or elsewhere, hold property of every description, make contracts, sue and be sued, enter into any engagements binding on himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office.

Appointment.

77.—(1) The creditors may, if they think fit, appoint more persons than one to the office of trustee, and when more persons than one are appointed they shall declare whether any act required or authorised to be done by the trustee is to be done by all or any one or more of such persons, but all

such persons are in this Act included under the term "trustee," and shall be joint tenants of the property of the bankrupt.

(2) The creditors may also appoint persons to act as trustees in succession in the event of one or more of the persons first named declining to accept the office of trustee, or failing to give security, or of the appointment of any such person not being certified by the Board of Trade.

78.—(1) If a vacancy occurs in the office of a trustee, the creditors in general meeting may appoint a person to fill the vacancy, and thereupon the same proceedings shall be taken as in the case of a first appointment.

(2) The official receiver shall, on the requisition of any creditor, summon a meeting for the purpose of filling any such vacancy.

(3) If the creditors do not, within three weeks after the occurrence of a vacancy, appoint a person to fill the vacancy, the official receiver shall report the matter to the Board of Trade, and the Board may appoint a trustee; but in such case the creditors or committee of inspection shall have the same power of appointing a trustee in the place of the person so appointed by the Board of Trade as in the case of a first appointment.

(4) During any vacancy in the office of trustee the official receiver shall act as trustee.

Control over Trustee.

79.—(1) Subject to the provisions of this Act, the trustee shall, in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors, have regard to any directions that may be given by resolution of the creditors at any general meeting, or by the committee of inspection, and any directions so given by the creditors at any general meeting shall, in case of conflict, be deemed to override any directions given by the committee of inspection.

(2) The trustee may from time to time summon general meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors, by resolution, either at the meeting appointing the trustee or otherwise may direct, and it shall be lawful for any creditor, with the concurrence of one-sixth in value of the creditors (including himself), at any time to request the trustee or official receiver to call a meeting of the creditors, and the trustee or official receiver shall call such

meeting accordingly within fourteen days:

Provided that the person at whose instance the meeting is summoned shall deposit with the trustee or the official receiver, as the case may be, a sum sufficient to pay the costs of summoning the meeting, such sum to be repaid to him out of the estate if the creditors or the court so direct.

(3) The trustee may apply to the court in manner prescribed for directions in relation to any particular matter arising under the bankruptcy.

(4) Subject to the provisions of this Act, the trustee shall use his own discretion in the management of the estate and its distribution among the creditors.

80.—If the bankrupt or any of the creditors, or any other person, is aggrieved by any act or decision of the trustee, he may apply to the court, and the court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

81.—(1) The Board of Trade shall take cognizance of the conduct of trustees, and, in the event of any trustee not faithfully performing his duties, and duly observing all the requirements imposed on him by statute, rules, or otherwise, with respect to the performance of his duties, or in the event of any complaint being made to the Board by any creditor in regard thereto, the Board shall inquire into the matter and take such action thereon as may be deemed expedient.

(2) The Board may at any time require any trustee to answer any inquiry made by them in relation to any bankruptcy in which the trustee is engaged, and may, if the Board think fit, apply to the court to examine on oath the trustee or any other person concerning the bankruptcy.

(3) The Board may also direct a local investigation to be made of the books and vouchers of the trustee.

Remuneration and Costs.

82.—(1) Where the creditors appoint any person to be trustee of a debtor's estate, his remuneration (if any) shall be fixed by an ordinary resolution of the creditors, or, if the creditors so resolve, by the committee of inspection, and shall be in the nature of a commission or percentage, of which one part shall be payable on the amount realised by the trustee, after deducting any sums paid to secured creditors out of the proceeds of their securities, and the

other part on the amount distributed in dividend.

(2) If one-fourth in number or value of the creditors dissent from the resolution, or the bankrupt satisfies the Board of Trade that the remuneration is unnecessarily large, the Board of Trade shall fix the amount of the remuneration.

(3) The resolution shall express what expenses the remuneration is to cover, and no liability shall attach to the bankrupt's estate, or to the creditors, in respect of any expenses which the remuneration is expressed to cover.

(4) Where a trustee acts without remuneration, he shall be allowed out of the bankrupt's estate such proper expenses incurred by him in or about the proceedings of the bankruptcy as the creditors may, with the sanction of the Board of Trade, approve.

(5) A trustee shall not, under any circumstances whatever, make any arrangement for or accept from the bankrupt, or any solicitor, auctioneer, or any other person that may be employed about a bankruptcy, any gift, remuneration, or pecuniary or other consideration or benefit whatever beyond the remuneration fixed by the creditors and payable out of the estate, nor shall he make any arrangement for giving up, or give up, any part of his remuneration, either as receiver, manager, or trustee, to the bankrupt or any solicitor or other person that may be employed about a bankruptcy.

83.—(1) Where a trustee or manager receives remuneration for his services as such, no payment shall be allowed in his accounts in respect of the performance by any other person of the ordinary duties which are required by statute or rules to be performed by himself.

(2) Where the trustee is a solicitor, he may contract that the remuneration for his services as trustee shall include all professional services.

(3) All bills and charges of solicitors, managers, accountants, auctioneers, brokers, and other persons, not being trustees, shall be taxed by the prescribed officer, and no payments in respect thereof shall be allowed in the trustee's accounts without proof of such taxation having been made. The taxing master shall satisfy himself before passing such bills and charges that the employment of such solicitors and other persons, in respect of the particular matters out of which such charges arise, has been duly sanctioned. The sanction must be

obtained before the employment, except in cases of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction.

(4) Every such person shall, on request by the trustee (which request the trustee shall make a sufficient time before declaring a dividend), deliver his bill of costs or charges to the proper officer for taxation, and, if he fails to do so within seven days after receipt of the request, or such further time as the court, on application, may grant, the trustee shall declare and distribute the dividend without regard to any claim by him, and thereupon any such claim shall be forfeited as well against the trustee personally as against the estate.

Receipts, Payments, Accounts, Audit.

84.—The trustee or official receiver shall, whenever required by any creditor so to do, furnish and transmit to him by post a list of the creditors showing the amount of the debt due to each creditor, and shall be entitled to charge for such list the sum of threepence per folio of seventy-two words, together with the cost of the postage thereof.

85.—It shall be lawful for any creditor, with the concurrence of one-sixth of the creditors (including himself), at any time to call upon the trustee or official receiver to furnish and transmit to the creditors a statement of the accounts up to the date of such notice, and the trustee shall, upon receipt of such notice, furnish and transmit such statement of the accounts:

Provided that the person at whose instance the accounts are furnished shall deposit with the trustee or official receiver, as the case may be, a sum sufficient to pay the costs of furnishing and transmitting the accounts, which sum shall be repaid to him out of the estate if the creditors or the court so direct.

86.—The trustee shall keep, in manner prescribed, proper books, in which he shall from time to time cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor of the bankrupt may, subject to the control of the court, personally or by his agent, inspect any such books.

87.—(1) Every trustee in a bankruptcy shall from time to time, as may be prescribed, and not less than once in every year during the continuance of the bankruptcy, transmit to the Board of Trade a statement showing the proceedings in the bankruptcy up to the date

of the statement, containing the prescribed particulars, and made out in the prescribed form.

(2) The Board of Trade shall cause the statements so transmitted to be examined, and shall call the trustee to account for any misfeasance, neglect, or omission, which may appear on the said statements or in his accounts or otherwise, and may require the trustee to make good any loss which the estate of the bankrupt may have sustained by the misfeasance, neglect, or omission.

88.—No trustee in a bankruptcy or under any composition or scheme of arrangement shall pay any sums received by him as trustee into his private banking account.

89.—(1) The Bankruptcy Estates Account shall continue to be kept by the Board of Trade with the Bank of England, and all moneys received by the Board of Trade in respect of proceedings under this Act shall be paid to that account.

(2) Every trustee in bankruptcy shall, in such manner and at such times as the Board of Trade with the concurrence of the Treasury direct, pay the money received by him to the Bankruptcy Estates Account at the Bank of England, and the Board of Trade shall furnish him with a certificate of receipt of the money so paid.

Provided that—

(a) if it appears to the committee of inspection that, for the purpose of carrying on the debtor's business or of obtaining advances, or because of the probable amount of the cash balance, or if the committee shall satisfy the Board of Trade that for any other reason it is for the advantage of the creditors that the trustee should have an account with a local bank, the Board of Trade shall, on the application of the committee of inspection, authorise the trustee to make his payments into and out of such local bank as the committee may select;

(b) in any bankruptcy composition or scheme of arrangement in which the official receiver is acting as trustee, or in which a trustee is acting without a committee of inspection, the Board of Trade may, if for special reasons they think fit to do so, upon the application of the official receiver or other trustee, authorise the trustee to make his payments into and out of such local bank as the Board may direct.

(3) Where the trustee opens an account in a local bank, he shall open and keep it in the name of the debtor's

estate, and any interest receivable in respect of the account shall be part of the assets of the estate, and the trustee shall make his payments into and out of the local bank in the prescribed manner.

(4) Subject to any general rules relating to small bankruptcies under section one hundred and twenty-nine of this Act, where the debtor at the date of the receiving order has an account at a bank, such account shall not be withdrawn until the expiration of seven days from the day appointed for the first meeting of creditors, unless the Board of Trade, for the safety of the account, or other sufficient cause, order the withdrawal of the account.

(5) If a trustee at any time retains for more than ten days a sum exceeding fifty pounds, or such other amount as the Board of Trade in any particular case authorise him to retain, then, unless he explains the retention to the satisfaction of the Board of Trade, he shall pay interest on the amount so retained in excess at the rate of twenty per centum per annum, and shall have no claim to remuneration, and may be removed from his office by the Board of Trade, and shall be liable to pay any expenses occasioned by reason of his default.

(6) All payments out of money standing to the credit of the Board of Trade in the Bankruptcy Estates Account shall be made by the Bank of England in the prescribed manner.

90.—(1) Whenever the cash balance standing to the credit of the Bankruptcy Estates Account is in excess of the amount which in the opinion of the Board of Trade is required for the time being to answer demands in respect of bankrupts' estates, the Board of Trade shall notify the same to the Treasury, and shall pay over the same or any part thereof as the Treasury may require to the Treasury, to such account as the Treasury may direct, and the Treasury may invest the said sums or any part thereof in Government securities to be placed to the credit of the said account.

(2) Whenever any part of the money so invested is, in the opinion of the Board of Trade, required to answer any demands in respect of bankrupts' estates, the Board of Trade shall notify to the Treasury the amount so required, and the Treasury shall thereupon repay to the Board of Trade such sum as may be required to the credit of the Bankruptcy Estates Account, and for that

purpose may direct the sale of such part of the said securities as may be necessary.

(3) The Treasury, out of any sums so paid to them, may pay such sums as they consider necessary for defraying the expenses of providing office accommodation for any officer performing duties under this Act.

(4) If, after any sum is so expended, the Board of Trade notify to the Treasury that an amount is required to answer the demands in respect of bankrupts' estates, and the securities and moneys held by the Treasury on the account mentioned in this section are insufficient to pay the amount so required, the Treasury shall, for the purpose of meeting the deficiency, charge on and pay out of the Consolidated Fund or the growing produce thereof, the sum expended in pursuance of the last subsection, or of any corresponding enactment repealed by this Act, or such part thereof as appears to them to be required.

(5) The dividends on the investments under this section shall be paid to such account as the Treasury may direct, and regard shall be had to the amount thus derived in fixing the fees payable in respect of bankruptcy proceedings.

91.—The Treasury may issue to the Board of Trade in aid of the votes of Parliament, out of the receipts arising from fees, fee stamps, and dividends on investments under this Act, any sums which may be necessary to meet the charges estimated by the Board of Trade in respect of salaries and expenses under this Act.

92.—(1) Every trustee shall, at such times as may be prescribed, but not less than twice in each year during his tenure of office, send to the Board of Trade, or as they direct, an account of his receipts and payments as such trustee.

(2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.

(3) The Board of Trade shall cause the accounts so sent to be audited, and, for the purposes of the audit, the trustee shall furnish the Board with such vouchers and information as the Board may require, and the Board may at any time require the production of and inspect any books or accounts kept by the trustee.

(4) When any such account has been audited, one copy thereof shall be filed and kept by the Board, and the other copy shall be filed with the court, and each copy shall be open to the inspection

of any creditor, or of the bankrupt, or of any person interested.

Vacation of Office by Trustee.

93.—(1) When the trustee has realised all the property of the bankrupt, or so much thereof as can, in his opinion, be realised without needlessly protracting the trusteeship, and distributed a final dividend, if any, or has ceased to act by reason of a composition having been approved, or has resigned, or has been removed from his office, the Board of Trade shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Board, shall take into consideration the report, and any objection which may be urged by any creditor or person interested against the release of the trustee, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the High Court.

(2) Where the release of a trustee is withheld, the court may, on the application of any creditor or person interested, make such order as it thinks just, charging the trustee with the consequences of any act or default he may have done or made contrary to his duty.

(3) An order of the Board releasing the trustee shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt, or otherwise in relation to his conduct as trustee, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) The foregoing provisions of this section shall apply to an official receiver when he is, or is acting as, trustee, and when an official receiver has been released under this section, or any previous similar enactment, he shall continue to act as trustee for any subsequent purpose of the administration of the debtor's estate, but no liability shall attach to him personally by reason of his so continuing in respect of any act done, default made, or liability incurred before his release.

(5) Where the trustee has not previously resigned or been removed, his release shall operate as a removal of him from his office, and thereupon the official receiver shall be the trustee.

(6) Where, on the release of a trustee, an official receiver is, or is acting as, trustee, no liability shall attach to him

personally in respect of any act done or default made, or liability incurred, by any prior trustee.

94.—If a receiving order is made against a trustee, he shall thereby vacate his office of trustee.

95.—(1) The creditors may, by ordinary resolution, at a meeting specially called for that purpose, of which seven days' notice has been given, remove a trustee appointed by them, and may, at the same or any subsequent meeting, appoint another person to fill the vacancy as hereinafter provided in case of a vacancy in the office of trustee.

(2) If the Board of Trade are of opinion—

(a) that a trustee appointed by the creditors is guilty of misconduct, or fails to perform his duties under this Act; or

(b) that his trusteeship is being needlessly protracted without any probable advantage to the creditors; or

(c) that he is by reason of lunacy, or continued sickness or absence, incapable of performing his duties; or

(d) that his connection with or relation to the bankrupt or his estate, or any particular creditor, might make it difficult for him to act with impartiality in the interest of the creditors generally; or

where in any other matter he has been removed from office on the ground of misconduct, the Board may remove him from his office, but, if the creditors by ordinary resolution disapprove of his removal, he or they may appeal against it to the High Court.

TURN OF THE MARKET. (Fr. *Différence*, Ger. *Unterschied*, Sp. *Diferencia*, It. *Differenza*.)

This is the difference between the two prices quoted in the list of stocks and shares. For example, when consols are quoted at two prices, it means that a stockjobber is willing to buy at the lower and to sell at the higher price, the difference between the two quotations being the "jobber's turn," or "the turn of the market."

TURN OVER. (Fr. *Chiffre d'affaires*, Ger. *Umsatz*, Sp. *Cifra de los negocios*, It. *Cifra d'affari*.)

In business, this expression denotes the amount of money which has been traded upon by buying and selling during a certain period.

TYPE. (Fr. *Type*, *caractère*, Ger. *Type* *Druckbuchstabe*, Sp. *Tipo*, It. *Tipo*.)

Type is the name generally given to the metal characters used in printing. All type-founders cast their type as nearly as possible to one uniform height, but the letters may have varying breadth. The ordinary type used in this volume is Minion or 7-Point. Each column has 63 lines, and is technically known as 11½ Pica ems wide, the total width of page including centre rule being 24 Pica ems.

The following are the names of the different kinds of type most frequently used in printing, with an example of each, and about the number of letters which would be contained in a page the same size as this Guide:—

Pearl (or 5-Point), 10,240 letters.

This type is used mostly in book work, and is known as

This is not the smallest size, but the two smaller sizes are rarely used.

Nonpareil (or 6-Point), 6,800 letters.

This type is used mostly in book work, and is

Minion (or 7-Point), 4,850 letters.

This type is used mostly in book work, an

Brevier (or 8-Point), 3,920 letters.

This type is used mostly in book work,

Bourgeois (or 9-Point), 3,320 letters.

This type is used mostly in book w

Long Primer (or 10-Point), 2,560 letters

This type is used mostly in book

Small Pica (or 11-Point), 2,200 letters.

This type is used mostly in b

Pica (or 12-Point), 1,700 letters.

This type is used mostly i

English (or 14-Point), 1,350 letters.

This type is used mostly

Great Primer (or 18-Point), 830 letters

This type is used m

Type is now almost invariably cast on what is termed the point system, which varies slightly from the old system, and the equivalents in points are shown in italics.

U. This letter is used in the following abbreviations:—

U/a., Underwriting Account (Marine Insurance).

Ult., Ultimo—Of the Last Month.

U.S.A., United States of America.

U/w., Underwriter.

ULLAGE. (Fr. *Manquant, vidange*, Ger. *Manko*, Sp. *Merma*, It. *Calo, colaggio*.)

This word means:—

(1) The waste in casks or bottles of liquids owing to leakage, breakage, evaporation, or racking.

(2) The difference between the full capacity of a cask, etc., and the quantity it actually contains.

ULTIMO (Latin). (Fr. *Du mois dernier, de l'écoulé, écoulé*, Ger. *voriger Monat*, Sp. *Último*, It. *Ultimo, scorso*.)

This means "the last month."

ULTRA VIRES. (Fr. *En dehors de ses pouvoirs*, Ger. *ausserhalb der Ermächtigung*, Sp. *En exceso de sus poderes*, It. *Fuori delle sue facoltà*.)

Any body, corporate or incorporate, is said to act *ultra vires*, when it acts or purports to act in excess of the powers conferred upon it.

UMPIRE. (Fr. *Tiers arbitre*, Ger. *dritte Schiedsrichter*, Sp. *Juez árbitro*, It. *Soprarbitro, terzo arbitro*.)

This is the person who is called in to decide a dispute. In arbitrations the umpire is a third person selected by the arbitrators themselves to decide between them when they have failed to agree.

UNCALLED CAPITAL. (Fr. *Fonds, capitaux pas appelés*, Ger. *unaufgefordertes Kapital*, Sp. *Fondos, capitales no llamados*, It. *Versamenti, capitali non chiamati*.)

This is the portion of the subscribed capital of a company which is not called up by the directors.

UNDER BOND. (Fr. *En entrepôt*, Ger. *unter Zollverschluss*, Sp. *Bajo fianza, e depósito aduanero, en custodia aduanera*, It. *Nel magazzino doganale*.)

Imported goods are said to be under bond when they are stored in a Government warehouse pending the payment of the duty upon them or until they are re-imported.

UNDER PROTEST. (Fr. *Protêté*, Ger. *mit Protest*, Sp. *Bajo protesto*, It. *Sotto protesto*.)

Money is said to be thus paid when it is illegally or excessively demanded, and paid to avoid the threatened consequences.

UNDERWRITER. (Fr. *Assureur maritime*, Ger. *Assekurant, Versicherer*, Sp. *Asegurador*, It. *Assicuratore marittimo*.)

This is the usual name given to a marine insurer, so-called because he underwrites or subscribes his name to each policy in which he is concerned, as a guarantee that, in case of loss, he

will be answerable for the amount subscribed by him. (See *Lloyd's*.)

UNDERWRITING CAPITAL. (Fr. *Assurance de capital*, Ger. *Kapitalversicherung, Kapital zeichnen*, Sp. *Seguro de capital*, It. *Sottoscrizione del capitale sociale*.)

Underwriting is a species of insurance, or rather it is the application of the principle of insurance to company formation. Its object is to guard against the risk that shares, debentures, or debenture stock offered for public subscription may not be taken up. This is effected by a certain number of people, who are called "underwriters," guaranteeing that they themselves will subscribe the whole or a portion of the shares, debentures, or debenture stock if the public fail to do so. Since the passing of the Companies Act, 1900, with the provision as to "minimum subscription" before going to allotment, it is clear that many projected enterprises must be ruined unless a considerable portion of the capital is practically secured before the concern is offered to the public. The provisions as to underwriting are now contained in the Companies (Consolidation) Act, 1908.

Generally the underwriting is done by a number of persons, but sometimes the whole of an issue is underwritten by a company or by one or two persons. The *modus operandi* is thus described by Sir F. B. Palmer: "The underwriter writes a letter addressed to the founder or promoter or to the company, agreeing to underwrite a specified amount of what is to be offered, upon the footing that he is only bound to take up his rateable proportion of what the public do not take up; and that in any event he is to be paid a commission, either in cash or paid-up shares, or in some other shape. Such a letter is generally expressed in the form of an agreement . . . but in effect it operates only as an offer, and, to become binding—to be converted into a contract—it must be accepted by the other party, and notice of such acceptance given to the underwriter. The acceptance may be in writing or oral, and it is *prima facie* no objection that the notice of acceptance is not given until after the list has closed, for the court is not disposed to import into underwriting contracts implied conditions in derogation of the express terms of the contract. The underwriting letter usually provides that if the underwriter makes default in applying, the other party to the

underwriting agreement may apply for the shares on his behalf. This authority, if properly framed, is effective and irrevocable where there is a complete contract, as above; for, in such cases, it is one of the terms of the contract that the authority shall subsist, and it is not open to one party to a contract by any notice to the other to revoke what is a term of the contract. It happens sometimes, however, that such an authority is expressed in contingent terms, as, for instance: 'I will, if called on by you, subscribe, etc., and if I make default you are to be at liberty, etc.' Where this is the case, the authority does not arise until after condition performed, that is, after the underwriter has been called on to subscribe; and, accordingly, if the other party exercises the authority before that has been done, the allotment will be ineffective. Even where the underwriting letter has not been accepted by the person to whom it was addressed, and there is, therefore, no contract, the underwriter may, in some cases, be held bound by an application made by the other party in professed exercise of the authority conferred by the letter in his possession. The principle of this is that the applicant has an apparent authority from the underwriter to apply, and the underwriter is therefore, as against the company accepting the application in good faith and without notice of any qualification or condition affecting the authority, estopped from denying the validity of the authority. . . . The principle would, of course, not apply if the company knew from the form of the letter or *aliunde* that the authority was qualified or conditional.

"An agreement to take shares must be distinguished from an agreement to place shares. One who merely agrees to place does not underwrite, and is not bound to take those he does not place.

"A contract to underwrite debentures is not specifically enforceable; the remedy sounds only in damages. The real security for the performance of the contract and payment of subsequent instalments is the liability to forfeiture of application moneys and earlier instalments."

Before the passing of the Companies Act, 1900, the business of underwriting capital was carried on between the underwriters and the promoters or vendors of the company, since it was doubtful whether the company could legally pay any commission in respect of the same.

But now it is lawful for a company to pay such commission, but under the following conditions:—

(1) The shares of the company, or a portion of them, must be offered to the public for subscription.

(2) The commission proposed must not be in excess of the rate authorised by the articles of association.

(3) The agreement to pay and the rate to be paid must be disclosed in the prospectus.

The amount or rate of commission to be paid should not be too high, otherwise difficulties may arise, seeing that in one case it was held that the payment of a commission of 7s. per 10s. share to subscribers, and also of a commission to underwriters, was a scheme to issue shares at a discount and therefore *ultra vires*. It is not easy to see the reason of this decision, because the financial result of underwriting is always practically to issue shares at a discount.

If an underwriter takes up the shares of a company on the faith of a prospectus which contains misrepresentations, he has the same right to repudiate his shares as any other subscriber.

An agreement to underwrite capital, like any other agreement, requires a 6d. stamp. If under seal a 10s. deed stamp is necessary. There is no need of an additional power of attorney stamp because the contract contains an authority to apply for shares on behalf of the underwriter.

UNDISCHARGED BANKRUPT. (Fr. *Failli (banqueroutier) pas déchargé*, Ger. *entlassener Fallit, nicht freigesprochener Bankrottierer*, Sp. *Fallido (quebrado) no descargado*, It. *Fallito (bancarottiere) no scaricato*.)

Before a person who has been adjudicated bankrupt can regain his former status, he must apply for his discharge, which application can be made at any time after his public examination has been concluded. Until he obtains his discharge he is known as an undischarged bankrupt, and, as such, he is subjected to certain disabilities which are prescribed by the bankruptcy laws. (See *Bankruptcy*.)

UNFUNDED DEBT. (Fr. *Dette flottante*, Ger. *schwebende Schuld*, Sp. *Deuda flotante*, It. *Debito oscillante o non consolidato*.)

This is another name for the "floating debt." It consists of loans of money borrowed for short periods, which the Government is bound to pay off at

certain fixed dates, and is represented by exchequer bills, exchequer bonds, and treasury bills and bonds.

UNIFIED STOCK. (Fr. *Dette unifiée*, Ger. *konsolidierte Schuld*, Sp. *Deuda unificada*, It. *Debito unificato*.)

This is the name given to the several loans, bearing different rates of interest, which have been amalgamated into one common debt, bearing a fixed rate of interest, in a similar manner to what has been done by consolidating annuities in England.

UNLIMITED COMPANY. (Fr. *Compagnie (société) à responsabilité illimitée*, Ger. *Gesellschaft mit unbegrenzter Haftpflicht*, *Gesellschaft mit unbeschränkter Haftung*, Sp. *Compañía (sociedad) de responsabilidad ilimitada*, It. *Compania a responsabilità illimitata*.)

A company is said to be unlimited when each of its members is liable for the whole of the debts of the same.

UNMERCHANTABLE. (Fr. *Invendable*, Ger. *unverkäuflich*, Sp. *No vendible*, It. *Invendibile, non commerciabile*.)

Goods are so described when they are in any way below the usual standard, or not in their natural sound state.

UNSEAWORTHY. (Fr. *Innavigable*, *qui ne peut tenir la mer*, Ger. *seeuntüchtig*, Sp. *En mal estado*, It. *Inetto alla navigazione*.)

A ship is so described when, owing to age, want of repair, insufficient hands, or incompetency of master and crew, it is not safe to send her on a voyage or to load her with cargo.

UPSET PRICE. (Fr. *Mise à prix*, Ger. *Ausrufspreis*, Sp. *Primera oferta*, It. *Prima offerta*.)

In auction sales this is the lowest fixed price at which a vendor is willing that his property shall be started and sold if no higher bids can be obtained.

UPTOWN WAREHOUSE. (Fr. *Entrepôt en ville*, Ger. *Stadtlager*, Sp. *Depósito en la ciudad*, It. *Deposito o fondaco in città*.)

This is a warehouse not situated by the waterside licensed by the Customs to store bonded or dutiable goods.

USANCE. (Fr. *Usance*, Ger. *Wechselfrist*, Sp. *Usanza*, It. *Usanza, uso*.)

This is the time allowed by usage for the currency of bills of exchange between any two countries. Thus, the usance for bills at New York upon Europe is sixty days' sight; that at Calcutta upon London is six months after sight. Sometimes foreign bills are drawn payable

at one, two, or more usances. (See *Bill of Exchange*.)

USUFRUCT. (Fr. *Usufruit*, Ger. *Niessbrauch*, Sp. *Usufructo*, It. *Usufrutto*.)

Usufruct is the right of using for a given time something belonging to another person, but without diminishing or altering its substance.

USURER. (Fr. *Usurier*, Ger. *Wucherer*, Sp. *Usurero*, It. *Usuraio*.)

A usurer is a person who lends out money at high rates of interest.

USURY. (Fr. *Usure*, Ger. *Wucher*, Sp. *Usura*, It. *Usura*.)

Usury means an exorbitant rate of interest charged by money-lenders to borrowers. Severe laws were at one time in force against persons who lent money at excessive rates of interest, and it was not until 1833 that it became lawful to take more than 5 per cent. upon bills of exchange. All laws against usury were abolished in 1854.

Owing to the high rates of interest charged to ignorant borrowers, and the over-reaching methods adopted by lenders, an important Act was passed in 1900, known as the Money-lenders Act. The following are its provisions:—

1. (1) Where proceedings are taken in any court by a money-lender for the recovery of any money lent after the commencement of the Act (November 1, 1900), or the enforcement of any agreement or security made or taken after the commencement of the Act, in respect of money lent either before or after the commencement of the Act, and there is evidence which satisfies the court that the interest charged in respect of the sum actually lent is excessive, or that the amounts charged for expenses, inquiries, fines, bonus, premium, renewals, or any other charges are excessive, and that, in either case, the transaction is harsh and unconscionable, or is otherwise such that a court of equity would give relief, the court may re-open the transaction, and take an account between the money-lender and the person sued, and may, notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, re-open any account already taken between them, and relieve the person sued from payment of any sum in excess of the sum adjudged by the court to be fairly due in respect of such principal, interest, and charges, as the court, having regard to the risk and all the circumstances, may adjudge to be

reasonable; and if any such excess has been paid, or allowed in account, by the debtor, may order the creditor to repay it; and may set aside, either wholly or in part, or revise, or alter, any security given or agreement made in respect of money lent by the money-lender, and if the money-lender has parted with the security may order him to indemnify the borrower or other person sued.

(2) Any court in which proceedings might be taken for the recovery of money lent by a money-lender shall have and may, at the instance of the borrower or surety or other person liable, exercise the like powers as may be exercised under this section, where proceedings are taken for the recovery of money lent, and the court shall have power, notwithstanding any provision or agreement to the contrary, to entertain any application under the Act by the borrower, or surety, or other person liable, notwithstanding that the time for repayment of the loan, or any instalment thereof, may not have arrived.

(3) On any application relating to the admission or amount of a proof by a money-lender in any bankruptcy proceedings, the court may exercise the like powers as may be exercised under this section when proceedings are taken for the recovery of money.

(4) The foregoing provisions shall apply to any transaction which, whatever its form may be, is substantially one of money-lending by a money-lender.

(5) Nothing in the foregoing provisions shall affect the rights of any *bonâ fide* assignee or holder for value without notice.

(6) Nothing in this section shall be construed as derogating from the existing powers or jurisdiction of any court.

(7) In the application of the Act to Scotland this section shall be read as if the words "or is otherwise such that a court of equity would give relief" were omitted therefrom.

2. (1) A money-lender as defined by the Act—

(a) Shall register himself as a money-lender in accordance with regulations under this Act, at an office provided for the purpose by the Commissioners of Inland Revenue, under his own or usual trade name, and in no other name, and with the address, or all the addresses, if more than one, at which he carries on his business of money-lender; and

(b) Shall carry on the money-lending business in his registered name, and in

no other name and under no other description, and at his registered address or addresses, and at no other address; and

(c) Shall not enter into any agreement in the course of his business as a money-lender with respect to the advance and repayment of money, or take any security for money in the course of his business as a money-lender, otherwise than in his registered name; and

(d) Shall on reasonable request, and on tender of a reasonable sum for expenses, furnish the borrower with a copy of any document relating to the loan or any security therefor.

(2) If a money-lender fails to register himself as required by this Act, or carries on business otherwise than in his registered name, or in more than one name, or elsewhere than at his registered address, or fails to comply with any other requirement of this section, he shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding £100, and in the case of a second or subsequent conviction, to imprisonment, with or without hard labour, for a term not exceeding three months, or to a fine not exceeding £100, or to both; provided that if the offender be a body corporate, that body corporate shall be liable on a second or subsequent conviction to a fine not exceeding £500.

(3) A prosecution under sub-section (1) (a) of this section shall not be instituted except with the consent in England of the Attorney-General or Solicitor-General, and in Ireland of the Attorney-General or Solicitor-General for Ireland.

3. (1) The Commissioners of Inland Revenue, subject to the approval of the Treasury, may make regulations respecting the registration of money-lenders, whether individuals, firms, societies, or companies, the form of the register, and the particulars to be entered therein, and the fees to be paid on registration and renewal of registration, not exceeding £1 for each registration or renewal, and respecting the inspection of the register and the fees payable therefor.

(2) The registration shall cease to have effect at the expiration of three years from the date of the registration, but may be renewed from time to time, and if renewed shall have effect for three years from the date of renewal.

4. If any money-lender, or any manager, agent, or clerk of a money-lender, or if any person being a director,

manager, or other officer of any corporation carrying on the business of a money-lender, by any false, misleading, or deceptive statement, representation or promise, or by any dishonest concealment of material facts, fraudulently induces or attempts to induce any person to borrow money or to agree to the terms on which money is or is to be borrowed, he shall be guilty of a misdemeanour, and shall be liable on indictment to imprisonment, with or without hard labour, for a term not exceeding two years, or to a fine not exceeding £500, or to both.

5. Where in any proceedings under section 2 of the Betting and Loans (Infants) Act, 1892, it is proved that the person to whom the document containing invitations to make bets or to borrow money was sent was an infant, the person charged shall be deemed to have known that the person to whom the document was sent was an infant, unless he proves that he had reasonable ground for believing the infant to be of full age.

6. The expression "money-lender" in this Act shall include every person whose business is that of money-lending, or who advertises or announces himself or holds himself out in any way as carrying on that business; but shall not include—

(a) Any pawnbroker in respect of business carried on by him in accordance with the provisions of the Acts for the time being in force in relation to pawnbrokers; or

(b) Any registered society within the meaning of the Friendly Societies Act, 1896, or any society registered or having rules certified under sections 2 to 4 of that Act, or under the Benefit Building Societies Act, 1836, or the Loan Societies Act, 1840, or under the Building Societies Acts, 1874 to 1894; or

(c) Any body corporate, incorporated or empowered by a special Act of Parliament to lend money in accordance with such special Act; or

(d) Any person *bonâ fide* carrying on the business of banking or insurance, or *bonâ fide* carrying on any business not having for its primary object the lending of money, in the course of which and for the purposes whereof he lends money; or

(e) Any body corporate for the time being exempted from registration under this Act by order of the Board of Trade made and published pursuant to regulations of the Board of Trade.

Though the Act has made several general improvements in the law, especially by requiring that money-lenders shall be registered, it was thought, by the decision in a case which came before the courts in 1901, that it had not gone to the length many people imagined. It was there held that the mere fact that a bargain is harsh and unconscionable is not sufficient ground to justify the court in re-opening the account between the parties or setting it aside. Thus, in the case referred to, the interest charged was 60 per cent. Still the facts did not go to show that the transaction was such that a court of equity would have interfered. As Ridley, J., said: "It appears to be established by a series of decisions that a court of equity will not grant relief in such cases merely because the charges or interest are excessive. Every case has, indeed, to be judged by its own circumstances; but unless the borrowers be of the class known as expectant heirs (which requires distinct consideration), the rule is that, assuming him to be of full capacity, relief will not be granted unless it can be shown that he has been over-reached, tricked, or deceived, and that the money-lender has taken an unfair and undue advantage of his weakness and necessities. The general rule is that neither excess of interest nor exorbitance of charge will suffice unless the element of unfair dealing is found to have existed." This decision was followed in a later case by Mr. Justice Channell. But the Court of Appeal reversed both these decisions, and held that the court has power to re-open the whole transaction when the rate of interest is excessive or the other charges exorbitant. And this finding of the Court of Appeal has been since affirmed by the House of Lords.

There has been much litigation in connection with the Act, but its scope is pretty clear. There were, however, one or two amendments necessary, and consequently the Money-lenders Act, 1911, was passed, which must now be read in connection with the Act of 1900. The following are its provisions:—

1.—(1) Notwithstanding anything in section two of the Money-lenders Act, 1900—

(a) any agreement with, or security taken by, a money-lender shall be, and shall be deemed always to have been, valid in favour of any *bonâ fide*

assignee or holder for value without notice of any defect due to the operation of that section, and of any person deriving title under him; and

(b) any payment or transfer of money or property made *bonâ fide* by any person, whether acting in a fiduciary capacity or otherwise, on the faith of the validity of any such agreement or security, without notice of any such defect, shall, in favour of that person, be, and be deemed always to have been, as valid as it would have been if the agreement or security had been valid; but in either such case the money-lender shall be liable to indemnify the borrower or any other person who is prejudiced by virtue of this enactment, and nothing in this enactment shall render valid an agreement or security in favour of an assignee or holder for value who is himself a money-lender.

(2) A person shall not be deemed to have had notice of a defect in an agreement or security by reason only that a search in the register established under the Money-lenders Act, 1900, would have disclosed the defect or shown that the agreement or security was effected with a money-lender; and, for the purposes of this Act and the Money-lenders Act, 1900, the provisions of section three of the Conveyancing Act, 1882, shall apply and be deemed always to have applied as if the expression "purchaser" included a person making any such payment or transfer as aforesaid.

(3) Nothing in this section shall render valid for any purpose any agreement, security, or other transaction which would, apart from section two of the Money-lenders Act, 1900, have been void or unenforceable, nor any agreement or security which has, before the commencement of this Act, been declared void by a court of competent jurisdiction.

2.—(1) No person shall be registered as a money-lender under any name including the word "bank," or under any name implying that he carries on banking business; and, where any money-lender is registered under any such name, the name shall be removed from the register and a notification to that effect sent to the money-lender.

(2) If a money-lender, in the course of carrying on the money-lending business, issues or publishes, or causes to be issued or published, any circular, notice, advertisement, letter, account, or statement of any kind containing expressions which might reasonably be

held to imply that he carries on banking business, he shall be liable on summary conviction to the like penalties as if he had failed to comply with section two of the Money-lenders Act, 1900.

V. This letter is used in the following abbreviations:—

V., Versus—Against.

Via, By the Way of.

Viz., Videlicet—Namely.

VACUITY. (Fr. *Vacuité*, Ger. *Leere*, Sp. *Vacuidad*, It. *Vacuità*.)

This means the difference between the capacity of a cask and its cubical contents.

VALUE IN ACCOUNT. (Fr. *Valeur en compte*, Ger. *Wert in Rechnung*, Sp. *Valor en cuenta*, It. *Valuta in conto*.)

This is a term used in drawing bills of exchange when they are for services rendered, or when, from cross transactions, there is a balance remaining in favour of the drawer.

VALUE RECEIVED. (Fr. *Valeur reçue*, Ger. *Wert erhalten*, Sp. *Valor recibido*, It. *Valuta ricevuta*.)

This term is invariably used upon bills of exchange to indicate that the drawee has received either money or money's worth from the drawer. As there is always a presumption of consideration in the case of bills of exchange, the words are really of no more value than the expression "yours truly" in a letter.

VALUE UPON. (Fr. *Tirer sur*, Ger. *ziehen auf*, Sp. *Girar sobre*, It. *Trarre o tirare su, fare tratta*.)

The meaning of this phrase is to draw a bill upon a person.

VALUED POLICY. (Fr. *Police évaluée*, Ger. *Wertpolice*, Sp. *Póliza valuada*, It. *Polizza valutata*.)

In marine insurance a valued policy is one in which the amount insured is valued or fixed.

VALUER. (Fr. *Appréciateur, évaluateur*, Ger. *Taxator, Schätzer*, Sp. *Avaluador*, It. *Stimatore, perito*.)

This is a person who puts a price or value upon anything.

VATting. (Fr. *Mixture*, Ger. *Mischung*, Sp. *Mezcla*, It. *Miscuglio, mescolanza*.)

This is a Custom House term for the mixing together of the same sorts, brands, colour, or rate of duty of wines (or spirits) for the purpose of fortifying, colouring, or strengthening the whole, or obtaining uniformity of character.

VAULT. (Fr. *Cave, voûte*, Ger. *Keller*, Sp. *Bodega*, It. *Cantina, volta*.)

A vault is an underground cellar with an arched roof.

VENDEE. (Fr. *Acheteur*, Ger. *Käufer*, Sp. *Comprador*, It. *Compratore*, *acquirente*.)

This is the party for whom a purchase is made, or the person who is himself the purchaser.

VENDOR. (Fr. *Vendeur*, Ger. *Verkäufer*, Sp. *Vendedor*, It. *Venditore*.)

This is the person on whose behalf a sale is made, or the person who is himself the seller.

VENDORS' SHARES. (Fr. *Actions réservées au vendeurs*, Ger. *Aktien der Verkäufer*, Sp. *Acciones del vendedores*, It. *Azioni dei venditori*.)

These are shares which are taken instead of cash by parties who convert their businesses into public companies. These shares take a dividend as may be agreed upon. Sometimes they rank *pari passu* with the ordinary shares, at others they defer taking a dividend until the ordinary shares have been paid a certain amount and then claim one-half or the whole of what is left, according to the amount of purchase money which the vendor has accepted in such shares.

VENDUE. (Fr. *Vente aux enchères*, Ger. *Auktion*, Sp. *Subasta*, *venduta*, It. *Vendita all' asta o all' incanto*.)

The term "vendue" is of colonial origin, and signifies a public auction.

VENTURE. (Fr. *Consignation*, Ger. *Konsignation*, *Spekulation*, Sp. *Consignación*, It. *Alla ventura*.)

This is a consignment of goods made at the risk of the sender, to be sold at the place of destination.

VERDICT. (Fr. *Verdict*, Ger. *Urteil*, *Verdikt*, Sp. *Sentencia*, It. *Sentenza*, *verdetto*.)

A verdict is the decision of a jury on a trial after the evidence of both sides has been heard.

VERST. (Fr. *Verste*, Ger. *Verst*, Sp. *Verste*, It. *Versta*.)

This is a Russian measure of length, equal to 1,166 $\frac{2}{3}$ yards, or almost exactly two-thirds of an English mile.

VIA. (Fr. *Par, par voie de*, Ger. *über, via*, Sp. *Por, por la vía de*, It. *Per, per la via di*.)

This term is used to signify —

(1) A name used exclusively in England to express one copy of a set of bills, as the first, second, or third via.

(2) By way of, signifying the route taken.

VICTUALLER. (Fr. *Approvisionnement*, Ger. *Lieferant*, Sp. *Contratista de provisiones*, It. *Fornitore*.)

A victualler is a person who supplies provisions.

VICTUALLING BILL. (Fr. *Liste de provisions soumises aux droits*, Ger. *Proviantschein*, Sp. *Lista de provisiones sujetas á los derechos*, It. *Listino o distinta delle vettovaglie soggette a dazio*.)

A victualling bill is a document given to the customs by the captain of a ship, containing a list of bonded or drawback goods taken on board for use as stores during a voyage.

VICTUALLING YARD. (Fr. *Magasin des subsistances*, Ger. *Proviantamt*, Sp. *Almacén de provisiones*, It. *Magazzino di sussistenza, deposito viveri*.)

This is a public establishment to collect and supply provisions for the navy.

VIDELICET. A contraction of the Latin words *videre licet*, "you may see." In its English use it means "namely," or "to wit," and is contracted into the form "viz."

VINTNER. (Fr. *Marchand de vin*, Ger. *Weinhändler*, Sp. *Vinatero*, It. *Vinaio, oste, mercante di vino*.)

This is another name for wine dealer.

WISE. (Fr. *Visa*, Ger. *Visa*, Sp. *Viso*, It. *Vistato, visto*.)

This is an official indorsement on a passport by the consul of the country in which a person wishes to travel, or an indorsement by him on any other document.

VOLENTI NON FIT INJURIA. This is a legal maxim which signifies that no legal wrong is done to a person if that person has voluntarily and knowingly accepted all the risks of the situation. Its application is practically confined to cases of negligence, and more especially to those which arise in disputes between masters and workmen, where one of the latter has sustained an injury. In order to be available as a defence in an action brought by a workman against his employer, either at common law or under the Employers Liability Act, 1880, it must be shown that the workman has fully understood the danger of his employment, and that he has accepted the same after being well acquainted with it. Mere knowledge is not sufficient; there must have been a voluntary acceptance after such knowledge.

VOUCHER. (Fr. *Pièce justificative*, Ger. *Beleg*, Sp. *Documento justificativo*, It. *Documento giustificativo*.)

This name is given to any document or writing in proof of the payment or receipt of money, or of other monetary transactions.

VOYAGE POLICY. (Fr. *Police de voyage*, Ger. *Reisepolice*, Sp. *Póliza de viaje*, It. *Polizza di viaggio*.)

A voyage policy, in marine insurance, is one which insures a ship or cargo for a certain specified voyage.

W. This letter is used in the following abbreviations:—

W.B., Way Bill.

W.b., Water Ballast (Shipping).

Wt., Weight.

W/W., Warehouse Warrant.

WAGER POLICY. (Fr. *Police gageuse*, Ger. *Wettpolice*, Sp. *Póliza apostadora*, It. *Polizza scommettitrice*.)

This is the name given to a policy of marine insurance in which the insurer has no real interest in the subject matter of the insurance. Though formerly common, they were made absolutely illegal, under certain penalties, by the Marine Insurance (Gambling Policies) Act, 1909. (See *Marine Insurance*.)

WAGES. (Fr. *Paye*, *salaire*, Ger. *Lohn*, *Arbeitslohn*, Sp. *Salario*, *paga*, It. *Paga*, *salario*.)

This word, plural in form but singular in meaning, signifies the compensation or reward paid to workmen or labourers for work which is more or less mechanical. Payment is usually made week by week, and it is this method of payment which distinguishes wages from salary.

The wages of a servant, labourer, or workman cannot be attached to satisfy a judgment, nor are they attachable under the Bankruptcy Act, 1914. Like a clerk or other servant who has a preferential claim for a certain portion of his salary in cases of bankruptcy or winding-up, a workman or labourer is also preferred as to two months' wages provided the amount does not exceed £25. When a company is being wound up, the claims of a workman or labourer must be paid, under Section 209 of the Companies (Consolidation) Act, 1908, even before those of any debenture-holders are satisfied.

An infant can sue in a county court to recover wages due to him, if the amount does not exceed £50, without the intervention of a next friend.

Wages must be paid in money; payment in goods or in any other way is an offence against the Truck Acts.

WAGES FUND. (Fr. *Caisse de gages*, Ger. *Löhnungsfonds*, Sp. *Caja de ahorros*, It. *Cassa di risparmio*.)

The wages fund is a fund which is theoretically assumed to exist, and out of which wages are paid. Practically,

such a fund is known to exist from the fact that wages are actually paid out of it. It is made up of two principal items, (a) a portion of the produce of past labour, (b) credit based on the anticipation of the profits of future labour. The absolute amount of the wages fund is never accurately known, and it is doubtful whether it is ever the same for two consecutive days. Many causes tend to make it fluctuate, especially those which go to create a demand for labour or to limit its supply, such as the general state of trade, the weather, financial crises, accumulation of capital, etc. The term is a convenient one to be used in the discussion of economic questions, but the thing itself is too shadowy and unstable to admit of employment in accurate calculations, or to afford safe ground for inferences.

WAIVER CLAUSE. (Fr. *Clause de désistement*, *clause de renonciation*, *clause d'abandon*, Ger. *Versichtleistungsklausel*, *Annahmeverweigerungsklausel*, Sp. *Cláusula de abandono*, *cláusula de renuncia*, It. *Clausola di rinuncia*, *clausola di desistenza*, *clausola di abbandono*.)

In marine insurance policies, a clause of this kind is one which is inserted providing that, in the case of accident, either the insurer or the insured may do what he thinks necessary in order to lessen the loss without prejudicing his rights under the policy.

WALL STREET. (Fr. *Wall Street*, *Place de la Bourse*, Ger. *Wall Street*, Sp. *Wall Street*, *Calle de la Muralla*, It. *Wall Street o Via del Muro*.)

The New York Stock Exchange is frequently spoken of as Wall Street, on account of its situation.

WAREHOUSE BOOKS. (Fr. *Livres des marchandises*, Ger. *Lagerbücher*, Sp. *Libros de mercancías*, It. *Libri delle merci in magazzino*.)

These are the special books kept recording the arrival of goods at, or the despatch of goods from, a warehouse, so that a list of those goods on hand or unsold is easily ascertained.

WAREHOUSE KEEPER. (Fr. *Entrepouseur*, Ger. *Lagerhalter*, Sp. *Almacenista*, It. *Magazziniere*.)

This is the person who receives goods of any kind for the mere purpose of storage. He is the bailee of the goods, and since he is a bailee for hire he must use proper care and diligence in preserving the goods intrusted to him from injury. A warehouse keeper has a lien on goods in his care for their storage, but not for the storage of other goods

belonging to the same persons, nor for any general balance of account.

WAREHOUSE KEEPER'S ORDERS.

(Fr. *Ordres à l'entrepouseur*, Ger. *Lagerscheine*, Sp. *Ordenes al almacenista*, It. *Ordini pel magazzinoiere o custode*.)

These are orders addressed by the customs to the warehouse keeper, at a warehouse where dutiable goods are lying, authorising him to deliver the goods upon which duty has been paid for home consumption; or authorising him to deliver dutiable goods for exportation, a bond note having been signed for them.

WAREHOUSING SYSTEM. (Fr. *Système d'emmagasinage*, Ger. *Lagersystem*, Sp. *Sistema de almacenaje*, It. *Deporre merci nei magazzini generali in franchigia doganale*.)

This is a provision made for lodging imported articles, liable to customs duty, in public warehouses, so that they may not be chargeable with duty until taken out for home consumption, such goods being exempt from duty if re-exported.

Whilst the goods are thus warehoused they are said to be "in bond," and the proprietor of the warehouse is required to enter into a bond to carry out his obligations properly. Hence the name of bonded warehouses.

No building can be used as a bonded warehouse until it has been approved by the proper Government officials, and the privilege of keeping such a warehouse is not granted as a matter of course. The applicant must satisfy the authorities that the warehouse is necessary for the requirements of the locality in which it is situated, and must give a bond for at least £1,000 with one or more substantial sureties. When permission has been granted certain officers are in supreme control, and the goods contained in the warehouse cannot be dealt with in any way except in the presence of one of these officers.

The convenience of bonded warehouses is very great. It is obvious that if duties were payable on goods directly they were landed, an immense amount of money would be lying idle, and the cost of the goods would be necessarily increased to pay for the interest on this money. For instance, suppose a spirit merchant imported a hundred gallons of rum of the value of £5, and that he wished to leave the spirit in a vault at the docks to mature. If he had to pay duty at the time of importation the capital lying idle would not be £5 only,

but also an additional sum of about £52 10s., or nearly £60 in all. As many thousands of gallons of wines and spirits are always occupying the bonded vaults, and many thousands of tons of tea, coffee, and tobacco are stored in the bonded warehouses, if duty had to be paid upon them on importation the amount of capital lying idle would be represented by millions of pounds sterling.

The practice with regard to dutiable goods on importation is to pass at the Custom House a document known as the "Entry for Warehousing," showing where it is the intention of the proprietor of the goods to house them, which must be in an approved bonded warehouse or vault. The goods are then removed from the importing ship under special regulations to the place indicated. They are there dealt with by the wharfinger, or dock company owning the place, acting for the owner of the goods, in such a way as may be necessary to prepare them for sale, that is, they are weighed, tared, sorted, sampled, gauged, etc., just as freely as if they were in the possession of the proprietor, so long as the rules of the officers of customs are complied with. When all the necessary operations are complete they are stored until they are released by payment of duty. In addition to the duty imposed there are other restrictions on the importation of dutiable goods, with which every importer must make himself acquainted. As an example of these restrictions, it may be mentioned that tobacco can only be imported at certain ports, in ships of not less than 120 tons burden, and in packets of not less than 80 lbs. gross weight, which may, however, be divided in bond for exportation or home consumption.

When the goods are required for sale, the proprietor of them, if the duty is to be paid upon the warehoused quantity, presents at the Cash Branch of the Custom House an "Entry for Home Consumption" for any one or more packages, together with the money for the duty. He also writes the necessary particulars on a "Duty Receipt." The warrant is then certified and forwarded to the officer in charge of the warehouse accounts, who compares the particulars with the official books, and, if correct, signs the Warehouse-Keeper's Order, which is sent to the vault or warehouse where the goods are stored; and, as far as the Custom House is concerned, the owner may remove his goods.

In the cases of tea, coffee, and dried fruits, the duty must be paid on the weight ascertained at, or immediately after, landing. Tobacco, however, which loses weight while in the warehouse by the natural process of drying, is re-weighed, and, if the loss does not exceed certain limits, duty is paid on the weight then ascertained. On account of the high duty and the great weight of the packages in which tobacco is sometimes imported, part of a package may be taken out of bond. Wines and spirits in casks also lose in bulk and strength by evaporation. Wines are therefore re-gauged; spirits are also re-gauged and re-tested on the application of the merchant previous to the duty being paid, the warrant being presented to the warehouse officer for the purpose of having the particulars of the re-examination inserted. The procedure explained in the last paragraph is then followed.

In the case of spirits, the quantity and strength having been ascertained, the liquor is reduced mathematically to a certain standard strength called "proof," and duty is charged on the resultant strength. Thus, 60 gallons of brandy at 15 per cent. over proof,

$$15 \text{ o.p. } \frac{60 \times 115}{100} = 69 \text{ proof gallons.}$$

The same quantity at 15 per cent. under proof, 15 u.p. $\frac{60 \times 85}{100} = 51$ gallons.

Wines, however, are charged on the liquid gallons, and the rate of duty is the same within certain degrees of strength.

If the goods stored in a bonded warehouse are required for export, the first duty of the exporter is to give a bond to the Custom House authorities that the dutiable goods shall be duly shipped, or, failing that, shall be returned into the control of the customs. There is no duty to be paid. Nominally, the bond is prepared by the customs; but, to save time, the exporter will find it better to write his own bond and hand it in for examination. The necessary form can be obtained from the authorised agent for the sale of Customs Forms. It bears an impressed stamp, which varies from 3d. to 5s., according to the amount of the penalty to be secured by the bond. This penalty is twice the amount of duty upon the goods concerned, and it is the practice to allow a sufficient margin both in giving the quantity of the goods and in calculating the penalty, care being taken to keep the latter within the

amount of stamp duty paid. There are two parties to a customs bond, one being called the "exporter," and the other the "surety." No inquiry is made about the former, who must, however, be at least twenty-one years of age; and, as a rule, it is the clerk of the real exporter who becomes the exporter, so called, on the Custom House documents. The second party to the bond, however, must be some one of known position and standing, and as either a licensed and bonded lighterman or carman must be employed in the removal of the goods, the services of the lighterman or carman are generally brought into requisition as the surety. This does not, of course, mean the man who navigates the barge or drives the van, but his employer.

The bond having been prepared, both parties to it attend at the Custom House and execute it. It is usual for firms who do a large export trade to give a general bond of sufficient amount to cover all the operations they are likely to be carrying on at any time, in which case a separate bond for each transaction is not necessary. All general bonds are prepared by the solicitor to the customs, London, and on each export under it a "Notice of Exportation" takes the place of the ordinary bond. This document requires an adhesive stamp, according to the scale for the bond, except in certain cases when it is exempt from stamp duty.

The name "Bond Warrant" is given to all kinds of entries for goods under bond. It is the basis on which the bond is prepared, but if the exporter has followed the usual practice of writing his own bond it will be soon enough to hand it in when the bond is given.

WARRANT. (Fr. *Warrant*, Ger. *Warrant*, *Lagerschein*, Sp. *Warrant*, *Certificado de depósito*, It. *Warrant*, *fede di deposito*.)

A warrant is a receipt for goods deposited in a public warehouse. It is a negotiable instrument, and must bear a threepenny stamp.

WARRANT OF ATTORNEY. (Fr. *Pouvoir*, Ger. *Vollmacht*, Sp. *Poder*, It. *Mandato di procura*.)

This is a power given by a client to his attorney to appear and plead for him, or to suffer judgment to go against him by confessing the cause of the action to be just.

WARRANTY. (Fr. *Garantie*, Ger. *Garantie*, *Bürgschaft*, Sp. *Garantia*, It. *Condizioni d'assicurazione*.)

A warranty is a guarantee or a

stipulation. In contracts for the sale of goods a warranty is defined, by the Act of 1893, as "an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated."

The general rule as to contracts of sale of goods is that a person buys at his own risk, the maxim *caveat emptor* applying. But in the following cases a warranty (or a condition) is implied:—

(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose, provided that in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.

(2) Where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality; provided that if the buyer has examined the goods there shall be no implied condition as regards defects which such examination ought to have revealed.

(3) Where goods are bought by sample there is an implied condition that the bulk shall correspond with the sample, and shall be free from any defect rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

(4) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade. (See *Sale*.)

An express warranty or condition does not negative a warranty or condition implied by the Sale of Goods Act, unless it is inconsistent with it. Any express warranty must be given at the time of the contract of sale, otherwise it must be supported by a fresh consideration.

Distinct from all questions of quality, there is an implied warranty, in every contract for the sale of goods (unless the

contrary intention is shown), that the vendor has a right to sell the same, and that the goods are free from undisclosed incumbrances. A "contrary intention" would be shown if the vendor were a pawnbroker or a sheriff. Each can only transfer the right which he has in the goods at the time of sale, and, in default of express warranty, is not liable for loss arising through a defective title.

As to warranties implied in a policy of marine insurance, see *Marine Insurance*.

WASTE BOOK. (Fr. *Main courante*, *brouillard*, Ger. *Kladde*, *Strazze*, Sp. *Borrador*, It. *Prima nota*, *scartafaccio*, *strazza*.)

This is a book sometimes, though erroneously, called the Day Book, in which entries of business transactions are made as they occur, and for a temporary purpose. Every transaction, whether of purchase, sale, or otherwise, is thus shown in chronological order irrespective of its nature. From the Waste Book the items are entered in proper form into the journal, with a view of being afterwards transferred permanently to the Ledger.

WATERING OF STOCK. (Fr. *Dilution de capital*, Ger. *Stammkapitalvergrößerung*, Sp. *Dilución de capital*, It. *Diluzione di capitali*.)

This is a slang expression, meaning that an additional amount of stock has been issued by a company without an additional provision being made to pay the interest on the same, or that the nominal value of securities has been increased without any corresponding payment in cash. This phrase originated in America.

WATER-LOGGED. (Fr. *Plein d'eau*, *entre deux eaux*, Ger. *halb unter Wasser*, Sp. *Lleno de agua*, It. *Incagliato fra due acqua*.)

This is a term applied to a ship which has become unmanageable owing to leakage, when the cargo is of such a nature, light timber for example, that it and the vessel both float.

WAY BILL. (Fr. *Feuille de route*, Ger. *Geleitschein*, Sp. *Hoja de marcha*, It. *Foglio di via*.)

This is a document which contains a list of passengers or goods carried by a public company.

WEIGHT NOTE. (Fr. *Note de poids*, Ger. *Gewichtsnota*, Sp. *Nota de peso*, It. *Nota del peso*.)

This is a document issued by the dock companies, giving the gross weight, tare and net weight, the marks,

numbers, and dates of entry of imported goods.

WET DOCK. (Fr. *Bassin à flot*, Ger. *Aussendock*, Sp. *Dársena*, It. *Darsena*.)

This is a dock into which vessels are admitted at high water, when the dock gates are closed again so that the level of the water does not sink. In these docks ships can lie afloat and take in or discharge cargo at any time, without regard to the rising or the falling of the tide.

WET GOODS. (Fr. *Marchandises liquides*, Ger. *Flüssigkeiten*, Sp. *Mercedias liquidas*, It. *Merchi liquide*.)

This is the commercial term applied to all liquids contained in casks or bottles.

WHARF. (Fr. *Quai*, *entrepôt*, Ger. *Werft*, *Kai*, Sp. *Muelle*, It. *Banchina*, *molo*.)

A wharf is a bank of timber or stone on the shore of a harbour or river where vessels can be loaded and unloaded.

A wharf is a "factory" within the meaning of the Factory and Workshop Act, 1895, and therefore a "factory" within the meaning of the Workmen's Compensation Act, 1906; but it does not necessarily follow that a canal wharf, upon which no machinery is used, is such a factory.

WHARFAGE. (Fr. *Quayage*, Ger. *Quaigebühr*, Sp. *Muellaje*, It. *Diritti di approdo*, *diritti di molo*.)

This is the name given to the fee charged for using a wharf when discharging a vessel of her cargo.

WHARFINGER. (Fr. *Propriétaire de quai*, Ger. *Kaimeister*, Sp. *Proprietario (arrendatario) del muelle*, It. *Proprietario di ponte d'approdo*, *guardiano di sbarcatoio*.)

The person who has charge or is owner of a wharf is called a wharfinger. He has a general lien upon goods in his possession for any moneys due to him from the owner of the goods.

WHARFINGER'S RECEIPT. (Fr. *Quittance de propriétaire*, Ger. *Quittung des Kaimeisters*, Sp. *Descargo de muelle*, It. *Quietanza del proprietario o custode*.)

This is the document given by a wharfinger in acknowledgment of goods received for shipment.

WHOLESALE. (Fr. *Gros*, *vente en gros*, Ger. *en gros*, *im Grossen*, *Grosshandel*, Sp. *Por mayor*, *Venta al por mayor*, It. *Vendita all'ingrosso*.)

The term wholesale is applied to the buying and selling of goods in large quantities only. Dealings in small quantities are said to be by retail.

WILL. (Fr. *Testament*, Ger. *Testament*, Sp. *Testamento*, It. *Testamento*.)

A will, by the law of England, is an instrument by which a person makes a disposition of his property to take effect after his death, and which is in its nature revocable by him during his lifetime, but which speaks and takes effect as if it had been executed not at its date of execution, but immediately before the death of the testator. It operates to dispose of all the real and personal estate to which the testator is entitled at the time of his death, unless, by its wording, it fails to include the whole of his property. If there is any such omission, then it is necessary for letters of administration to be taken out as to that part of the estate which is not disposed. A grant of this kind is called a grant *de bonis non*.

It must be borne in mind that a will of real estate, that is, of fixed and immovable property, is governed by the law of the place where the property is situated. The place where such a will is made and the language used are unimportant, but the execution must be in the form required by the law in force in the country where the property is. A will to pass real property in England must be executed in accordance with the provisions of the Wills Act, 1837, that is, it must be in writing, and signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction; and such signature must be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and each witness must attest and subscribe the will in the presence of the testator, but no form of attestation is necessary. As will be pointed out hereafter, no person who is to benefit under a will, nor whose husband or wife is to benefit, should be a witness. It follows, therefore, that if a person is possessed of real estate in other countries than England, for example, in France or Germany, he must make a separate will in accordance with the forms required for each country in order to deal with the property situated elsewhere than in England.

As to a will of personal estate, that is, of movable property, the law of the country in which the testator is domiciled, or has his permanent home, at the time of his death, prevails as a general rule, and it is therefore generally sufficient if a will is executed according to the formalities required by the country

of the domicile. By a statute passed in 1861, and known as Lord Kingsdown's Act, it is provided that a will made out of the United Kingdom by a British subject, whatever may be his domicile at the time of making the same or at the time of his death, shall, as regards personal estate, be held to be well executed if it is made according to the form required either by the law of the place where the same was made, or by the law of the place where such person was domiciled when the same was made, or by the laws then in force in that part of the British dominions where he had his domicile of origin; and that every will made within the United Kingdom by a British subject, whatever may be his domicile at the time of making the same or at the time of his death, shall, as regards personal estate, be held to be well executed if it is executed according to the form required by the laws for the time being in force in that part of the United Kingdom where the same is made. For example, if a British subject is residing or staying temporarily abroad, he can make a will as to his personal property either in the above named English form, or in the form in vogue in the country where he is residing, or in the form of the country where he is domiciled, or in the form of that part of the British dominions where he had his domicile of origin. (See *Domicil*.)

The forms required for making a will in the following foreign countries are regulated, in some part, with modifications, by the Code Napoleon. In France, Belgium, and Italy, a will can be holograph, or by public act, or by secret form. A holograph will to be valid must be written entirely by the testator, and dated and signed by him. No other formality is required. A will by public act is one which is received by two notaries in the presence of two witnesses, or by one notary in the presence of four witnesses. If it is received by two notaries it must be dictated to them by the testator and be written out by one of the notaries, whichever is selected. If there is only one notary it must be in like manner dictated by the testator and written out by the notary. In either case it must be read throughout to the testator in the presence of the witnesses, and it must be signed by the testator and by the witnesses. Neither legatees, nor their relations, nor relatives by marriage to the fourth degree, nor clerks of the notaries employed are capable of being

witnesses. A secret will may be written by the testator or by some other person, but it must be signed by the testator himself. The paper which contains the dispositions or the envelope in which it is placed must be closed and sealed. The testator must present it so closed and sealed to a notary and six witnesses at least, or close and seal it in their presence, and declare that it contains his will written and signed by him, or written by some other person and signed by him. It is the duty of the notary to subscribe the document, his subscription being on the paper, or on the leaf which serves for the envelope, and the subscription must be attested by the witnesses. The witnesses must be males, of age, and citizens in full enjoyment of civil rights.

In Spain a will can be holograph, public, or secret. A holograph will must be on paper stamped with the year of its manufacture, and wholly written and signed by the testator, with the date on which it is made, and it must be presented to a judge of first instance of the last domicile of the testator within five years of that date. If this last formality is not complied with the will is invalid. Foreigners can make a holograph will in the language of the country to which they belong. There are also regulations as to the presentation of the will to a judge after the death of the testator. A public will must be received by a notary in the presence of three witnesses, one of whom must be able to read and write, and who must see the testator. The testator is required to make a declaration of his last wishes to the notary. The will, with the statement of the place and date, is then read aloud, and the testator must declare that it is conformable to his wishes. The document is then signed and attested by those of the witnesses who are able to read and write, and the notary must make a declaration to the effect that the testator is capable of making a will. A secret will is made with the same formalities as in France, except that only five witnesses are required, of whom three must sign. The remaining formalities are in the province of the notary. Women, minors, strangers, blind persons, mutes, deaf persons, those who do not understand the language of the testator, persons incapacitated by law, and writers, clerks, servants, and relations of the notary to the fourth degree, and relatives by marriage to the second

degree, cannot be witnesses. In a public will the devisees and legatees cannot be witnesses, nor their relations to the fourth degree, nor relatives by marriage to the second degree.

In Germany, a will can be made in common form before a judge or a notary, or by a testament written and signed by the testator with a statement of the date and place. For the purpose of a will a judge must have the assistance of the registrar or two witnesses; a notary, a second notary, or two witnesses. Relations and relatives by marriage in a direct line, or to the twelfth degree, are incapable of acting as judge, notary, or witnesses. Attestation by legatees avoids their legacies, and minors cannot attest. The testator must declare orally to the judge or the notary his last wishes and have them put into writing. A statement must be made in the will of the place and date, of the description of the testator and the witnesses, and of the dispositions of the testator. This is read over and approved by the testator and then signed by him. If the testator is unacquainted with the German language his written wishes must be translated into German by an interpreter. After the execution, the will is sealed by the judge or notary in the presence of the above mentioned persons and the testator with the public seal, and deposited in a public registry. A certificate of the deposit is handed to the testator. A return of the certificate by the testator operates as a revocation of the will.

The illustrations of wills made in certain foreign countries are given so as to act as a warning to testators who imagine that will making is an easy matter abroad. It would be easy to multiply examples, but enough has been said to show how necessary it is for a person who wishes to make arrangements as to the disposal of his property should secure proper legal advice in all cases when he is not a domiciled Englishman.

The law of England does not make it requisite to the validity of a will that it should assume any particular form, or be couched in language technically appropriate to its testamentary character. It is sufficient that, however irregular in form or inartificial in expression, it discloses the intention of the testator respecting the destination of his property after his death. A will may be printed, typewritten, or otherwise set out, so long as it is clearly expressed. The important fact to be borne in mind

is the witnessing of the document. Provided that there are two witnesses to a will, it is immaterial, so far as the validity of the will itself is concerned, who they are, provided they are under no legal disability. But if any person attests a will to whom, or to whose wife or husband, any devise, legacy, or benefit (except charges for payments of debts) is given, such devise, legacy, or benefit is null and void, although the will itself is good as to the rest. The devise, legacy, or benefit will fall into the residue, if there is a residuary bequest; and if not, there will be an intestacy as to the same. It is quite immaterial that there are still two witnesses without the beneficiary, if the will is attested by more than two witnesses. A creditor, with the payment of whose debt the property of the testator is charged by the will, or an executor is a competent witness.

A minor cannot make a valid will according to the law of England. An exception is made in the case of a soldier on active military service, or a mariner at sea, as far as his personal property is concerned. Either of these may make a will verbally before witnesses, so as to dispose of personal estate.

The will of a lunatic is void unless it is proved that the will was executed during a lucid interval. Similarly, the will made by a man who was so drunk as not to know what he was doing is absolutely void. And a will may be set aside if it is shown that its execution was obtained by force, fear, fraud, or undue influence.

A woman who was married before 1883 can only make a will with the consent of her husband. If the marriage took place after 1882 a married woman has full power to dispose by will of the whole of her property as if she were an unmarried woman. If there is no will, the whole of the personal estate of a married woman passes absolutely to her husband.

Although it was pointed out above that no form of attestation is necessary, it is usual to state that the formalities of the Wills Act have been carried out. A common attestation clause is the following:—

"Signed by the said A.B., the testator, in the presence of us, both present at the same time, who in his presence and at his request and in the presence of each other have hereunto set our names as witnesses."

The two witnesses then sign their

names and give descriptions of themselves. In the absence of an attestation clause an affidavit by one of the witnesses will be required after the death of the testator before probate will be granted.

No obliteration, interlineation, or other alteration made in any will after execution is valid unless such alteration, etc., is executed in the same manner as is required for the execution of a will. But a will with such alteration, etc., as part thereof is duly executed if the signature of the testator and the subscriptions of the witnesses are made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of, or opposite to a memorandum referring to such alteration, etc., and written at the end or some other part of the will.

A will is always revocable during the lifetime of the testator, even though there is a declaration in it to the effect that it is irrevocable. The revocation is complete if a duly executed subsequent will contains a clause expressly revoking a former will. Also the will of a man or woman is *de facto* revoked by his or her marriage, except where it is made in exercise of a power of appointment when the real and personal estate thereby appointed would not, in default of the appointment, pass to his or her heir, customary heir, executor or administrator, or to the person entitled as his or her next of kin under the Statutes of Distribution. But no will is revoked by any presumption of an intention on the part of a testator. Therefore, unless there is a revocation by implication of law, as above stated, a will, in order to be revoked, must be burned, torn, or otherwise destroyed by the testator or some person in his presence and by his direction, with the intention of revoking the same. No will which has been revoked can be revived except by re-execution, or by a codicil executed in the manner before described, showing an intention to revive it. A codicil is generally used to make some change in the dispositions contained in a will, and forms a kind of appendix to the original will. It must be dated, signed, and attested by two witnesses in the same manner as a will.

A testator sometimes desires to refer to extraneous documents in making his will. It should be borne in mind that it is a rule of law that any papers in existence at the time of execution of a testamentary document may be

incorporated into it, and be read as part of it, if so clearly referred to as to leave no doubt what papers were intended. But a document or paper not in existence at the time of the execution of a will cannot be incorporated into it, nor can a testator reserve by his will a power of making a disposition by any subsequent unattested paper. For instance, a person cannot direct legacies given by will to his children to be reduced by what shall appear by his books at his death to have been lent by him to them. Such a direction is void. And similarly, he cannot give to them by will articles which he shall specify in his notebook. But in connection with this matter another rule of law must be borne in mind, that if a parent, or a person standing *in loco parentis*, bequeaths to a child a legacy or a share of the residue of his property, and afterwards in his lifetime gives to such child an equal or a less amount than such legacy or share of residue, the bequest will be wholly or partially, as the case may be, adeemed or satisfied by the subsequent gift.

Where it is known that a will has been made, but cannot be found after the death of the testator, and there is no evidence forthcoming that it has been revoked, secondary evidence is admissible to show what its contents were. Declarations of the testator, whether oral or in writing, are received as evidence for that purpose.

In the case of the will of Lord St. Leonards, the contents of a lost will were allowed to be proved by a single witness, whose competency and veracity were unimpeachable, even though the witness was an interested party. Where it is not possible to prove the whole of the contents of a lost will, probate will be granted to the extent to which they are proved.

If a legatee under a will dies before the testator, the legacy lapses and falls into the residue. And if there is no residuary legatee there is an intestacy as to so much of the estate of the testator as is comprised in the legacy. There is, however, an exception to this rule. If a person being a child or other issue of a testator, to whom any property is devised or bequeathed by such testator, dies in the lifetime of the testator leaving issue, and any such issue survive the testator, such devise or bequest does not lapse by the death of the devisee or legatee in the lifetime of the testator, but takes effect as if the death of such

person had happened immediately after the death of the testator. The effect of this is not that the issue of the person takes the devise or bequest, but that it passes by the will or intestacy of the devisee or legatee as the case may be.

The word "children" in a will means legitimate children. If, therefore, a testator wishes to provide for children of whose legitimacy there is or may be a doubt, he should particularise them by their names or otherwise show by clear words the objects of his beneficence, and not merely describe them as children of A. B.

By the rule against what is known as "perpetuities," a testator cannot by his will tie up property for a longer period than a life or lives in being, and twenty-one years afterwards (allowance being made for gestation where it actually exists). The effect of this rule is that the income arising from property can be dealt with by leaving the property in the hands of trustees for the benefit of any number of persons, who are alive at the time of the testator's death, in succession, and after the decease of the survivor of them for a further period of twenty-one years, so that at the end of such period of twenty-one years the capital must go to some person or persons absolutely. Again, a will cannot direct property and income to be accumulated (except for the payment of debts) for a longer period than twenty-one years from the death of the testator, or during the minority of any person or persons living at his death, or during the minority of any person or persons who would, if of full age, be entitled to the rents and profits or interest of the property. The rule against perpetuities does not apply to legacies left to charities.

Previous to 1892, the Mortmain Acts prohibited devises of lands to charities (with certain exceptions), but now land may be left by will for any charitable use, but it must in every case be sold within a year of the testator's death, unless an extended period is allowed by the High Court or the Charity Commissioners. Also any personal property directed to be laid out in land for charitable uses need not be so expended, but can be held by the charity as an investment. And the High Court, or the Charity Commissioners, if satisfied that the land left by will to a charity, or directed to be purchased out of personalty, is required for occupation, may sanction the retention or the purchase of it.

Upon the death of a testator, it is the duty of his executors to prove his will in order to perfect their title to act. This must be done by all the executors appointed, or by some or one of them, power being reserved for the other or others to prove or to renounce. Probate can be taken out after the lapse of seven days from the death of the testator. If the executors intermeddle with the estate, or in any way administer it without taking out probate within six months after the death of the testator, they are liable to a fine of £100, and a percentage on the stamp duty. (See *Executor*.)

For the safe custody of the wills and codicils of living persons, a depository has been provided at Somerset House. The wills or codicils are received at the principal or any district registry, if they are enclosed in sealed envelopes, and forwarded to Somerset House upon compliance with prescribed regulations. These regulations will always be furnished upon application. The fee charged is 12s. 6d.

The will of any person, after it has been proved, may be read at Somerset House on payment of a fee of one shilling. It is, in fact, a public document. A copy may also be obtained, the price of the copy being dependent upon the length of the document.

WINDING-UP. (Fr. *Liquidation*, Ger. *Liquidation*, Sp. *Liquidación*, It. *Liquidazione*.)

The winding-up of a company means the closing up of all the business transactions and finance of the whole concern. Winding-up is the only process by means of which a company is brought to an end, and it does not therefore necessarily follow that a company is insolvent when this process is resorted to. Whilst its affairs are being wound up, a company is said to be "in liquidation." (See *Companies*.)

WINDOW DRESSING. (Fr. *Faire l'étalage*, Ger. *Schaufensterausschmücken*, Sp. *Arreglar*, *adornar los escaparates*, It. *Disposizione delle mostre, disposizione delle vetrine*.)

This is quite a modern term and generally speaking it means a method of displaying goods to the best advantage. In financial circles, however, it is usual to indicate that the banks are calling in loans in order to make their cash balances appear large in the periodical statements issued by them.

WINDWARD. (Fr. *Côté du vent*, Ger. *windwärts*, Sp. *Al viento*, It. *A sopravvento*.)

This is the side of a ship facing the quarter from which the wind blows.

WITHOUT ENGAGEMENT. (Fr. *Sans engagement*, Ger. *unverbindlich*, Sp. *Sin compromiso*, *sin empeño*, It. *Senza impegno*.)

This is a term sometimes used by merchants when quoting the price of certain articles liable to sudden fluctuations. It means that the quotation they give is the market price of the day, but they do not bind themselves to accept an order at it.

WITHOUT PREJUDICE. (Fr. *Sans préjudice*, Ger. *unbeschadet*, Sp. *Sin perjuicio*, It. *Senza pregiudizio*.)

In the course of legal proceedings, either of the parties may desire to make an effort to come to terms. Correspondence or interviews then take place, and if it is made clear that the interviews are confidential, or if the letters are marked "without prejudice," no use can be made of either as evidence if the case ever goes into court, that is, a letter written without prejudice can never be read except by leave of the party who has written it. The reply to a letter thus marked is equally privileged.

WITHOUT RECOURSE. (Fr. *Sans recours*, Ger. *ohne Obligo*, Sp. *Sin recurso*, It. *Senza ricorso*.)

These words are sometimes written by an indorser on a bill of exchange, though the French phrase, *sans recours*, is the more common, implying that the indorsee has no claim against the indorser should the bill not be paid when it becomes due. The words are only used when the indorser has no personal interest in the bill, and has only acted as agent for another person.

WITHOUT RESERVE. (Fr. *Sans mise à prix*, Ger. *ohne Vorbehalt*, *unbedingt*, Sp. *Sin reserva*, It. *Senza riserva*.)

This is an auction term, signifying that the goods offered for sale will be sold absolutely to the highest bidder. The law upon the subject was thus stated by Baron Martin: "The sale was announced by the auctioneers to be without reserve. This, according to all the cases both at law and in equity, means that neither the vendor nor any person in his behalf shall bid at the auction, and that the property shall be sold to the highest bidder, whether the sum be equivalent to the real value or not. We cannot distinguish the case of an auctioneer putting up property for sale upon such a condition from the case of the loser of property offering a reward, or that of a railway company publishing a

time-table stating the times when, and the places to which, trains run. It has been decided that the person giving the information advertised for, or a passenger taking a ticket, may sue as upon a contract with him. Upon the same principle, it seems to us that the highest *bonâ fide* bidder at an auction may sue the auctioneer as upon a contract that the sale shall be without reserve."

WORKING PARTNER. (Fr. *Associé actif*, Ger. *aktiver Teilhaber*, Sp. *Socio activo*, It. *Socio attivo*.)

A working partner is a partner who gives, in addition to the capital which he has invested, his labour and experience for the benefit of the business.

WORKMEN'S COMPENSATION ACT, 1906. This Act was passed to amend and amplify the provisions of the Acts of 1897 and 1900, and came into force on the 1st July, 1907. The persons who are now brought within the statute are so numerous that it is unsafe for any employer to attempt to dispense with insurance. The chief difficulties which arise are in respect of whether the person who is injured met with the accident through some event arising "out of and in the course of his employment," and the amount of compensation, and it is hopeless to attempt to arrive at any satisfactory conclusion by means of a short summary. Another very common defence is absence of statutory notice, and this point has given rise to a large number of cases, in which the decisions often appear to be much at variance. In order, however, that the general nature of liability may be known the text of the Act is given in full.

1.—(1) If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the First Schedule to this Act.

(2) Provided that—

(a) The employer shall not be liable under this Act in respect of any injury which does not disable the workman for a period of at least one week from earning full wages at the work at which he was employed:

(b) When the injury was caused by the personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible, nothing in this Act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this Act

or take proceedings independently of this Act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this Act, and shall not be liable to any proceedings independently of this Act, except in case of such personal negligence or wilful act as aforesaid:

(c) If it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall, unless the injury results in death or serious and permanent disablement, be disallowed.

(3) If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act (including any question as to whether the person injured is a workman to whom this Act applies), or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of the First Schedule to this Act, be settled by arbitration, in accordance with the Second Schedule to this Act.

(4) If, within the time hereinafter in this Act limited for taking proceedings, an action is brought to recover damages independently of this Act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed; but the court in which the action is tried shall, if the plaintiff so choose, proceed to assess such compensation, but may deduct from such compensation all or part of the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this Act. In any proceeding under this subsection, when the court assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award under this Act.

(5) Nothing in this Act shall affect any proceeding for a fine under the enactments relating to mines, factories, or workshops, or the application of any such fine.

2.—(1) Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless

notice of the accident has been given as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or, in case of death, within six months from the time of death:

Provided always that—

(a) the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defence by the want, defect, or inaccuracy, or that such want, defect, or inaccuracy was occasioned by mistake, absence from the United Kingdom, or other reasonable cause; and

(b) the failure to make a claim within the period above specified shall not be a bar to the maintenance of such proceedings if it is found that the failure was occasioned by mistake, absence from the United Kingdom, or other reasonable cause.

(2) Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which the accident happened, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

(3) The notice may be served by delivering the same at, or sending it by post in a registered letter addressed to, the residence or place of business of the person on whom it is to be served.

(4) Where the employer is a body of persons, corporate or unincorporate, the notice may also be served by delivering the same at, or by sending it by post in a registered letter addressed to, the employer at the office, or, if there be more than one office, any one of the offices of such body.

3.—(1) If the Registrar of Friendly Societies, after taking steps to ascertain the views of the employer and workmen, certifies that any scheme of compensation, benefit, or insurance for the workmen of an employer in any employment, whether or not such scheme includes other employers and their workmen, provides scales of compensation not less favourable to the workmen and their dependants

than the corresponding scales contained in this Act, and that, where the scheme provides for contributions by the workmen, the scheme confers benefits at least equivalent to those contributions, in addition to the benefits to which the workmen would have been entitled under this Act, and that a majority (to be ascertained by ballot) of the workmen to whom the scheme is applicable are in favour of such scheme, the employer may, whilst the certificate is in force, contract with any of his workmen that the provisions of the scheme shall be substituted for the provisions of this Act, and thereupon the employer shall be liable only in accordance with the scheme, but, save as aforesaid, this Act shall apply notwithstanding any contract to the contrary made after the commencement of this Act.

(2) The Registrar may give a certificate to expire at the end of a limited period of not less than five years, and may from time to time renew with or without modifications such a certificate to expire at the end of the period for which it is renewed.

(3) No scheme shall be so certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring, or which does not contain provisions enabling a workman to withdraw from the scheme.

(4) If complaint is made to the Registrar of Friendly Societies by or on behalf of the workmen of any employer that the benefits conferred by any scheme no longer conform to the conditions stated in sub-section (1) of this section, or that the provisions of such scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certificate, the Registrar shall examine into the complaint, and, if satisfied that good cause exists for such complaint, shall, unless the cause of complaint is removed, revoke the certificate.

(5) When a certificate is revoked or expires, any moneys or securities held for the purpose of the scheme shall, after due provision has been made to discharge the liabilities already accrued, be distributed as may be arranged between the employer and workmen, or as may be determined by the Registrar of Friendly Societies in the event of a difference of opinion.

(6) Whenever a scheme has been certified as aforesaid, it shall be the duty of the employer to answer all such inquiries and to furnish all such accounts

in regard to the scheme as may be made or required by the Registrar of Friendly Societies.

(7) The Chief Registrar of Friendly Societies shall include in his annual report the particulars of the proceedings of the Registrar under this Act.

(8) The Chief Registrar of Friendly Societies may make regulations for the purpose of carrying this section into effect.

4.—(1) Where any person (in this section referred to as the principal), in the course of or for the purposes of his trade or business, contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this Act which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal, then, in the application of this Act, references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed:

Provided that where the contract relates to threshing, ploughing, or other agricultural work, and the contractor provides and uses machinery driven by mechanical power for the purpose of such work, he and he alone shall be liable under this Act to pay compensation to any workman employed by him on such work.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of this section, and all questions as to the right to and amount of any such indemnity shall in default of agreement be settled by arbitration under this Act.

(3) Nothing in this section shall be construed as preventing a workman recovering compensation under this Act from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, or in, or about premises on which the principal has undertaken

to execute the work or which are otherwise under his control or management.

5.—(1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then, in the event of the employer becoming bankrupt, or, making a composition or arrangement with his creditors, or if the employer is a company in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in the enactments relating to bankruptcy and the winding-up of companies, be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so however that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

(2) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the bankruptcy or liquidation.

(3) There shall be included among the debts which under section one of the Preferential Payments in Bankruptcy Act, 1888, and section four of the Preferential Payments in Bankruptcy (Ireland) Act, 1889, are in the distribution of the property of a bankrupt and in the distribution of the assets of a company being wound up to be paid in priority to all other debts, the amount, not exceeding in any individual case one hundred pounds, due in respect of any compensation the liability whereof accrued before the date of the receiving order or the date of the commencement of the winding-up, and those Acts and the Preferential Payments in Bankruptcy Amendment Act, 1897, shall have effect accordingly. Where the compensation is a weekly payment, the amount due in respect thereof shall, for the purpose of this provision, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the First Schedule to this Act.

(4) In the case of the winding-up of a company within the meaning of the Stannaries Act, 1887, such an amount as aforesaid, if the compensation is payable to a miner or the dependants of a miner, shall have the like priority as is conferred on wages of miners by section

nine of that Act, and that section shall have effect accordingly.

(5) The provisions of this section with respect to preferences and priorities shall not apply where the bankrupt or the company being wound up has entered into such a contract with insurers as aforesaid.

(6) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

6.—Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof—

(1) The workman may take proceedings both against that person to recover damages and against any person liable to pay compensation under this Act for such compensation, but shall not be entitled to recover both damages and compensation; and

(2) If the workman has recovered compensation under this Act, the person by whom the compensation was paid, and any person who has been called on to pay an indemnity under the section of this Act relating to sub-contracting, shall be entitled to be indemnified by the person so liable to pay damages as aforesaid, and all questions as to the right to and amount of any such indemnity shall, in default of agreement, be settled by action, or, by consent of the parties, by arbitration under this Act.

7.—(1) This Act shall apply to masters, seamen, and apprentices to the sea service and apprentices in the sea-fishing service, provided that such persons are workmen within the meaning of this Act, and are members of the crew of any ship registered in the United Kingdom, or of any other British ship or vessel of which the owner, or (if there is more than one owner) the managing owner, or manager resides or has his principal place of business in the United Kingdom, subject to the following modifications:—

(a) The notice of accident and the claim for compensation may, except where the person injured is the master, be served on the master of the ship as if he were the employer, but where the accident happened and the incapacity commenced on board the ship it shall not be necessary to give any notice of the accident:

(b) In the case of the death of the master, seaman, or apprentice, the claim

for compensation shall be made within six months after news of the death has been received by the claimant:

(c) Where an injured master, seaman, or apprentice is discharged or left behind in a British possession or in a foreign country, depositions respecting the circumstances and nature of the injury may be taken by any judge or magistrate in the British possession, and by any British consular officer in the foreign country, and if so taken shall be transmitted by the person by whom they are taken to the Board of Trade, and such depositions or certified copies thereof shall in any proceedings for enforcing the claim be admissible in evidence as provided by sections six hundred and ninety-one and six hundred and ninety-five of the Merchant Shipping Act, 1894, and those sections shall apply accordingly:

(d) In the case of the death of a master, seaman, or apprentice, leaving no dependants, no compensation shall be payable, if the owner of the ship is, under the Merchant Shipping Act, 1894, liable to pay the expenses of burial:

(e) The weekly payment shall not be payable in respect of the period during which the owner of the ship is, under the Merchant Shipping Act, 1894, as amended by any subsequent enactment, or otherwise, liable to defray the expenses of maintenance of the injured master, seaman, or apprentice:

(f) Any sum payable by way of compensation by the owner of a ship under this Act shall be paid in full notwithstanding anything in section five hundred and three of the Merchant Shipping Act, 1894 (which relates to the limitation of a shipowner's liability in certain cases of loss of life, injury, or damage), but the limitation on the owner's liability imposed by that section shall apply to the amount recoverable by way of indemnity under the section of this Act relating to remedies both against employer and stranger as if the indemnity were damages for loss of life or personal injury:

(g) Sub-sections (2) and (3) of section one hundred and seventy-four of the Merchant Shipping Act, 1894 (which relates to the recovery of wages of seamen lost with their ship), shall apply as respects proceedings for the recovery of compensation by dependants of masters, seamen, and apprentices lost with their ship as they apply with respect to proceedings for the recovery of wages due to seamen and apprentices; and

proceedings for the recovery of compensation shall in such a case be maintainable if the claim is made within eighteen months of the date at which the ship is deemed to have been lost with all hands.

(2) This Act shall not apply to such members of the crew of a fishing vessel as are remunerated by shares in the profits or the gross earnings of the working of such vessel.

(3) This section shall extend to pilots to whom Part X of the Merchant Shipping Act, 1894, applies, as if a pilot when employed on any such ship as aforesaid were a seaman and a member of the crew.

8.—(1) Where—

(i) the certifying surgeon appointed under the Factory and Workshop Act, 1901, for the district in which a workman is employed certifies that the workman is suffering from a disease mentioned in the Third Schedule to this Act and is thereby disabled from earning full wages at the work at which he was employed; or

(ii) a workman is, in pursuance of any special rules or regulations made under the Factory and Workshop Act, 1901, suspended from his usual employment on account of having contracted any such disease; or

(iii) the death of a workman is caused by any such disease;

and the disease is due to the nature of any employment in which the workman was employed at any time within the twelve months previous to the date of the disablement or suspension, whether under one or more employers, he or his dependants shall be entitled to compensation under this Act as if the disease or such suspension as aforesaid were a personal injury by accident arising out of and in the course of that employment, subject to the following modifications:—

(a) The disablement or suspension shall be treated as the happening of the accident;

(b) If it is proved that the workman has at the time of entering the employment wilfully and falsely represented himself in writing as not having previously suffered from the disease, compensation shall not be payable;

(c) The compensation shall be recoverable from the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due:

Provided that—

(i) the workman or his dependants if so required shall furnish that employer

with such information as to the names and addresses of all the other employers who employed him in the employment during the said twelve months as he or they may possess, and, if such information is not furnished, or is not sufficient to enable that employer to take proceedings under the next following proviso, that employer upon proving that the disease was not contracted whilst the workman was in his employment shall not be liable to pay compensation; and

(ii) if that employer alleges that the disease was in fact contracted whilst the workman was in the employment of some other employer, and not whilst in his employment, he may join such other employer as a party to the arbitration, and if the allegation is proved that other employer shall be the employer from whom the compensation is to be recoverable; and

(iii) if the disease is of such a nature as to be contracted by a gradual process, any other employers who during the said twelve months employed the workman in the employment to the nature of which the disease was due shall be liable to make to the employer from whom compensation is recoverable such contributions as, in default of agreement, may be determined in the arbitration under this Act for settling the amount of the compensation;

(d) The amount of the compensation shall be calculated with reference to the earnings of the workman under the employer from whom the compensation is recoverable;

(e) The employer to whom notice of the death, disablement, or suspension is to be given shall be the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due, and the notice may be given notwithstanding that the workman has voluntarily left his employment.

(f) If an employer or a workman is aggrieved by the action of a certifying or other surgeon in giving or refusing to give a certificate of disablement or in suspending or refusing to suspend a workman for the purposes of this section, the matter shall in accordance with regulations made by the Secretary of State be referred to a medical referee, whose decision shall be final.

(2) If the workman at or immediately before the date of the disablement or suspension was employed in any process mentioned in the second column of the Third Schedule to this Act, and the

disease contracted is the disease in the first column of that Schedule set opposite the description of the process, the disease, except where the certifying surgeon certifies that in his opinion the disease was not due to the nature of the employment, shall be deemed to have been due to the nature of that employment, unless the employer proves the contrary.

(3) The Secretary of State may make rules regulating the duties and fees of certifying and other surgeons (including dentists) under this section.

(4) For the purposes of this section the date of disablement shall be such date as the certifying surgeon certifies as the date on which the disablement commenced, or, if he is unable to certify such a date, the date on which the certificate is given: Provided that—

(a) Where the medical referee allows an appeal against a refusal by a certifying surgeon to give a certificate of disablement, the date of disablement shall be such date as the medical referee may determine:

(b) Where a workman dies without having obtained a certificate of disablement, or is at the time of death not in receipt of a weekly payment on account of disablement, it shall be the date of death.

(5) In such cases, and subject to such conditions as the Secretary of State may direct, a medical practitioner appointed by the Secretary of State for the purpose shall have the powers and duties of a certifying surgeon under this section, and this section shall be construed accordingly.

(6) The Secretary of State may make orders for extending the provisions of this section to other diseases and other processes, and to injuries due to the nature of any employment specified in the order not being injuries by accident, either without modification or subject to such modifications as may be contained in the order.

(7) Where, after inquiry held on the application of any employers or workmen engaged in any industry to which this section applies, it appears that a mutual trade insurance company or society for insuring against the risks under this section has been established for the industry, and that a majority of the employers engaged in that industry are insured against such risks in the company or society and that the company or society consents, the Secretary of State may, by Provisional Order, require all employers in that industry to insure in the company or society upon such

terms and under such conditions and subject to such exceptions as may be set forth in the Order. Where such a company or society has been established but is confined to employers in any particular locality or of any particular class, the Secretary of State may for the purposes of this provision treat the industry, as carried on by employers in that locality or of that class, as a separate industry.

(8) A Provisional Order made under this section shall be of no force whatever unless and until it is confirmed by Parliament, and if, while the Bill confirming any such Order is pending in either House of Parliament, a petition is presented against the Order, the Bill may be referred to a Select Committee, and the petitioner shall be allowed to appear and oppose as in the case of Private Bills, and any Act confirming any Provisional Order under this section may be repealed, altered, or amended by a Provisional Order made and confirmed in like manner.

(9) Any expenses incurred by the Secretary of State in respect of any such Order, Provisional Order, or confirming Bill shall be defrayed out of moneys provided by Parliament.

(10) Nothing in this section shall affect the rights of a workman to recover compensation in respect of a disease to which this section does not apply, if the disease is a personal injury by accident within the meaning of this Act.

9.—(1) This Act shall not apply to persons in the naval or military service of the Crown, but otherwise shall apply to workmen employed by or under the Crown to whom this Act would apply if the employer were a private person:

Provided that in the case of a person employed in the private service of the Crown, the head of that department of the Royal Household in which he was employed at the time of the accident shall be deemed to be his employer.

(2) The Treasury may, by warrant laid before Parliament, modify for the purposes of this Act their warrant made under section one of the Superannuation Act, 1887, and notwithstanding anything in that Act, or any such warrant, may frame schemes with a view to their being certified by the Registrar of Friendly Societies under this Act.

10.—(1) The Secretary of State may appoint such legally qualified medical practitioners to be medical referees for the purposes of this Act as he may, with the sanction of the Treasury, determine, and the remuneration of, and other

expenses incurred by, medical referees under this Act shall, subject to regulations made by the Treasury, be paid out of moneys provided by Parliament.

Where a medical referee has been employed as a medical practitioner in connection with any case by or on behalf of an employer or workman or by any insurers interested, he shall not act as medical referee in that case.

(2) The remuneration of an arbitrator appointed by a judge of county courts under the Second Schedule to this Act shall be paid out of moneys provided by Parliament in accordance with regulations made by the Treasury.

11.—(1) If it is alleged that the owners of any ship are liable as such owners to pay compensation under this Act, and at any time that ship is found in any port or river of England or Ireland, or within three miles of the coast thereof, a judge of any court of record in England or Ireland may, upon its being shown to him by any person applying in accordance with the rules of the court that the owners are probably liable as such to pay such compensation, and that none of the owners reside in the United Kingdom, issue an order directed to any officer of customs or other officer named by the judge requiring him to detain the ship until such time as the owners, agent, master, or consignee thereof have paid such compensation, or have given security to be approved by the judge, to abide the event of any proceedings that may be instituted to recover such compensation and to pay such compensation and costs as may be awarded thereon; and any officer of customs or other officer to whom the order is directed shall detain the ship accordingly.

(2) In any legal proceeding to recover such compensation, the person giving security shall be made defendant, and the production of the order of the judge, made in relation to the security, shall be conclusive evidence of the liability of the defendant to the proceeding.

(3) Section six hundred and ninety-two of the Merchant Shipping Act, 1894, shall apply to the detention of a ship under this Act as it applies to the detention of a ship under that Act, and, if the owner of a ship is a corporation, it shall for the purposes of this section be deemed to reside in the United Kingdom if it has an office in the United Kingdom at which service of writs can be effected.

12.—(1) Every employer in any industry to which the Secretary of State may direct that this section shall apply

shall, on or before such day in every year as the Secretary of State may direct, send to the Secretary of State a correct return specifying the number of injuries in respect of which compensation has been paid by him under this Act during the previous year, and the amount of such compensation, together with such other particulars as to the compensation as the Secretary of State may direct, and in default of complying with this section shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding five pounds.

(2) Any regulations made by the Secretary of State containing such directions as aforesaid shall be laid before both Houses of Parliament as soon as may be after they are made.

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

“Employer” includes any body of persons corporate or unincorporate and the legal personal representative of a deceased employer, and, where the services of workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Act, be deemed to continue to be the employer of the workman whilst he is working for that other person;

“Workman” does not include any person employed otherwise than by way of manual labour whose remuneration exceeds two hundred and fifty pounds a year, or a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business, or a member of a police force, or an outworker, or a member of the employer's family dwelling in his house, but, save as aforesaid, means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work, or otherwise, and whether the contract is expressed or implied, is oral or in writing;

Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependants or other person to whom or for whose benefit compensation is payable;

“Dependants” means such of the members of the workman's family as were wholly or in part dependent upon the earnings of the workman at the time of his death, or would but for the incapacity

due to the accident have been so dependent, and where the workman, being the parent or grandparent of an illegitimate child, leaves such a child so dependent upon his earnings, or, being an illegitimate child, leaves a parent or grandparent so dependent upon his earnings, shall include such an illegitimate child and parent or grandparent respectively;

“Member of a family” means wife or husband, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, granddaughter, step-son, step-daughter, brother, sister, half-brother, half-sister;

“Ship,” “vessel,” “seaman,” and “port” have the same meanings as in the Merchant Shipping Act, 1894;

“Manager,” in relation to a ship, means the ship's husband or other person to whom management of the ship is entrusted by or on behalf of the owner;

“Police force” means a police force to which the Police Act, 1890, or the Police (Scotland) Act, 1890, applies, the City of London Police Force, the Royal Irish Constabulary, and the Dublin Metropolitan Police Force;

“Outworker” means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, or repaired, or adapted for sale, in his own home or on other premises not under the control or management of the person who gave out the materials or articles;

The exercise and performance of the powers and duties of a local or other public authority shall, for the purposes of this Act, be treated as the trade or business of the authority;

“County court,” “judge of the county court,” “registrar of the county court,” “plaintiff,” and “rules of court,” as respects Scotland, mean respectively sheriff court, sheriff, sheriff clerk, pursuer, and act of sederunt.

14.—In Scotland, where a workman raises an action against his employer independently of this Act in respect of any injury caused by accident arising out of and in the course of the employment, the action, if raised in the sheriff court and concluding for damages under the Employers' Liability Act, 1880, or alternatively at common law or under the Employers' Liability Act, 1880, shall, notwithstanding anything contained in that Act, not be removed under that Act or otherwise to the Court of Session, nor shall it be appealed to that court otherwise than by appeal on a question of law; and for the purposes of such appeal

the provisions of the Second Schedule to this Act in regard to an appeal from the decision of the sheriff on any question of law determined by him as arbitrator under this Act shall apply.

15.—(1) Any contract (other than a contract substituting the provisions of a scheme certified under the Workmen's Compensation Act, 1897, for the provisions of that Act) existing at the commencement of this Act, whereby a workman relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment, shall not, for the purposes of this Act, be deemed to continue after the time at which the workman's contract of service would determine if notice of the determination thereof were given at the commencement of this Act.

(2) Every scheme under the Workmen's Compensation Act, 1897, in force at the commencement of this Act shall, if re-certified by the Registrar of Friendly Societies, have effect as if it were a scheme under this Act.

(3) The Registrar shall re-certify any such scheme if it is proved to his satisfaction that the scheme conforms, or has been so modified as to conform, with the provisions of this Act as to schemes.

(4) If any such scheme has not been so re-certified before the expiration of six months from the commencement of this Act, the certificate thereof shall be revoked.

16.—(1) This Act shall come into operation on the first day of July nineteen hundred and seven, but, except so far as it relates to references to medical referees, and proceedings consequential thereon, shall not apply in any case where the accident happened before the commencement of this Act.

(2) The Workmen's Compensation Acts, 1897 and 1900, are hereby repealed, but shall continue to apply to cases where the accident happened before the commencement of this Act, except to the extent to which this Act applies to those cases.

17.—This Act may be cited as the Workmen's Compensation Act, 1906.

SCHEDULES.

FIRST SCHEDULE.

SCALE AND CONDITIONS OF COMPENSATION.

(1) The amount of compensation under this Act shall be—

(a) where death results from the injury—

(i) if the workman leaves any dependants wholly dependent upon his earnings, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury or the sum of one hundred and fifty pounds, whichever of those sums is the larger, but not exceeding in any case three hundred pounds, provided that the amount of any weekly payments made under this Act, and any lump sum paid in redemption thereof, shall be deducted from such sum, and, if the period of the workman's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be one hundred and fifty-six times his average weekly earnings during the period of his actual employment under the said employer;

(ii) if the workman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or, in default of agreement, may be determined, on arbitration under this Act, to be reasonable and proportionate to the injury to the said dependants; and

(iii) if he leaves no dependants, the reasonable expenses of his medical attendance and burial, not exceeding ten pounds;

(b) where total or partial incapacity for work results from the injury, a weekly payment during the incapacity not exceeding fifty per cent. of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not then for any less period during which he has been in the employment of the same employer, such weekly payment not to exceed one pound (but increased since Sept., 1917, by 25%).

Provided that—

(a) if the incapacity lasts less than two weeks no compensation shall be payable in respect of the first week; and

(b) as respects the weekly payments during total incapacity of a workman who is under twenty-one years of age at the date of the injury, and whose average weekly earnings are less than twenty shillings, one hundred per cent. shall be substituted for fifty per cent. of his average weekly earnings, but the weekly payment shall in no case exceed ten shillings.

(2) For the purposes of the provisions of this schedule relating to "earnings"

and "average weekly earnings" of a workman, the following rules shall be observed—

(a) average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated. Provided that where by reason of the shortness of the time during which the workman has been in the employment of his employer, or the casual nature of the employment, or the terms of the employment, it is impracticable at the date of the accident to compute the rate of remuneration, regard may be had to the average weekly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district ;

(b) where the workman had entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, his average weekly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident ;

(c) employment by the same employer shall be taken to mean employment by the same employer in the grade in which the workman was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause ;

(d) where the employer has been accustomed to pay to the workman a sum to cover any special expenses entailed on him by the nature of his employment, the sum so paid shall not be reckoned as part of the earnings.

(3) In fixing the amount of the weekly payment, regard shall be had to any payment, allowance, or benefit which the workman may receive from the employer during the period of his incapacity, and in the case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he is earning or is able to earn in some suitable employment or business after the accident, but shall bear such relation to the amount of that difference as under the circumstances of the case may appear proper.

(4) Where a workman has given notice of an accident, he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and, if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and to take or prosecute any proceeding under this Act in relation to compensation, shall be suspended until such examination has taken place.

(5) The payment in the case of death shall, unless otherwise ordered as hereinafter provided, be paid into the county court, and any sum so paid into court shall, subject to rules of court and the provisions of this schedule, be invested, applied, or otherwise dealt with by the court in such manner as the court in its discretion thinks fit for the benefit of the persons entitled thereto under this Act, and the receipt of the registrar of the court shall be a sufficient discharge in respect of the amount paid in :

Provided that, if so agreed, the payment in case of death shall, if the workman leaves no dependants, be made to his legal personal representative, or, if he has no such representative, to the person to whom the expenses of medical attendance and burial are due.

(6) Rules of court may provide for the transfer of money paid into court under this Act from one court to another, whether or not the court from which it is to be transferred is in the same part of the United Kingdom as the court to which it is to be transferred.

(7) Where a weekly payment is payable under this Act to a person under any legal disability, a county court may, on application being made in accordance with rules of court, order that the weekly payment be paid during the disability into court, and the provisions of this schedule with respect to sums required by this schedule to be paid into court shall apply to sums paid into court in pursuance of any such order.

(8) Any question as to who is a dependant shall, in default of agreement, be settled by arbitration under this Act, or, if not so settled before payment into court under this schedule, shall be settled by the county court, and the amount payable to each dependant shall be settled by arbitration under this Act, or, if not so settled before payment into court under this schedule, by the county court. Where there are both total and partial dependants nothing in this schedule shall

be construed as preventing the compensation being allotted partly to the total and partly to the partial dependants.

(9) Where, on application being made in accordance with rules of court, it appears to a county court that, on account of neglect of children on the part of a widow, or on account of the variation of the circumstances of the various dependants, or for any other sufficient cause, an order of the court or an award as to the apportionment amongst the several dependants of any sum paid as compensation, or as to the manner in which any sum payable to any such dependant is to be invested, applied, or otherwise dealt with, ought to be varied, the court may make such order for the variation of the former order or the award, as in the circumstances of the case the court may think just.

(10) Any sum which under this schedule is ordered to be invested may be invested in whole or in part in the Post Office Savings Bank by the registrar of the county court in his name as registrar.

(11) Any sum to be so invested may be invested in the purchase of an annuity from the National Debt Commissioners through the Post Office Savings Bank, or be accepted by the Postmaster-General as a deposit in the name of the registrar as such, and the provisions of any statute or regulations respecting the limits of deposits in savings banks, and the declaration to be made by a depositor, shall not apply to such sums.

(12) No part of any money invested in the name of the registrar of any county court in the Post Office Savings Bank under this Act shall be paid out, except upon authority addressed to the Postmaster-General by the Treasury or, subject to regulations of the Treasury, by the judge or registrar of the county court.

(13) Any person deriving any benefit from any moneys invested in a post office savings bank under the provisions of this Act may, nevertheless, open an account in a post office savings bank or in any other savings bank in his own name without being liable to any penalties imposed by any statute or regulations in respect of the opening of accounts in two savings banks, or of two accounts in the same savings bank.

(14) Any workman receiving weekly payments under this Act shall, if so required by the employer, from time to time submit himself for examination by a duly qualified medical practitioner

provided and paid by the employer. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place.

(15) A workman shall not be required to submit himself for examination by a medical practitioner under paragraph (4) or paragraph (14) of this schedule otherwise than in accordance with regulations made by the Secretary of State, or at more frequent intervals than may be prescribed by those regulations.

Where a workman has so submitted himself for examination by a medical practitioner, or has been examined by a medical practitioner selected by himself, and the employer or the workman, as the case may be, has within six days after such examination furnished the other with a copy of the report of that practitioner as to the workman's condition, then, in the event of no agreement being come to between the employer and the workman as to the workman's condition or fitness for employment, the registrar of a county court, on application being made to the court by both parties, may, on payment by the applicants of such fee not exceeding one pound as may be prescribed, refer the matter to a medical referee.

The medical referee to whom the matter is so referred shall, in accordance with regulations made by the Secretary of State, give a certificate as to the condition of the workman and his fitness for employment, specifying, where necessary, the kind of employment for which he is fit, and that certificate shall be conclusive evidence as to the matters so certified.

Where no agreement can be come to between the employer and the workman as to whether or to what extent the incapacity to the workman is due to the accident, the provisions of this paragraph shall, subject to any regulations made by the Secretary of State, apply as if the question were a question as to the condition of the workman.

If a workman, on being required so to do, refuses to submit himself for examination by a medical referee to whom the matter has been so referred as aforesaid, or in any way obstructs the same, his right to compensation and to take or prosecute any proceeding under this Act in relation to compensation, or, in the case of a workman in receipt of a weekly payment, his right to that weekly payment, shall be suspended until such examination has taken place.

Rules of court may be made for prescribing the manner in which documents are to be furnished or served and applications made under this paragraph and the forms to be used for those purposes and, subject to the consent of the Treasury, as to the fee to be paid under this paragraph.

(16) Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished, or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this Act:

Provided that where the workman was at the date of the accident under twenty-one years of age and the review takes place more than twelve months after the accident, the amount of the weekly payments may be increased to any amount not exceeding fifty per cent. of the weekly sum which the workman would probably have been earning at the date of the review if he had remained uninjured, but not in any case exceeding one pound.

(17) Where any weekly payment has been continued for not less than six months, the liability therefor may, on application by or on behalf of the employer, be redeemed by the payment of a lump sum of such an amount as, where the incapacity is permanent, would, if invested in the purchase of an immediate life annuity from the National Debt Commissioners through the Post Office Savings Bank, purchase an annuity for the workman equal to seventy-five per cent. of the annual value of the weekly payment, and as in any other case may be settled by arbitration under this Act, and such lump sum may be ordered by the committee or arbitrator or judge of the county court to be invested or otherwise applied for the benefit of the person entitled thereto: Provided that nothing in this paragraph shall be construed as preventing agreements being made for the redemption of a weekly payment by a lump sum.

(18) If a workman receiving a weekly payment ceases to reside in the United Kingdom, he shall thereupon cease to be entitled to receive any weekly payment, unless the medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature. If the medical referee so certifies, the workman shall be entitled to receive quarterly the amount of the weekly payments accruing due during the preceding quarter

so long as he proves, in such manner and at such intervals as may be prescribed by rules of court, his identity and the continuance of the incapacity in respect of which the weekly payment is payable.

(19) A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.

(20) Where under this schedule a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension.

(21) Where a scheme certified under this Act provides for payment of compensation by a friendly society, the provisions of the proviso to the first subsection of section eight, section sixteen, and section forty-one of the Friendly Societies Act, 1896, shall not apply to such society in respect of such scheme.

(22) In the application of this Act to Ireland the provisions of the County Officers and Courts (Ireland) Act, 1877, with respect to money deposited in the Post Office Savings Bank under that Act shall apply to money invested in the Post Office Savings Bank under this Act.

SECOND SCHEDULE.

ARBITRATION, ETC.

(1) For the purpose of settling any matter which under this Act is to be settled by arbitration, if any committee, representative of an employer and his workmen, exists with power to settle matters under this Act in the case of the employer and workmen, the matter shall, unless either party objects by notice in writing sent to the other party before the committee meet to consider the matter, be settled by the arbitration of such committee, or be referred by them in their discretion to arbitration as hereinafter provided.

(2) If either party so objects or there is no such committee, or the committee so refers the matter or fails to settle the matter within six months from the date of the claim, the matter shall be settled by a single arbitrator agreed on by the parties, or in the absence of agreement by the judge of the county court, according to the procedure prescribed by rules of court.

(3) In England the matter, instead of being settled by the judge of the county court, may, if the Lord Chancellor so authorises, be settled according to the like procedure, by a single arbitrator

appointed by that judge, and the arbitrator so appointed shall, for the purposes of this Act, have all the powers of that judge.

(4) The Arbitration Act, 1889, shall not apply to any arbitration under this Act; but a committee or an arbitrator may, if they or he think fit, submit any question of law for the decision of the judge of the county court, and the decision of the judge on any question of law either on such submission, or in any case where he himself settles the matter under this Act, or where he gives any decision or makes any order under this Act, shall be final, unless within the time and in accordance with the conditions prescribed by rules of the Supreme Court either party appeals to the Court of Appeal; and the judge of the county court, or the arbitrator appointed by him, shall, for the purpose of proceedings under this Act, have the same powers of procuring the attendance of witnesses and the production of documents as if the proceedings were an action in the county court.

(5) A judge of county courts may, if he thinks fit, summon a medical referee to sit with him as an assessor.

(6) Rules of court may make provision for the appearance in any arbitration under this Act of any party by some other person.

(7) The costs of and incidental to the arbitration and proceedings connected therewith shall be in the discretion of the committee, arbitrator, or judge of the county court, subject as respects such judge and an arbitrator appointed by him to rules of court. The costs, whether before a committee or an arbitrator or in the county court, shall not exceed the limit prescribed by rules of court, and shall be taxed in manner prescribed by those rules, and such taxation may be reviewed by the judge of the county court.

(8) In the case of the death, or refusal or inability to act, of an arbitrator, the judge of the county court may, on the application of any party, appoint a new arbitrator.

(9) Where the amount of compensation under this Act has been ascertained, or any weekly payment varied, or any other matter decided under this Act, either by a committee or by an arbitrator or by agreement, a memorandum thereof shall be sent in manner prescribed by rules of court, by the committee or arbitrator, or by any party interested, to the registrar of the county court who shall, subject to such rules, on being satisfied as to its genuineness, record such memorandum

in a special register without fee, and thereupon the memorandum shall for all purposes be enforceable as a county court judgment.

Provided that—

(a) no such memorandum shall be recorded before seven days after the despatch by the registrar of notice to the parties interested; and

(b) where a workman seeks to record a memorandum of agreement between his employer and himself for the payment of compensation under this Act and the employer, in accordance with rules of court, proves that the workman has in fact returned to work and is earning the same wages as he did before the accident, and objects to the recording of such memorandum, the memorandum shall only be recorded, if at all, on such terms as the judge of the county court, under the circumstances, may think just; and

(c) the judge of the county court may at any time rectify the register; and

(d) where it appears to the registrar of the county court, on any information which he considers sufficient, that an agreement as to the redemption of a weekly payment by a lump sum, or an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence, or other improper means, he may refuse to record the memorandum of the agreement sent to him for registration, and refer the matter to the judge who shall, in accordance with rules of court, make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just; and

(e) The judge may, within six months after a memorandum of an agreement as to the redemption of a weekly payment by a lump sum, or of an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, has been recorded in the register, order that the record be removed from the register on proof to his satisfaction that the agreement was obtained by fraud or undue influence or other improper means, and may make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just.

(10) An agreement as to the redemption of a weekly payment by a lump sum if not registered in accordance with this Act shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the weekly payment is payable from liability to continue to make that weekly payment, and an agreement as to the amount of compensation to be paid to a person under a legal disability or to dependants, if not so registered, shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the compensation is payable from liability to pay compensation, unless, in either case, he proves that the failure to register was not due to any neglect or default on his part.

(11) Where any matter under this Act is to be done in a county court, or by, to, or before the judge or registrar of a county court, then unless the contrary intention appear, the same shall, subject to rules of court, be done in, or by, to, or before the judge or registrar of, the county court of the district in which all the parties concerned reside, or if they reside in different districts the district prescribed by rules of court, without prejudice to any transfer in manner provided by rules of court.

(12) The duty of a judge of county courts under this Act, or in England of an arbitrator appointed by him, shall, subject to rules of court, be part of the duties of the county court, and the officer of the court shall act accordingly, and rules of court may be made both for any purpose for which this Act authorises rules of court to be made, and also generally for carrying into effect this Act so far as it affects the county court, or an arbitrator appointed by the judge of the county court, and proceedings in the county court or before any such arbitrator, and such rules may, in England, be made by the five judges of county courts appointed for the making of rules under section one hundred and sixty-four of the County Courts Act, 1888, and when allowed by the Lord Chancellor as provided by that section, shall have full effect without any further consent.

(13) No court fee, except such as may be prescribed under paragraph (15) of the First Schedule to this Act, shall be payable by any party in respect of any proceedings by or against a workman under this Act in the court prior to the award.

(14) Any sum awarded as compensation shall, unless paid into court under this Act, be paid on the receipt of the

person to whom it is payable under any agreement or award, and the solicitor or agent of a person claiming compensation under this Act shall not be entitled to recover from him any costs in respect of any proceedings in an arbitration under this Act, or to claim a lien in respect of such costs on, or deduct such costs from, the sum awarded or agreed as compensation, except such sum as may be awarded by the committee, the arbitrator, or the judge of the county court, on an application made either by the person claiming compensation, or by his solicitor or agent, to determine the amount of costs to be paid to the solicitor or agent, such sum to be awarded subject to taxation and to the scale of costs prescribed by rules of court.

(15) Any committee, arbitrator, or judge may, subject to regulations made by the Secretary of State and the Treasury, submit to a medical referee for report any matter which seems material to any question arising in the arbitration.

(16) The Secretary of State may, by order, either unconditionally or subject to such conditions or modifications as he may think fit, confer on any committee representative of an employer and his workmen, as respects any matter in which the committee act as arbitrators, or which is settled by agreement submitted to and approved by the committee, all or any of the powers conferred by this Act exclusively on county courts or judges of county courts, and may by the order provide how and to whom the compensation money is to be paid in cases where, but for the order, the money would be required to be paid into court, and the order may exclude from the operation of provisos (d) and (e) of paragraph (9) of this Schedule agreements submitted to and approved by the committee, and may contain such incidental, consequential, or supplemental provisions as may appear to the Secretary of State to be necessary or proper for the purposes of the order.

(17) In the application of this Schedule to Scotland—

(a) "County court judgment" as used in paragraph (9) of this Schedule means a recorded decree arbitral:

(b) Any application to the sheriff as arbitrator shall be heard, tried, and determined summarily in the manner provided by section fifty-two of the Sheriff Courts (Scotland) Act, 1876, save only that parties may be represented by any person authorised in writing to appear for them and subject to the

declaration that it shall be competent to either party within the time and in accordance with the conditions prescribed by act of sederunt to require the sheriff to state a case on any question of law determined by him, and his decision thereon in such case may be submitted to either division of the Court of Session, who may hear and determine the same and remit to the sheriff with instruction as to the judgment to be pronounced, and an appeal shall lie from either of such divisions to the House of Lords:

(c) Paragraphs (3), (4), and (8) shall not apply.

(18) In the application of this schedule to Ireland the expression "judge of the county court" shall include the recorder of any city or town, and an appeal shall lie from the Court of Appeal to the House of Lords.

THIRD SCHEDULE.

Description of Disease.	Description of Process.
Anthrax . . .	Handling of wool, hair, bristles, hides, and skins.
Lead poisoning or its sequelae	Any process involving the use of lead or its preparations or compounds.
Mercury poisoning or its sequelae . . .	Any process involving the use of mercury or its preparations or compounds.
Phosphorus poisoning or its sequelae . . .	Any process involving the use of phosphorus or its preparations or compounds.
Arsenic poisoning or its sequelae . . .	Any process involving the use of arsenic or its preparations or compounds.
Ankylostomiasis	Mining.

Where regulations or special rules made under any Act of Parliament for the protection of persons employed in any industry against the risk of contracting lead poisoning require some or all of the persons employed in certain processes specified in the regulations or special rules to be periodically examined by a certifying or other surgeon, then, in the application of this schedule to that industry, the expression "process" shall, unless the Secretary of State

otherwise directs, include only the processes so specified.

This list of industrial diseases was added in 1907 as follows:—

Description of Disease or Injury.	Description of Process.
1. Poisoning by nitro- and anido- derivatives of benzene (dinitrobenzol, anilin, and others), or its sequelae . . .	Any process involving the use of a nitro- or anido- derivative of benzene or its preparations or compounds.
2. Poisoning by carbon bisulphide or its sequelae . . .	Any process involving the use of carbon bisulphide or its preparations or compounds.
3. Poisoning by nitrous fumes or its sequelae	Any process in which nitrous fumes are evolved.
4. Poisoning by nickel carbonyl or its sequelae.	Any process in which nickel carbonyl gas is evolved.
5. Arsenic poisoning or its sequelae . . .	Handling of arsenic or its preparations or compounds.
6. Lead poisoning or its sequelae . . .	Handling of lead or its preparations or compounds.
7. Poisoning by G o n i o m a K a m a s s i (African boxwood) or its sequelae . . .	Any process in the manufacture of articles from Gonioma Kamassi (African boxwood).
8. Chrome ulceration or its sequelae. . .	Any process involving the use of chromic acid or bi-chromate of ammonium, potassium, or sodium, or their preparations.
9. Eczematous ulceration of the skin produced by dust or caustic or corrosive liquids, or ulceration of the mucous membrane of the nose or mouth produced by dust	[Repealed; but re-enacted in slightly altered form, by Order dated 2nd December, 1908.]

Description of Disease or Injury.	Description of Process.	Description of Disease or Injury.	Description of Process.	
10. Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye, due to pitch, tar, or tarry compounds . . .	Handling or use of pitch, tar, or tarry compounds.	Telegraphists' cramp . . .	Use of telegraphic instruments.	
11. Scrotal epithelioma (chimney-sweeps' cancer) . . .	Chimney-sweeping.	Eczematous ulceration of the skin produced by dust or liquids, or ulceration of the mucous membrane of the nose or mouth produced by dust.		
12. Nystagmus.	Mining.	<p>It is now the common practice for all employers to insure against the liabilities imposed upon them under the Act of 1906. A list of the companies undertaking this kind of business is given under <i>Insurance Companies</i>, and from them full particulars as to the cost of insurance must be obtained.</p> <p>WRECK. (Fr. <i>Navire naufragé</i>, <i>naufrage</i>, Ger. <i>Schiffbruch</i>, Sp. <i>Naufragio</i>, It. <i>Naufragio</i>.)</p> <p>A wreck is a ship cast on shore after being abandoned. Technically, a ship is not a wreck if any living thing is on board at the time of the stranding.</p> <p>WRECKAGE. (Fr. <i>Naufrage, débris</i>, Ger. <i>Strandgut, Schiffstrümmer</i>, Sp. <i>Objetos arrojados por el mar</i>, It. <i>Avanzi di naufragio</i>.)</p> <p>Goods cast upon the shore by the sea after a wreck are called wreckage.</p> <p>WRIT. (Fr. <i>Assignation</i>, Ger. <i>Gerichtsbeehl</i>, Sp. <i>Citación</i>, It. <i>Citazione, mandato ejecutivo</i>.)</p> <p>A writ, which is also known as an act of summons, is a document which, generally speaking, commands a person to do a thing. When used in a legal sense it means the document by which an action is commenced in the High Court of Justice. It corresponds to the plaint note in the County Court. The writ must have the seal of the court before it can have any legal validity, and a payment of 10s. has to be made upon its issue. The writ is directed to the person whom it is proposed to make defendant in an action. It commands such person to enter an appearance at the High Court or at some other specified place within a period of eight days to</p>		
13. Glanders . . .	Care of any equine animal suffering from glanders; handling the carcass of such animal.			
14. Compressed air illness or its sequelae . . .	Any process carried on in compressed air.			
15. Subcutaneous cellulitis of the hand (beat hand) . . .	Mining.			
16. Subcutaneous cellulitis over the petella (miners' beat keen) . . .	Mining.			
17. Acute bursitis over the elbow (miners' beat elbow) . . .	Mining.			
18. Inflammation of the synovial lining of the wrist-joint and tendon sheaths . . .	Mining.			

Further additions were made in 1908 as follows:—

Description of Disease or Injury.	Description of Process.
Cataract in glassworkers	Processes in the manufacture of glass involving exposure to the glare of molten glass.

answer the demand of the plaintiff. It is issued in the name of the Lord Chancellor, or, if the office of Lord Chancellor is vacant, in the name of the Lord Chief Justice. The nature of the claim put forward by the plaintiff is indorsed on the writ. Strictly speaking, the writ should be served personally upon the defendant, but it is often arranged between the parties that service shall be made upon the solicitor who acts for the defendant. If the defendant cannot be traced, or if he is living without the jurisdiction, other methods of service must be resorted to. These are matters of practice into which it is unnecessary to enter. A writ is valid, and may be served, within twelve months of its date of issue; but if service has not been effected within that period application may be made for renewal, which will be granted, in ordinary circumstances, for successive periods of six months, though a fresh application has to be made after each six months. By keeping the writ alive the operation of the Statute of Limitations (*q.v.*) is prevented. After a writ has been served upon him, or after the interval allowed for substituted service, the defendant has eight days within which to enter an appearance. If he fails to do so, judgment may be entered against him. But if an appearance is entered then action runs its due course, unless in the meantime one of the parties withdraws from it. (See *Action*.)

WRITE OFF. (Fr. *Inscrire, défalquer*, Ger. *abschreiben*, Sp. *Descargar*, It. *Annullare*.)

In book-keeping, this term generally refers to the closing of an account by transferring the balance of a debt to the debit of profit and loss account.

WROUGHT GOLD. (Fr. *Orfévri*, Ger. *verarbeitetes Gold*, Sp. *Oro trabajado*, It. *Oro lavorato, orificeria*.)

The gold which is known by this name is made into two legal standards—one is 22 carats of pure gold, chiefly used for coins; the other is 18 carats, and is mostly used for the manufacture of jewellery and plate.

X. This letter is used in the following abbreviations:—

X.c., Ex Coupon.
X.d., Ex Dividend.
X.in., Ex Interest.
X.new, Ex New.

Y is used in the combination Y/A, as an abbreviation for York-Antwerp Rules (marine insurance).

YARD. (Fr. *Yard*, Ger. *Elle*, Sp. *Yarda*, It. *Jarda*, *Yard*, *Misura di lunghezza pai a metri* .92.)

This is the British standard of length. It is defined by an Act of Parliament, passed in 1855, as the straight line or distance between the centres of the transverse lines in the two gold plugs in the bronze bar deposited in the office of the Exchequer when the temperature is at 62° Fahrenheit. If this standard should by any chance be destroyed, it may be replaced by means of its copies. Should these in turn fail the length must be restored by pendulum observations.

The measure of the yard is 3 feet or 36 inches.

YEARLY TENANCY. (See *Landlord and Tenant*.)

YEAR'S PURCHASE. (Fr. *Loyer d'un nombre (spécifié) d'années*, Ger. *Jahre der Miete*, Sp. *Años adelantados*, It. *Prezzo d'acquisto calcolato secondo la rendita di tanti anni*.)

This term is used to indicate that landed or house property is worth so many times its annual rental.

YEN. (Fr., Ger., Sp., and It., *Yen*.) This is the new unit of value in Japan. It is represented by both gold and silver coins. The value of the gold twenty yen piece is £2 0s. 11½d., which gives the circulating value of the silver token yen at about 2s. 0½d., or 9.76 yens at par are equal to £1.

YORK-ANTWERP RULES. (Fr. *Règlements York-Anvers*, Ger. *York-Antwerpen Statuten*, Sp. *Reglamentos York-Amberes*, It. *Statuti (Regolamenti) York-Anversa*.)

This is the name given to a set of rules in accordance with which underwriters agreed to act in the adjustment of named insurance losses. These rules were drawn up at a conference of underwriters held at Antwerp in 1887, as modified by a subsequent conference held at Liverpool in 1890.

ZOLLVEREIN. (Fr. *Zollverein*, Ger. *Zollverein*, Sp. *Zollverein union aduanaera*, It. *Zollverein o unione commerciale tedesca*.)

This is the name of the union of the various German states, under the leadership of Prussia, established in 1818, to enable them, in their commercial dealings with other countries, to act as one. The need for such a union had long been

felt, for it was utterly ruinous to commerce to be compelled to cross a frontier every few miles. After the establishment of the Zollverein all import duties were collected on a common frontier, and the moneys received were divided among the different states in proportion

to their populations. The affairs were managed by a council of delegates from the states. Since the union of the Empire of Germany under one sovereign the Zollverein has ceased to be of importance.

THE END

“PELMANISM” IN 1918

By EDWARD ANTON

Next to the war there is probably no topic so much the subject of conversation as the prominent part in the affairs of the Empire which has been played by that remarkable new force—*Pelmanism*. The progress of this movement may be taken as an earnest of the still greater part which it will play in the future; for, in the space of a few months, the Pelman Institute has risen from the status of a private concern to that of a truly national institution.

The credit of “discovering” the immense possibilities of “Pelmanism” as a factor of national and individual betterment belongs largely to “Truth,” which, after a close and critical investigation of all the available evidence, devoted an entire supplement to a report on the work of the Pelman Institute in May, 1916, and issued further supplements in May, 1917, and in June, 1918.

The effect of these reports—emanating from a source well known for its fearless independence—was electrical. Every section of the community responded to “Truth’s” sounding call to efficiency. To satisfy the enormous public demand for the reports, several large editions (amounting to some hundreds of thousands) were reprinted and distributed free through the medium of announcements in the “Daily Mail,” “The Times,” and other leading journals. A large proportion of these reprints was reserved for the Army and the Navy; but every class of the public displayed eagerness for copies, and the demand, I may add, is still unabated. I venture the opinion that “Truth” performed a national service of no small value when it devoted its columns to the work of opening the eyes of the public to the practical importance of “Pelmanism” as an aid to personal efficiency and progress.

And now, I repeat, “Pelmanism” has become a *national* movement. No fewer than 38,000 people enrolled for the Course in the first 5 months of 1918, and every day—nay, every hour—brings fresh evidence of its almost limitless possibilities. It is affirmed—and I believe it wholeheartedly—that no man or

woman who has conscientiously followed Pelman principles has ever failed to reap substantial benefit.

Some have utilised it primarily as a means of gaining increased incomes and better positions in business or professional life; others adopt it with a view to securing greater mental development and a higher standard of personal efficiency; others, again, find it of superlative value educationally and intellectually. It appeals to every individual who desires to progress and to prosper, no matter what the sphere of his or her work or ambitions may be.

The registers of the Institute show that every conceivable vocation or occupation is represented therein. I will deal with the various “groups” further on; but in the meantime I desire to emphasize, by every means in my power, the fact that there is no class of men or women who can afford to disregard “Pelmanism,” whatever their education may have been, whatever their present position and attainments may be.

What is the Pelman System? The question is not easily answered in small space. I can best illustrate the effects of a Pelman Training by a reference to what takes place when a course of scientific physical culture is followed. The physical culturist first learns the use of each group of muscles; he then *exercises* them systematically in order to develop their power and to bring them under his direct control. The result is a very high maximum of physical efficiency, every set of muscles being brought into *fully* effective use and proper co-ordination of effort being introduced. The Pelman System applies the same scientific methods to the various faculties of the mind, and with equally definite and equally certain results. But whereas the degree of physical development is limited, the possibilities of *mental* development are practically *limitless*. That is why the University man and the Army chief are able, equally with the man of elementary education, the clerk or the private, to derive direct and tangible benefits from the adoption of Pelmanism.

The Pelman System is, moreover,

distinguished by its inexhaustible adaptability. It is not a mental strait-jacket, but an instrument of wonderful range and elasticity. Instead of attempting to impose "cut-and-dried" rules and methods of thought, it shows the student how to give effective expression to his or her own ideals, aims, and personality. In fact, it completes a man or woman in the mental sense, just as bodily training completes them in the physical sense. That is possibly why the Pelman System has so very often been the means of developing latent (and unsuspected) powers of the mind. It arouses the student to a recognition of his or her own powers and opportunities, inspiring self-confidence, moral courage, and the desire for effective action. As a mental and moral "tonic" it is, by the testimony of many students, well worth many times the time spent upon it.

INCOMES DOUBLED AND TREBLED.

Let us first see what has been accomplished, in a financial sense, as a result of following the Pelman System. Evidence is piled mountain-high in this regard, for probably 60 per cent. of those who take up the Pelman Course do so with the idea of increasing their incomes. Having achieved this object, they proceed to realise some of the "higher values" of Pelmanism—values which, to quote the words of an ardent Pelmanist, are "far above money."

It will be conceded that, in one sense, financial gain is the most *solid* evidence that could be desired. A man might imagine that his power of concentration and application to work had improved or that he was more observant or had developed greater will power, but not even the most vivid imagination could explain substantial monetary gains such as are daily reported by students of the Pelman Course. Here are a few reports, taken almost at random, from the records of the Institute—

- Rise of £145 per annum.
- Doubled my turnover.
- Salary increased by £125 (woman).
- Salary improved 300 per cent.
- Literary prize of £250.
- My income has gone up 300 per cent.
- Substantial increase in my salary.
- Increase of salary of 50 per cent.
- Increased turnover and salary.
- My turnover has beaten all records.
- My business has increased considerably.
- Salary exactly doubled.

—Added £80 to my commission account.

—I have had a 40 per cent. rise.

—The means of making my income double.

—Greatest increase in business.

The above "results" are quoted in the exact words of the writers; in every case they are reported with *other* benefits which have accrued from the Course. In some cases the gains have resulted from a few weeks' study of "Pelmanism"; in other cases a longer period has elapsed. The time depends upon the diligence and adaptability of the student; and those are factors which are not within the control of the Pelman Institute.

THE ARMY AND NAVY.

Nearly 40,000 officers and men of both Services are now Pelmanists, the list being headed by over 100 admirals and generals. The mere fact that such a large number are studying the Course, in spite of such drawbacks as scanty leisure and adverse environment, speaks volumes for the estimation in which Pelmanism is held by the Services. Equally significant is the frequency with which generals send their subordinate officers to be enrolled, and regimental commanders often pay the fee for one or more of their N.C.O.'s.

Whilst the bulk of Army and Navy men take the Course as being indispensable to their professional efficiency, it is worthy of note that a secondary object is to gain increased efficiency for business when the war is over and the soldier or sailor returns to civil life.

PROFESSIONAL MEN AND "PELMANISM."

All classes of professional men have displayed the keenest interest in the Pelman System. Doctors, solicitors, barristers, architects, auditors, journalists, authors, civil engineers, educationists—these have all enrolled in large numbers, and have supplied astonishing evidence of the value of the Course to them in their daily work. A few examples of letters received from professional men are appended.

From a Doctor.

"I took the Pelman Course because my practice was not in a satisfactory condition, and I could not discover the cause. Your lessons enabled me to analyse the trouble, discover the weak points, and correct them, with most satisfactory results. Your Course has proved to be a splendid investment for me. My chief regret is that I did not

take it at the beginning of my student days."

From an Engineer.

"The Course has been thoroughly enjoyable. I have taken a real interest in it; in fact, its fascination compels one to be interested. The benefits I have derived are: Self-confidence, greater interest, power, initiative, wider outlook, ability to do more and better work with greater rapidity, and less fatigue. It is a course I would recommend every one to take advantage of."

From a Solicitor.

"I have found the Course particularly useful in my business; it has helped me to advise far more usefully, and to deal with professional work and problems far more efficiently. Altogether I have no hesitation whatever in recommending the Pelman Course as a wonderful tonic to the mind. No one who practises the System perseveringly can possibly fail to receive great benefit."

From a Private Tutor.

"Speaking from my own personal experience I should have no hesitation in saying that everybody who can do so ought to take a Course of Pelman training. I have applied the memory methods successfully in learning a new language. Increased self-confidence, improved concentration, a disciplined imagination, and a reliable memory are among the many benefits which all who give the Course a fair trial gladly acknowledge. No wonder Pelman students are enthusiastic."

PELMAN TRAINING FOR WOMEN.

The number of women students of the Pelman Course has noticeably increased since the war had the effect of greatly enlarging the sphere of women's activities. Here are some interesting letters from women who have taken a Pelman Training.

"Benefit and Enjoyment."

"I have derived much benefit and enjoyment from the Course. I have been enabled to perform more difficult and responsible work, and my salary has been increased.—A WOMAN CLERK."

Rapid Business Progress.

"Ten months ago I decided to venture on a business life. I had no business experience at all, and anticipated a difficult time, being very nervous and shy. I took up the Pelman Course: Began in September last as a clerk; was promoted and my salary increased 25 per cent. in November; and in March, 1916, I was again promoted to book-keeper (not

a war post), with another increase. Within a year I expect to be earning double my salary. I attribute the greater part of my success to Pelman, for I worked on Pelman lines.—A WOMAN BOOK-KEEPER."

Increased Earning Power.

"I am now earning on an average £1 ls. per week by my pen over and above my salary. This is due entirely to Pelman, who taught me how to do the maximum amount of work with a minimum amount of energy.—A GOVERNESS."

A Lady of Fifty.

"My object in studying the Pelman Course was not in any way a professional one, but simply to improve my memory and mental capacity, which, at the age of 50, were, I felt, becoming dull and rusty. I have found the Course not only most interesting, but calculated to give a mental stimulus, keenness, and alertness to one's mind, which is what most people need at my age. Anyone who goes through the Course is bound to receive real benefit and find a delightful occupation.—INDEPENDENT MEANS."

From a Titled Lady.

"So struck is my husband by the good I have already derived from the Pelman Course, that, as soon as his present arduous duties permit, he fully hopes to do a Course himself. Also he brought Pelman to the notice of a brother officer whom he felt it would benefit, and this same officer has not only started the Course himself, but, in his turn, wishes his wife also to take it up."

"PELMANISM" IN THE BUSINESS WORLD.

The new movement has made tremendous progress amongst all classes of business men. In many cases the enrolment of one member of a firm is quickly followed by others from the same firm. Quite recently enrolments were made, in one day, from *eight members* of one large firm (including managing director, works manager, warehouse manager, cashier, correspondent, foreman, invoice clerk, and forwarding clerk). Such facts render comment superfluous. The frequency with which business principals pay for the enrolment of their employees proves that "Pelmanism" supplies a convincing answer to the question "Is it worth while?" Here are a few interesting letters from business men—

From a Director.

"I consider the Pelman Course is of the utmost value. It teaches one how to observe and to think in the right way,

distinguished by its inexhaustible adaptability. It is not a mental strait-jacket, but an instrument of wonderful range and elasticity. Instead of attempting to impose "cut-and-dried" rules and methods of thought, it shows the student how to give effective expression to his or her own ideals, aims, and personality. In fact, it completes a man or woman in the mental sense, just as bodily training completes them in the physical sense. That is possibly why the Pelman System has so very often been the means of developing latent (and unsuspected) powers of the mind. It arouses the student to a recognition of his or her own powers and opportunities, inspiring self-confidence, moral courage, and the desire for effective action. As a mental and moral "tonic" it is, by the testimony of many students, well worth many times the time spent upon it.

INCOMES DOUBLED AND TREBLED.

Let us first see what has been accomplished, in a financial sense, as a result of following the Pelman System. Evidence is piled mountain-high in this regard, for probably 60 per cent. of those who take up the Pelman Course do so with the idea of increasing their incomes. Having achieved this object, they proceed to realise some of the "higher values" of Pelmanism—values which, to quote the words of an ardent Pelmanist, are "far above money."

It will be conceded that, in one sense, financial gain is the most *solid* evidence that could be desired. A man might imagine that his power of concentration and application to work had improved or that he was more observant or had developed greater will power, but not even the most vivid imagination could explain substantial monetary gains such as are daily reported by students of the Pelman Course. Here are a few reports, taken almost at random, from the records of the Institute—

- Rise of £145 per annum.
- Doubled my turnover.
- Salary increased by £125 (woman).
- Salary improved 300 per cent.
- Literary prize of £250.
- My income has gone up 300 per cent.
- Substantial increase in my salary.
- Increase of salary of 50 per cent.
- Increased turnover and salary.
- My turnover has beaten all records.
- My business has increased considerably.
- Salary exactly doubled.

—Added £80 to my commission account.

—I have had a 40 per cent. rise.

—The means of making my income double.

—Greatest increase in business.

The above "results" are quoted in the exact words of the writers; in every case they are reported with *other* benefits which have accrued from the Course. In some cases the gains have resulted from a few weeks' study of "Pelmanism"; in other cases a longer period has elapsed. The time depends upon the diligence and adaptability of the student; and those are factors which are not within the control of the Pelman Institute.

THE ARMY AND NAVY.

Nearly 40,000 officers and men of both Services are now Pelmanists, the list being headed by over 100 admirals and generals. The mere fact that such a large number are studying the Course, in spite of such drawbacks as scanty leisure and adverse environment, speaks volumes for the estimation in which Pelmanism is held by the Services. Equally significant is the frequency with which generals send their subordinate officers to be enrolled, and regimental commanders often pay the fee for one or more of their N.C.O.'s.

Whilst the bulk of Army and Navy men take the Course as being indispensable to their professional efficiency, it is worthy of note that a secondary object is to gain increased efficiency for business when the war is over and the soldier or sailor returns to civil life.

PROFESSIONAL MEN AND "PELMANISM."

All classes of professional men have displayed the keenest interest in the Pelman System. Doctors, solicitors, barristers, architects, auditors, journalists, authors, civil engineers, educationists—these have all enrolled in large numbers, and have supplied astonishing evidence of the value of the Course to them in their daily work. A few examples of letters received from professional men are appended.

From a Doctor.

"I took the Pelman Course because my practice was not in a satisfactory condition, and I could not discover the cause. Your lessons enabled me to analyse the trouble, discover the weak points, and correct them, with most satisfactory results. Your Course has proved to be a splendid investment for me. My chief regret is that I did not

take it at the beginning of my student days."

From an Engineer.

"The Course has been thoroughly enjoyable. I have taken a real interest in it; in fact, its fascination compels one to be interested. The benefits I have derived are: Self-confidence, greater interest, power, initiative, wider outlook, ability to do more and better work with greater rapidity, and less fatigue. It is a course I would recommend every one to take advantage of."

From a Solicitor.

"I have found the Course particularly useful in my business; it has helped me to advise far more usefully, and to deal with professional work and problems far more efficiently. Altogether I have no hesitation whatever in recommending the Pelman Course as a wonderful tonic to the mind. No one who practises the System perseveringly can possibly fail to receive great benefit."

From a Private Tutor.

"Speaking from my own personal experience I should have no hesitation in saying that everybody who can do so ought to take a Course of Pelman training. I have applied the memory methods successfully in learning a new language. Increased self-confidence, improved concentration, a disciplined imagination, and a reliable memory are among the many benefits which all who give the Course a fair trial gladly acknowledge. No wonder Pelman students are enthusiastic."

PELMAN TRAINING FOR WOMEN.

The number of women students of the Pelman Course has noticeably increased since the war had the effect of greatly enlarging the sphere of women's activities. Here are some interesting letters from women who have taken a Pelman Training.

"Benefit and Enjoyment."

"I have derived much benefit and enjoyment from the Course. I have been enabled to perform more difficult and responsible work, and my salary has been increased.—A WOMAN CLERK."

Rapid Business Progress.

"Ten months ago I decided to venture on a business life. I had no business experience at all, and anticipated a difficult time, being very nervous and shy. I took up the Pelman Course: Began in September last as a clerk; was promoted and my salary increased 25 per cent. in November; and in March, 1916, I was again promoted to book-keeper (not

a war post), with another increase. Within a year I expect to be earning double my salary. I attribute the greater part of my success to Pelman, for I worked on Pelman lines.—A WOMAN BOOK-KEEPER."

Increased Earning Power.

"I am now earning on an average £1 ls. per week by my pen over and above my salary. This is due entirely to Pelman, who taught me how to do the maximum amount of work with a minimum amount of energy.—A GOVERNESS."

A Lady of Fifty.

"My object in studying the Pelman Course was not in any way a professional one, but simply to improve my memory and mental capacity, which, at the age of 50, were, I felt, becoming dull and rusty. I have found the Course not only most interesting, but calculated to give a mental stimulus, keenness, and alertness to one's mind, which is what most people need at my age. Anyone who goes through the Course is bound to receive real benefit and find a delightful occupation.—INDEPENDENT MEANS."

From a Titled Lady.

"So struck is my husband by the good I have already derived from the Pelman Course, that, as soon as his present arduous duties permit, he fully hopes to do a Course himself. Also he brought Pelman to the notice of a brother officer whom he felt it would benefit, and this same officer has not only started the Course himself, but, in his turn, wishes his wife also to take it up."

"PELMANISM" IN THE BUSINESS WORLD.

The new movement has made tremendous progress amongst all classes of business men. In many cases the enrolment of one member of a firm is quickly followed by others from the same firm. Quite recently enrolments were made, in one day, from *eight members* of one large firm (including managing director, works manager, warehouse manager, cashier, correspondent, foreman, invoice clerk, and forwarding clerk). Such facts render comment superfluous. The frequency with which business principals pay for the enrolment of their employees proves that "Pelmanism" supplies a convincing answer to the question "Is it worth while?" Here are a few interesting letters from business men—

From a Director.

"I consider the Pelman Course is of the utmost value. It teaches one how to observe and to think in the right way,

which few realise who have not studied it. The great charm to me was the realisation of greater power to train oneself for more and more efficiency. I gained from each lesson right up to the end of the Course."

From a Clerk.

"Looking back over the time since I first enrolled for the Course, I marvel at the changed outlook and wide sphere which it opened out to me. The personal benefits are a great increase of self-confidence and a thousand-fold better memory. . . . If only the public knew your Course, I am sure your offices would be literally besieged by prospective students."

From a Works Manager.

"Your System has certainly been of great assistance to me in a variety of ways. Up to recently I was works manager for a big firm of yarn spinners, but have now attained the position of right-hand man to the owners, being removed from the executive to the administrative side of the business."

From a Bank Cashier.

"I have much pleasure in testifying to the practical value of the Pelman System as a means of developing one's mental powers. My chief regret is that I did not take the Course years ago. I have found the training of great value in clearness of mental vision, quickness of decision, and greater self-confidence. The outlay is quite nominal compared with the great advantages attained."

From a Printer.

"I only wish I had taken the Pelman Course twenty or thirty years ago. The System is interest-compelling, is easily understood, and if intelligently and conscientiously followed produces results which are unmistakably encouraging."

From a Foreign Correspondent.

"It is with great pleasure that I certify having derived great benefit from the Pelman System of Mind and Memory Training. I have greatly improved in will power and memory, and can do my work much easier."

From a Textile Buyer.

"From my own experience I would strongly recommend the Pelman Course to all who are ambitious and keenly desirous of success. Perhaps its greatest value is that it causes one to feel more independent of circumstances of any and

every kind; it tends to transfer our destiny from chance into our own keeping."

From an Advertising Manager.

"As advertising manager for a large firm of manufacturing chemists, I have, by thinking along the lines laid down in the Course, been able to evolve a number of ideas for new lines which must, in part, at any rate, be credited to your System of training."

"TRUTH'S" SUMMING UP.

I cannot do better than to quote from the conclusion arrived at by "Truth's" investigator, and which formed the finale to the first report—

"The Pelman System places the means of progress within the reach of every one. It does not provide a brain for the brainless, but it does provide every one with the means of making the best use of the faculties with which Nature has endowed him, and bringing them to full fruition. What that fruition will be depends, of course, on the original capabilities of the student; but it needs no great knowledge of the world to be aware that the man with well-ordered mind and reliable memory is at an advantage over him whose faculties, though naturally greater, have been undeveloped or developed at random. The moral is, of course, for those who want to make the most of their natural endowments to equip themselves for success in the battle of life to see that their minds are trained to the point of efficiency. With that object they cannot do better than take advantage of the course of instruction offered to them by the Pelman Institute."

A full description of the Pelman System is given in "Mind and Memory," with many interesting illustrations of the manifold utilities of Pelmanism, and evidence of its value to various classes of men and women. A free copy of this book, together with a free copy of "Truth's" latest report, will be sent, post free, to any reader of "The Business Man's Guide" who sends a postcard applying for same to The Pelman Institute, 360 Pelman House, Bloomsbury Street, London, W.C.1.

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