

**A TREATISE**  
**ON THE**  
**LAW OF RAILWAY COMPANIES,**  
**IN THEIR**  
**Formation, Incorporation, and Government ;**  
**WITH**  
**AN ABSTRACT OF THE STATUTES,**  
**AND**  
**A TABLE OF FORMS.**

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**BY**  
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## P R E F A C E.

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SINCE this work was projected, and in great part executed, several others on similar subjects have issued from the press. The various reasons, personal and professional, which have delayed the publication of the present volume until now, it is quite unnecessary to obtrude upon the reader. Suffice it to observe that that delay was felt to be unavoidable, and, though greatly regretted by the writers at the time, has been attended with, at least, one advantage, that of enabling them to include in their work full notices of the modifications in the law which recent judicial decisions have effected, and some account of the alterations in the practice of Parliament in relation to Railway Bills introduced by the new Standing Orders of the two Houses,—although the changes in the latter are so frequent as to require the constant vigilance of the parliamentary agent to ensure regularity and accuracy in conducting a bill through its several stages. In now submitting to the public the result of their labours, the writers are sensible that in their treatment of topics on which the law is so unsettled, and of proceedings in which the practice is so various, they have had difficulties to contend with which it would be absurd to suppose, and arrogant to affirm, that they had successfully surmounted. During a considerable portion of the period occupied in the composition of this volume, the legal profession has been in a state of perplexity and doubt, and society in a condition of anxiety and

alarm, in reference to the rights and liabilities springing from the novel and peculiar relations introduced among men by railway speculation. The drift of judicial decision appeared to fluctuate, and the application of the admitted principles of law seemed hazardous, amid the doubts engendered, and the uncertainty felt in regard to the nature and extent of the obligations incurred, and the rights acquired, in respect of railway property, in the several stages of a company's existence. The principles on which these questions are to be solved, the writers have aimed to explain as clearly and correctly as the inherent difficulties and adventitious perplexities of the subject admitted; and they entertain a hope that the doctrines propounded will be found abundantly justified both by the decisions cited in their support, and by a legitimate application to the several cases of those rules of law which govern the contracts, and determine the rights and liabilities of parties in relation to the more ordinary transactions of mankind. Some indulgence may, perhaps, fairly be claimed, and will, doubtless, be readily conceded, should there be found any errors or omissions in the discussion of topics so new and so numerous as those which are embraced within the scope of this treatise. The writers have spared no pains to be at once full and accurate in their treatment of the several branches of their subject. At the same time they have been anxious not to trespass beyond the limits of their plan into the regions of general law, pleading and evidence; and they have felt it difficult at times to effect a just compromise between too general a treatise on the principles of law in respect to the rights and remedies of contracting parties; the mutual claims and obligations of partners; the powers and disabilities of corporations, and the like; and too restricted a view of the doctrines and decisions directly affecting the engagements and relations of Railway Companies.

It will be observed by the reader that some topics have fallen under consideration more than once in the several portions of



the work, and legal doctrines been repeated in different connexions; the authors being willing rather to run the risk of being blamed for repetition, than incur censure for negligence and oversight in the discussion of their subject. Thus, under the division of remedies, frequent references to the nature and limits of the rights before expounded were quite unavoidable; and in discoursing of the duties and responsibilities springing from certain established relations, the powers and claims incident to those relations could not be overlooked, although they had been more formally and minutely treated in another part of the volume. If perspicuity and comprehensiveness have hereby been secured, the writers will submit the more cheerfully to critical rebuke for occasional redundancy.

With a view to the direct and practical usefulness of the work, (the great object throughout) an elaborate digested Index has been appended, whereby it is hoped every topic discussed may be readily found, under several different titles; so that the student and practitioner may be able in a moment to avail himself of any assistance which the treatise may be calculated to afford him in the prosecution of his researches, and the dispatch of his business. With the same view, and in accordance with a wholesome modern practice, the cases cited are arranged in the table under the names both of the plaintiffs and the defendants.

The Appendix, in addition to an Abstract of the Statutes relating to railways, contains a number of forms of public and private notices, warrants, orders, appointments, agreements, awards, and the like, adapted to the various exigencies of a Railway Company, and of those who either would negotiate and contract with such a body, or are liable to be affected by its proceedings; and it is hoped that they will be found serviceable, as precedents capable of being modified to suit the multifarious demands of actual practice.

The Addenda, at the commencement of the volume, include

all the recent cases on the subject of the treatise which have appeared in the reports up to the time of publication.

These are all the explanations which it seems necessary to give of the work now submitted, with great diffidence, to the candour and indulgence of the profession; and the authors only detain the reader a moment longer to acknowledge the assistance they have derived from the learned authors who have preceded them in their labours, and to the merits of whose productions both the profession and the public have borne a testimony, not indeed more sincere, but far more satisfactory than the eulogies, however earnest, of their fellow-labourers in the same arduous field could possibly furnish. The references in the various notes scattered through the following pages will indicate the nature and extent of the obligations which the writers have incurred in such quarters.

*Middle Temple,*  
*Michaelmas Term, 1847.*

# CONTENTS.

---

<b>INTRODUCTION</b>	<b>Page</b> <b>1</b>
---------------------	-------------------------

## BOOK I.—FORMATION OF THE COMPANY.

### CHAPTER I.

<b>PRELIMINARY PROCEEDINGS RENDERED NECESSARY BY 7 &amp; 8 VIC.</b>	
c. 110	6
<b>SECT. 1.—Provisional Registration and Preliminary Pro-</b>	
ceedings	7
2.—Distribution of Shares	14
3.—Execution of Deeds	19

### CHAPTER II.

#### RIGHTS, REMEDIES, AND LIABILITIES OF THE PROMOTERS AND MEMBERS OF A COMPANY RESPECTIVELY BEFORE THE ACT IS OBTAINED,

<b>SECT. 1.—Rights and Liabilities of the Original Promoters</b>	
before the Formation of a Provisional Com-	
mittee	24
<b>2.—Rights, Powers and Liabilities of the Members</b>	
of a Provisional Committee	27
<b>3.—Allottees; their Rights and Liabilities</b>	
	50
<b>4.—Rights, Remedies, and Liabilities of the</b>	
Managing Committee and Shareholders	
after Execution of the Deeds	56
<b>5.—Sale of Scrip</b>	
	67
<b>6.—Rights and Liabilities of Vendors and Pur-</b>	
chasers of Scrip	76
<b>7.—Complete Registration</b>	
	81

**BOOK II.—INCORPORATION OF THE COMPANY.**

**CHAPTER I.**

<b>PRELIMINARY PROCEEDINGS RENDERED NECESSARY BY THE STANDING ORDERS OF THE HOUSES OF PARLIAMENT.</b>				<b>Page</b>
<b>SECT. 1.</b>	<b>—The Parliamentary Agent</b>	-	-	89
	<b>2.—Notices to the Public</b>	-	-	91
	<b>3.—Notices to Owners and Occupiers</b>	-	-	94
	<b>4.—Plans and Sections</b>	-	-	95
	<b>5.—Subscription, Contract, and Estimate</b>	-	-	101
	<b>6.—Petition, Declaration, and Bill</b>	-	-	102
	<b>7.—Deposit</b>	-	-	110
	<b>8.—Examiners of Petitions</b>	-	-	115

**CHAPTER II.**

**PROCEEDINGS IN THE HOUSE OF COMMONS.**

<b>SECT. 1.</b>	<b>—Petition for a Bill</b>	-	-	121
	<b>2.—Select Committee on Standing Orders</b>	-	-	122
	<b>3.—Presentation and First Reading of the Bill</b>	-	-	124
	<b>4.—Second Reading</b>	-	-	127
	<b>5.—Committee of Selection, and Committee on an Unopposed Bill</b>	-	-	129
	<b>6.—Select Committee on an Opposed Bill</b>	-	-	131
	<b>7.—Third Reading of the Bill</b>	-	-	153

**CHAPTER III.**

**PROCEEDINGS IN THE HOUSE OF LORDS.**

<b>SECT. 1.</b>	<b>—Preliminaries to the Introduction of a Bill to the Upper House</b>	-	-	154
	<b>2.—Committee on Standing Orders</b>	-	-	156
	<b>3.—Second Reading</b>	-	-	160
	<b>4.—Committee on the Bill</b>	-	-	161
	<b>5.—Third Reading</b>	-	-	164
	<b>6.—Royal Assent</b>	-	-	165

**CHAPTER IV.**

**PARLIAMENTARY FEES, AND AGENTS' AND SOLICITORS' BILLS.**

<b>SECT. 1.</b>	<b>—Parliamentary Fees</b>	-	-	166
	<b>2.—Agents' and Solicitors' Bills</b>	-	-	166

## BOOK III.—FORMATION OF THE LINE.

## CHAPTER I.

<b>PURCHASE AND TAKING OF LANDS.</b>	<b>Page</b>
Preliminary Matters	174
SECT. 1.—What Lands may be taken	185
2.—What Parties may Claim Compensation, and for what Injuries	188
3.—Purchase of Lands by Agreement	195
4.—Purchase of Lands otherwise than by Agreement	200
5.—Conveyances	236
6.—Entry on Lands	241
7.—Proceedings in respect of Lands subject to Public, <i>Quasi</i> -Public, and Peculiar Rights and Burdens	248
8.—Lands subject to Private Rights and Burdens	254
9.—Interests omitted to be purchased, and the Sale of superfluous Lands	261

## CHAPTER II.

<b>RIGHTS OVER PROPERTY NOT PURCHASED</b>	<b>267</b>
SECT. 1.—Right to the temporary Use and Occupation of Property not purchased	268
2.—Right to make permanent alterations in Property not purchased	270
3.—Right to vary and restrict the Rights of others over their Property	281

## CHAPTER III.

<b>EXECUTION OF WORKS</b>	<b>287</b>
SECT. 1.—General Powers and Restrictions in the execution of the Works	288
2.—Deviations from the proposed Line	293
3.—Crossing and diverting Turnpike and other Roads	299
4.—Works for the accommodation of adjoining Lands	314
5.—Branch Railways	320
6.—Drainage of Lands in Ireland	323
7.—Miscellaneous matters connected with the Formation of the Line	325

## BOOK IV.—WORKING OF THE LINE.

CHAPTER I.		Page
OPENING OF THE RAILWAY	- - -	334
CHAPTER II.		
USER OF THE LINE	- - -	337
SECT. 1.—User of the Railway by the Public	- - -	338
2.—User of the Railway by the Company as Common Carriers	- - -	340
CHAPTER III.		
ENGINES AND CARRIAGES	- - -	358
CHAPTER IV.		
TRAINS	- - -	366
CHAPTER V.		
TOLLS, RATES, AND CHARGES	- - -	376
SECT. 1.—General legal Principles and Provisions in relation to Tolls, Rates, and Charges	- - -	377
2.—Tolls and Charges payable to a Railway Company as Owners and Proprietors of the Line	- - -	385
3.—Rates and Charges payable to a Railway Company as Carriers of Goods and Passengers	- - -	389
CHAPTER VI.		
BYE-LAWS	- - -	394
CHAPTER VII.		
PUBLIC AND PRIVATE BURDENS	- - -	400
CHAPTER VIII.		
GOVERNMENT NOTICES AND RETURNS	- - -	415

## BOOK V.—CONSTITUTION, FUNCTIONS, AND GOVERNMENT OF THE COMPANY.

CHAPTER I.		
AS TO GOVERNMENT	- - -	420
SECT. 1.—Directors	- - -	420

# CONTENTS.

xiii

	Page
SECT. 2.—Meetings	441
3.—Officers	447

## CHAPTER II.

CAPITAL	453
SECT. 1.—Shares	453
2.—Calls	492
3.—Dividends	503
4.—Loans	506

## CHAPTER III.

CONTRACTS	517
-----------	-----

# BOOK VI.—REMEDIES.

## CHAPTER I.

REMEDIES AGAINST A RAILWAY COMPANY IN EQUITY	529
SECT. 1.—Injunction	532
2.—Specific Performance	549

## CHAPTER II.

REMEDIES AGAINST A RAILWAY COMPANY AT COMMON LAW.	
SECT. 1.—Mandamus	554
2.—Certiorari	575
3.—Assumpsit	582
4.—Debt and Covenant	585
5.—Case and Trespass	590
6.—Trover	601
7.—Ejectment	606

## CHAPTER III.

CRIMINAL AND OTHER REMEDIES AGAINST A RAILWAY COMPANY.	
SECT. 1.—Indictment	610
2.—Summary Proceedings	614

## CHAPTER IV.

REMEDIES BY A RAILWAY COMPANY	
SECT. 1.—In Equity and at Common Law	625
2.—Criminal and Statutory Remedies by a Railway Company	633

# CONTENTS OF APPENDIX.

---

## No. I.—ABSTRACT OF STATUTES.

	PAGE
1 & 2 VIC. c. 98.	
An Act to provide for the Conveyance of the Mails by Railways. (14th Aug. 1838.)	643
3 & 4 VIC. c. 97.	
An Act for Regulating Railways. (10th Aug. 1840.)	644
5 & 6 VIC. c. 55.	
An Act for the better Regulation of Railways, and for the Conveyance of Troops. (30th July, 1842.)	645
7 & 8 VIC. c. 85.	
An Act to attach certain Conditions to the Construction of future Railways, authorised or to be authorised by any Act of the present or succeeding Sessions of Parliament, and for other purposes in relation to Railways. (9th Aug. 1844.)	647
8 VIC. c. 16.	
An Act for Consolidating in One Act certain Provisions usually inserted in Acts with respect to the Constitution of Companies incorporated for carrying on Undertakings of a Public nature. (8th May, 1845.)	649
8 VIC. c. 18.	
An Act for Consolidating in One Act certain Provisions usually inserted in Acts, authorising the taking of Lands for Undertakings of a Public nature. (8th May, 1845.)	656
8 VIC. c. 20.	
An Act for Consolidating in One Act certain Provisions usually inserted in Acts authorising the making of Railways. (8th May, 1845.)	667



7 & 8 Vic. c. 110.

An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies. 677

10 & 11 Vic. c. 78.

An Act to amend an Act for the Registration, Incorporation, and Regulation of Joint Stock Companies. 682

9 Vic. c. 20.

An Act to amend an Act of the Second Year of her present Majesty, for providing for the Custody of certain Monies paid in pursuance of the Standing Orders of either House of Parliament, by Subscribers to Works or Undertakings to be effected under the Authority of Parliament. 683

9 & 10 Vic. c. 28.

An Act to facilitate the Dissolution of certain Railway Companies. 684

9 & 10 Vic. c. 57.

An Act for Regulating the Guage of Railways. 687

10 & 11 Vic. c. 69.

An Act for the more effectual Taxation of Costs on Private Bills in the House of Commons. 687

9 & 10 Vic. c. 93.

An Act for Compensating the Families of Persons killed by Accidents. 689

9 & 10 Vic. c. 105.

An Act for Constituting Commissioners of Railways. 689

---

## FORMS.

1. Form of Return to be made on application for Certificate of Provisional Registration—Consent to Act, and Agreement to take Shares by Provisional Committee-men ... .. 691
2. Request to be Inserted on Provisional Committee ... .. 692
3. Appointment of Solicitor to a Company provisionally registered 692

Acceptance of Appointment by Solicitor .. .. .	692
4. Revocation of Appointment of Solicitor—Resignation of Office by Solicitor ... .. .	692, 693
5. Form of Application for Shares ... .. .	693
6. Letter of Allotment—Agreement for Sale of Scrip .....	693, 694
7. Form of Scrip Certificate in a Railway Company ... .. .	695
8. Parliamentary Contract ... .. .	696
9. Subscribers' Agreement ... .. .	698
10. Notice of intention to apply to Parliament to be published in the "Gazette," and Public papers ... .. .	704
11. Notice of intended Application to Parliament to be given to Owners, Leasees, and Occupiers ... .. .	705
12. Table of Assents, Dissents, and Neuters ... .. .	707
13. Book of Reference ... .. .	708
14. Petition for Leave to bring in a Railway Bill ... .. .	709
15. Memorial complaining of Non-compliance with Standing Orders .....	709
16. Petition against a Railway Bill ... .. .	712
17. Agreement for Sale to a Railway Company of certain Lands, and for Withdrawal of Opposition in Parliament ... .. .	713
18. Requisition to Clerk in Private Bill Office for Warrant to pay Deposit into the Court of Chancery ... .. .	715
19. Warrant for Payment of Deposit into the Court of Chancery .....	716
20. Register of Book of Shareholders ... .. .	717
21. Shareholders' Address Book .. .. .	718
22. Form of Certificate of Share .. .. .	718
23. Form of Transfer of Shares or Stock ... .. .	719
23 A. Agreement for Sale of Shares .. .. .	719
24. Notice of Closing Transfer Books. ... .. .	719
25. Notice of ordinary Meeting, and of the Closing of Register of Trans- fers previous thereto. (Another Form.) .. .. .	720
26. Declaration of Transmission of Interest in Shares by Death of Share- holder ... .. .	720
27. Same where Party dies Intestate ... .. .	721
28. Same in case of Marriage of Female Shareholder ... .. .	721
28 A. Same in Case of Bankruptcy ... .. .	721
29. Notice of Call .. .. .	722
30. Declaration in an Action for Calls ... .. .	722
31. Pleas in an Action for Calls ... .. .	723
32. Notice of intention of Forfeiture of Shares ... .. .	723
33. Declaration, to accompany the Receipt of the Treasurer of a Railway Company for the price of Shares sold under a Forfeiture for non- payment of Calls .. .. .	723

34. Notice of a Judgment Creditor of a Railway Company that he is about to move for Execution against a Shareholder ...	724
35. Certificate that definite Portion of Capital has been Paid ...	725
36. Form of Mortgage Deed ... ..	725
37. Form of Bond ... ..	726
38. Form of Transfer of Mortgage or Bond ... ..	726
39. Appointment of Receiver of Tolls, &c., on application of Mortgagee .. ..	727
40. Requisition by Shareholders to Directors to Call an extraordinary Meeting of the Company ... ..	727
41. Form of Proxy ... ..	728
42. Form of Conviction ... ..	728
43. Warrant of Distress against a Railway Company to levy Penalties and Costs under a Conviction by Justices ... ..	728
44. Notice to the Treasurer of a Railway Company, demanding Payment of a Sum of Money under £20, due by the Company, under a Conviction by a Justice ... ..	729
45. Form of Conveyance on Chief Rent ... ..	730
46. Certificate that the Whole of the Capital of the Company has been subscribed .. ..	730
47. Notice to Landowner of intention of Company to take Lands .. ..	730
48. Notice by Landowner to Company of a desire to have the Amount of Compensation settled by Arbitration .. ..	732
49 A. Form of Appointment of Arbitrator by Landowner .. ..	733
49. Affidavit of the due Appointment of Arbitrators in support of a Motion for making the Submission to Arbitration a Rule of Court .. ..	733
50. Rule, making Appointment of Arbitrators a Rule of Court. .. ..	734
51. Appointment by Landowner of Arbitrator to act <i>ex parte</i> , on Default of Company to appoint one .. ..	734
52. Appointment of Umpire by Arbitrators .. ..	735
53. Award of Arbitrators .. ..	735
54. Declaration by Arbitrator or Umpire to be annexed to Award .. ..	736
55. Notice by a Railway Company to Landowners of their intention to issue their Warrant to the Sheriff .. ..	736
56. Warrant of a Railway Company to the Sheriff to summon a Jury .. ..	737
57. Warrant to the Sheriff. (Another Form.) .. ..	738
58. Notice by Company to Landowner of Time and Place of Inquiry .. ..	739
59. Form of Inquisition .. ..	741
60. Appointment of Surveyor by two Justices, where the Owner of Lands has Failed to Appear at Writ of Inquiry .. ..	742

61. Declaration of Surveyor appointed by Justices .. ..	743
62. Notice to Company by Landowner Dissatisfied with Surveyor's Valuation .. .. .	744
63. Notice to Company by Owners of Land taken or injuriously affected by the Execution of Railway Works .. .. .	744
64. Adjudication of Justices where Compensation claimed is under £50 .. .. .	745
65. Form of Conveyance .. .. .	746
66. Form of Conveyance of Land to a Railway Company ..	747
67. Nomination of two Trustees by a Party under Disability, where Compensation does not exceed £200. .. ..	749
68. Deed-poll executed by Company on Inability, Neglect, or Refusal of Landowner to Convey .. .. .	750
69. Notice by Company of intention to Enter on Lands for the purpose of Surveying, &c. .. .. .	751
70. Bond to be given by a Railway Company, where they Enter on Land before the Assessment of Compensation .. ..	751
71. Warrant by Company to Sheriff to deliver Possession ..	752
72. Notice by Company to the Owners of Lands omitted, &c., by mistake, of intention to apply to Justices for Correction of the Schedule and Plans, &c. .. .. .	753
73. Certificate of Justices correcting Plans and Books of Reference	753
74. Notice by Company to Landowner and Occupier, of Entry upon Lands for temporary purposes .. .. .	754
75. Notice by Landowner to Company, objecting to their Entry on his Lands for temporary purposes .. .. .	755
76. Order of Justices that certain Lands required by the Company for temporary purposes shall not be taken, on the ground that they are necessary for the beneficial enjoyment of other Lands	756
77. Order of Justices that certain Lands other than those originally required by the Company, shall be taken on the ground that they are more fitting .. .. .	757
78. Consent of Justices that Railway may be carried Across public highway on a Level. .. .. .	758
79. Articles of Agreement between a Railway Company and an opposing Landowner, for Withdrawing Opposition, giving Compensation, and Construction of Works .. .. .	759

## ADDENDA.

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### *Page 14—line 12.*

So much of 7 & 8 Vic. c. 110, sec. 4, as requires the return to the office of the Registrar of Joint Stock Companies, of a copy of every prospectus, hand bill, &c., is now repealed by 10 & 11 Vic. c. 78, sec. 4: and certain other particulars in addition to those not repealed, are required by section 5 to be returned, namely:—

First—The amount of the proposed capital.

Secondly—The amount and number of shares into which it is to be divided.

### *Page 30—line 9.*

Thus the committee of a company formed for constructing a railway from one place to another certain place, could not, on their capital turning out to be insufficient to carry out their own scheme, appropriate the funds in hand in furtherance of another scheme; in such case, all expenses incurred would fall on the members of the committee, and could not be deducted from the deposits of the shareholders, *Gilbert v. Cooper*, 4 B. C. 397.

### *Page 48—note (b).*

Such a plea has been decided to be bad, consequently if the defendant is not able to comply with the provisions of 3 & 4 W. 4, c. 42, sec. 8, either because one of those who contracted along with him is not resident within the jurisdiction, or because he is unable to verify his residence, the defendant is deprived of his plea in abatement altogether.

Gell and another *v.* Lord Curzon, 16 L. J., N. S., C. P. 173.

*Page 48—line 17.*

So where separate actions are brought against several joint contractors for the same cause of action, the court upon payment of the debt and costs in one action will stay the proceedings in the others without costs, *Newton v. Blunt*, C. P. 121, 16 L. J., N. S.; and if separate actions have been brought against several joint contractors, and one of such joint contractors pleads payment of money into court, the court will on the application of the other party sued, allow him to plead payment into court without actually paying in the money.

*Rendel and another v. Malleon*, 16 L. J. N. S., Ex. 168.

*Page 51—line 23.*

The doctrine laid down as above has been confirmed by the case of *Woolmer v. Toby*, 16 L. J., Q. B. 225; in which case a projected railway company issued prospectuses containing the names of provisional directors, and directing applications for shares to be made according to a form annexed, to the provisional committee of management of the company; and an application was accordingly made by the defendant on the 13th of October, in the prescribed form, and a letter of allotment was sent to him on the 15th of December, announcing that the committee had allotted him certain shares. At the foot of this letter was the form of a banker's receipt, which purported to be given "on account of the provisional committee." It also appeared by resolutions that there was a provisional committee, and also a part thereof formed into a committee of management, by whom the business of the formation of the company was conducted. And between the time of application and the allotment to the defendant, some of the members of the provisional committee had withdrawn from that body, and others had been added. Still, it was held that the contracts to take shares and pay the deposit, was made with the provisional committee, and not with the committee of management.

*Page 54—line 17.*

The doctrines laid down in the preceding remarks have been overruled by the decision of *Vollans v. Fletcher*, 1 L. J., Ex. 173, and it would now appear that unless the letter of

allotment is a mere acceptance of the terms stated in the letter of application, it does not amount to an agreement between the allottee and the provisional committee.

*Page 56—note (b).*

But a letter of allotment that is not a simple acceptance of the terms stated in the letter of application does not amount to an agreement, and therefore does not require an agreement stamp.

*Vollans v. Fletcher*, 16 L. J. N. S., Ex. 173.

*Page 59—line 9.*

The doctrine of *Walworth v. Holt* has been confirmed in *Apperly v. Page*, 16 L. J., N. S. ch. 100.

*Page 59—after, note (c).*

In any suit, however, against the directors of a company by some of the shareholders on behalf of themselves and others, care must be taken not to join as plaintiff a party who has assigned his shares: as such party could neither have an interest in the winding up of the concern and division of the surplus; nor could he ask relief on the ground of a right to be indemnified from liabilities; nor could he adequately represent the beneficial interest of the assignee.

*Doyle and others v. Muntz*, 16 L. J. N. S., ch. 51.

*Page 60—line 14.*

Nor will the fact that the line of railway, as sanctioned by Parliament, is not identical with the one for which he subscribed, exonerate him from his liability, provided it is essentially the same, or some portion of that which they contemplated making.

*Midland Great Western of Ireland Railway Company v. Gordon*, 16 L. J., N. S., 167 Ex.

*Page 75—line 5.*

So, although the bought and sold note has been signed only by the defendant, it will require a stamp as creating a contract.

*Knight v. Barber* 16 L. J., N. S., 18 Ex.

*Page 76—line 22.*

So a loss sustained by the broker on any such transaction may be proved as a debt in case of the bankruptcy of the defaulting party.

*Ex parte Barton re Charles*, 4 R. C. 371.

*Page 76—note (b).*

See further as to the measure of damages in such case.

*Pott v. Flather*, 16 L. J. N. S. 366, Q. B.

*Page 166.*

The 6th Geo. IV. c. 123. is repealed by the 10 & 11 Vic. c. 69, except as to costs incurred in the then, or any preceding session of Parliament. By the law, as it at present stands, no parliamentary agent, attorney or solicitor, nor any person claiming through them, can commence an action for any charges in respect of any proceedings in the House of Commons, or in respect of any proceedings relating to standing orders, *either in carrying through or opposing a bill*, until the expiration of one calendar month after he has delivered a signed bill to the party sought to be charged. There is one exception to the above general rule, which is, that if a judge of the superior courts is satisfied that the party chargeable is about to quit the kingdom, such judge may authorise an action to be commenced forthwith. The Speaker has, as before, the power of appointing a taxing officer, (a) and also the power of making a list of charges to be allowed in taxation; (b) and the taxing officer is now entitled to examine witnesses on oath, and to receive affidavits sworn before him, or any master extraordinary in Chancery; (c) and he may also call for books and papers. (d)

The costs of taxation, it would appear, are now in the discretion of the taxing officer, and he may award them in such proportion as he thinks fit. (e)

Either the party chargeable, or the attorney or agent sending in the bill, may make application for the taxation thereof; and if either party, after having had due notice of the day

(a) Sec. 3.

(b) Sec. 4.

(c) Sec. 5.

(d) Sec. 6.

(e) Sec. 7.



appointed for taxation, neglect to attend, the taxing officer may proceed to tax and settle the bill *ex parte*. If pending the taxation of a bill proceedings be taken for the recovery thereof, the judge, or court, before whom the same are brought, shall stay all proceedings until the amount of the bill has been certified by the Speaker. The party chargeable, however, is not entitled to make an application for the taxation of a bill after a verdict shall have been obtained, or a writ of inquiry executed in an action for the recovery of the demand, nor after the expiration of six months after the delivery of a signed bill; unless the Speaker, on receiving a report of the special circumstances, think fit to order the bill to be taxed. (a)

The taxing officer, if required by either party, must report his taxation to the Speaker; and either party may, within twenty-one days after the report shall have been made, deposit in the office of the taxing officer a memorial addressed to the Speaker, complaining of the report, or any portion of it; and the Speaker may refer the report, or any subsequent one, to the taxing officer to review his taxation.

If no memorial to review taxation has been presented, or (where such memorial has been presented) after the matters complained of shall have been disposed of, the Speaker, upon application of either party, shall deliver a certificate of the amount so ascertained, and such certificate shall be conclusive as to the amount of costs and charges in all proceedings, either in law or equity. And unless the defendant has pleaded that he is not liable to the payment of such costs or charges, the certificate shall have the effect of a warrant of attorney, and the court, or judge of the court, in which the action shall have been commenced, shall order judgment to be entered up for the sum specified in the certificate, as if the (b) defendant had in any such action signed a warrant to confess judgment.

*Page 228—line 14.*

The party petitioning for the investment of purchase money paid into court, and the payment of dividends, must make an affidavit that he believes his title to be good; and the affidavit to that effect will not be dispensed with, although the petitioner

(a) Sec. 8.

(b) Sec. 9.

is aged and infirm, and although the company have accepted his title, and consented to the prayer of the petition.

*Ex parte Hollick, in re Ely, Brandon, and Peterborough Railway Act*, 16 L. J. N. S., ch. 78.

*Page 293.*

The limits of alterations in the levels of railways have reference to the datum line, and not to the surface of the ground, as shown on plans, &c., deposited in Parliament.

Plans and sections, &c., deposited, are binding on the company only so far as they are incorporated in the Special Act.

*North British Railway Company, v. Tod*, 4 R. C. 449.

*Page 471—line 30.*

A question of importance arises here as to what portions of the property of a railway company are liable to be seized under a *fieri facias*. Obviously, all chattels belonging to them, such as carriages, engines, trucks, and the like, may be taken under an execution. It is, however, doubtful whether the rails could be removed; and it would seem that, inasmuch as the rails would pass to the heir, and not go to the executor, they could not be seized by a creditor of the company, under a writ. On grounds of public policy, too, they would appear to be exempt.

*Fisher v. Dixon*, 12 Clarke and Finelly. See post. pp. 509, 510.

*Page 479 last line but one.*

We have already seen (a) that a party contracting to sell shares need not be in possession of them at the time of the contract, but that it will be sufficient if he put himself into a condition to fulfil his contract at the period appointed. And although the vendor should fail through some default of the other contracting party to put himself actually into such a condition (as by a neglect to pay a call due, which must be paid under 8 Vic. c. 16, before a valid transfer can be effected), yet he will not thereby be precluded from recovering damages against the purchaser. Thus where the defendants bought of the plaintiffs on the 15th of October a hundred railway shares to be paid for on the 31st of October, and on the 14th a call

(a) *Supra*, p. 475.

had been made on the shares; on the 1st of November the vendors (who according to the custom of the share market were to prepare the transfer deed) applied to the purchasers for a name to be inserted therein, and the latter refused, and subsequently, on a tender of the shares being made, declined to accept them, and an action was brought on the contract by the vendors, the plaintiffs were held entitled to a verdict on a plea that they were not ready and willing to transfer the shares, as, when they asked for a name and were refused, they were in a condition by paying the calls to make a valid transfer.

*Shaw and others, v. Rowley and another, 16 L. J., N. S. 180. Ex.*

*Page 496—line 12.*

So though the line of railway sanctioned by parliament be not identical with the one for which he subscribed, yet if it be substantially the same, or a portion of the same, he will be liable, upon his subscription.

*Midland Great Western of Ireland Rail. Com. v. Gordon, 16 L. J. N. S., 167 Ex.*

*Page 500—at bottom of page.*

A call must be considered as made as soon as a notice announcing that the directors have resolved to make a call, has been sent to the shareholders.

*Shaw v. Rowley, 16 L. J., N. S., 180 Ex.*

*Page 531, at the bottom.*

It has been held, however, that in an action against a railway company, for taking more money for the carriage of goods than they were by law entitled to take, the company was entitled to notice of action, as the action must be deemed to be one for something done in pursuance of their act of incorporation.

*Kent v. The Great Western Railway Company, 16 L. J., N. S., 72 C. P.*

*Page 538—line 2.*

But an injunction will not be granted at the suit of individual shareholders of a railway company to restrain a corporate officer exercising corporate functions, and seeking to take the corporate seal out of his hands. The proper remedy, it is submitted, would be *Mandamus* or *Quo Warranto*.

*Mozley v. Alston, 16 L. J., N. S., 217 ch.*

# TABLE OF CASES.

## A.

Acraman v. Bristol Dock Company, 533.  
 Adderley v. Dixon, 52.  
 Addey's Charity (Trustees of) re London and Greenwich Rail. Com., 237.  
 Adley v. Whitstable Company, 538.  
 Agar, Blair v. 59.  
 Agar v. Regents Canal Com., 202, 533, 534, 535.  
 Aide, Fisher v., 73.  
 Albans (Duke of St.) v. Shore, 478.  
 Albrecht, Duncuft v., 75, 476.  
 Aldred and others v. North Midland Rail. Com., 179, 312, 546, 553.  
 Aldridge v. Great Western Rail. Com., 354, 596.  
 Alley v. Gain, 41.  
 Alston, Mosley v., 424, 447, 557, *Add.* 25.  
 Althorpe *ex parte*, 235.  
 Anon. (2 Chitty 81), 609.  
 Anon. (Lofft. 56), 613.  
 Anson (Lady) Vice v., 54, 61.  
 Apperley v. Page, *Add.* 21.  
 Argyle (Duke of) Wood v., 64.  
 Armstrong v. Marshall, 208.  
 Armytage, Tripp v., 604.  
 Arnott, Southampton Dock Com. v., 440, 465, 630.  
 Attorney-General v. Birmingham and Derby Junction Rail. Com., 383.  
 ——— v. Eastern Counties Rail. Com., 548.  
 ——— v. Forbes, 544.  
 ——— v. London and Southampton Rail. Com., 310.  
 ——— v. Manchester and Leeds Rail. Com., 179, 538, 547.  
 Attornies (Society of), Ward v., 538.  
 Attwood v. Small, 62.  
 Aylesbury Rail. Com. v. Mount, 499, 628, 632.  
 ——— v. Thompson, 499, 461.

## B.

Bagshaw, Rex v., 219.  
 Bank of England, Rex v., 558.  
 ———, Yarborough, v., 550, 590, 595, 601.  
 Bankes, Doe d. Bryant v., 54.  
 Barber, Knight v. 74, *Add.* 21.  
 ———, Latham v., 479.  
 Barclay, Devereux v., 602.  
 Barker, Parker v., 36.  
 Barnard v. Hamilton, 476.  
 Barnesley Canal Com. v. Twibell, 192, 284, 549.  
 Barnett v. Burdett, 46, 47, 65.  
 ———, v. Sir Henry Lambert, 46, 48.  
 Barratt, Green v., 58.  
 Barrett v. Stockton and Darlington Rail. Com. 175, 379, 584.  
 Barron, Whitehead, v., 46, 65.  
 Bartholomew, Drybutter, v., 454.  
 Barton, *ex parte* (re Charles.) *Add.* 22.  
 Basingstoke Canal Com., Pontet v. 510, 557.  
 Batson v. Donovan, 344, 390.  
 Beach, Lucas v., 34, 62.  
 Beckham v. Drake, 44.  
 Bedford v. Brutton, 62.  
 Bell v. Hull and Selby Rail. Com., 178, 193, 307, 541.  
 ——— Bowlby v., 477.  
 ——— Caswell v., 541.  
 Berkeley v. De Vere.  
 Berks and Hants Canal Bill, (Session, 1825), 133.  
 Bernard, West London Rail. Com. v., 60, 79, 440, 465, 496.  
 Beverley v. Lincoln Gas Light Com., 518, 583.  
 Bickley, Letson v., 214.  
 Biddulph, Great North of England Rail. Com. v., 494.

Bignold, Ellison *v.*, 71.  
 Bingham, Reg. *v.*, 560, 581, 622.  
 Birmingham and Aylesbury Rail. Com.  
     *v.* Thompson, 461.  
 Birmingham, Bristol, and Thames  
     Junction Rail. Com. *v.* Locke, 465,  
     473, 487, 502.  
 ——— Playfair *v.*, 547.  
 ——— *v.* White, 465, 468.  
 Birmingham Canal Com. *v.* Lloyd, 545.  
 ———, Rex *v.*, 283.  
 Birmingham and Derby Junction Rail.  
     Com., Attorney-General *v.*, 383.  
 Birmingham and Gloucester Rail. Act,  
     in *re*, 233.  
 Birmingham and Gloucester Rail. Com.  
     Reg *v.*, 311, 564, 581, 611, 614.  
 Birmingham Gas Com., Smith *v.*, 595.  
 Birston *v.* Lyster, 52.  
 Bishop of Durham *ex parte*, 234.  
 Bishop *v.* North, 323.  
 Blair *v.* Agar, 59.  
 Blake, London and Brighton Rail.  
     Com. *v.*, 305, 626.  
 Blakemore *v.* Glamorganshire Canal  
     Nav. Com., 202, 327, 532, 533, 535.  
 Bligh *v.* Brent, 455, 474.  
 Blundell *v.* Winsor, 3, 66, 69.  
 Blunt and Cornfoot, Parrett *v.*, 40.  
 Blunt, Newton *v.*, *Add.* 20.  
 Bolton and Preston Rail. Com., North  
     Union Rail. Com., 248, 547.  
 Bond *v.* Pittard, 36.  
 Bontien, Rex *v.*, 16.  
 Booth *v.* Pollard, 551.  
 Bough, Miles *v.*, 440.  
 Boulston *v.* Sandiford, 343.  
 Boulton, White *v.*, 353.  
 Bourne *v.* Freeth, 61.  
 ———, Tredwin *v.*, 61.  
 Bowlby *v.* Bell, 477.  
 Boxmoor (Trustees of waste lands of)  
     *ex parte* in *re* London and Birming-  
     ham Rail. Com., 235.  
 Boyd *v.* London and Croydon Rail.  
     Com., 592.  
 Boys *v.* Pink, 349.  
 Bradford, Rex *v.*, 406.  
 Bradley *v.* Holdsworth, 74, 76, 455, 474.  
 ———, Williams *v.*, 47, 65.  
 ———, and others, Wyrley and Essing-  
     ton Canal Nav. Com. *v.*, 283.  
 Braithwaite *v.* Schofield, 61, 65.  
 Bray *v.* Freemont, 71.  
 Brecknock and Abergavenny Canal  
     Com., Rex *v.*, 568, 569, 570.

Bremner *v.* Williams, 353, 359.  
 Brent, Bligh, *v.*, 455, 474.  
 Bristol Dock Com., Acraman *v.*, 533.  
 ———, Reg *v.*, 278, 320, 554, 626.  
 ———, Rex *v.*, 574.  
 Bristol and Exeter Rail. Com., Doe *d.*  
     Payne *v.*, 185, 202, 203, 219, 232,  
     298, 535.  
 ———, Reg *v.*, 299, 563, 566, 568,  
     577.  
 Bristol (Mayor of), Rex *v.*, 219.  
 Browne, Kingston on Hull Dock Com.  
     *v.*, 379.  
 Bruce *v.* Willis, 240.  
 Brucker *v.* Fromont, 353.  
 Brundrett *ex parte*, 68.  
 Brutton, Bedford *v.*, 62.  
 Buck *v.* Buck, 68.  
 ———, Doe *d.* Nash *v.*, 54.  
 Buckeridge *v.* Ingram, 454.  
 Buckley, Huddersfield Canal Com. *v.*,  
     60, 473.  
 Burdett, Barnett *v.*, 46, 47, 65.  
 Burnett *v.* Lynch, 480.  
 Butler, Wilson *v.*, 424.  
 Byron (Lord), Robinson *v.*, 532.

## C.

Cadell, Chapple, *v.*, 22.  
 ———, Viner *v.*, 484.  
 Camberwell and South Lambeth Water  
     Works Bill, 133.  
 Cambridge and Lincoln Railway Act,  
     135.  
 Canterbury (Abp. of), Rex. *v.*, 554.  
 Carden *v.* General Cemetery Com., 27,  
     62, 530, 586.  
 Carmarthen (Mayor of) *v.* Lewis, 518.  
 Carpue *v.* London and Brighton Rail.  
     Com., 354, 531, 597, 598, 600.  
 Castendirck *v.* De Burgh, 114.  
 Caswell *v.* Bell, 541.  
 Cauty, Stewart *v.*, 71, 476.  
 Chambers, Jacques *v.*, 456.  
 Chamberlayne, Duncan *v.*, 481.  
 Chapman, Howse *v.*, 454.  
 Chapple *v.* Cadell, 22.  
 Charlton, Mayor of Ludlow *v.*, 509.  
 Cheltenham and Great Western Union  
     Rail. Com. *v.* Daniell, 78, 460, 463,  
     470, 497.  
 ——— *v.* De Medina, 60, 463, 497.  
 ———, Gordon *v.*, 542, 545.  
 Cheltenham (Commissioners of), Reg.  
     *v.*, 579, 622.

- Cheltenham Rail. Com. *v.* Price, 465, 496.  
 Chester and Birkenhead Rail. Com., Stanley *v.*, 29, 177, 530, 551.  
 Child *v.* Morley, 76.  
 Childs, Gardiner *v.*, 44.  
 — *v.* Thomas, 484.  
 Chilton *v.* London and Croydon Rail. Com., 393, 399, 593, 637.  
 Christie *v.* Griggs, 354.  
 Church *v.* Imperial Gas Light and Coke Com., 518.  
 Clarence Rail. Com., Coates *v.*, 306, 539.  
 —, Great North of England Rail. Com. *v.*, 532.  
 — *v.* —, 541, 626.  
 Clarke *v.* Imperial Gas Com., 508.  
 Clemson, Taylor *v.*, 219, 220, 297.  
 Clifton, Fox *v.*, 19, 34, 36, 54, 61, 63.  
 Coates *v.* Clarence Rail. Com., 306, 539.  
 Cocker, Jackson *v.*, 68, 77, 78, 478.  
 Codd, Kearsley *v.*, 1, 63.  
 —, Milburn *v.*, 62.  
 Coleman *v.* Eastern Counties Rail. Com., 431, 528, 537.  
 Colley *v.* Smith, 62.  
 Collinson *v.* Newcastle and Darlington Rail. Com., 303, 588.  
 Colt *v.* Nettervill, 74, 75.  
 —, *v.* Wollaston, 58.  
 Commercial Rail. Com., Sims *v.*, 182.  
 —, Stone *v.*, 182, 184, 188, 211, 212, 213, 219, 238, 534, 552, 564.  
 Congreve, Hichens *v.*, 59.  
 Cooke *ex parte re* Liverpool and Manchester Rail. Com., 234.  
 Cooper, Featherstone *v.*, 210.  
 —, Gilbert *v.*, *Add.* 19.  
 —, London and Brighton Rail. Com. *v.*, 626.  
 —, Massier *v.*, 352.  
 Corrigan *v.* London and Blackwall Rail. Com., 209, 214, 218, 219, 222, 562, 579, 587.  
 Cory *v.* Yarmouth and Norwich Rail. Com., 543.  
 Cotton, Lane *v.*, 345, 356.  
 Crawshay *v.* Maule, 52.  
 Crosby, Nockrells *v.*, 30, 56.  
 Crowther, Wintle *v.*, 44.  
 Croydon Canal Company, Hodges *v.*, 586, 590.  
 Cumberworth (inhabitants of) *Rex. v.*, 327, 564.  
 Cumming *v.* Prescott, 422, 481, 482.  
 Cunliffe *v.* Manchester and Bolton Canal Com., 538.  
 Curzon (Lord), Gell *v.*, *Add.* 19.  
 — Wilson *v.*, 27.  
 Cutler, Figs *v.*, 51.  
  
 D.  
 Daly *v.* Thompson, 16, 70 77, 462, 463, 556.  
 Daniell, Cheltenham and Great Western Union Rail. Com. *v.*, 78, 460, 463, 470, 497.  
 Davis *v.* London and Blackwall Rail. Com., 595.  
 —, Pitchford *v.*, 35, 56, 61, 64.  
 Dean Inclosure (Commissioners of), Rex *v.*, 554.  
 De Burgh, Castendireck *v.*, 114.  
 De Medina, Cheltenham and Great Western Union Rail. Com. *v.*, 60, 463, 497.  
 —, Stevens *v.*, 477.  
 Deptford Pier Com., Reg. *v.*, 233, 563, 567, 572.  
 Devereux *v.* Barclay, 602.  
 Dibdin, Hinton *v.*, 349.  
 Dickinson *v.* Valpy, 61.  
 Dilworth *in re*, 455, 481.  
 Dixon, Adderley *v.*, 52.  
 Fisher *v.*, *Add.* 24.  
 —, Monkland and Kirkintilloch Rail. Com. *v.*, 322, 323.  
 Dobson *ex parte (re Boulton)* 455, 482.  
 Dodd, Rex. *v.*, 2.  
 Doe *v.* Roe, 609.  
 — *dem.* Bryant *v.* Bankes, 54.  
 — Fisher *v.* Rose, 609.  
 — Hutchinson *v.* Manchester Bury, and Rossendale Rail. Com., 232, 245.  
 — Hutchinson *v.* East Lancashire Rail. Com., 232, 242, 607.  
 — Myatt *v.* St. Helen's and Run-corn Gap Rail. Com., 509, 510, 609.  
 — Nash *v.* Buck, 54.  
 — Payne *v.* Bristol and Exeter Rail. Com., 185, 202, 203, 219, 232, 298, 535.  
 — Ross *v.* Roe, 609.  
 — Wawn *v.* Horne, 608.  
 Doloret *v.* Rothschild, 80.  
 Doe *v.* London and Croydon Rail. Com., 182, 184, 552, 564.

Donovan, Batson *v.*, 344, 390.  
 Doubleday *v.* Muskett, 35.  
 Doyle and others *v.* Muntz, *Add.* 21.  
 Drake, Beckham *v.*, 44.  
 Drew *v.* New River Com., 280, 595.  
 Drybutter *v.* Bartholomew, 454.  
 Dublin and Drogheda Rail. Com.,  
     Evans *v.*, 530.  
 Dudley Canal Navigation Com., Graze-  
     brook *v.*, 283.  
 Dun River Navigation Com. *v.* North  
     Midland Rail. Com., 298, 533, 534.  
 Duncan *v.* Chamberlayne, 481.  
 ——— *v.* Surrey Canal (Proprietors),  
     602.  
 Duncuft *v.* Albrecht, 75, 476.  
 Dundalk Western Rail. Com. *v.* Tapster,  
     628.  
 Dunstan and others *v.* Imperial Gas  
     Com., 469.  
 Duvergier *v.* Fellows, 69.

## E.

Eastern Counties Rail. Com. *v.* Tufnell,  
     238.  
 ——— Attorney-General *v.*, 548.  
 ——— Coleman *v.*, 431, 528, 537.  
 ——— Manning *v.*, 316, 318, 593.  
 ——— Manser, *v.*, 291, 538.  
 ——— Petre (Lord), *v.*, 177, 521,  
     533, 540, 550.  
 ——— Petley, *v.*, 533.  
 ——— Piggott, *v.*, 360, 596.  
 ——— Reg. *v.*, 189, 190, 192, 221,  
     326, 447, 559, 560, 564, 566, 568,  
     571, 573, 580, 590.  
 ——— Scott, *v.*, 527.  
 ——— Tower and others *v.*, 247,  
     545.  
 ——— *v.* Tufnell, 238.  
 East India Com. Gibson *v.*, 517.  
 East Lancashire Rail. Com., Doe *d.*  
     Hutchinson *v.*, 232, 242, 607.  
 Edinburgh, Leith and Newhaven Rail.  
     Com., *v.* Hebblewhite, 473, 502,  
     629, 631.  
 Edwards *v.* Grand Junction Rail. Com.,  
     29, 177, 197, 292, 530.  
 ——— *v.* Sharratt, 344.  
 Ellis *v.* Schmæk, 35, 45, 61, 65.  
 Ellison *v.* Bignold, 71.  
 Elwell *v.* Grand Junction Rail. Com.,  
     598.

Eton College, *ex parte*, (*re* London  
     and Birmingham Rail. Com.), 235.  
 ——— *v.* Great Western Rail. Com.,  
     179, 546, 553.  
 Evans *v.* Dublin and Drogheda Rail.  
     Com., 530.  
*Ex parte* Althorpe, 235.  
 ——— Barton (*re* Charles), *Add.* 22.  
 ——— Boxmoor (Trustees of waste  
     lands of), 235.  
 ——— Cooke, (*re* Manchester and  
     Liverpool Rail. Com.), 234.  
 ——— Dobson (*re* Boulton), 455, 482.  
 ——— Durham (Bishop of), 234.  
 ——— Eton College (*re* London and  
     Birmingham Rail. Com.), 235.  
 ——— Farlow, 181.  
 ——— Gardner (*re* Eastern Counties  
     Rail. Com.), 235.  
 ——— Grainge, 233.  
 ——— Great Western Rail. Com. (*re*  
     Rhodes, solicitor), 239.  
 ——— Hawkins, 228.  
 ——— Hirst (*re* Birmingham and  
     Derby Junction Rail. Com.), 234.  
 ——— Hollick, (*re* Ely, Brandon and  
     Peterboro' Rail. Com.), *Add.* 24.  
 ——— Horne, 457, 462, 483, 556.  
 ——— Lancaster Canal Com., (*re*  
     Dilworth), 454, 485.  
 ——— Madon (*re* Great Western  
     Rail. Com.), 236.  
 ——— Newton (*re* Manchester and  
     Birmingham Rail. Com.), 228.  
 ——— Northwick, 231, 234.  
 ——— Onslow (*re* London and Bir-  
     mingham Rail. Com.), 234.  
 ——— Orde, 459.  
 ——— Parkes, 568.  
 ——— Robins, 341, 565, 597.  
 ——— Shaw, 228.  
 ——— Spencer, 484.  
 ——— Trafford, (*re* Liverpool and  
     Manchester Rail. Com.), 234.  
 ——— Trinity House Corporation,  
     234.  
 ——— Vallance (*re* Lachman), 481.  
 ——— Waithman, 481.  
 ——— Watkins, 481.  
 ——— Wilkinson and others, (*re*  
     London and Portsmouth Direct  
     Rail. Com.), 114.  
 ——— Wilson, 36.  
 Eyre, Holland *v.*, 18, 53.

## F.

Fairclough, London and Brighton Rail.  
Com. v., 440, 465, 473, 490, 487,  
494, 496, 632.  
Farlow, *ex parte*, 181.  
Farren v. Vansittart, 542.  
Featherstone v. Cooper, 210.  
Fellows Duvergier v., 69.  
Fennell, v. Newman, 51.  
Fenton v. Trent and Mersey Naviga-  
tion Com., 192, 285.  
Fernley Stainbank v., 58.  
Field, Toppin v., 501.  
Figes, v. Cutler, 51.  
Fisher v. Aide, 73.  
—— v. Dixon, *Add.* 24.  
Fishmongers Com. v. Robertson, 197,  
550, 583.  
Flather, Pott v., *Add.* 22.  
Fleming, Vice v., 49.  
Fletcher, Vollans v., 56, *Add.* 20.  
Fooks v. Wilts, Somerset and Wey-  
mouth Rail. Com., 268.  
Forbes, Attorney-General v., 544.  
Forward v. Pittard, 348.  
Foss v. Harbottle, 438, 447.  
Foulds, Priestley v., 175, 320, 379.  
Fox v. Clifton, 19, 34, 36, 54, 61, 63.  
Foxcroft, Rex v., 425.  
Freeman, London Gd. Junc. Rail. Com.  
v., 69, 78, 460, 463, 465, 470, 630.  
Freemont, Bray v., 71.  
Freeth, Bourne v., 61.  
Fromont, Brucker v., 353.  
Froud, Rex v., 16.  
Fry, Parkin v., 27.  
Fyler v. Fyler, 60, 484, 501.

## G.

Gain, Alley v., 41.  
Gandell, Rawsthorne v., 51, 85.  
Gardiner v. Childs, 44.  
Gardner *ex parte* (re Eastern Counties  
Rail. Com.), 235.  
—— Rex v., 217, 224.  
Gas Light Com., Wilde v., 595.  
Gell and another v. Lord Curzon, *Add.*  
19.  
General Cemetery Com., Carden v., 27,  
62, 468, 530, 586.  
Gibson v. East India Com., 517.  
Gilbert v. Cooper, *Add.* 19.  
Gilden Modern Inclosure Act, 103.

Giles, Hutt and others v., 58.  
Glasgow Gas Bill (1843), 137.  
Glamorganshire Canal Navigation  
Com., Blakemore v., 202, 327, 532,  
533, 535.  
—— Reg. v., 383.  
Goddard v. Hodges, 62.  
Godson v. Good, 48.  
Golden v. Manning, 346.  
Goldney, Henry v., 48.  
Gomme, Powle v., 75.  
Good, Godson v., 48.  
Goode v. Harrison, 36.  
Goodchild, London and Greenwich  
Rail. Com. v., 264.  
Goodfellow, Simes v., 208.  
Goodrich, Rex v., 561.  
Gordon v. Cheltenham and Great West-  
ern Rail. Com., 542, 545.  
—— Midland Great Western of Ire-  
land Rail. Com. v., *Add.* 21, 25.  
Graham, London Grand Junction Rail.  
Com. v., 69, 71, 78, 463, 465, 470.  
Grainge, *ex parte*, 233.  
Grand Collier Dock Com., Mangles v.,  
438, 495, 537.  
—— Preston v., 53, 438, 486, 537.  
Grand Junction Canal Com., London  
and Birmingham Rail. Com. v.,  
291, 540, 626.  
—— Rex v., 383.  
Grand Junction Rail. Com. v. White,  
319, 592, 627.  
—— Edwards v., 29, 177, 197, 292,  
530, 551.  
—— Elwell v., 598.  
—— Palmer v., 341, 531, 598.  
—— Pickford v., 343, 344, 381, 382,  
383, 544, 599, 602.  
—— Reg. v., 403, 408.  
Grand Junction Water-works Com.,  
Ware v., 431, 538.  
Grant, Routledge v., 15.  
Gray, Sharp v., 353, 359.  
Grazebrook, Dudley Canal Navigation  
Com. v., 283.  
Great North of England Rail. Com. v.,  
Biddulph, 494.  
—— v. Clarence Rail. Com., 532.  
—— Tetley and another v., 236.  
Great North of England Clarence and  
Hartlepool Junction Rail. Com. v.  
Clarence Rail. Com., 532, 541, 626.  
Great Western Rail. Com., *ex parte* (re  
Rhodes, Solicitor), 239.



- Great Western Rail. Com.** Aldridge *v.*, 354, 596.  
 ——— Eton College *v.*, 179, 546, 553.  
 ——— Hyde *v.*, 232, 242, 246.  
 ——— Jones *v.*, 199, 246, 536, 548.  
 ——— Kent *v.*, *Add.* 25.  
 ——— Mouchet *v.*, 534.  
 ——— Parker *v.*, 176, 380, 383, 584.  
 ——— Parkes *v.*, 523.  
 ——— Penny *v.*, 232, 522.  
 ——— Price *v.*, 515.  
 ——— Ranger *v.*, 469, 523.  
 ——— Reg. *v.*, 403, 410, 530, 566, 572, 573, 634.  
**Great Western Rail. Com., Rigby *v.*, 540.**  
 ———, Roach *v.*, 524, 604.  
 ———, Robertson *v.*, 199, 246, 540, 550.  
 ———, Sharp *v.*, 526.  
 ———, Storer *v.*, 292, 320, 552.  
**Green *v.* Barratt, 58.**  
**Greenhalgh *v.* Manchester and Birmingham Rail. Com., 178, 247, 544, 546, 553.**  
**Griggs, Christie *v.*, 354.**  
**Gunston, London Grand Junc. Rail. Com. *v.*, 69, 470.**
- H.
- Hall, Thames Haven Dock and Rail. Com. *v.* 421, 423, 441, 495, 633.**  
**Hamilton (Duke of) *v.* South Western Rail. Com. 552.**  
**Hammond *v.* South Eastern Rail. Com., 596.**  
**Harbottle, Foss *v.*, 438, 447.**  
 ———, Youl, *v.*, 602.  
**Hare *v.* Waring, 476, 479.**  
**Harford, Monmouthshire Can. Com. *v.*, 319.**  
**Hargreaves *v.* Lancaster and Preston Junc. Rail. Com., 178, 546, 553.**  
**Harmer *v.* Tappenden, 595.**  
**Harris, Walker *v.*, 51.**  
**Harrison *v.* Harrison, 71.**  
 ——— *v.* Heathorn, 3, 71.  
 ———, Goode *v.*, 36.  
**Hart, Stevenson *v.*, 602.**  
**Hartland, Money Penny *v.*, 34, 62.**  
**Hastings, Richardson *v.*, 17, 63, 59.**  
**Hawkins *ex parte*, 228.**  
**Hawthorn *v.* Newcastle-on-Tyne and North Shields Rail. Com., 525, 606.**
- Heath, Lambert *v.*, 74.**  
**Heathorn, Harrison *v.*, 3, 71.**  
**Hebblewhite *v.* McMorine, 75, 475, 478.**  
 ———, Edinburgh, Leith, and Newhaven Rail. Com. *v.*, 473, 502, 629, 631.  
 ———, South Eastern Rail. Com. *v.*, 632.  
**Henley, Mayor of Lyme *v.*, 613.**  
**Hennings, Rothschild *v.*, 79.**  
**Henry *v.* Goldney, 48.**  
**Hewitt, Price *v.*, 475.**  
**Hibbert *v.* Hibbert, 52.**  
**Hichen *v.* Congreve, 59.**  
**Hickman, Lawton *v.*, 73.**  
**Higgins, Holmes *v.*, 34, 62, 468.**  
**Hill *v.* Manchester and Salford Waterworks Com., 469, 508, 530, 586.**  
**Hinton *v.* Dibdin, 349.**  
**Hirst *ex parte* (re Birm. and Derby Junc. Rail. Com.), 234.**  
 ———, Ray *v.*, 73.  
**Hoare, King *v.*, 48.**  
**Hodges *v.* Croydon Canal Com., 586, 590.**  
 ———, Goddard *v.*, 62.  
**Holdsworth, Bradley *v.*, 74, 76, 455, 474.**  
**Holland *v.* Eyre, 18, 53.**  
 ———, Shaw *v.*, 4, 7, 71, 76.  
**Hollick *ex parte* (re Ely, Brandon, and Peterborough Rail. Com.), *Add.* 24.**  
**Holmes *v.* Higgins, 34, 62, 468.**  
**Holt, Walworth *v.* 17, 53, 59.**  
**Hone, Perring *v.*, 34, 62.**  
**Hopkins, Wyld *v.*, 36, 38.**  
**Horne, *doe dem.*, Wawn *v.*, 608.**  
 ——— *ex parte*, 457, 462, 483, 556.  
 ——— *v.* Ivy, 517.  
 ———, Riley *v.*, 343, 348, 599.  
**Howden (Lord) *v.* Simpson, 29, 177, 521, 531, 586.**  
 ———, Simpson *v.*, 180, 547.  
**Howse *v.* Chapman, 454.**  
**Hubbard, Teague *v.*, 62.**  
**Huddersfield Canal Com. *v.* Buckley, 60, 468, 473.**  
**Hughes, Thorpe *v.*, 537.**  
**Hull and Selby Rail. Com., Bell *v.*, 176, 193, 307, 541.**  
 ———, Reg. *v.*, 562, 587.  
**Hull Dock Com. *v.* La Marche, 175, 379.**  
**Humble *v.* Langston, 77, 78, 79, 474, 478, 479, 480, 497.**

Humble *v.* Mitchell, 75, 455.  
 Hungerford Market Com., Reg. *v.*, 191.  
 Hungerford Market Com. *v.*, Rex 182,  
 183, 184, 213, 559, 561, 564.  
 Huntley, Watkins *v.*, 56, 78.  
 Hustler, Leeds and Liverpool Can. Com.  
*v.*, 175, 379.  
 Hutchinson *v.* Manchester, Bury, and  
 Rossendale Rail. Com., 245.  
 ———, Pratt *v.*, 3.  
 Hutt and others *v.* Giles, 58.  
 Hyde *v.* Great Western Rail. Com., 232,  
 242, 246.  
 ———, *v.* Trent and Mersey Nav. Com.,  
 348.

## I.

Ilderton *v.* Lond. and Birm. Rail. Com.,  
 599.  
 Illingworth *v.* Manchester and Leeds  
 Rail. Com., 279, 545.  
 Imperial Gas Light and Coke Com.,  
 Church *v.*, 518.  
 Imperial Gas Com., Clarke *v.*, 508.  
 ———, Dunston and others *v.*, 469.  
 Ingleby, Walburn *v.*, 66.  
 Ingram, Buckeridge *v.*, 454.  
 ———, Phipps *v.*, 208.  
 Innocent *v.* North Midland Rail. Com.,  
 272, 545.  
 Ivy, Horne *v.*, 517.

## J.

Jackson *v.* Cocker, 68, 77, 78, 478.  
 ——— *v.* Rogers, 343, 390.  
 Jacques *v.* Chambers, 456.  
 Johnson, Shepherd *v.*, 71.  
 Jones *v.* Great Western Rail. Com.,  
 199, 246, 536, 548.  
 ———, Reg. *v.*, 571.  
 ———, Sirhowy Tram-road Com. *v.*, 323.  
 ——— *v.* Tarleton, 602.  
 ———, Williams *v.*, 52.  
 Josephs *v.* Pebrer, 67, 69, 75.

## K.

Kearsley *v.* Codd, 1, 63.  
 Kemp *v.* London and Brighton Rail.  
 Com., 247, 306, 319, 541.  
 Kempson *v.* Saunders, 56, 68, 78.  
 Kennett and Avon Canal Com., Rex *v.*,  
 610.  
 Kensington (Lord) *v.* Kensington Canal  
 Com., 559, 591.

Kensington Canal Com., Lord Ken-  
 sington *v.*, 559, 591.  
 Kent *v.* Great Western Rail. Com., *Add*  
 25.  
 Kershaw, Lawler *v.*, 20, 52, 63, 65.  
 Kidwelly Canal Com. *v.* Raby, 50.  
 Kilner, Tempest *v.*, 71.  
 Kimbolton (inhabitants of), Rex *v.*,  
 622.  
 King *v.* Hoare, 48.  
 Kingston on Hull Dock Com., *v.*  
 Browne, 379.  
 Knight *v.* Barber, 74, *Add.* 21.  
 Knill, Lambert *v.*, 40, 44.

## L.

Lambert, Barnett *v.*, 46, 48.  
 ——— *v.* Heath, 74.  
 ——— *v.* Knill, 40, 44.  
 La Marche, Hull Dock Com., *v.* 175,  
 379.  
 Lancaster Canal Com., *ex parte* (re Dil-  
 worth), 454, 485.  
 ——— *v.* Parnaby and others, 353,  
 354, 597.  
 ——— Thicknesse *v.* 181, 191, 194.  
 Lancaster & Preston Junc. Rail. Com.,  
 Hargreaves *v.*, 178, 546, 553.  
 ——— Muschamp *v.*, 342, 346.  
 ——— Reg. *v.*, 221, 577.  
 Lane *v.* Cotton, 345, 356.  
 ——— *v.* Newdigate, 532.  
 Langford *v.* Brighton, Lewes, and Has-  
 tings Rail. Com., 546.  
 Langston, Humble *v.*, 77, 78, 79, 474,  
 478, 479, 480, 497.  
 Larpent, Richardson *v.*, 537.  
 Latham *v.* Barber, 479.  
 Law, Searle *v.*, 459.  
 ——— *v.* Wilson, 36, 40.  
 Lawler *v.* Kershaw, 20, 52, 63, 65.  
 Lawton *v.* Hickman, 73.  
 Le Blane, Maudesley *v.* 35, 37, 45, 65.  
 Lee *v.* Milner, 181, 194, 298, 327, 535,  
 548.  
 Leeds & Liverpool Can. Com. *v.* Hust-  
 ler, 175, 379.  
 ——— Reg. *v.*, 567.  
 Leeds and Manchester Rail. Com.,  
 Priestley *v.* 291, 548.  
 Leeds and Selby Rail. Com., Rex *v.*,  
 193, 283, 285.  
 Leicestershire and Northampton Union  
 Canal Com., Reg. *v.*, 383.  
 Letsom *v.* Bickley, 214.

- Lewis, Mayor of Carmarthen *v.*, 518.  
     — Rex *v.* 16.  
     — Reynell *v.* 36, 38.  
 Lincoln Gas Light Com., Beverley *v.*,  
     518, 583.  
 Lister *v.* Lobley, 181.  
     — Stubbs *v.*, 489.  
 Liverpool and Manchester Rail. Com.  
     Rex *v.*, 260.  
 Liverpool Waterworks Com., Sparks *v.*,  
     489.  
 Lloyd, Birmingham Canal Com. *v.*,  
     545.  
 Lobley, Lister *v.*, 181.  
 Locke, Birmingham, Bristol, and  
     Thames Junction Rail. Com. *v.*,  
     465, 473, 487, 502.  
 London Assurance Com., Rex *v.*, 556.  
 London and Birmingham Rail. Com. *v.*  
     Grand Junction Canal Com., 291,  
     540, 626.  
     — Ilderton *v.*, 599.  
     — Reg. *v.*, 304, 311, 564, 611.  
     — Semple *v.*, 280, 331, 535, 543,  
     595.  
     — Spencer and another *v.*, 305,  
     306, 532, 536.  
     — *v.* Winter, 197, 550, 626.  
 London and Blackwall Rail. Com., Cor-  
     rigan *v.*, 209, 214, 218, 219, 222,  
     562, 579, 587.  
     — Davies *v.*, 595.  
     — Reg. *v.*, 224, 563.  
     — Walker *v.*, 181, 188, 194, 563.  
     — Warburton *v.*, 546.  
 London and Brighton Rail. Com. *v.*  
     Blake, 305, 626.  
     — Carque *v.*, 354, 531, 597, 598,  
     600.  
     — *v.* Cooper, 626.  
     — *v.* Fairclough, 440, 465, 473,  
     480, 487, 494, 496, 632.  
     — Kemp *v.* 247, 306, 319, 541.  
     — *v.* Wilson, 447, 494, 496, 629,  
     632.  
 London and Croydon Rail. Com., Boyd  
     *v.*, 592.  
     — Chilton *v.*, 393, 399, 593, 637.  
     — Doe *v.*, 182, 184, 552, 564.  
     — Pearson *v.*, 489, 491.  
 London Dock Com., Rex *v.*, 193.  
 London Grand Junction Rail. Com. *v.*  
     Freeman, 69, 78, 460, 463, 465,  
     470, 630.  
 London Grand Junc. Rail. Com. *v.* Gra-  
     ham, 69, 71, 78, 459, 463, 465, 470.  
     — *v.* Gunston, 69, 470.  
 London and Greenwich Rail. Com. *v.*  
     Goodchild, 264.  
     — *in re*, 209, 218, 580.  
 London and Southampton Rail. Com.,  
     Attorney-General *v.*, 310.  
     — Reg. *v.*, 191, 259.  
     — Trustees of Northam Bridge  
     and Roads *v.*, 302, 542.  
 London and South-Western Rail. Com.,  
     Reg. *v.*, 339, 403.  
     — Walker *v.*, 345, 347, 358, 598.  
 Long, Manby *v.*, 518.  
 Loonie *v.* Oldfield, 73.  
 Lough Swilley and Lough Foyle Drain-  
     age and Canal Petition, 104.  
 Lucas *v.* Beach, 34, 62.  
 Ludlow (Mayor of) *v.* Charlton, 509.  
 Lyle, Phelps *v.*, 421.  
 Lyme (Mayor of) *v.* Henley, 613.  
 Lynch, Burnett *v.*, 480.  
 Lynn (Mayor of) *v.* Turner, 613.
- M.
- Mackintosh *v.* Midland Counties Rail.  
     Com., 526.  
 Macklin *v.* Waterhouse, 343, 348.  
 Madon *ex parte* (*re* Great Western Rail.  
     Com.), 236.  
 Malleson, Rendel and another, *v.*, *Add.*,  
     20.  
 Manby *v.* Long, 518.  
 Manchester (Commissioners of), Rex *v.*,  
     182, 213.  
     — Market Street (Commis-  
     sioners), Rex *v.* 564.  
 Manchester and Birmingham Rail.  
     Com., Greenhalgh *v.*, 178, 247, 544,  
     546, 553.  
     — Tomlinson *v.*, 180, 199, 553.  
 Manchester and Bolton Canal Com.,  
     Cunliffe *v.*, 538.  
 Manchester, Bury, and Rossendale  
     Rail. Com., Doe *dem.* Hutchinson  
     *v.*, 232, 245.  
 Manchester, Huddersfield, and Great  
     Grimsby Rail. Com., *in re*, 113.  
 Manchester and Leeds Rail. Com., At-  
     torney-General *v.*, 179, 538, 547.  
     — Illingworth *v.*, 279, 545.  
     — Reg. *v.*, 219, 220, 564, 572.  
     — *v.* Reg. (*in error*), 310.

- Manchester and Leeds Rail. Com. v.**  
     Webb, 175, 200, 246, 271, 274, 379,  
     534, 544.  
**Manchester and Salford Waterworks**  
     Com., Hill v., 469, 530, 586.  
**Mangles v. Grand Collier Dock Com.,**  
     438, 495, 537.  
**Manning v. Eastern Counties Rail.**  
     Com., 316, 318, 593.  
     — Golden v., 346.  
**Manser v. Eastern Counties Rail. Com.,**  
     291, 538.  
**Margate Pier Com., Rex v.,** 412, 572,  
     573.  
**Marshall, Armstrong v. 208.**  
     — v. Corporation of Queen-  
     borough, 550.  
**Massiter v. Cooper,** 352.  
**Matthews v. West London Waterworks**  
     Com., 595.  
**Maudesley v. Le Blane,** 35, 37, 45, 65.  
**Maule, Crawshay v.,** 52.  
**Maund v. Monmouthshire Canal Com.,**  
     590, 602.  
**M'Arthur v. Lord Seaforth,** 71.  
**M'Morine, Hibblewhite v.,** 75, 475, 478.  
**M'Neill v. Reid,** 51.  
**Middlesex (Sheriff of), Reg. v.,** 220,  
     563.  
**Midland Counties Rail. Com., Mackin-**  
     tosh v. 526.  
     — v. Oswin, 229, 241.  
     — Reg. v., 192.  
     — v. Wescomb, 238.  
**Midland Great Western of Ireland Rail.**  
     Com. v. Gordon, *Add.*, 21, 25.  
**Milburn v. Codd,** 62.  
**Miles v. Bough,** 440.  
**Milner, Lee v.,** 181, 194, 298, 327, 535,  
     548.  
     —, York and North Midland Rail.  
     Com. v., 316.  
**Mitchell, Humble v.,** 75, 455.  
     — v. Newell, 235.  
     — v. Newhall, 74.  
**Monday, Rex v.,** 425.  
**Money Penny v. Hartland,** 34, 62.  
**Monkland and Kirkintilloch Rail. Com.**  
     v. Dixon, 322, 323.  
**Monmouthshire Can. Com. v. Harford,**  
     319.  
     — Maund v., 590, 602.  
**Morley, Child v.,** 76.  
**Morris, Rex v.,** 323.  
**Mosley v. Alston,** 424, 447, 557, *Add.*, 25.  
**Mouchet v. Great Western Rail. Com.,**  
     534.  
**Mount, Aylesbury Rail. Com. v.,** 499,  
     628, 632.  
**Muntz, Doyle and others v., Add.,** 21.  
**Muschamp v. Lancaster and Preston**  
     Rail. Com., 342, 346.  
**Muskett, Doubleday v.,** 35.  
  

N.

**Nene Outfall (Commissioners of), Rex**  
     v., 190.  
**Nettervill, Colt v.,** 74, 75.  
**New River Company, Drew v.,** 280,  
     595.  
     — castle and Darlington Rail. Com.,  
     NewCollinson v., 303, 588.  
**Newcastle-on-Tyne and North Shields**  
     Rail. Com., Heathorn v., 525, 606.  
**Newdigate, Lane v.,** 532.  
**Newell, Mitchell, v.,** 235.  
**Newhall, — v.,** 74.  
**Newman, Fennell, v.,** 51.  
**Newton v. Blunt, Add.,** 20.  
**Newton ex parte (in re Manchester and**  
     Birmingham Rail. Com.), 228.  
     — v. Stewart, 41.  
**Nockells v. Crosby,** 30, 56.  
**North, Bishop v.,** 323.  
**Northam Bridge and Roads (Trustees**  
     of) v. London and Southampton  
     Rail. Com., 302, 542.  
**North British Rail. Com. v. Tod, Add.,**  
     24.  
**North Midland Rail. Com., Aldred v.,**  
     179, 312, 546, 553.  
     — Innocent v., 272, 545.  
     — v. Palmerston (Lord), 236.  
     — Reg. v., 279, 559, 591.  
     — River Dun Navigation Com.,  
     v., 298, 533, 534.  
**North Union Rail. Com. v. Bolton and**  
     Preston Rail. Com., 248, 547.  
     — Reg. v., 192, 567.  
**Northwick, ex parte,** 231, 234.  
**Norwich and Brandon Rail. Com., Reg.**  
     v., 311, 317, 565, 571.  
**Norwich and Lowestoffe Navigation**  
     Com. v. Theobald, 495.  
**Norwich and Watton Roads (Trustees**  
     of), Rex v., 218, 219, 220, 579.  
**Nottingham Old Water Works Com.,**  
     Rex v., 190, 192, 222, 562, 587.

## O.

- Oldfield, Loonie *v.*, 73.  
 Oldknow *v.* Wainwright, 425.  
 O'Neil *v.* Brendle, 73.  
 Onslow, *ex parte*, (*re* London and Birmingham Rail. Com.), 234.  
 Orde, *ex parte*, 459.  
 Oswin, Midland Counties Rail. Com. *v.*, 229, 241.

## P.

- Page, Apperly *v.*, *Add.*, 21.  
 Palmer *v.* Grand Junction Rail. Com., 341, 531, 598.  
 Palmerston (Lord), North Midland Rail. Com. *v.*, 236.  
 Parker *v.* Barker, 36.  
 ——— *v.* Great Western Rail. Com., 176, 380, 383, 584.  
 Parkes *v.* Great Western Rail. Com., 523.  
 ——— *ex parte*, 523, 568.  
 Parkin *v.* Fry, 27.  
 Parrett *v.* Blunt and Cornfoot, 40.  
 Parson *v.* Spooner, 26.  
 Patrick, Rex *v.*, 530, 633.  
 Pearce, Dean of Rochester *v.*, 518.  
 Pearson *v.* London and Croydon Rail. Com., 489, 491.  
 Pease, Rex *v.* 314, 611.  
 Pebrer, Josephs *v.*, 67, 69, 75.  
 Penney *v.* Great Western Rail. Com., 232, 522.  
 Perkins, Shaw, *v.* 571.  
 Perring *v.* Hone, 34, 62.  
 Perth Railway Bill (Session 1845), 136.  
 Petley *v.* Eastern Counties Rail. Com., 533.  
 Petre (Lord) *v.* Eastern Counties Rail. Com., 177, 521, 533, 540, 550.  
 Phelps *v.* Lyle, 421.  
 Phipps *v.* Ingram, 208.  
 Pickels, Reg. *v.*, 572.  
 Pickering, Scales *v.*, 175.  
 Pickford *v.* Grand Junction Rail. Com., 343, 344, 381, 382, 383, 544, 599, 602.  
 Piggott *v.* Eastern Counties Rail. Com., 360, 596.  
 Pink, Boys *v.*, 349.  
 Pitchford *v.* Davis, 35, 56, 61, 64.  
 Pittard, Bond *v.*, 36.  
 ——— Forward *v.*, 348.

- Player, Rex *v.*, 425.  
 Playfair *v.* Birmingham, Bristol, and Thames Junction Rail. Com., 547.  
 Pollard, Booth *v.*, 551.  
 Pontet *v.* Basingsstoke Canal Com., 510, 557.  
 Pott *v.* Flather, *Add.*, 22.  
 Powell *v.* Salisbury, 597.  
 Powle *v.* Gomme, 75.  
 Pratt *v.* Hutchinson, 3.  
 Prendergast *v.* Turton, 80, 491.  
 Prescott, Cumming *v.*, 422, 481, 482.  
 Preston *v.* Grand Collier Dock Com., 53, 438, 486, 537.  
 Price, Cheltenham Rail. Com. *v.*, 465, 496.  
 ——— *v.* Great Western Rail. Com., 515.  
 ——— *v.* Hewitt, 475.  
 Priestley *v.* Foulds, 175, 320, 379.  
 ——— *v.* Leeds and Manchester Rail. Com., 291, 548.  
 Proctor, Thornton *v.*, 63.

## Q.

- Queenborough (Corporation of), Marshall *v.*, 550.

## R.

- Raby, Kidwelly Canal Com. *v.*, 50.  
 Ramsden, Wainwright *v.* 260.,  
 Randall, Salmon *v.*, 184, 202, 535, 548, 564.  
 Ranger *v.* Great Western Rail. Com., 469, 523.  
 Rawsthorne *v.* Gandell, 51, 85.  
 Ray *v.* Hirst, 73.  
 Reeve, Rex *v.*, 575.  
 Reg *v.* Bingham, 560, 581, 622.  
 ——— *v.* Birmingham and Gloucester Rail. Com., 311, 564, 581, 611, 614.  
 ——— *v.* Bristol Dock Com., 278, 320, 554, 626.  
 ——— *v.* Bristol and Exeter Rail. Com., 299, 563, 566, 568, 577.  
 ——— *v.* Deptford Pier. Com., 233, 563, 567, 572.  
 Reg. *v.* Eastern Counties Rail. Com., 189, 190, 192, 221, 326, 447, 559, 560, 564, 566, 568, 571, 573, 580, 590.  
 ——— *v.* Glamorganshire Canal Comp., 383.  
 ——— *v.* Grand Junction Canal Com., 383.

- Reg. *v.* Grand Junction Rail. Com., 403, 408.  
 — *v.* Great Western Rail. Com., 403, 410, 530, 566, 572, 573, 634.  
 — *v.* Hull and Selby Rail. Com., 562, 587.  
 — *v.* Hungerford Market Com., 191.  
 — *v.* Jones, 571.  
 — *v.* Lancaster and Preston Junction Rail. Com., 221, 577.  
 — *v.* Leeds and Liverpool Canal Com., 567.  
 — *v.* Leicestershire and Northampton Union Canal Com., 383.  
 — *v.* London and Birmingham Rail. Com., 304, 311, 564, 611.  
 — London and Blackwall Rail. Com., 224, 563.  
 — *v.* London and Greenwich Rail. Com., 580.  
 — London and Southampton Rail. Com., 191, 259.  
 — *v.* London and South Western Rail. Com., 339, 403.  
 — *v.* Manchester and Leeds Rail. Com., 219, 220, 310, 564, 572.  
 — *v.* Middlesex (Sheriff of), 220, 563.  
 — *v.* Midland Counties Rail. Com., 192.  
 — *v.* North Midland Rail. Com., 279, 559, 591.  
 — *v.* North Union Rail. Com., 192, 567.  
 — *v.* Norwich and Brandon Rail. Com., 311, 317, 565, 571.  
 — *v.* Pickels, 572.  
 — *v.* Scott and others, 304, 612.  
 — *v.* Sharpe, 307.  
 — *v.* Sheffield, Ashton-under-Lyne, and Manchester Rail. Com., 216, 220, 576, 577.  
 — *v.* South Holland Drainage (Trustees for), 211.  
 — *v.* Swansea Harbour (Trustees of), 219, 562.  
 — *v.* Victoria Park Company, 432, 558.  
 — *v.* Warwickshire (Sheriff of), 217, 223.  
 — *v.* West, 530, 572, 634.  
 — *v.* York and North Midland Rail. Com., 566, 574.  
 Regent's Canal Com., *Agar v.*, 202, 533, 534, 535.  
 —, *Rex v.*, 611.  
 Rendel and another *v.* Mallison, *Add.* 20.  
*Rex v.* Bagshaw, 219.  
 — *v.* Bank of England, 558.  
 — *v.* Birmingham Canal Com., 283.  
 — *v.* Bontien, 16.  
 — *v.* Bradford, 406.  
 — *v.* Brecknock and Abergavenny Canal Com., 568, 569, 570.  
 — *v.* Bristol (Mayor, Bailiffs, &c., of) 219.  
 — *v.* Bristol Dock Com., 574.  
 — *v.* Canterbury (Abp. of), 554.  
 — *v.* Cheltenham (Commissioners of), 579, 622.  
 — *v.* Cumberworth (Inhabitants of), 327, 564.  
 — *v.* Dean Inclosure (Commissioners of), 554.  
 — *v.* Dodd, 2.  
 — *v.* Foxcroft, 425.  
 — *v.* Froud, 16.  
 — *v.* Gardner, 217, 224.  
 — *v.* Goodrich, 561.  
 — *v.* Grand Junction Canal Com., 383.  
 — *v.* Hungerford Market Com., 182, 183, 184, 213, 559, 561, 564.  
 — *v.* Kennett and Avon Canal Com., 610.  
 — *v.* Kimbolton, (Inhabitants of), 622.  
 — *v.* Leeds and Selby Rail. Com., 193, 283, 285.  
 — *v.* Lewis, 16.  
 — *v.* Liverpool and Manchester Rail. Com., 260.  
 — *v.* London Assurance Com. 556.  
 — *v.* London Dock Com., 193.  
 — *v.* Manchester (Commissioners of), 182, 213.  
 — *v.* ——— (Commissioners of Market-street), 564.  
 — *v.* Margate Pier Com., 412, 572, 573.  
 — *v.* Monday, 524.  
 — *v.* Morris, 233.  
 — *v.* Nene Outfall (Commissioners of), 190.  
 — *v.* Norwich and Watton Roads (Trustees of), 218, 219, 220, 579.  
 — *v.* Nottingham Old Waterworks Com., 190, 192, 222, 562, 587.  
 — *v.* Patrick, 530, 633.  
 — *v.* Pease, 314, 611.  
 — *v.* Player, 425.

**Rex v. Reeve**, 575.  
 — *v. Regent's Canal Com.*, 611.  
 — *v. St. Katharine's Dock Com.*, 562.  
 — *v. St. Margaret's, Leicester*, 567.  
 — *v. St. Nicholas, Gloucester*, 405.  
 — *v. Severn and Wye Rail Com.*, 329, 554, 565, 611.  
 — *v. Stafford (Marquis of)*, 554.  
 — *v. Stainforth and Keadby Canal Com.*, 567.  
 — *v. Stratford-on-Avon (Mayor of)* 610.  
 — *v. Thames and Isis Navigation (Commissioners of)*, 571.  
 — *v. Trafford*, 613.  
 — *v. Watts*, 16.  
 — *v. Webb and others*, 2.  
 — *v. Wilks*, 16.  
 — *v. Wiltshire Canal Com.*, 557.  
 — *v. Wiltshire and Berkshire Canal Com.*, 468, 557, 567, 569.  
 — *v. Wiltshire (Justices of)*, 622.  
 — *v. Windham*, 554.  
 — *v. Worcester Canal Com.*, 457, 483, 556.  
 — *v. York (Justices of)* 223.  
 — *v. Yorkshire (West Riding Justices)*, 575, 580.  
**Reid, McNeil v.**, 51.  
**Reynell v. Lewis**, 36, 38.  
**Richards, Southampton Dock Com. v.** 440, 465, 494, 502, 630.  
**Richardson v. Hastings**, 17, 53, 59.  
 — *v. Larpent*, 537.  
**Rigby v. Great Western Rail. Com.**, 540.  
**Riley v. Horne**, 343, 348, 599.  
**River Dun Navigation Com. v. North Midland Rail. Com.**, 298, 533, 534.  
**Roach v. Great Western Rail. Com.**, 524, 604.  
**Robertson, Fishmonger's Com. v.**, 197, 550, 583.  
**Robertson v. Great Western Rail Com.**, 199, 246, 540, 550.  
 — *v. Saville v.* 47.  
**Robins, ex parte**, 341, 565, 597.  
**Robinson, Weald of Kent Canal Com. v.**, 60.  
**Robinson v. Lord Byron**, 532.  
**Rochester (Dean, &c., of) v. Pierce**, 518.  
**Roe, doe v.**, 609.

**Roe, doe dem., Ro s v.**, 609.  
**Rogers, Jackson v.**, 343, 390.  
**Rose, doe dem, Fisher v.**, 609.  
 — *Thames Haven Dock and Rail. Com. v.*, 421, 441, 495, 557.  
**Rothschild, Doloret v.**, 80.  
 — *v. Hennings*, 79.  
**Roult v. Wilson**, 597.  
**Routledge v. Grant**, 15.  
**Rowley, Shaw v., Add.**, 25.

## S.

**Salisbury, Powell v.**, 597.  
**Salmon v. Randall**, 202, 535, 548, 564.  
**Sandiford, Boulston v.**, 343.  
**Saunders, Kempson v.**, 56, 68, 78.  
**Saville v. Robertson**, 47.  
**Savory, Tonkin v.**, 74, 75.  
**Scales v. Pickering**, 175.  
**Schmæk, Ellis v.**, 35, 45, 61, 65.  
**Schofield, Braithwaite v.**, 61, 65.  
**Scott v. Eastern Counties Rail. Com.**, 527.  
 — *and others, Reg. v.*, 304, 612.  
**Seaforth (Lord), McArthur v.**, 71.  
**Searle v. Law**, 459.  
**Semple v. London and Birmingham Rail. Com.**, 280, 331, 535, 543, 595.  
**Severn and Wye Rail. Com., Rex v.**, 329, 554, 565, 611.  
**Shairp, Wontner v.**, 29, 56, 57.  
**Sharp v. Gray**, 353, 359.  
 — *v. Great Western Rail. Com.*, 526.  
**Sharpe, Reg. v.**, 307.  
**Sharratt, Edwards v.**, 344.  
**Shaw, ex parte**, 228.  
 — *v. Holland*, 4, 7, 71, 76.  
 — *v. Perkins*, 571.  
 — *v. Rowley, Add.*, 25.  
**Sheffield, Ashton-under-Lyne, and Manchester Rail. Com. v. Woodcock**, 422, 440, 463, 470, 493, 494, 498, 500, 631.  
 — *Reg. v.*, 216, 220, 576, 577.  
**Sheffield and Rotherham Rail. Com., Turner v.**, 192, 559, 594.  
**Shepherd v. Johnson**, 71.  
**Shore, Duke of St. Alban's v.**, 478.  
**Simes v. Goodfellow**, 208.  
**Simpson v. Lord Howden**, 180, 547.  
 — *v.*, 29, 177, 521, 531, 586.  
**Sims v. Commercial Rail. Com.**, 182.

- Sirhowy Tram Road Company *v.* Jones, 323.  
 Small, Attwood *v.*, 62.  
 Smith *v.* Birmingham Gas Com., 595.  
 —, Colley *v.*, 62.  
 — *v.* Stafford, 457, 483.  
 — *v.* Symes, 210.  
 —, Young *v.*, 73.  
 Snell, Wright *v.*, 390.  
 South Eastern Rail. Com. *v.* Hammond, 596.  
 — *v.* Hebblewhite, 632.  
 South Holland Drainage (Trustees for), Reg. *v.*, 211.  
 South Level Drainage, Commissioners *in re*, 564.  
 South Western Rail. Com., Duke of Hamilton *v.*, 552.  
 Southampton Dock Com. *v.* Arnott, 440, 465, 630.  
 — *v.* Richards, 440, 465, 494, 502, 630.  
 Southwark Market Com., 104.  
 Sparks *v.* Liverpool Waterworks Com., 489.  
 Spenser, *ex parte*, 484.  
 — (Earl), Vauxhall Bridge Com. *v.*, 177.  
 — and another *v.* London and Bir. Rail. Com., 305, 306, 532, 536.  
 Spooner, Parson *v.*, 26.  
 Spottiswoode, Walstab *v.*, 29, 30, 56.  
 St. Helen's and Runcorn Gap Rail. Com., *doe dem* Myatt *v.*, 509, 510, 609.  
 St. Katharine's Dock Com., *in re*, 235.  
 —, Rex *v.*, 562.  
 St. Margaret's, Leicester, Rex *v.*, 567.  
 St. Nicholas, Gloucester, Rex *v.*, 405.  
 Stafford (Marquis of), Rex *v.*, 554.  
 — (Mayor of) *v.* Till, 518.  
 —, Smith *v.*, 457, 483.  
 Stainbank *v.* Fernley, 58.  
 Stainforth and Keadby Canal Com., Rex *v.*, 567.  
 Stanley *v.* Chester and Birkenhead Rail. Com., 29, 177, 530, 551.  
 Stephenson *v.* Hart, 602.  
 Stevens *v.* De Medina, 477.  
 Stewart *v.* Cauty, 71, 476.  
 Stewarts, Newton *v.*, 41.  
 Stockton and Darlington Rail. Com., Barrett *v.*, 175, 379, 584.  
 Stone *v.* Commercial Rail. Com., 182, 184, 188, 211, 212, 213, 219, 238, 534, 552, 564.  
 Storer *v.* Great Western Rail. Com., 292, 320, 552.  
 Stourbridge Canal Com. *v.* Wheeley 175, 378.  
 Stratford and Moreton Rail. Com., Stratton *v.*, 494, 495.  
 — on Avon (Mayor of), Rex *v.*, 610.  
 Stratton, Stratford, and Moreton Rail. Com. *v.*, 494, 495.  
 Stubbs *v.* Lister, 489.  
 Surrey Canal (Proprietors of), Duncan *v.*, 602.  
 Sutton *v.* Tatham, 76.  
 Swansea Harbour (Trustees of), Reg. *v.*, 219, 562.  
 Symes, Smith *v.*, 210.  
 Syston and Peterborough Rail. Bill (1845), 137.

## T

- Tappenden, Harmer *v.*, 595.  
 Tapster, Dundalk Western Rail. Com. *v.*, 628.  
 Tarleton, Jones *v.*, 602.  
 Tatham, Sutton *v.*, 76.  
 Taylor *v.* Clemson, 219, 220, 297.  
 Teague *v.* Hubbard, 62.  
 Tempest *v.* Kilner, 71.  
 Tetley and another *v.* Great North of England Rail. Com., 236.  
 Thames Haven Dock and Rail. Com. *v.* Hall, 421, 423, 441, 495, 633.  
 — *v.* Rose, 421, 441, 495, 557.  
 Thames and Isis Navigation (Commissioners of), Rex *v.*, 571.  
 Theobald, Norwich and Lowestoffe Navigation Com. *v.*, 495.  
 Thicknesse *v.* Lancaster Canal Com., 181, 191, 194.  
 Thomas, Childs *v.*, 484.  
 Thompson, Aylesbury Rail. Com. *v.*, 461, 499.  
 —, Daly *v.*, 16, 70, 77, 462, 463, 556.  
 Thornton *v.* Procter, 63.  
 Thorpe *v.* Hughes, 537.  
 Thursfield and Jones (Master, &c., of the Company of Wax Chandlers), 610.  
 Till, Mayor of Stafford *v.*, 518.  
 Tilson *v.* Warwick Gas Com., 62, 469, 585.



Toby, Woolmer *v.*, *Add.*, 20.  
 Tod, North British Rail. Com. *v.*, *Add.*, 29.  
 Tomlinson *v.* Manchester and Birmingham Rail. Com., 180, 199, 553.  
 Tonkin *v.* Savory, 74, 75.  
 Toppin *v.* Field, 501.  
 Tower and others *v.* Eastern Counties Rail. Com., 247, 545.  
 Trafford, *ex parte* (*re* Liverpool and Manchester Rail. Com.), 234.  
 ———, Rex *v.*, 613.  
 Tredwin *v.* Bourne, 61.  
 Trent and Mersey Navigation Com., Fenton *v.*, 192, 285.  
 ———, Hyde *v.*, 348.  
 Trinity House Corporation, *ex parte*, 234.  
 Tripp *v.* Armitage, 604.  
 Tufnell, Eastern Counties Rail. Com. *v.*, 238.  
 Turner, Mayor of Lynn *v.*, 613.  
 ——— *v.* Sheffield and Rotherham Rail. Com., 192, 559, 594.  
 Turton, Prendergast *v.*, 80, 491.  
 Twibell *v.* Barnsley Canal Com., 192, 284, 549.

## V.

Vallance, *ex parte* (*re* Lachman), 481.  
 Valpy, Dickinson *v.*, 61.  
 Vansittart, Farren *v.*, 542.  
 Vauxhall Bridge Com. *v.* Earl Spencer, 177.  
 Vice *v.* Lady Anson, 54, 61.  
 ——— *v.* Fleming, 49.  
 Victoria Park Com., Reg. *v.*, 432, 558.  
 Viner *v.* Cadell, 484.  
 Vollans *v.* Fletcher, 56, *Add.*, 29.

## W.

Wainwright, Oldknow *v.*, 425.  
 ——— *v.* Raraden, 260.  
 Waithman, *ex parte*, 481.  
 Walburn *v.* Ingleby, 66.  
 Walker *v.* Harris, 51.  
 ——— *v.* London and Blackwall Rail. Com., 181, 188, 194, 563.  
 ——— *v.* London and South Western Rail. Com., 345, 347, 358, 598.  
 Walstab *v.* Spottiswoode, 29, 30, 56.  
 Walworth *v.* Holt, 17, 53, 59.  
 Wansell *v.* Southwood, 206.

Warburton *v.* London and Blackwall Rail. Com., 546.  
 Ward *v.* Society of Attornies, 538.  
 Ware *v.* Grand Junction Waterworks Com., 431, 538.  
 Waring, Hare *v.*, 476, 479.  
 Warwick Gas Com., Tilson *v.*, 62, 469, 585.  
 Warwickshire (Sheriff of), Reg. *v.*, 217, 223.  
 Waterhouse, Macklin *v.*, 343, 348.  
 Watkins, *ex parte*, 481.  
 ——— *v.* Huntley, 56, 78.  
 Watts, Rex *v.*, 16.  
 Weald of Kent Canal Com. *v.* Robinson, 60.  
 Webb *v.* Manchester and Leeds Rail. Com., 175, 200, 246, 271, 274, 379, 534, 544.  
 ——— and others, Rex *v.*, 2.  
 Wescomb, Midland Counties Rail. Com. *v.*, 238.  
 West, Reg. *v.*, 530, 572, 634.  
 West London Rail. Com. *v.* Bernard, 60, 79, 440, 465, 496.  
 West London Waterworks Com., Matthews *v.*, 595.  
 West Riding Union Rail. Bill (1847), 124.  
 Wheeley, Stourbridge Can. Com. *v.*, 175, 378.  
 White, Birmingham, Bristol, and Thames Junction Rail. Com. *v.*, 465, 468.  
 White *v.* Boulton, 353.  
 ———, Grand Junction Rail. Com. *v.*, 319, 592, 627.  
 Whitehead *v.* Barron, 46, 65.  
 Whitstable Com., Adley, *v.* 538.  
 Wilde *v.* Gas Light Com., 595.  
 Wilkinson and others, *ex parte* (*re* Lond. and Portsmouth Direct Rail. Com.), 114.  
 Wilks, Rex *v.*, 16.  
 Williams *v.* Bradley, 47, 65.  
 ———, Brenner *v.*, 353, 359.  
 ———, *v.* Jones, 52.  
 Willis, Bruce, *v.*, 240.  
 Wilson *v.* Butler, 424.  
 ——— *v.* Lord Curzon, 27.  
 ——— *ex parte*, 36.  
 ———, Law *v.*, 36, 40.  
 ———, Lond. and Brighton Rail. Com. *v.*, 447, 494, 496, 629, 632.  
 ———, Roult *v.*, 597.

- Wilson v. Wilson, 421, 424.  
 Wilts and Berks Canal Com., Rex v.,  
     468, 557, 567, 569.  
 Wiltshire Canal Com. Rex v., 557.  
     — (Justices of), Rex v., 622.  
 Wilts, Somerset, and Weymouth Rail.  
     Com., Fooks, v., 268.  
 Windham, Rex v., 554.  
 Winsor, Blundell v., 3, 66, 69.  
 Winter, London and Birmingham Rail.  
     Com. v., 197, 550, 626.  
 Wintle v. Crowther, 44.  
 Wollaston, Colt v., 58.  
 Wontner v. Shairp, 29, 56, 57.  
 Wood v. Duke of Argyle, 64.  
 Woodcock, Sheffield, Ashton-under-  
     Lyne, and Manchester Rail. Com.  
     v., 422, 440, 463, 470, 493, 494,  
     498, 500, 631.  
 Woolmer v. Toby, *Add.*, 20.
- Wright v. Snell, 390.  
 Wyld v. Hopkins, 36, 38.  
 Wyrley and Essington Canal Nav. Com.  
     v. Bradley and others, 283.
- Y.
- Yarborough v. Bank of England, 550,  
     590, 595, 601.  
 Yarmouth and Norwich Rail. Com.,  
     Cory v., 543.  
 York (Justices of), Rex v., 223.  
 York and North Midland Rail. Com. v.  
     Milner, 316.  
     —, Reg. v., 566, 574.  
 Yorkshire (West Riding Justices), Rex  
     v., 575, 580.  
 Youl v. Harbottle, 602.  
 Young v. Smith, 73.

# THE LAW

## RELATING TO

### RAILWAY COMPANIES.

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#### INTRODUCTORY.

At common law, any number of persons joining together and forming a company or association for the purpose of carrying out any project by means of combined capital, stood exactly in the same relative situation, both among themselves and in respect of third parties, as the members of any other partnership composed of a limited number of individuals. And although the partners could, by their deed of settlement, regulate the mode of government among themselves, still, such arrangements could not avail in any way to limit their responsibility to third parties. On the one hand, a person entering into any such company, not incorporated, however small the amount of his interest, would be individually liable, *in solido* (a), to third parties, on all matters arising during the period of his continuing a member; while, on the other, he would be entitled only to those remedies against his co-partners, whether in law or equity, which would be available in ordinary partnerships. However beneficial to the interests of a trading country the combination of capital subscribed by a number of persons may be, as furnishing means for the execution of works entirely beyond the reach of a partner-

Associations at common law.

Statutory restrictions upon.

(a) *Kearsley v. Codd*, 2 C. and P. 408 (n) *Abbott*.

ship composed of a few individuals, there is no doubt that the formation of companies on the joint stock principle opened the door to innumerable impositions on the public, who, either from ignorance or from an inordinate desire of gain, rushed into numerous schemes fraudulently concocted and of the most hope'ess character.

The Bubble  
Act.

To such an extent was this the case, that as early as the reign of George the First the establishment of such companies was felt to be a public evil so serious, that a statute was passed (*a*) (known as the Bubble Act) containing several restrictions on their formation, and imposing heavy penalties on the parties originating them.

Thus, sec. 18 of that statute declares that any company acting or presuming to act as a corporate body, or raising transferable stock, or attempting to transfer such stock, without legal authority, either by act of parliament or charter, was to be deemed null and void. The following section enacts that such undertakings shall be deemed public nuisances, and their promoters liable to be indicted. But however laudable the intention of the legislature in passing this act, the restrictions contained in it were found to be incompatible with the freedom which is essential to the interests of commerce; and hence it soon became a dead letter in the statute-book. And although in one case it was attempted to lay an information under this statute against a party for establishing a company with transferable shares, yet the rule was refused; the court evidently leaning to the defendant, and deciding that the relator should be left to avail himself of the common law remedy by indictment, or that the Attorney-General should proceed, *ex officio*, if he should deem it advisable for the protection of the public (*b*). In the other cases that came before the courts on the construction of the above statute, the legality of the association in question was not

(*a*) 6 Geo. 1. c. 18.

(*b*) Rex v. Dodd, 9 East, 516. See also Rex v. Webb & others, 14 East, 406.

tested (as in the words of the act itself) by the issuing of transferable shares, but by the issuing shares transferable without restriction (a). From the decisions in the above cases, it was evident that the bias of the court was against the act; and serious doubts being engendered as to the policy of it, it was subsequently repealed by the 6 Geo. 4, c. 91, which, putting an end to the statutory penalties previously imposed, declared that all companies within the 6 Geo. 1, c. 18, were in future "to be dealt with and adjudged upon in like manner as might have been done at common law." Hence the formation of a joint stock company having transferable shares is not illegal, unless the purposes for which it was formed are likely to be injurious to the public (b). Since that time various statutes have been passed regulating joint stock companies formed for carrying on particular branches of trade, as well in regard to their original construction and their internal management, as to the liabilities of the subscribers in such companies to third parties, and the mode of suing and being sued.

Repealed by 6  
Geo. 4, c. 91.

Whenever a company formed upon the joint stock principle for purposes not included in those branches of trade for the regulation of which special statutes had been passed, was desirous of limiting the responsibility of its members to the extent of the sum subscribed by each individual, it was usual to obtain an act of incorporation. Such act in general prescribed the mode of suing and being sued in the name of the secretary or some other public officer of the company specially named therein, and limited the responsibility of the members to the amount of their respective subscriptions; and all parties contracting with such incorporated body were presumed to contract with the company and upon the credit of its funds, and not on the credit of each individual member.

Incorporation  
by statute.

(a) *Pratt v. Hutchinson*, 15 East, 510.

(b) *Harrison v. Heathorne*, 6 M. & Gr. 181; 6 Sc. N. R. 735. *Blundell v. Winsor*, 8 Sim. 601.

By letters  
patent.

But as the expense of obtaining an act of incorporation was very great, a statute (7 Will. 4 & 1 Vic. c. 73) was passed, whereby the crown was empowered by letters patent to grant to any number of persons associated together for trading purposes, any privileges which, according to the rules of the common law, it would be competent to the crown to grant by any charter of incorporation.

It is an essential preliminary to a company obtaining such letters patent that a deed of partnership should be signed by every member thereof, binding himself, his heirs, executors, and administrators to pay the amount of his subscription.

Joint Stock  
Companies' Act  
(7 & 8 Vict. c.  
110).

It should be observed that none of the above statutes in any way applied to companies requiring the authority of parliament for the execution of their works, or the accomplishment of their purposes: but a late act (the 7 & 8 Vict., cap. 110) intitled "An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies," is of more extensive application, and includes all companies formed after the first day of November 1844, (a) whose capital is divisible into shares and transferable without the express consent of all the parties; to all insurance companies and similar institutions. All partnerships consisting (otherwise than by operation of law) of more than twenty-five persons, save and except,

Banking Companies;

Schools and Scientific and Literary Institutions;

Loan Societies, and Benefit Building Societies duly certified and enrolled;

Friendly Societies so certified for making assurance for not more than 200*l.*;

Mining partnerships worked on the cost book principle, and anonymous partnerships in Ireland; and also except-

(a) Section 2. As to what companies may be said to have been formed after that date, see *Shaw v. Holland*, 15 L. J. R., N. S. Ex. 87; 4 R. C. 150.

ing companies formed for executing any bridge, road, cut, canal, reservoir, aqueduct, waterwork, navigation, tunnel, archway, railway, pier, port, harbour, ferry or dock which cannot be carried into execution without obtaining the authority of parliament unless where specially provided. The concluding words are important as bringing within the operation of the statute, in numerous and important particulars, companies formed for the construction of railways during the early stages of their existence ; and until they have obtained an act of incorporation.

## BOOK I.—FORMATION OF THE COMPANY.

### CHAPTER I.

#### PRELIMINARY PROCEEDINGS RENDERED NECESSARY BY 7 & 8 VICT., c. 110.

IN the foregoing introductory remarks we have confined our attention to the formation of such Joint Stock Companies as did not require a compulsory power over the rights and properties of others, to enable them to carry on their operations and effect their objects; we shall in future direct our observations to those companies which cannot accomplish their purposes without interfering with the private rights of third parties, and which cannot, therefore, carry out their undertakings without the aid of such extraordinary powers (unknown at common law) as are only to be obtained by a special act of the legislature.

Application of  
7 & 8 Vict. c.  
110, to railway  
companies.

Although the statute 7 & 8 Vict. c. 110, excepts out of its operation (as we have already seen) companies for executing any work which cannot be carried into execution without the authority of Parliament, (unless where otherwise specially provided) still so many of the sections are expressly made to apply to such companies during their formation and previous to their obtaining an act of incorporation, that we must, at all events, during the stages of provisional registration, include railway companies, as entirely within the meaning and operation of that act.

Where, however, a railway company was incorporated by an act before the first of November, 1844; but subsequently to that day the company resolved to make an



extension line, and, on the thirtieth of July, 1845, obtained an act for that purpose, it was held that the latter undertaking was not a partnership, the formation of which was commenced after the first of November, 1844, and that the company was not therefore within the operation of the Joint Stock Companies Act. (a)

In the present book we propose to show how Railway Companies formed for the purpose of executing works that cannot be carried into execution without the aid of the legislature, are regulated and controlled by the above statute, in their original formation and first announcement to the public, in conduct and management previous to incorporation, and in respect of the rights, powers, duties, and liabilities of promoters, directors, and shareholders, both among themselves and to third parties.

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#### SEC. I.—PROVISIONAL REGISTRATION, AND PRELIMINARY PROCEEDINGS.

AFTER the projectors or promoters have in their own minds matured a scheme, whether for constructing a railway or other work under the authority of Parliament, or for any other purpose requiring a larger capital than they themselves can command, the first step generally taken is to advertise the project, and invite the public to subscribe their names, and contribute funds towards the formation of a company for carrying it out. But since the passing of the Joint Stock Companies Act, which came into operation on the first of November, 1844, before being permitted to announce such scheme publicly whether by advertisement, hand bill, or prospectus, the promoters (b) are required to register certain particulars in an office s. 4

(a) *Shaw v. Holland*, 4 R. C. 150; 15 L. J. N. S. Ex. 87.

(b) The term "Promoter" is applied to any person acting by whatever name, in the formation of a company previous to complete registration.---  
Sec. 3.

called the registry office for Joint Stock Companies, and to obtain a certificate of provisional registration.

Particulars to be registered.

The following are the particulars required to be given to the registrar. (*a*)

1st. The Name of the intended Company.

2nd. The Purpose of the Company.

3rd. The Name of the Promoters with their respective occupations, places of Business, (if any) and places of residence.

Certificate of

Upon a return being made of these three particulars, signed by one or more of such promoters on behalf of himself and the others, and the payment of a fee of 5*l.*, (*s.* 21), the promoters will be entitled to a certificate of Provisional Registration. This certificate is of force only for twelve calendar months from the date thereof, (*s.* 23), at the expiration of which time, if the company have neither been incorporated by Act of Parliament nor have been completely registered, a renewed certificate of Provisional Registration must be obtained, for which a fee of 2*l.* is to be paid. This renewed certificate, like the original, lasts only one year. (*b*)

Its effect.

Renewal of

Powers under.

Having obtained such certificate of Provisional Registration, the promoters are then at liberty to announce publicly, either by advertisement, handbill, or otherwise, the title, objects, and purposes of the intended company, but coupled with the words "registered provisionally," to open subscription lists, to allot shares, and receive deposits by way of earnest thereon, at a rate not exceeding the sum of 10*s.* for every 100*l.* on the amount of every share in the capital of the intended company; and, in the case of railway companies, such further sum as may be required by

(*a*) The Registry Office is at present in Serjeant's Inn, Fleet Street, where attendance is given daily (Sundays and Holydays excepted), from 10 till 4 o'clock.

(*b*) This provision must be borne in mind by the promoters of any company who, having failed in one session of Parliament, propose to renew their application in another.

the standing orders of either House of Parliament, (a) and to do such other acts as may be necessary for obtaining their Act of Parliament. The amount of deposit at present required by the standing orders of both Houses, is one-tenth part of the capital subscribed.

The Joint Stock Act does not render the existence of any company that is not provisionally registered before being publicly announced illegal, so as to vitiate all proceedings taken by such unregistered company, but imposes a penalty of 25*l.* (s. 24) upon the promoters, and also upon persons employed by them, for either taking money by way of deposit, or for issuing scrip, or any instrument denoting a claim to any share in the proposed company; or for advertising the existence or proposed formation of such company, previous to its having been provisionally registered. Any person may sue for and recover this penalty by action of debt. Penalties.

After the company has been provisionally registered, the promoters should appoint a solicitor (s. 6) whose duty it will be to make the requisite returns and manage the legal business of the company. After such appointment, most, if not all, of the penalties imposed upon the promoters for neglecting to comply with the provisions of the Act, will fall upon the solicitor. The appointment must be in writing, and signed by one or more of the promoters. The acceptance of the appointment must also be in writing, and signed by the solicitor appointed; and duplicates both of the appointment and the acceptance must be lodged with the registrar of Joint Stock Companies. The solicitor being thus appointed, and having thus accepted the appointment, becomes to all intents and purposes the solicitor of the intended company, and remains liable to the penalties of neglect or default in the discharge of his duties until his death, or until the appointment has been revoked, or he himself has resigned. Neither the revocation of such appointment by the promoters, nor the (b) Appointment of solicitor.  
How made.  
How revoked.

(a) H. C., 46; H. L. 224, sec. 4.

resignation by the solicitor is complete, until a duplicate either of the written resignation or revocation, as the case may be, has in like manner been deposited with the registrar; and until the prescribed formalities shall have been duly observed, the attorney will be liable as such for the discharge of every duty appertaining to the situation, and will remain exposed to all the consequences of neglect. Hence the proper appointment of the attorney is one of the most important steps in the preliminary movements of a company, for immediately on the registration of the appointment by the promoters, and of the acceptance by the attorney, the promoters are relieved from duties and liabilities of the most serious character, and from the risk of incurring penalties both for sins of omission and commission, from which non-professional persons are ordinarily found incompetent to protect themselves. If the returns required by the above act be not duly made, the promoters, before the appointment of a solicitor and the solicitor afterwards (ss. 5, 6) are liable to forfeit a sum of 20%, at almost every step of their progress. In addition to these penalties imposed on the solicitor for non-compliance with the act, he is also liable either to be suspended from practice for any time to be appointed by the Court to which he belongs, or to be struck off the rolls, if it appear to such Court that he fraudulently omitted to make any of the required returns.

(c) Promoters  
or Provisional  
Committee-  
men

After the original promoters have obtained their certificate of provisional registration, they generally associate with themselves other persons as provisional directors. The term "directors" is usually (although not correctly) applied to any person whose name is included in the provisional committee. It should rather be reserved for the members of the managing committee, after incorporation or complete registration; since the definition of the word "directors," given by the statute (s. 3), is, "The persons having the direction, conduct, management, or superintendence of the affairs of a company;" and in the sen-

Definition of.

tence immediately following it is declared, that the term "promoter" shall apply to "every person, acting by whatever name, in the forming or establishing of a company at any period prior to the company obtaining a certificate of complete registration." Taking the two definitions together, and referring to the 16th section, which, with regard to the authentication of returns, provides that, previous to complete registration, the promoters of the company, or their solicitor, shall make all the returns required by the act; and (ss. 10, 11), after such company shall have obtained a certificate of complete registration, the directors shall make or cause to be made every such return; it is quite clear that the term "director" is improperly used in the provisional stages of the company, and that all parties having the direction and management previous to complete registration or incorporation, although usually called provisional directors or managing committee-men, do not fall within the definition given above, and should be designated "promoters."

Two sections of the Joint Stock Act, the 28th and the 4th, seem to have been designed to prevent any person from acting either as a promoter of a company before complete registration, or as a director afterwards, without the possession of a certain specified qualification. In the 28th section, it is enacted that it shall not be lawful to appoint any person to act as a director, whether honorary or otherwise, or to hold the office of patron, or president, or any other office of like description, unless at the time of such appointment, or of such his acting, he hold in his own right at least one share in the capital of the company. The section then proceeds to inflict a penalty, first, on the party acting without such qualification; secondly, on the person announcing the name of such unqualified individual as a director, in the following words, "that if, without having such share, any person be, or become, or act as director, patron, or president of such company, or in any office of such or the like nature, then he shall forfeit for

Qualification  
of.  
s. 28.

Penalty under  
28th section.

Does not apply  
to railway com-  
panies.

every such offence a sum not exceeding 20*l.*; and that if any person be announced or held out as a director, patron, or president, or as holding any office of such description, without having so consented, then each director of such company, knowingly concurring in such representation, shall forfeit the sum of 20*l.*” For obvious reasons, this section cannot be held to apply to railway companies, first, because they are not specially alluded to and included in the enactment; and, secondly, because the provision is made in regard of a company completely registered; and a railway company, if completely registered (which is rarely the case), can be so but for the very short interval between the obtaining of a certificate thereof, and the procuring of the act of incorporation; because, as soon as incorporated by Act of Parliament, the company is exempted entirely from all the provisions of the statute in question.

Let us now inquire whether the 4th section of the act is so framed as to secure the object proposed.

Provisions of  
4th and 5th  
sections.

By that section the promoters are required, when and as they shall be ascertained and decided on, to register the names of all the members of the committee, or other body acting in the formation of the company, with their respective occupations, places of business, and of residence, together with the written consent of each of such promoters, to become such; and a written agreement on the part of each promoter, entered into with some one or more persons as trustees for the said company, to take one or more shares in the proposed undertaking, which must be signed by the member whose agreement it purports to be. The next section provides that, should the registration above required be delayed for a period of one month after the particulars have been ascertained or determined, any promoter, or the solicitor, if duly appointed, will be liable to a penalty of 20*l.*; to be recovered, in the absence of any specific remedy, in the mode pointed out by the 69, 70, and following sections.

Effect of them.

The only effect of these two sections, taken together, is

to make the promoters of the company (or their solicitor) liable to the penalty imposed, when they shall have failed to register the written consent of a member of the committee to take one or more shares in the proposed company for one month after such consent shall "have been ascertained or determined." If, therefore, there has never been any such consent, it would seem that the predicament contemplated in the 5th section has never arisen, and the penalty cannot be incurred. Even if it should be held that, under the circumstances supposed, the parties would be liable under that clause, still there is nothing in the enactments under consideration making it unlawful for a person who has never agreed to take any shares to act as a promoter in the formation of the company. The object of the sections we have quoted is, palpably, to make a qualification necessary for a promoter; but the terms employed seem inadequate for the accomplishment of that object.

The promoters, having duly registered their scheme, (d) Prospectus. associated other persons with themselves as provisional committee men, and appointed a solicitor to act on their behalf, are in a position to issue their prospectus, and to invite the public to subscribe to their undertaking. The Form of. prospectus generally contains the title or name of the intended railway, with the words "registered provisionally."

The proposed capital, and the number of shares into which it is to be divided.

The deposit to be paid on each share.

The names of the Provisional Committee.

The bankers,

The engineers,

The solicitors,

Then comes an announcement of the termini, and course of the line, together with those other particulars regarding the anticipated traffic, probable income and expense, &c., which are always important elements of the calculation which is to be the foundation of the proposed contract

with the public. Considerable care is required in drawing up the prospectus, as, previous to the execution of the deeds, it is considered as setting forth the terms of the contract between the promoters and the subscribers. Hence the amount of capital, the number of shares, and the authority of the promoters (in case, through the want of public support, or the refusal of the legislature to sanction the project, the act of incorporation should not be obtained) to expend the sum deposited, or some definite proportion thereof, in the payment of the expenses incurred, should be expressly mentioned.

Registry of.

Although the 4th section of the Joint Stock Act states that a copy of every hand bill, prospectus, or circular, must be registered previous to publication, no penalty is imposed (provided the company has been provisionally registered) for issuing them previous to such registration, but if the registration of such copy be delayed for a month after the time of publication, the 5th section makes the promoters, or the solicitor, as the case may be, liable to a penalty of 20*l*. This penalty, as there is no particular mode of recovering it prescribed, is recoverable under the 69th section by any person who shall proceed for the same before two justices of the peace having jurisdiction either where the offender resides, or where the offence was committed.

## SEC. II.—DISTRIBUTION OF SHARES.

(a) Application  
for shares.

The prospectus inviting parties to subscribe their names and capital to the intended scheme having been issued and circulated, the next point to be considered is the application for shares, and agreement to pay the deposit and sign the usual deeds, which are generally known as the parliamentary or subscribers contract and subscribers agreement.



The following is the usual form of an application for Form of.  
shares.

*To the Managing Committee of the                      Railway  
Company.*

I request you will allot me                      shares, of £  
each, in this Company, and I undertake to accept the  
same, or any less number, and to pay the deposit of  
£                      per share, and all future calls thereon, and to  
sign the parliamentary contract and subscribers' agree-  
ment when required.

Dated this                      day of                      18

Name in full

Residence

Business

Name of Referee

Residence

As in the case of ordinary contracts, an offer, so long as Effect of.  
it is unaccepted, may be withdrawn by the party making  
it (a), so an application for shares is not sufficient of itself  
to complete the agreement between the parties, so as to  
make it compulsory upon a party applying, to take them  
up, and pay the deposit thereon, but the applicant will be  
at liberty to withdraw his application at any time previous  
to an allotment being made to him. As to the effect of  
the application coupled with the allotment, see post (b).

On the receipt of the letters of application, it is usual  
to number them in the order in which they arrive, and  
also to enter them in like manner in a book called the  
Numerical Register. Great care ought to be taken of the  
letters of application, for two reasons: First, as being  
evidence of a contract to take the shares; and secondly,

(a) *Routledge v. Grant*, 4 Bing. 653.

(b) Page 51.

because they may probably be called for in parliament, and the non-production of them might throw discredit on the parties petitioning the legislature for their bill.

Fraudulent applications.

It would seem that any person applying for shares under a false name is liable to criminal prosecution, under the statutes passed against forgery; and whether the name used be that of an utterly fictitious person who never existed, or of a person actually existing, is wholly immaterial; it is as much a forgery in the one case as in the other, (a) provided the fictitious name be assumed for the purposes of fraud in the particular instance in question. (b) Indeed it is now a settled rule, that the counterfeiting any writing with a fraudulent intent, whereby another would be prejudiced, is forgery at common law. (c)

(d) Allotment of shares.

The promoters having received a sufficient number of applications for shares in the proposed undertaking, it is their duty to select from among the applicants the most eligible to whom they shall allot.

Number to be allotted.

Care should be taken in the allotment of shares, neither to allot too many nor too few. If the directors allot too many they may be liable at the suit of any holder of scrip certificates, for refusing to register him as a shareholder after they obtain their act of incorporation; (d) on the other hand if, having a sufficient number of applicants, they allot too few, they may be held personally liable for all expenses incurred, should they be unable in consequence of such mismanagement to proceed in their application to Parliament; and a bill in equity might be filed against them by the shareholders, praying that they may be

(a) *Rex v. Bontien*, Russ. & Ry., 260; Archb. Cr. L., by Jervis, ninth edition.

(b) *Rex v. Lewis*, Foster, 116; *Rex v. Wilks*, 2 East, P. C., 957; *Rex v. Froud*, 1 B. & B., 300; *Rex v. Watts*, Russ. & Ry. 436.

(c) Russell on Crimes, by Graves, vol. ii., p. 358.

(d) *Daly v. Thompson*, 10 M. & W., 309.

decreed to make good all losses sustained by their misconduct. (a)

To prevent fraud and secure a number of responsible subscribers, rigid enquiries ought to be made not merely as to the genuineness of the signature and identity of the party applying, but also as to his ability to take up his shares and pay the deposit and the calls when they shall become due. (b)

Selection of allottee.

The mischievous consequences of fraudulent applications for shares are not corrected by the punishment of the parties offending; for the promoters, by the insertion of the names of such fictitious applicants in their parliamentary contract, take an incomplete scheme into parliament, and are liable to be rejected on the ground either of not having a sufficient number of genuine signatures to their deeds, as required by the standing orders, or of bringing before the House a contract tainted with fraud. And it is highly probable, that although there might be genuine signatures to such an amount of subscriptions as should equal three-fourths of the estimated cost of the works, yet still the bill would be thrown out, unless it was shown that due diligence had been used in making the necessary enquiries as to the identity of the parties applying; and the petitioners might have their application refused, as being parties implicated in the guilt of attempting a fraud on the legislature and the public, by inserting as subscribers to their scheme the names of men utterly unable to meet the engagements for which they have made themselves responsible in the parliamentary contract. Hence the promoters must use great diligence in assuring themselves both of the genuineness of the application,

Consequences of indiscreet selection.

(a) *Walworth v. Holt*, 4 Myl. & Cr., 619; *Richardson v. Hastings*, 7 Beav., 323.

(b) A remarkable instance of the necessity of such precaution is furnished by the position in which the London and York Railway Company were placed in the session of 1845, by the petition for a scrutiny of the names appended to the subscription contracts.

and of the integrity and pecuniary ability of the applicants.

(c) Letters of allotment; form of.

A letter of allotment is a written notice to an applicant for shares, informing him that the committee of management have allotted him a certain number, and requiring him to pay the deposit thereon, and sign the usual deeds on or before a certain day. On the receipt of this notice, if it be a simple intimation of compliance with the request of the applicant not introducing any conditions (a) at all varying the form of application hereinbefore given, there can be no doubt that the application for shares and agreement to pay the deposit and sign the usual deeds when required, coupled with the letter of allotment sent by the provisional committee, renders the contract between the parties complete; and that the provisional committee have sufficient ground either for filing a bill in equity to compel a specific performance of the agreement (b), or for bringing an action at common law for the breach of the contract to pay the deposit; in which action they may also recover, in the shape of damages, any loss sustained by the company through the allottee's non-fulfilment of his engagements.

Effect of.

Makes the contract between promoters and allottee complete.

(d) Banker's receipt.

On the party producing the letter of allotment, and paying the deposit upon the shares allotted to him to one of the bankers named in such letter, he will receive in exchange for his letter of allotment a banker's receipt. The banker's receipt is a document signed by the banker, acknowledging that he has received on account of the persons named therein the amount of deposit mentioned in the letter of allotment.

Form of.

Effect of.

Neither letters of allotment nor the receipts are transferable, and hence the transferee acquires no rights as against the company, and therefore cannot claim to execute the deeds in the place of the original allottee.

(a) *Holland v. Eyre*, 2 Sim. & St., 194.

(b) For further information as to the liability of allottees, see *post*, ch. ii. s. 3

persons necessary for the due fulfilment of the conditions imposed on them by the standing orders of parliament, and for the preparation of the requisite plans, deeds, and contracts. Their powers are co-extensive with the demands of the legislature, and the necessities of their position as petitioners for an act. For every purpose, however, beyond those of completing the organization of the company, and obtaining the act of incorporation, they are incapacitated at this stage of their proceedings.

Among the powers conferred on the directors of a company on provisional registration, is that of allotting shares, and incidental to this power is the authority to distribute them among the applicants in such proportions as to them may appear right, altogether rejecting some offers, granting some in part, and others to the full extent of the demand, according as in their judgment the interests of the company may require. The allotment must, however, be *bona fide* not fraudulent, or the provisional committee will be liable for the consequences of their fraud, in a suit in equity, at the instance of those allottees or members who have suffered by reason of their misconduct; or, if the schemes should prove abortive, in an action at law to recover back the amount of deposit paid. (a)

To allot shares.

The provisional committee may also, in furtherance of the objects of the company, make contracts and agreements with landowners both as to the mode of intersecting their lands, and the amount of compensation to be paid either for the lands or for withdrawing opposition; such contracts are, of course, conditional, and provided they are made in good faith they will be binding on the company in the event of the act being obtained. (b) They may also, if so authorized by the deed of settlement, or

To agree with Landowners.

Or rival companies.

(a) *Walstab v. Spottiswoode*, 15 L. J., N. S., Exch., 193. See also *Wontner v. Shairp*, sittings in Com. Pl., after T. T., 1846.

(b) See on this subject *post*, book iii, and *Edwards v. Grand Junction Railway Company*, 1 Myl. & Cr., 650; *Stanley v. Chester and Birkenhead Railway Company*, 9 Sim., 264; *Lord Howden v. Simpson and others*, 10 A. & E., 793; 3 R. C., 294.

the subscribers' agreement, make any arrangement as regards amalgamation with rival companies, or as to the abandonment of any portion of the line, or the making of additional branches. Should they, however, be desirous of doing anything beyond the scope of the powers conferred on them by their deed of settlement, and beside the direct purposes for which the company was formed, they should obtain the express sanction of the shareholders at a meeting duly convened for that object.

To pledge the  
company's  
credit.

To spend de-  
posits.

Incidental to the right of doing the several acts hereinbefore mentioned, it is submitted that the provisional committee have authority to pledge the credit of the company for any and all purposes within the scope and objects of the association, subject to the restrictions imposed by the 7 & 8 Vict. c. 110; and also the right to indemnify themselves for all liabilities and expenses incurred in carrying out the project. For this purpose they may, in the absence of any agreement to the contrary, appropriate the deposits of subscribers to the payment of all costs properly incurred. The subscribers' agreement however usually gives express authority to this effect. Although the provisional committee are empowered immediately on provisional registration to do all the above mentioned acts, it is advisable before incurring the heavy expenses attending the full exercise of their powers, that they should satisfy themselves that there will be a sufficient number of subscribers to constitute the company, otherwise if the project turn out abortive for want of adequate public support, they may not be entitled to appropriate to the liquidation of expenses incurred any portion of the deposits actually paid. (a)

It would, therefore, be prudent in all cases, before taking any step which would involve a considerable outlay, to wait until the deposits have been paid, and the sub-

(a) *Nockells v. Crosby*, 3 B. & C. 814. *Walstab v. Spottiswoode*, 15 L. J., N. S., Exch. 193.

subscription or parliamentary contract, and subscribers' agreement.

The parliamentary contract is a deed whereby the several subscribers covenant with certain persons, named therein as trustees for the proposed company, that they have subscribed for the sums placed opposite their names, for the purpose of making a railway from a certain place to another certain place, with discretionary powers to the persons named as directors to vary and alter both the termini and intermediate stations, to abandon or defer any portion of the line, as they may think fit, and to apply to parliament in the ensuing, or any future session, for an Act of Incorporation; with a covenant to pay (in case the act is obtained) the amount subscribed within a certain time; or, in case the bill is thrown out, to contribute towards the expenses incurred in proportion to their shares. It should be observed that if the trustees, with whom the subscribers covenant, execute the deed as shareholders, the instrument will be void. As to the particulars required by the standing orders of the Houses of Parliament to be observed in respect of the parliamentary contract, see next book.

(b) Parliamentary contract; nature and form of.

The subscribers' agreement or deed of settlement is a contract under seal between the subscribers and certain parties named therein as trustees for and on behalf of the intended company, by the terms of which its internal government previous to incorporation is regulated.

(c) Subscribers' agreement.

This deed usually contains a covenant on the part of the several subscribers to pay up the amount of their subscriptions. It then proceeds further to covenant That certain persons named therein are to be the directors and managers of the business and affairs of the company until the bill is obtained, that each subscriber will abide by the regulations specified in the deed and by such others as the directors may make in furtherance of the objects of the association. Of these the principal are such as regulate the amount of capital, with the limits within

Usual provisions of.

which it may be increased or diminished, the amount of deposit, and the manner of appropriating it in discharge of preliminary expenses, and the time and mode of payment of future instalments.

It further provides, that in case any of the subscribers fail to execute any future deeds which may become necessary under the standing orders of either house of parliament, the committee of management may forfeit their shares; then follow clauses appointing the chairman and deputy chairman with the mode of voting; clauses regulating the filling up of vacancies in the direction, occurring by death, resignation, or misconduct; and the appointment of sub-committees; clauses giving the directors power to employ surveyors, clerks and others, to survey and make plans and estimates for surveys and execution of works, and to make bargains with land-owners and others as to the purchase of land in case the bill should pass. In this deed large discretionary powers are given to the managing body to be exercised for the promotion of the general objects of the company, although it has not been usual in the generality of subscribers' agreements to make any provision for the dissolution of the intended company in case any number of shareholders less than the whole should be desirous of breaking up the company, or in case a rival line should have obtained an act of incorporation, it is advisable that such a provision should be inserted in all subscribers' agreements, as without it any one dissentient shareholder would be enabled to prevent the dissolution of a company, although it might have either become impracticable or inexpedient to carry it out, for it cannot be inferred from the general construction of the subscribers' agreement that the majority, or any definite number, shall have authority to direct and regulate the affairs of the company;(a) and although by a late act, 9 & 10 Vict., cap. 28, entitled An Act to facilitate the Dissolution of certain

(a) *Chapple v. Cadell*, Jacob, 537; *Story on Partnership*, s. 213.



Railway Companies, provision was made for the dissolution of such companies, it would appear that this act was applicable only to persons or companies that had entered into contracts for the making of railways previous to the passing thereof, and that as far as that act was concerned, all parties entering into such contracts subsequently were left in the same position as before.<sup>(a)</sup>

Although the provisions of the two instruments called the parliamentary contract and subscribers' agreement may be (and sometimes are) all included in the former, and the latter be altogether dispensed with, yet it is on many accounts desirable to have the two separate deeds. In the first place, the objects of the two are totally different. The parliamentary contract is prepared and executed in compliance with standing orders, and relates only to the subscription itself. The subscribers' agreement, on the other hand, is a document prescribing the terms on which the parties executing it consent to belong to the proposed company, and the various regulations of the society before incorporation. The insertion of such provisions (numerous as they must necessarily be for this purpose) would needlessly encumber the parliamentary contract, and, from the complex character of the document, some would almost unavoidably be overlooked and omitted; whilst if made the subject of a separate deed they are at once more likely to be remembered, and to be so framed as to secure the objects proposed.

(a) 9 & 10 Vict., c. 28, s. 1.

## CHAPTER II.

RIGHTS, REMEDIES, AND LIABILITIES OF THE PROMOTERS  
AND MEMBERS OF A COMPANY, RESPECTIVELY, BEFORE  
THE ACT IS OBTAINED.

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SEC. I.—*Rights and Liabilities of the original Promoters of a Company, before the formation of a Provisional Committee.*

Promoters ;  
definition of.

By the interpretation clause (a) of the 7 & 8 Vict. c. 110, the term "promoter" is made to apply "to every person acting by whatever name in the forming and establishing of a company at any period prior to the company obtaining a certificate of complete registration." This definition will include the members both of provisional and managing committees, as well as the original projectors ; but in common parlance the word "promoters" is seldom employed to designate any persons other than those who originated the scheme, and in whose names it is provisionally registered. It is of these persons exclusively that we are now to speak, and we shall treat of their rights and liabilities as arising out of their connection with and management of the projected company before the formation of a provisional committee.

Liabilities of.

Although the statute 7 & 8 Vict. c. 110, forbids the promoters of a scheme to make the same public before it has been provisionally registered, there is nothing in that act to preclude them from taking privately all such steps as they may deem necessary for the developing and completing of their project. Expenses, more or less serious in amount, may be incurred in these preliminary proceedings,

(a) Section 3.

but most commonly the prudence of the parties concerned induces them to limit the outlay in this stage to the payment of the fee required for provisional registration, the promoters being unwilling to incur any serious personal liability, until the deposits of subscribers shall form a fund to which they can resort. But where the promoters are desirous of rigidly examining and fully maturing the scheme previous to any public announcement of it, considerable expense must necessarily be incurred in getting information, making calculations as to the probable cost of construction, procuring returns of traffic, ascertaining the dispositions of landowners and others on the proposed line, and in the employment of engineers, surveyors, and other officers, whose assistance may be necessary for those purposes.

The question here arises, Who are the parties liable for these expenses? Should the scheme of the projectors prove abortive and no company be formed, there can be no doubt that the persons who gave the orders are the only parties liable. It is a case of simple contract, on which there is a direct personal liability. If, however, the project be adopted by a number of persons, who on its provisional registration form themselves into a company, under and subject to the provisions of the 7 & 8 Vict. c. 110, a question may arise how far the original projectors transfer the liability for previous expenses from themselves to the provisional or managing committee then formed.

If scheme is abortive.

If successful.

The mere fact of the projectors either associating others with themselves in the conduct of the scheme, or transferring it over entirely, will not, even in case of an express agreement to that effect between the projectors and the incoming parties, or the new provisional committee, relieve the former from their original liability, nor render their associates or successors liable to the creditors, unless some arrangement is made between the creditors, the projectors, and the incoming provisional committee-men, that the latter are to be taken and considered as the parties liable.

Transfer of liability to provisional committee.

Rights of promoters.

To be re-im-  
bursed ex-  
penses.

Express con-  
tract.

To remunera-  
tion for ser-  
vices.

Whether the registered promoters of a scheme which they have either entirely transferred to others, or in the management of which they have associated others with themselves, acquire any right against the company when formed (in the absence of express agreement) is a question of considerable importance. If they have merely associated others with themselves in the conduct of the company and still take part in its affairs, it would seem that they will be entitled in equity to be allowed all charges, losses, and expenditure incurred in the transaction of the business subsequent to the formation of the partnership, but cannot claim any compensation, commission, or reward for their skill, labour, and services while employed in behalf of the intended company. (a)

If, however, previous to associating with, or transferring the scheme over to, others, they enter into an express agreement as to the consideration to be paid to them, and the terms on which they part with the whole, or certain portions, of their interest therein, they will have a right in either case to compel the specific performance of such agreement; and their remedy will be either in Equity or at Common Law, according to the circumstance of their being partners or otherwise with the contracting parties. (b)

It frequently happens that the scheme is registered by and in the names of parties who are desirous of being appointed to the respective offices of engineer, solicitor, or secretary of the intended company. In such case, should the scheme prove abortive, and the registered promoters have transferred it, without special agreement, either partially or entirely to the hands of others, they would be precluded from enforcing any claim for their work, labour, and services. Thus, where, (in a recent case) the secretary, who was also a registered promoter of a scheme which

(a) Story on Partnership, s. 185.

(b) *Parsons v. Spooner*, 15 L. J. R., N. S., 155 ch.

failed, brought an action against certain members of the provisional committee to recover compensation for his services, the Lord Chief Baron directed the plaintiff to be non-suited, saying, "It appears to me that a promoter cannot sue any provisional committee-man, or any person connected with the scheme. The 7 & 8 Vict. c. 110, has limited what the parties may do, and the promoters may incur certain preliminary expenses, but they cannot sue any of the directors for any of those expenses." (a) This decision seems to be grounded on the fact, that under the circumstances stated, the relations of partnership subsisted between the plaintiff and the defendants, as being all associated together for the promotion of the scheme, although it did not appear that the plaintiff had taken, or agreed to take, any shares in the proposed company. If, however, the Act of Incorporation be obtained, the original promoters would be entitled to remuneration under the usual clauses, appropriating the money received in the first place to the payment of the expenses incurred in obtaining the Act. (b)

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SEC. II.—*Rights, Powers, and Liabilities of the Members of a Provisional Committee.*

The scheme having been provisionally registered, and a provisional committee formed, we proceed to consider the rights, powers, and liabilities of the members thereof; whether they act through the agency of a select portion of their number called a managing committee, or generally and without the intervention of such a body.

Provisional  
committee.

(a) *Wilson v. Lord Curzon and another*, Sittings in the Exch. after Michaelmas T., 1846. See also *Parkin v. Fry*, 2 C. & P., 311.

(b) *Carden v. General Cemetery Company*, 5 Bing. N. C. 253; 7 Dowl. 275.

(a) Their rights  
and powers.

After the provisional registration of any company, it is lawful for the provisional committee to assume the name of the intended company, to issue their prospectus, to open subscription lists, to allot shares, and receive a deposit of ten shillings per cent. thereon, and in the case of companies requiring the authority of Parliament, such further sum per cent. as may be required by the standing orders of either House of Parliament, to be deposited before an act can be applied for (at present one-tenth part of the capital subscribed), and also to perform such other acts only as are necessary for constituting the company, or for obtaining letters patent, or a charter, or an act of parliament. They may not, however, make calls, nor contract for or hold lands, nor enter into any contracts for any services, or for the execution of any works, or for the supply of any stores, except such services, or stores, or other things as are necessarily required for the establishing of the company; and, except any purchase or other contract to be made conditional on the completion of the company, and to take effect after the certificate of complete registration, act of Parliament, or charter, or letters patent shall have been obtained, and except (in the case of companies requiring an act of Parliament) contracts for services in making surveys, and performing all other acts necessary for obtaining an act of incorporation, or other act for enabling the company to execute their works. (a)

Generally.

Hence the directors of a railway company, provisionally registered, are empowered not only to take such steps as may be necessary to insure the formation and internal completeness of the company, but such also as are necessary for procuring their act of parliament. Thus they may make surveys and contract for the services of competent persons for that purpose; they may obtain the assistance of counsel, solicitors, and parliamentary agents, of engineers, draughtsmen, and accountants, and any other

(a) 7 & 8 Vict., c. 110, s. 23.

The letters of allotment are usually returned to the secretary by the respective bankers after the time for payment of the deposits has expired.

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SEC. III.—*Execution of Deeds.*

WHEN a subscriber has received his letter of allotment, and paid the deposit, his next business is to make application for permission to execute the parliamentary or subscription contract, and the subscribers' agreement; for which purpose, days are usually fixed by the directors, and notice thereof given to the allottees. Evidence should be required on the production of the banker's receipt for that purpose, that the holder is the person to whom the shares were allotted. The applicant is usually identified by requiring him to indorse his name on the banker's receipt, and by then comparing the indorsement with the signature to the letter of application for shares.

Execution of deeds.

(a) Preliminary enquiries by promoters.

On the execution of the above deeds, and the delivery of the banker's receipt at the offices of the company, the subscriber will receive scrip to the amount of the shares for which he has subscribed. A scrip certificate is a document usually signed by two or more of the directors, acknowledging that the holder thereof, having executed the parliamentary contract and subscribers' agreement, and paid the proper deposit, is entitled to the number of shares therein mentioned. As to the transferability of scrip, and the rights and liabilities of vendors and purchasers of scrip, see *post* (a).

As the signing the parliamentary contract and subscribers' agreement materially alters the position of a party who has merely paid his deposit on the shares allotted, by converting the agreement to become a partner into an actual partnership (b), which will be considered to have

By allottees.

(a) Page 67.

(b) *Fox v. Clifton*, per Tindal, C.J., 6 Bing. 800.

commenced from the time of the payment of his deposit (*a*), it is advisable for an allottee, previous to his doing so, to require some evidence that he is not likely to be one of a few who may come in to execute the deeds; lest, after rendering himself liable "*in solido*" to the expenses incurred, it should afterwards turn out that a sufficient amount of deposit was not forthcoming to meet the parliamentary outlay, and he himself should be made responsible for heavy claims against the company. Although by the conditions inserted in the prospectus and letter of allotment, the refusal of an allottee to execute the usual deeds might entail a forfeiture of the amount of his deposit, even that would be better than to incur a liability of an indefinite amount to third parties by making himself a partner. Nor is it sufficient, before executing the deeds, that a subscriber satisfy himself as to the amount of deposit actually paid; he should also ascertain, for his own security, as far as practicable, the number of the subscribers, and their ability to meet the engagements they have entered into with the company.

This can easily be shown by reference to the banker's book and the return of the letters of allotment upon which the deposit has been paid. Every subscriber being entitled to such information, any refusal to afford it would be in itself a suspicious circumstance and one calculated to throw doubt upon the *bona fides* of the undertaking. Should the promoters of the company, in the event of a refusal on the part of the allottee to execute the deeds, take any proceedings in equity to compel such execution, it would probably be held a sufficient answer if the defendant could show either any fraud on the part of the plaintiffs in the distribution of shares, or such a state of things as, even in the absence of fraud, precluded any reasonable prospect of a successful establishment of the company.

We shall now point out the form and nature of the

(*a*) *Lawler v. Kershaw, M. & M. 93, Tenterden.*



scribers' agreement executed to the extent required by the standing orders of parliament. And inasmuch as the application for shares, although coupled with an allotment, is not a sufficient guarantee that the deposit will be paid, and the deeds executed; and the power to sue parties applying for shares, and refusing or neglecting to take them up, is a remedy which, however effectual, is too tardy to prevent the main objects of the promoters from being defeated by the delay which must necessarily ensue if they be driven to avail themselves of it; it would be better to have those important preliminary conditions of an application to parliament fulfilled before any serious liabilities are incurred in the service of the company.

It was evidently the intention of the framers of the 7 & 8 Vict. c. 110, first, that no person should be held out to the world as a provisional committee-man, or promoter of a company, without a written consent, on the part of such provisional committee-man to become such, and also a written agreement, entered into with some one or more persons as trustees for the said company, to take one or more shares in the company, and signed by the person intending to act as such. Secondly, that no person should be appointed or act as patron, president or director, whether honorary or otherwise, unless at the time of the appointment, and of his acting as such, he held at least one share in the proposed company (a). With regard to the latter provision, it is unnecessary to make any remarks, as the clause in question does not apply to companies which fall within the proviso of the second section of the statute, and therefore is not applicable to railway companies. As to the former, namely, that relating to the agreement in writing, to act as a promoter, and to take one or more shares in the intended company, we have already seen (b), that notwithstanding the provisions of the statute, a party

(b) Their liabilities.

Unaffected by  
7 & 8 Vict., c.  
110.

(a) See sections 4 & 28.

(b) Supra, ch. 1 pp. 11—13.

may act as a promoter, although he has entered into no such agreement, and hence he may incur the liability, as he may assume the character of a promoter without any compliance with the statutory regulations ; so that although the publicly advertising as a provisional committee-man, a person who has never given his consent in the manner prescribed by the statute, may render the promoters (or their solicitor) liable to penalties, for omitting to register such consent within a month after the necessary particulars shall have been ascertained, yet the question of connexion with the company, and consequently of liability, remains entirely unaffected by such omission, and in this respect compliance or non-compliance with the statute is utterly immaterial. Satisfactory proof of such facts as would have fixed a party with liability before the passing of the statute, are amply sufficient for the purpose since.

Liability at  
common law.

In discussing the question of liability, therefore, as it affects the provisional committee of a railway company, we shall proceed on the doctrines and principles of the common law, because neither the Joint Stock Registration Act, nor any other, contains any provisions at all altering the relations of such persons to third parties during the period of provisional registration, either by modifying or restricting their rights, or varying their remedies. Claims by and upon a company provisionally registered, or any members of it, upon or by any person, are to be enforced and resisted like any other claims, and determined by the ordinary rules of the common law. We may leave out of consideration, therefore, in this inquiry, the 7 & 8 Vict. c. 110, as having no connexion with the subject.

So we must disentangle ourselves of all that is technical and conventional in the terms employed to designate those whose liabilities we are considering ; terms invented to describe the special connexion which certain parties have with a company at the different stages of its existence, but which, as being utterly unknown to the common law, have no definite and intelligible signification,

when used in legal documents, or reiterated in arguments in court. Such are the words and expressions, "promoters," "directors," "provisional or managing committee," and the like. It is convenient (indeed necessary) to employ them, but we shall err if we fail to remember that it is the real relations sustained, and not the nominal position or office of the party, by which his liabilities must be determined. What the man has done, and not what he may be called, is the point to be ascertained, when we would understand the legal incidents of the position in which he is placed, or when we would attain a clear and definite notion of his connexion with a transaction on which he may sue, or on which he may be sued. If an individual has contracted, personally or by means of another whom he has authorised to act on his behalf, he will be liable, though no conventional designation be affixed to his name; but if he have not so contracted, personally or by his authorised agent, he will not be liable, though he be called a promoter, a director, or (worse than all) a provisional committee-man.

Of the contracts upon which the members of a provisional committee, or other promoters of a company, are sued, by far the larger proportion consist of such as were entered into by some other party than the defendant, and the ground on which it is sought to fix him with liability is, either that the real contractor was a partner with the defendant in the business concerning which the contract was made, and had authority therefore to pledge the defendant's credit in the transaction; or that the contracting party was the legally authorised and constituted agent, servant, or representative, of a co-partnership of which the defendant was a member, and by whose acts he will therefore be bound. In a word, it is contended either that all the members of a provisional committee are partners, so that each one is empowered to pledge the credit of the others in partnership matters, and that a managing committee are the appointed agents of the provisional committee; or that the secretary, solicitor, engineer, or other

officer, is the lawful agent of either of those bodies, by whose acts they will jointly and individually be bound. All the difficulties which have arisen in determining the liabilities of the parties sued, have sprung from the variety and complexity of the facts and circumstances to which the rules of law were to be applied, and not at all from any uncertainty in the rules themselves.

**How incurred.** At common law there are two ways in which a person may incur the liabilities of a partner: first, by an actual participation, or right to participate, in the profit and loss of the concern, which is a real partnership; and secondly, by such an interference in the management of it as may reasonably lead others to conclude he is a partner, or by representing himself, or consenting that others should represent him in that character, which is an ostensible partnership. We shall treat of these in their order.

**By taking shares.**

The first and most usual criterion of the existence of a partnership is a community of profit and loss; and consequently a person renders himself liable as a partner in an unincorporated company by taking one or more shares in the undertaking. It has been repeatedly held, therefore, that where a provisional committee-man acquires a right to shares in such company by the execution of the deeds, he will be to all intents a partner with the other members, and will be liable as such to third parties. (a) The provisional committee-men being liable in respect of their shares in the same manner and to the same extent as the rest of the shareholders, we shall treat more fully of that liability in a subsequent part of this work (b).

**By interference in management.**

But a right to participate in the profits of a concern, however, is not the only mode of creating a partnership, because, so far as third parties are concerned, the relations of partnership may be established and the obligations of it

(a) *Holmes v. Higgins*, 1 B. & C., 74; *Lucas v. Beech*, 1 M. & Gr., 417; *Fox v. Clifton*, 6 Bing., 776; *Perring v. Hone*, 4 Bing., 28; *Money Penny v. Hartland*, 1 C. & P., 352, Abbott.

(b) See *post*, page 59.

imposed, not only by an actual participation in the profit and loss of the speculation, which beyond all controversy identifies the individual so sharing the risks of the enterprise with those with whom he is associated in prosecuting it; but also, secondly, by a person's taking part in the proceedings of the association and openly connecting himself with the management of its affairs, by attending meetings, giving orders, and the like.

Thus, attendance at meetings, though no other active part be taken in the affairs of the company, and though the attendance be only occasional, or even at a single meeting (*a*), is sufficient to make a party liable. So, although the defendant were not present at the meeting at which the order was given, if by attendance at subsequent meetings, or inspection of the works in progress, he could be presumed to have sanctioned the order, he will be liable (*b*). So, also, even where the party sued had ceased altogether to attend the meetings before the contract sued upon was entered into (*c*).

Attending  
meetings.

Where a certain number have been selected out of the general body of the provisional committee to act as a committee of management, and they assume the office and undertake to conduct the affairs of the association, the members thereof will be primarily liable for all expenses incurred, in consequence of their orders, or of the orders of their secretary or servant, when the authority is shown to have been given (*d*). So, also, a majority at any meeting (a quorum being present, if provided for in the subscribers' agreement) would have an implied, if not an express right under deed, to pledge the credit of their co-committee men in relation to all matters within the scope of their authority. As to the liability of those who

Managing  
committee.

(*a*) *Ellis v. Schmoek*, 5 Bing., 521.

(*b*) *Maudsley v. Le Blanc*, 2 C. & P., 409.

(*c*) *Doubleday v. Muskett*, 7 Bing., 110.

(*d*) *Pitchford v. Davis*, 5 M. & W., 2. Parke B.

take this active part in the management of a company's affairs, doubts can seldom arise (*a*).

By holding out name to the world.

A third mode by which a person may render himself liable as a partner is by representing himself, or consenting that others should represent him, as jointly embarked in the promotion of some scheme, to which he thus lends the sanction of his name, and affords the advantage of his credit and reputation. Under these circumstances it has been justly held that although such person was neither engaged to contribute funds for the purposes of the association, nor entitled to share its profits, yet on grounds of public policy, and to prevent the frauds upon creditors consequent on a system of fictitious and illusory credit resulting from honorary patronage of mercantile schemes, all the parties whose names are published as promoters of the enterprise should be deemed partners and be made liable as such. (*b*)

Thus a party may be rendered liable by permitting his name to be held out as a patron, director, or member of the provisional committee of a company; nor does it appear necessary that he should, in addition to his assent to act, have attended meetings, taken shares, or in any other way have interfered in the management of the concern. (*c*)

Assent to join provisional committee.

As to what will be a sufficient consent on the part of an individual to act as a provisional committee-man, we may remark that if the party have complied with the requirements of the Joint Stock Registration Act, by signing a written agreement to act in that capacity, and to take one or more shares in the company, no question can arise on the subject. But it is not by any means

(*a*) See the observations of Mr. Baron Parke on this subject, in the case of *Law v. Wilson*, at Nisi Prius, 1846.

(*b*) *Exp. Wilson*, 19 Ves., 458—467; *Fox v. Clifton*, 8 Bing., 776; *Parker v. Barker*, 1 Brod. & B., 9; *Goode v. Harrison*, 5 B. & Ald., 147; *Bond v. Pittard*, 3 M. & W., 357.

(*c*) But see recent cases of *Reynell v. Lewis*, and *Wyld v. Hopkins*, *infra*, page 38.

necessary that this should have been done in order to fix a party with liability—a written request to have his name inserted in the list of the provisional committee, or a written consent to that effect, though unaccompanied with any agreement to take shares, would suffice, it only being necessary that the publishing the name to the world should be the act of the party himself; and this must appear either by his express or implied assent. If the provisions of the 7 & 8 Vict., c. 110 have been complied with, the registered consent to act will be conclusive evidence of the liability of the party on more grounds than one; on the ground of its proving the existence of a partnership between himself and the other members of the company, and also on the ground of its furnishing unanswerable testimony to the fact of the publication of his name being his own act and deed. But the latter may be proved although no registered, or even written, consent can be produced. If the name of the defendant be inserted in the prospectus, and he be shown to have done any act from which his sanction of that insertion may be fairly inferred, such as calling at the offices of the company, making inquiries as to its affairs, claiming the number of shares usually allotted to the members of the provisional committee, and the like, this will be evidence for the jury to shew his consent to fill the situation with the liabilities of which the plaintiff seeks to charge him. Even if the responsibility to third parties of an individual sued as a provisional committee-man, on the ground of his assent to act as such, depended upon the fact that the statutory consent was given, it would seem that, on the proof of such facts as are mentioned above, the Court would presume that such assent was given. (a)

The arguments by which we have thus endeavoured to establish the liability of the members of a provisional committee for expenses incurred in the prosecution of the

Considerations  
as to the ap-  
plication of  
above rules to  
projected com-  
panies.

(a) *Maudsley v. Le Blanc*, 2 C. & P., 409.

Reynell v.  
Lewis.  
Wyld v. Hop-  
kins.

Doctrines of  
partnership.

general business and objects of the association, have proceeded on the broad principles of the common law, in reference to parties associated together for a common object, and on the supposition that the promoters of a public company were partners. The assumed analogy, however, between ordinary cases of partnership and the projectors of public companies, has lately come under the consideration of the Court of Exchequer in two important cases, and that analogy has been denied. It has been held in those cases (*a*), that the fact of a party having given a written consent to act as a provisional committee-man does not make him a partner with the others, and that one member of a provisional committee does not appoint the others his agents, so as to bind him by their acts. Hence the simple fact of being a member of a provisional committee does not involve an individual in the responsibilities of a partnership. The position (considered apart from the acts and conduct of the party) is one to which the law attaches no definite obligations: it amounts to nothing. But if the fact of being a member of a provisional committee be nothing, the holding out of the name as such cannot be more; and therefore such representation with the defendant's express consent is said to involve no liability; it is a consent to be a provisional committee-man, and to be advertised as such, and nothing more. Then, if there be no relations analogous to those of partnership among the members of the body in question, the application of the doctrine of implied agency becomes impossible. Each member of a mercantile firm impliedly gives authority to the others to bind him in matters connected with their business; but no such authority can be inferred where no similar relations are sustained. But if there be no partnership connection and obligations between members of a provisional committee, and if one be not agent

(*a*) Reynell v. Lewis, and Wyld v. Hopkins, *Sittings after Michaelmas Term*, 1846.



for the others in relation to the company's affairs, to show the mere fact that a defendant was a member, is to give no evidence to fix him with liability on a contract, unless he entered into it himself. If some other member of the provisional committee contracted, the party sued is not responsible, for the contracting party was not his agent, and could not bind him; and therefore it is sought to make him responsible on a contract into which he never entered, personally, or by a lawful agent, and on which he is not liable, either primarily or secondarily.

The decision from which the above inferences are drawn, proceeds on the assumption that the defendant is a member of a provisional committee, having his name on the list, and nothing more. If, however, the list be published in a prospectus, and the defendant be shown to have been cognizant of the contents of that document, it may be considered as equivalent to his saying all which is there set forth, and expressing his sanction and approval of all that is there suggested as proper to be done. Liability for subsequent expenses will then depend on the terms of this prospectus, and the fair conclusion to be drawn from the fact that the defendant appended his name to it.

The question on which the liability of a provisional committee-man will turn, whether partnership be contended for or not, is that of principal and agent. If the contracting party was the defendant's agent, he was so either by virtue of some formal, solemn, and express authority given, which is rarely the case, or by some implied authority. The law will not infer any such implied authority between the members of a provisional committee as such. A jury, however, looking at all the facts and circumstances of the case, may infer such authority in any individual instance. As a general rule, it would be unreasonable to conclude that a person affixing his name to the list, and assenting to act as a member of a provisional committee, constitutes every other individual who may chance to have his name added thereto his agent. Even

Of principal  
and agent.

where a committee of management is formed for the purpose of conducting the affairs of the association, it cannot always be reasonably inferred that each individual member of the provisional committee constitutes that committee his agents, so as to become responsible for every act which they may do, and every liability which they may incur (*a*).

But if the defendant's name be appended to a prospectus naming the committee of management, and specifying the general course to be adopted in forwarding the objects of the company, there would be reasonable evidence of an implied authority to the managing committee to pledge the credit of the defendant for reasonable expenses incurred. Nevertheless, as this implied agency is not an inference of law from the mere relation of the parties (it may be gathered from some of the recent cases that) before a jury can find it, they must be of opinion that the defendant intended to give authority to pledge his credit, and that he knew something of the nature and amount of the debts about to be incurred, and consented to be responsible for them (*b*). Where the managing committee were the original projectors of the scheme, and were existing and acting before the formation of a provisional committee, it is not reasonable to conclude that the latter consented to be responsible for their acts (*c*).

Holding out  
name to the  
world.

In a recent case at *nisi prius* (since the decisions in *Reynell v. Lewis* and *Wyld v. Hopkins*), Lord Denman intimated that where a person allowed his name to be held out to the world as a partner he would be liable for the acts of his co-partners without its being shown that he had given any direct assent to the particular contract; and said, "in ordinary cases of partnership, where the names of the partners are painted over a shop-door, it is not incumbent on a party in giving credit to one to inquire

(*a*) See Mr. Baron Parke's observations in *Law v. Wilson*, 1846.

(*b*) Summing up of Mr. Justice Erle in *Parrett v. Blunt* and *Cornfoot*.

(*c*) *Lambert v. Knill*, 1846.

whether the others have sanctioned it; it will be assumed that in allowing their names to appear, they authorise parties to deal with the others upon their credit. The same principle applies to this case; here the defendant has authorised his name to be placed on the published list of the provisional committee; and it may be supposed that the public have given credit to the company on the fact of his name appearing in the list, the same as with partners whose names are painted over a shop." (a). It is not easy, at first sight, to reconcile the doctrines here propounded, which agree with the rules of the common law, and have been acted on in a long series of cases by eminent judges, with the view recently taken by the Court of Exchequer.

In a still more recent case (b), the same learned judge (after adverting to the cases of *Reynell v Lewis* and *Wyld v. Hopkins*, and expressing his approval of those decisions so far as they distinguished the case of the members of a provisional committee from a partnership or a *quasi* partnership) directed the jury that provisional committee-men, being associated together as the members of a body acting for a particular object, must be considered as having individually assented to the measures taken by that body, or any authorised members thereof, for the promotion of that object. That it frequently happens that in expressly authorising the doing of one thing, many others are impliedly sanctioned, as being closely connected with it, or essentially necessary for its accomplishment. As, if a man be instructed to build a house, he is impliedly empowered to procure the materials necessary for it: so, if the object be the formation and constitution of a company, all such things as may be essential for that purpose are included in the general authority to form it. That it will, nevertheless, in each case be a question for the jury

(a) *Alley v. Gain*, Middlesex Sittings after Michaelmas Term, 1846.

(b) *Newton v. Stewarts*, London Sittings after Michaelmas Term, 1846.

whether the defendant, in joining the provisional committee, did so with the view of sanctioning and promoting the formation of the company, and did thereby impliedly consent that his credit should be pledged, by his co-committee-men, or their agents, in taking all necessary steps for the accomplishing of that object. That if the jury should find these questions in the affirmative, the liability of the defendant is conclusively established on any lawful contract essential to the establishment of the company, whether entered into by himself personally, or by any other members of the committee, or by their secretary and solicitor duly authorised.

From the last two cases, it may be gathered that although the members of a provisional committee sustain no relation to each other identical with or closely analogous to that of partners at common law, yet that, as being publicly associated together for the furtherance of a common object, the consent of any individual to join the body (which must mean something) can mean only an approval of the proposed object, and a sanction of the effort to accomplish it, by their combined exertions. That if this be the proper interpretation of the act of a person joining the committee, this general and express approval of the object may reasonably be deemed to include the implied (but not less essential) sanction of the necessary steps for securing it; and that this sanction makes the act of any other member of the body in furtherance thereof his own act, on the well-understood principles of implied agency.

Result of recent cases.

The general result of the decisions in *Reynell v. Lewis*, and *Wyld v. Hopkins*, would appear to be, that it will be a question for the jury, in each case, whether the defendant made the contract upon which he is sued, either by himself or by his agent duly authorised for that purpose, and that it must be collected from all the facts of the particular case, how far each member of the provisional committee authorised the other members of it, or the members of the managing committee, or the secretary, solicitor, or

other person who gave the order, to pledge his credit in respect of the contract on which the action is brought. The apparent discrepancy between the cases relating to this subject, divides them into two classes, distinguished each from the other not so much by any difference in the interpretation of the rules or principles of law, as by a disagreement as to which rule or principle is most applicable to the circumstances under consideration. If the Common Law doctrines of ostensible partnership from the joint publication of names to the world, as of persons interested in the promotion of one and the same object, be applied to projected companies, any member of a provisional committee would appear to be liable on all the obligations incurred by his co-promoters in the service of the company, and the problem is solved at once by a summary application of those doctrines. The defendant and the contracting party each has his name on the list, therefore, though not actually yet constructively, the former entered into the contract, for the act of the other was his act; as far as the world was concerned they were partners, jointly interested in the undertaking, and jointly and individually liable for their own and for each other's acts in furtherance of the scheme: and there is a verdict for the plaintiff. But if to a similar state of facts the doctrine of principal and agent at Common-Law be applied, the result will be more favourable for the party sought to be fixed with liability. It is then argued: on this contract the defendant is not responsible unless he entered into it. Did he then contract with the plaintiff? Not personally, that is admitted, nor yet by an agent having direct, formal, and explicit authority from him for that purpose; but by an agent having an authority to be implied under the circumstances stated: then is it so? The law will not infer the implied agency from the mere relation of the parties, as in the case of partners at Common-Law, or of husband and wife; but if no such incidents attach at law to the existing relations, it must be shewn as a matter of fact, or of reasonable inference or

presumption, that the implied authority to pledge his credit was intended to be given by the defendant; that he meant to authorise each co-committee-man to contract for him, and intended to be bound by their acts, and to be liable on the obligations they incurred. In other words, it must be proved that the orders given by another, and the goods supplied to another, were orders given by the defendant and goods supplied to him, constructively, so as to make him answerable in the action brought against him for their price. In order to shew this, two points must be made out, first, that the goods were really supplied, or the orders executed, *on the credit of the defendant*; (a) and, secondly, that the defendant authorised the contracting party to pledge his credit; and unless both are found in the affirmative, the defendant is not liable. If the doctrine of partnership, or *quasi* partnership, among the members of a provisional committee be maintained, this important consequence follows, that no sooner is the character assumed, than a real substantial liability attaches on all contracts made by the others for the purposes of the company, whether the plaintiff knew of the defendants' connection with the scheme or not; so that it will be unnecessary to prove that it was done on his credit, the cases shewing the liability of secret partners in a firm being strictly applicable to that state of things. (b)

However difficult it may appear to be to reconcile the cases above cited, and the opinions of the several judges who presided at the trials thereof, yet, from a general view of the seemingly conflicting decisions, this conclusion may perhaps be safely drawn: that where any question arises as to the liability on a contract of any member of a provisional or managing committee, or board of provisional or managing directors, after proof of all material facts in

(a) See *Lambert v. Knill*, 1846.

(b) See *Wintle v. Crowther*, Cr. & J., 316.; *Beckham v. Drake*, 9 M. & W., 79; *Gardiner v. Childs*, 8 C. and P., 346.

the case, it will be rather for the jury to say what responsibility was incurred by the defendant in fact, than for the judge to declare what responsibility attached upon him in law; that such liability must be inferred from circumstances as a matter of fact, not deduced from the mere relation of the parties as a matter of law; and that its nature and extent as well as its existence must be left with the jury, and not be determined by the judge; and therefore that no legal doctrines, whether of partnership or agency, can be judicially applied to the facts proved to ascertain the liability of a defendant, but the jury must decide on the effect of these facts, guided in their decision by such a statement of general principles as to the judge may appear right.

If the liability of a provisional committee-man be any way established, whether it be laid down as law (on the doctrine of a *quasi* partnership) or be inferred as a matter of fact (on the doctrine of express or implied agency), it would seem that it commences immediately on the assumption of that character, as soon, that is, as the consent, verbal or written (and the agreement required by the Joint Stock Act is conclusive in the absence of even the least interference), or the conduct indicative of such consent has furnished reasonable proof of his connection with the scheme. Hence he may become liable as such before he has signed the subscription contract, and it will be assumed that he has done so, even if it be shewn that he has not. (a)

Commence-  
ment of  
liability.

This liability will extend to all contracts entered into by parties properly authorised, whether members of the provisional or managing committee or their lawful agents, provided they were made in furtherance of the objects of the association, were necessary for the formation of the company, and were such as might lawfully be made since the passing of the Joint Stock Act. And if the members of a provisional committee have duly appointed a com-

Extent of.

(a) *Maudsley v. Le Blanc*, 2 C. & P., 409; *Ellis v. Schmœk*, 5 Bing., 521.

mittee of management, contracts lawfully made by a majority of the latter to promote the objects mentioned in the prospectus will bind the rest. Upon each of these a provisional committee-man will be liable upon proof of such facts as shew him to be a member of that body, concurring in the appointment of the committee of management, whose acts are therefore his own, so long as the limit of the delegated authority is not transgressed. (a)

Where, however, the managers of the company make any agreement, or enter into any contract, beyond the scope of their authority as defined by the above statute, or limited by the terms of the prospectus, it will be necessary, in order to fix a defendant with liability, to shew that he either directly interfered in the making of the contract, or expressly sanctioned it afterwards. This distinction is in accordance with the general law of partnership, under which any member of the firm will be held responsible for all acts done, and proceedings taken by any other member of it, for the promotion of the business and objects of the partnership, so long as those acts and proceedings are within the scope of the authority given to one or more to act on behalf of the whole; but where the thing done was either not in furtherance of the partnership business, or without the province of the party to perform in the name and on the behalf of the firm, no liability will attach except to those who were immediately concerned in it.

This liability also extends only to contracts made subsequently to the time at which the party first, either by acting or consenting to act on the provisional committee, authorised the pledging of his own credit thereon: and not to contracts made previously, of which the incoming member, however, receives the benefit, (b) not even in case

(a) *Barnett v. Burdett*, *Sittings after Hilary Term*, 1846; *Same v. Sir Henry Lambert*, 15 L. J., N. S., 305, Exch.

(b) *Whitehead v. Barron*, 2 M. & Rob., 248, Tindall.



of express admission of liability. (a) The reason of this rule is well explained by Mr. Justice Story. (b) "A contract can be obligatory only upon those who are parties to it, or derive a benefit from it at the time of its inception. The joint interest, or joint liability, must be contemporaneous with the formation of the contract itself in order to superinduce the corresponding liability to perform it; and if there be no partnership then in existence to be bound, or none which is a party or privy to the contract, it cannot be deemed their contract but solely that of those who contracted and were capable of contracting at the time. Otherwise the law would introduce the extraordinary anomaly of making a contract, consummate and perfect between all the original parties, expand so as to be in fact the contract of other parties, who had not, and perhaps could not, at the time, have any interest in, or privity or connection therewith."

It was held, however, in two cases at Nisi Prius (c), that although a provisional committee-man was not liable on contracts executed previously to his joining the company, still he was liable on such as, though made before, remained, either in whole or in part, executory at the time of his becoming a member. These decisions are not irreconcilable with the general principles stated above. The actions in question were not brought on entire contracts entered into previously, although executed subsequently, to the defendant's joining the company, but for goods sold and delivered, and work and labour performed, some portion previously, and the remainder subsequently, to the time when the defendants respectively became members of the committee; so that each separate delivery of goods, or performance of work, might be regarded as equivalent to a new contract.

(a) *Saville v. Robertson*, 4 T. R., 728.

(b) *On the Law of Partnership*, p. 226.

(c) *Barnett v. Burdett*, *supra*. *Williams v. Bradley*, sittings after Hilary Term, 1846.

Is joint.

The liability of the members of a provisional committee once established, is a joint liability, and hence all the contracting parties should be joined in an action (*a*); but the only advantage which can be taken by a defendant of the non-joinder of the rest, is by plea in abatement, which, in the case of an action against a member of a provisional committee, is virtually impracticable, as the plea must truly state the names of all the parties liable, and also that they were living and resident within the jurisdiction of the court at the time of the commencement of the action; and should any name be omitted, the plea will not be supported (*b*). Nor would the fact that another action for the same cause was pending against other members of the committee be an answer; (*c*) although, if judgment had been recovered against one of the body, such judgment without satisfaction would be a bar to an action on the same contract against any of the others (*d*).

Dissenting  
party.

It seems, however, to have been intimated, that if the defendant dissented in respect of the contract in question, and the contracting party had notice of such dissent, a defendant would not be liable, (*e*) although the contract was made by an assenting majority of provisional committeemen. On the doctrine of implied agency between the members, the discharge of a dissident from liability can be understood, as by his conduct he expressly negatives the idea of his authorising the rest to act for him in the particular transaction. But if these committees are to be considered as analogous to partnerships, the question arises whether a majority is to govern in case of diversity of opinion as to the mode of conducting the partnership

(*a*) See Chitt. Pl., p. 47, sixth edition.

(*b*) *Godson v. Good*, 6 Taun. 587. A case is now pending in the Court of Common Pleas, as to the validity of a plea in abatement for the non-joinder not of all the co-contractors, but of such of them as were resident within the jurisdiction when the action was commenced.

(*c*) *Henry v. Goldney*, Exch. T. T., 1846.

(*d*) *King v. Hoare*, 14 L. J., N. S., Exch. 29. 13 M. & W. 491.

(*e*) *Barnett v. Lambert*, 15 L. J., N. S., Exch. 305.

business, or whether one dissentient can arrest the partnership business, or suspend the ordinary powers and authority of the other partners in relation thereto, against the will of the majority. According to Mr. Justice Story, (a) "where there is no stipulation to the contrary, a majority acting *bona fide*, have the right and authority to conduct the partnership business within the true scope thereof, notwithstanding the dissent of the minority." Although the above doctrine is laid down by so great an authority, it does not seem to be established by any decisions in our courts of law; and, indeed, the cases which relate to this subject, seem to imply an opinion to the contrary. Thus in *Vice v. Fleming*, (b) C. B. Alexander said, "it is clear that the defendant might, by an absolute notice, have discharged himself from all further liability, whether he ceased or continued to be a partner." In the same case, Mr. Justice Garrow added, "all the partners of a firm are liable for the debts of the firm, but the responsibility may be limited by express notice by one that he will not be liable for the acts of his co-partners."

Whatever may be the law on the subject in the case of ordinary partnerships, it is desirable that an assenting majority should, as to all matters relating to the business for which the company was formed, have authority to bind a dissenting minority; otherwise it would be in the power of any few dissentients either to suspend the affairs of the company, or to get rid of liability on contracts, of which the dissentients themselves would receive the ultimate benefits.

But however an individual member of a provisional committee may be able, by express notice in certain cases, to limit his general liability, it would seem that having once assumed that character, and incurred the obligations belonging to it, he cannot by any act of his own divest himself of the character, or discharge himself from the obliga-

Determination  
of liability.

(a) Comm. on Law of Partnership, Sec. 123.

(b) 1 Y. & J., 229.

tions as long as the company remains unincorporated ; at all events, if a partnership exists among the members. It seems questionable, whether even though he withdraw from the concern with the consent of all his co-committee-men, and publicly disavow all future connection with its affairs, and all future right to any share of its profits, he can succeed in escaping the liability of his position ; inasmuch as doubt has been thrown upon the right of his associates to consent to his withdrawal. (*a*)

A company formed for the construction of a railway is a partnership for a specific purpose, which cannot be dissolved at the mere will of any party desirous of withdrawing, nor even with the consent of any number of his colleagues, less than the whole, (which will include every shareholder) until that specific purpose has been carried out, or the respective rights, remedies, and liabilities of the members and of third parties, have been regulated by an act of incorporation. He can then discharge himself of liability in the mode therein prescribed.

### SEC. III.—*Allottees, their Rights and Liabilities.*

Letter of  
Allotment.

AFTER letters of allotment have been issued to the applicants a new legal relation is constituted, and new rights and liabilities arise thereupon. The promoters and the allottees respectively acquire rights and incur liabilities in virtue of the contract which has been entered into between them. The nature of these has been much disputed. Part of the difficulty has arisen from the terms of the instruments setting forth the conditions of the agreement. This, however, by a proper form of the letter of allotment, may be easily obviated.

(*a*) *Kidwelly Canal Company v. Raby*, 2 Price, 93.

On receiving a letter of allotment, the allottee becomes liable to perform the conditions of his own contract; that is, to accept the allotted shares, to pay the deposit thereon, and to sign the deeds. The provisional committee become liable to accept the deposit when tendered, and to permit the allottee to execute the Parliamentary contract and the subscribers' agreement. The rule that one partner cannot sue another at common law, except on an express covenant, or on an account stated, does not apply to the case under consideration, which is that of a breach of agreement to become a partner, and where an action will clearly lie (a). Although sustainable in point of law, there are, however, practical difficulties of a serious kind in the adoption of this remedy against a party neglecting to pay the deposit and take up the shares allotted.

Liability of allottee thereon.

At common law.

In the first place, the necessity of suing in the names of all the persons who, at the time of the contract made, were members of the provisional committee, together with all who had then signed the deeds, and were, therefore, partners; the cumbersomeness and difficulty of proof, and liability to mistakes, which in their consequences would be fatal, render an action at law almost impracticable. Moreover, the risk that some one of the numerous plaintiffs might be induced to give the defendant a release, and thereby furnish him with a triumphant answer to the claim, is another formidable objection to the proceeding. (b) The contingency that the court might hold the release fraudulent, and order the plea to be struck off the record, is too slight to diminish to any considerable extent the force of the objection (c).

These inconveniences are in a great degree precluded, where, in the form of application for shares, the allottees agree with certain parties named as trustees on behalf

(a) *Figs v. Cutler*, 3 Stark, 139; *Abbott. M'Neill v. Reed*, 2 M. & Sc. 89, 9 Bing, 68; *Walker v. Harris*, 1 Anstr., 245.

(b) *Rawthorne v. Gandell*, 15 L. J., Exch., 291, N. S., 15 M. & W., 304.

(c) *Fennell v. Newman*, 4 B. & Ald., 419.

In Equity.

Bill for specific performance.

of the company, to pay the deposit and sign the deeds, as the trustees will then be entitled to sue in their own names. The remedy in equity against an allottee refusing to execute his contract, is not encumbered with so many difficulties as that in law. A court of equity, indeed, will refuse to interfere where the object of the application is to establish a general partnership, which might be dissolved immediately afterwards at the option of any member of it.

But they will decree a specific performance of an agreement to become a partner, in all cases in which the proposed relation is to be established for a definite period, or for the accomplishment of some specific object (*a*). The grounds of this exercise of an equitable jurisdiction are ably stated by Mr. J. Story, in his work on the Law of Partnership. He says, "other of the intended partners may have incurred responsibilities on account of the intended partnership; or preliminary steps for the business of such intended partnership may have been taken, and acts done putting the same into an inchoate and imperfect operation, upon the full faith and confidence of a punctilious discharge of duties by the other side; so that it might work a most serious, if not irreparable, mischief and injury, not to enforce the specific performance of the contract, so as to bind all the parties to the acts done, and to the responsibilities incurred (*b*). Where specific performance of an agreement to become a partner is decreed, the partnership (if no particular date has been fixed by the contract) will be deemed to commence from the period when the contract itself was completed (*c*). An allottee, consequently, will be considered a partner from the time the allotment was made (*d*). It was formerly

*a*) *Adderley v. Dixon*, 1 Sim. & St., 611; *Hibbert v. Hibbert*, Roll T.T., 1807; *Birston v. Lyster*, 3 Atky., 383; and note of Mr. Swanston to *Crawshay v. Maule*, 1 Swans., 513.

*b*) Story on Partnership, ch. x., s. 188.

*c*) *Williams v. Jones*, 5 B. & C., 108.

*d*) *Lawler v. Kershaw*, M. & M., 93; *Tenterden*; *Williams v. Jones*, 5 B. & C., 108.

held that, in any suit by partners, all the members of the firm should be joined as plaintiffs; otherwise a demurrer would lie for want of equity, on the ground of the non-joinder of the proper parties. If this were so, the cumbersomeness and difficulty attending the remedy in equity would be equal to that at common law; although, however, there are no cases in which the non-joinder of all the members of a company has been urged as an objection against the proceedings, and therefore no decision directly in point can be cited; yet, in recent suits, instituted by one or more shareholders of a company, on behalf of themselves and the rest, against the directors for misappropriation of the funds, it has been held that a demurrer would not lie on the ground that all the shareholders should have been joined (*a*). From this, therefore, we may infer, that in case of a bill filed to compel a specific performance of an agreement to join the association, if all the members of the managing committee were made plaintiffs, no objection could be taken on account of the non-joinder of the other shareholders.

It is not unusual in letters of allotment to insert a clause to the effect that the allotment will become void in case the deposit should not be paid on or before the day named, and that in such case the directors reserve to themselves power to rescind the allotment, and reallot the shares. Under these circumstances questions may arise; first, whether the insertion of such a proviso is not an introduction of new matter, which would have the effect of avoiding the original contract; (*b*) and, secondly, whether payment on or before the day named is not a condition precedent of which the allottee can take advantage. As to the first point it is submitted, that the insertion of the clause in question is not such an introduction of new matter into the contract as can suffice to vacate it, the power of for-

Proviso as to  
forfeiture.

(*a*) *Richardson v. Hastings*, 7 Beav. 325; *Walworth v. Holt*, 4 Myl. & Cr., 619; *Preston v. Grand Collier Dock Company*, 2 Rail. Cas., 335; 11 Sim., 327.

(*b*) *Holland v. Eyre*, 2 Sim. & St., 194.

feiture reserved to the committee being incidental to their office and functions as the managing body, and without such power it would be impossible to form a company. On the second point it seems clear, that if the provisional committee are ready to perform their part of the contract within reasonable time, the allottee cannot avail himself of punctual payment as a condition precedent, by the non-fulfilment of which he may escape from the obligations of his agreement, (a) and thus take advantage of his own wrong. The power to forfeit is an additional remedy, of which the directors may avail themselves or not, and they are therefore at liberty either to rescind or to enforce the contract. These powers, however, are of less importance where the letter of allotment contains no proviso of forfeiture, or where the proviso expressly states that it shall be in the option of the managing committee to forfeit and reallocate the shares or enforce the payment against the allottee.

Liability to  
third parties.

As the allotment of shares, even when coupled with payment of the deposit, does not of itself constitute an allottee a partner with the provisional directors of a company, neither will it make him a partner as regards third parties. An allottee is not a partner in fact, the payment of the deposit and the banker's receipt given thereon does not give him a right in the partnership property, but merely a right in equity to have an assignment of a portion thereof according to the number of shares he holds. Thus, when in an action for goods supplied to a mining company, it appeared that the defendant had paid money for certain shares, and received a certificate to that effect, but had never executed any deed, nor otherwise interfered in the affairs of the company; it was held that the action could not be maintained. (b)

Right of al-  
lottee to re-  
cover back the  
whole deposit.

The contract between the provisional committee and the allottee, on the receipt of the letter of allotment, is a

(a) *Doe dem Bryant v. Bankes*, 4 B. & Ald., 401. *Doe dem Nash v. Buck*, 1 M. & W., 402.

(b) *Vice v. Lady Anson*, 7 B. & C., 409; *Fox v. Clifton*, 6 Bing., 776.



contract not of present partnership, but to become a partner in a certain event. The liability of an allottee to complete his contract to become a member of the company, and the remedies which the committee may have against him we have already considered.

If the allottee is compelled by legal process to execute the deeds, and thereby enrol and constitute himself a partner in the company, a new state of things arises to which we shall advert in the next section ; but supposing him to have paid his deposit, and never to be called upon to sign the deeds, in consequence of the dissolution of the company, and failure of the scheme without an application to parliament, and such failure is not attributable to any fraud or gross mismanagement of the committee, the question arises whether the allottee is entitled to receive back the entire amount of deposit, without any rateable deduction for expenses incurred. This question must be decided principally upon the terms of the prospectus which is the basis of the contract between the allottee and the committee until the partnership is completed by the execution of the deeds. It is usual in the prospectus to make some mention of the costs to be incurred in forwarding the proposed company, and if that document so alludes to them as that by fair intendment it may be concluded that the allottee was aware of his liability to share the expenses of the steps to be taken, and impliedly therefore undertook to pay his proportion of them in any event, he will be liable accordingly.

Dependent on  
terms of pro-  
spectus.

The language of the prospectus may easily be framed so as to preclude dispute upon the subject. But if no undertaking to contribute towards preliminary expenses can be inferred from the terms of the prospectus, or of the letter of allotment, and the scheme be entirely abandoned, the allottee will be entitled to receive back the amount of his deposit without any deduction being made for preliminary expenses. His contract was simply to become partner with others in an event which never happened,

and hence he may claim, in an action for money had and received, on the ground of a failure of consideration, to be repaid the full amount which he advanced conditionally, on the happening of that event. (a) A plaintiff however will be non-suited unless the letter of allotment which he offers in evidence be stamped. (b)

It is, however, submitted that delay in making the application to parliament, from inability on the part of the managing body to proceed at once,) is not an abandonment of the scheme which will entitle an allottee to recover back the amount of his deposit on the ground of a failure of consideration, inasmuch as in the cases in which such a right to recover has been decided to belong to allottees, the circumstances showed an ultimate and entire abandonment, and not a mere postponement, of the project on the part of the directors.

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SEC. IV. — *Rights, Remedies, and Liabilities of the Managing Committee and Shareholders, after execution of the Deeds.*

WE have already considered the different members of a company in several distinct positions, namely as projectors, provisional committee-men, and allottees; it, therefore, now only remains for us to consider the position of the managing committee-men in respect of the parties executing the subscribers' agreement and parliamentary contract, and thereby becoming shareholders, and also the position of such shareholders with respect to

(a) *Nockels v. Crosby*, 3 B. & C., 814; *Kempson v. Saunders*, 4 Bing., 5; *Walstab v. Spottiswoode*, 15 L. J., N. S., Exch. 195; *Watkins v. Huntly*, 2 Carr. & P., 45 note,—Best; *Pitchford v. Davis*, 5 M. & W., 2; *Wontner v. Sharp*, *Sittings after Trinity Term*, 1846.

(b) *Vollans v. Fletcher*, *London Sittings, Exch.*, after *Michaelmas Term*, 1846.

third parties. We shall treat first of the mutual rights and liabilities of directors and subscribers, and then of the liabilities of the latter to third parties.

The liability of the managing committee of a projected company to the shareholders will depend in great measure upon the nature of the contract between the parties. Ordinarily deeds are prepared and signed by all the parties to the undertaking, by which each binds himself to bear a certain proportion of the expenses which shall be incurred whether the scheme succeed or miscarry. In this case the governing body are protected by the terms of the instrument so long as they act in accordance with the authority thereby conferred upon them, and they may lawfully dispose of the funds entrusted to them in furtherance of the general objects of the association; nor will they be liable to refund, although the project should ultimately fail. If, however, the scheme originated in fraud, and without any probable or reasonable chance of success, or if there was any fraud in the manner of carrying it out, or in case the directors abandoned the scheme without the concurrence and consent of all the shareholders, or of such a number of shareholders as the deed of settlement prescribed, the fact of a party having executed the deeds, and made himself a partner, would not preclude him from his right to have the deposit returned free from all deductions on account of expenses previously incurred. For although it was decided in the case of *Fox v. Clifton* (a), that a party by executing the deeds made himself a partner in the company, in which case his remedy against the directors for any fraud or mismanagement subsequent to the partnership being completed between himself and them would be in equity only; yet it has been held at *Nisi Prius*, (b) that if the shareholder was induced to execute the deed by gross

(a) Liability of directors to shareholders.

For fraud.

(a) 6 Bing., 795.

(b) *Wontner v. Shairp*, sittings after T. T., 1846. Erle.

fraud and misrepresentation on the part of the directors that the deed was void, and that the subscriber could sue the directors for money had and received, and was not compelled to resort to a court of equity for his remedy. This is in accordance with the established principle of law, which makes void any deed executed by a party whose execution was procured by covin and misrepresentation. But the bare fact that the subscription contract was not executed to the full amount of the proposed capital (in the absence of fraud), would not be sufficient to support an action by one of the shareholders who had executed the deed to recover back the amount of his deposit, his covenant being absolute and having no reference to any condition precedent. (a)

Remedy in case  
of bubble  
schemes.

The usual remedy, however, in such cases is in a Court of Chancery. Thus a bill in equity lies to recover back the deposits paid by a shareholder in a joint stock company where the project is a bubble (b). So, where the directors of a joint stock company, in order to sell their shares to advantage, represented in their reports and by their agents, that the affairs of the company were in a very prosperous state, and declared large dividends at a time when the affairs of the company were greatly embarrassed, a person who had been induced by those means to purchase shares of one of the directors was held entitled to relief in equity, on filing a bill against the director of whom he had made the purchase (c).

Of misapplica-  
tion of funds.

So, for any misappropriation of the funds of the company, or for a refusal to refund or account in case of the *miscarriage of the scheme*, the remedy is to be sought against the directors in a Court of Equity. Even here, however, certain supposed legal rules obstructed the administration of justice in numerous instances. A bill filed in the cases above mentioned would be for an account, and that the

(a) *Hutt and Others v. Giles*, 13 L. J., N. S., 337, Exch., 12 M. & W. 492.

(b) *Colt v. Wollaston*, 2 P. Wms., 154; *Green v. Barratt*, 1 Simon, 45.

(c) *Stainbank v. Fernley*, 9 Simon, 556.

funds might be applied to the objects of the undertaking, but then it was thought that such a bill must pray a dissolution of the partnership, and that all the partners must necessarily be parties to the suit. Both these notions are now exploded, and the cases which seemed to support them are overruled by the decision of Lord Cottenham C. in *Walworth v. Holt*, (a) followed by the Master of the Rolls in the subsequent case of *Richardson v. Hastings*. (b) There is little difficulty now, therefore, in finding relief in equity for shareholders in a company whose funds have been misapplied by the managing body. The wrong doers need not all be joined as defendants, nor need the injured parties all combine to sue, and the bill need not pray a dissolution in order to obtain the interference of the court. (c)

The general body of subscribers are liable to the directors of the association (or to the trustees named in the parliamentary contract and subscribers' agreement, with whom they expressly covenant,) to perform every thing in accordance with the stipulations of the contract into which they have entered, and the covenants of the instrument which they have executed. Thus they are bound to pay their deposits, and contribute rateably in proportion to the extent of their share in the undertaking towards the expenses incurred in carrying it out.

(b) Liability of shareholders to directors.

On covenants in deeds.

According to the practice now uniformly adopted of requiring every subscriber to execute the two deeds known respectively as the subscribers' agreement and the Parliamentary contract, the individual members of the association are made liable on the terms of their own agreement. The covenants into which they voluntarily enter, may therefore be enforced against them in all cases, except those where fraud may be assigned and proved, or where the association

(a) 4 Myl. & C., 619.

(b) 7 Beavan, 323.

(c) *Hichens v. Congreve*, 4 Russ., 562    *Blair v. Agar*, 1 Simon, 37; 2 Simon, 289.

is itself tainted with illegality, and no action or suit therefore could be maintained to enforce any engagements which have been made to promote the objects of it. Thus a shareholder is always liable on his express covenant with the trustees of the company to pay up the instalments to the full amount of his subscription, notwithstanding that after the act has been obtained, he has not been registered under it; (a) unless subsequently to the passing of the act, having paid all calls then due, he transfer his shares in the mode prescribed (b) by the company's clauses act; or, having parted with them previously to the special act being obtained, the purchaser, on the passing of it, send them in claiming to be registered, and get his name inserted in place of the original allottee. (c)

Personal representatives  
liable thereon.

Personal representatives of a subscriber are also liable for the amount of deposit or instalment, under a covenant entered into by the deceased with trustees on the part of the company, binding himself, his executors, and administrators to pay his subscription towards the undertaking (d).

Distinctions  
between actual  
and proposed  
partnerships.

Questions as to the liability of subscribers to a projected company were formerly incumbered with difficulties arising out of distinctions taken between an actual and a proposed partnership between them and the promoters and managers of the scheme. These doubts were engendered by the ambiguity of the terms of the provisional agreement or other instrument under which the inchoate association was formed. If the words of that document could be construed as establishing the actual relation of partners between the subscribers and the managers, the former incurred all the common-law liabilities involved in that relationship. If,

(a) *West London Railway Company v. Bernard*, 3 Q. B., 873, 13 L. J., N. S., Q. B., 68.

(b) *Huddersfield Canal Company v. Buckley*, 7 T. R., 36.

(c) *Cheltenham and Great Western Union Railway Company v. De Medina*, 2 Railway Cases, 728.

(d) *Fyler v. Fyler*, 2 R. C., 873; 3 Beav., 550. *Sed vid.* *Weald of Kent Canal Company v. Robinson*, 5 Taun., 801.

on the other hand, the deed would not justify such an interpretation, but imported only an intention on the part of the subscribers in a certain specified event to become partners with the promoters of the scheme, and until that event happened, the subscribers did nothing to connect themselves further with the company, by attending meetings, or the like, then they could not be liable for any expenses incurred in forwarding the design of the original promoters. So if the contemplated event never happened at all, the condition of the contract itself failing, the subscribers were held entitled, as on failure of consideration, to recover back from the promoters the amount of their deposit in an action for money had and received to their use. For information as to the law on these points, the cases cited below may be consulted (*a*). They establish some valuable general principles, but the application of them in individual instances is always determined by the special circumstances of the case; and they seem rather to apply to parties who have subscribed for shares in a trading company, but have not executed the deeds. If, however, the principles of those decisions should be held applicable to shareholders in railway companies, they are of little importance since 7 & 8 Vict. c. 110, which restrains the power to contract otherwise than conditionally on the passing of the act.

Now of little consequence.

As a general rule, in the absence of any express agreement, one member of a company has no right of action against another for work or labour done, and expenses incurred for the company. Thus, where the agent employed in carrying the bill into parliament sued the chairman of the managing committee for the amount of his bill, and it

(*c*) Liability of shareholders to each other.

(*a*) *Braithwaite v. Schofield*, 9 B. & C., 401; *Pitchford v. Davies*, 5 M. & W., 2; *Tredwin v. Bourne*, 6 M. & W., 461; *Fox v. Clifton*, 4 M. & P., 676; 6 Bing., 776; *Bourne v. Freeth*, 9 B. & C., 632, 4 M. & R., 512; *Vice v. Lady Anson*, 7 B. & C., 409, 1 M. & R., 113; *Dickenson v. Valpy*, 10 B. & C., 128, 5 M. & R., 126; and *Ellis v. Schmoek*, 5 Bing., 521, 3 M. & P., 220.

appeared that the agent was a shareholder in the undertaking, it was held that the action would not lie. (a)

On contract executed before plaintiff joined the company.

Yet a plaintiff, a member of the company, may maintain an action for money, work, labour, and expenses incurred and bestowed for the company previous to his becoming a shareholder. (b)

Where demand is on a special fund.

After incorporation, however, a shareholder, should the act contain any clause appropriating the amount of deposit to the payment of preliminary expenses, would be entitled, on suing the proper officer of the company, to recover the amount of his demand out of the fund so appropriated. (c)

Where it is by virtue of express covenant.

So, where the directors of a company have entered into an express covenant with a shareholder, even in respect of matters connected with the business of the company, a right of action thereon will accrue to the covenantee, although the relation of partnership subsist between the plaintiff and the defendant. Thus, where the plaintiffs and defendants were members of a joint stock company, and the plaintiff agreed to demise land to the defendants as trustees for the company, defendants covenanting to pay him rent, and by a separate deed the plaintiff and the other members of the company covenanted to indemnify the defendants for acts done by them as trustees; it was held that the plaintiff, notwithstanding he was a member of the company, might sue the defendants on their covenant. (d) But although one member of a company has no right of action at common law against any of his asso-

(a) *Goddard v. Hodges*, 1 Cr. & M., 33; *Holmes v. Higgin*, 1 B. & C., 74; *Lucas v. Beach*, 1 M. & Gr., 417; *Teague v. Hubbard*, 8 B. & C., 345; *Colley v. Smith*, 2 M. & Ry., 96; *Moneypenny v. Hartland*, 1 C. & P., 352, S. C., 2, C. & P., 378; *Milburn v. Codd*, 7 B. & C., 419; *Ferring v. Hone*, 4 Bing., 28.

(b) *Lucas v. Beach*, 1 Scott, N. R., 350.

(c) *Tilson v. Warwick Gas Light Company*, 4 B. & C., 962; *Carden v. General Cemetery Company*, 5 Bing. N. C., 253, 7 Dowl., 275.

(d) *Bedford v. Brutton*, 1 Scott, 245, 1 Bing., N. C., 399, *Attwood v. Small*, 1 M. & R., 246, 7 B. & C., 390.



ciates for work, labour, and services, and money expended, in and about the business of the company, he has, for any advances he may have made, a remedy in equity, and is entitled to be reimbursed all money expended by him in and for the company, and which he has been compelled to pay at the suit of third parties (a) ; but not (except as in the cases above mentioned) to any recompense on account of his work and labour, performed in and about the affairs of the company.

In a former section, we have discussed the liability to third parties, of persons acting or assenting to act as provisional committeemen ; it is now, therefore, only necessary for us to consider the liability incurred in such cases by a party becoming a shareholder.

A distinction must be drawn between the terms subscriber and shareholder. A subscriber, according to the definition given in the 7 & 8 Vic. c. 110, s. 3, means any person who has agreed to take shares in a company, but has not executed the deeds ; whilst, on the other hand, a shareholder means a person possessed of a share, and who has executed the deeds. The following remarks will be confined exclusively to the latter class. A subscriber who has executed the deeds, and thereby become a shareholder, is (as we have already remarked), in respect of the members of the company, to all intents and purposes a partner, (b) in the undertaking ; and, as such, is liable *in solido* (c) to third parties for all expenses incurred in carrying out the objects mentioned in the deed, and for the accomplishment of which the company was formed. He will not, however, be held liable on any contracts made by the directors which are foreign to the purposes of the company.

(d) Liability of shareholders to third parties.

Of shareholders.  
Definition of.

Are partners.

Liability as such.

Thus if a company is formed for making a railway from

(a) *Thornton v. Proctor*, 1 Anstr., 94.

(b) *Lawler v. Kershaw*, M. & M. 93 ; *Tenterden* ; *Fox v. Clifton*, 6 Bing., 795.

(c) *Kearley v. Codd*, 2 Car. & P., 408, *Abbott* (n).

A to B, a shareholder would not be liable for expenses incurred in making surveys and taking preliminary steps for a railway from A to C, and although in the subscribers' contract and agreement great latitude is generally given to the committee of management as to abandoning, altering, or varying any portion of the intended line, and throwing out branches, yet the exercise of such powers must be limited by the original scheme of the company, and be in accordance with the general plan and primary object of the association. The terms of the prospectus, if conditional, must be complied with, or no partnership is established by the execution of the deeds. (a)

When and how  
it commences.

As we have before observed, the mere application for shares and payment of deposit is not conclusive of a person's liability to third parties, and amounts to nothing in the absence of proof of other facts, such as interfering in the management, or expressly or impliedly authorising the particular contract on which liability is attempted to be enforced; but the signing the deed is conclusive evidence of a complete partnership. A subscriber to the intended company who has not signed the deed, nor at all interfered in the management of its affairs, is not directly liable for expenses incurred in advertising, holding meetings, making surveys, preparing plans and specifications, and taking other preliminary steps for the purpose of launching the company. In such cases the liability is cast upon the parties to whom credit was given. To follow the words of Mr. Baron Parke: "The secretary, or other person who gives the order to the tradesman is primarily liable; the director who gives the order to the secretary may be liable if it can be shown that he authorised the act of the secretary in making the contract, or a third party (as a shareholder) may become liable, if it can be shown that he has authorised the act of the directors." (b)

(a) *Wood v. Duke of Argyle*, 6 M. & Gr. 928. 13 L. J., N. S., C. P. 96; *Pitchford v. Davis*, 5 M. & W., 2.

(b) *Pitchford v. Davis*, 5 M. & W., 2.

But if a subscriber has made himself a partner either by interfering in the management of the concern, or by signing the deed, he will be directly liable.

It is but seldom that a subscriber in a railway company has the opportunity of interfering in the management of it, that being left entirely in the hands of a select number; attending and voting at meetings is, however, a sufficient interference to involve the liabilities under consideration. (a)

On signing the deeds the party executing becomes a partner from the time when he paid his deposit, (b) consequently he incurs a liability not only on contracts entered into subsequent to the execution of the deeds, but also on those which, though previous to such execution, were subsequent to the payment of his deposit. But he will not be liable for the price of goods ordered by a company before he had become a member, but not delivered until afterwards. (c)

However, since the Joint Stock Companies' Registration Act, the liabilities of shareholders in companies for executing works requiring the authority of parliament is much restricted, and may be said to be confined exclusively to such preliminary expenses as may have been incurred in taking the necessary steps for procuring an act of parliament.

All other contracts for services, or execution of works at a future day, or purchasing of lands, must be made conditional on the company obtaining their act of incorporation. Should any contracts in breach of this provision be made unconditionally, the parties contracting may possibly incur a personal liability in respect thereof, but

(a) *Braithwaite v. Schofield*, 9 B. & C., 401; *Maudsley v. Le Blanc*, 2 C. & P. 409; (Note.) *Bayley*. *Ellis v. Schmoek*, 5 Bing., 521.

(b) *Lawler v. Kershaw*, M. & M., 93.

(c) *Whitehead v. Barron*, 2 M. & Rob., 248, Tindal; but see *Williams v. Bradley*, *Sittings in London after Hil. T.*, 1846; *Pollock*, C. B.; *Barnett v. Burdett*, same sittings; *Alderson*.

no such liability can attach to the general body of the shareholders.

In railway companies the liability of shareholders seldom becomes a question of practical importance, as creditors of the company rarely proceed against a shareholder, because they possess a more extensive and more easily available remedy by action against some or all the members of the committee of management, into whose hands the deposits are paid, and to which fund every creditor will resort so long as it lasts. Should the funds be exhausted, it is, even in such cases, better to sue the managing committee, (or some member of it) they having generally the power, by action upon their covenants in the deed of settlement, to compel the shareholders to contribute rateably towards the expenses incurred.

Clauses as to  
limited liability.

Having thus shown the liability of a shareholder to third parties after he has signed the deeds, it is necessary to make a few remarks on a clause frequently inserted in prospectuses, "That the shareholder is not to be liable beyond the amount of his or her deposit." As regards third parties such a clause is entirely nugatory. (a) Into the prospectuses of *bond fide* companies it ought never to be introduced, as its object (or at least its only effect) must be to mislead the ignorant and unwary, with the hopes of a limited liability when the law imposes an unlimited. Nevertheless such a clause may, perhaps, create a contract between the shareholders and the promoters, in which case the latter would be liable to return any sum paid by the former to a creditor of the company, beyond the amount of deposit specified in the prospectus.

After a shareholder has signed the deed, he cannot be released from his responsibilities and duties as such except on performance of all the covenants he has entered into, or with the consent of his associates. Thus it was held in

(a) *Blandell v. Winsor*, 8 Simon, 601; *Walburn v. Ingleby*, 1 Myl. & K., 61, 76.

*Kidwelly Canal Company v. Raby*, (a) that the defendant who had subscribed an agreement for the purpose of obtaining an act of parliament to execute certain works, &c., could not withdraw his name, and discharge himself from his engagement, without the consent of the rest of the subscribers, nor when the act was obtained could he exonerate himself from the liability imposed thereby, by showing that he had, during the progress of the bill, renounced before the committee all further connexion with the undertaking, and procured the omission of his name from the act. In that case a doubt was thrown out, whether the directors had even the power of releasing him.

Where a shareholder is released by consent of his partners, he is merely released from liabilities on contracts entered into subsequent to his withdrawal; his responsibility in respect of contracts previously made, although not completed at the time, will remain entirely unaffected.

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#### SEC. V.—*Sale of Scrip.*

WE come now to consider the legality of the sale of scrip, and shall inquire first, if the sale of scrip is good at common law independently of the 7 & 8 Vict. c. 110. Legality of  
sale of scrip

On referring to the decisions that were given previously to the repeal of the 6 Geo. 1. c. 18. (known as the Bubble Act,) we find, in general, that the sale of scrip certificates was held illegal, and that none of the parties concerned, whether principals or brokers, could recover upon or enforce a contract entered into for this purpose; and, that it made no difference whether the transaction amounted to an actual sale, or only to an agreement for a sale, of the documents in question.

Thus, in *Josephs v. Pebrer*, (b) it was held, that a broker

(a) 2 Price. 93.

(b) 3 B. & C., 639.

could not maintain an action against his principal for the price of certain shares purchased at the request of the latter, as the contract was in violation of the above statute. Again, in another case, (a) in which B. being employed by A. to purchase for him transferable shares in an unincorporated company, charged and received from him a sum of money beyond the market price of such shares at the time, it was held that an action would not lie to recover back the overcharge, the company being within 6 G. 1. c. 18, and the parties *in pari delicto*.

Test of.

The general test of the legality of such companies was the issuing or not of shares transferable without restriction, and it was assumed in *Josephs v. Pebrer*, above cited, that an association issuing transferable shares, and assuming to act as a body corporate, in anticipation of obtaining an act of parliament, was illegal as well at common law as under the statute, and that no agreement relative to the sale or purchase of shares in a proposed joint stock company, to authorise which no act of parliament had been passed or charter granted, could be enforced.

At common law.

On the repeal of the 6 Geo. 1, c. 18 by the 6 Geo. 4, c. 91, all companies within the 18th, 19th, and 20th sections of the 6 Geo. 1, cap. 18, in respect of which the statutory restrictions and penalties were removed, were in future "to be dealt with and adjudged upon in like manner as they might have been at common law."

In a later case (b), decided after the repeal of the Bubble Act, although the question before the court was not as to the validity of an agreement for the sale or purchase of shares in an unincorporated company, yet the legality of the purchase of such shares was debated and decided. An action had been brought by the purchaser against the vendor of scrip certificates in a company for forming a

(a) *Buck v. Buck*, 1 Camp., 547, Mansfield; see also *Jackson v. Cocker*, 4 Beav., 59; 2 Railway Cases, 368.

(b) *Kempson v. Sanders*, 4 Bing., 5; S. C. 2 Car. & P., 366.

railway (and which was dissolved because no eligible line could be found) for the recovery of the money paid, on the ground of the failure of consideration. The defence set up was that the whole transaction was illegal, and that the parties being *in pari delicto*, the plaintiff could not recover. That objection was however overruled, and, in fact, the legality of the sale of scrip certificates admitted. We next come to a class of cases in which the legality of the sale of scrip certificates, although not directly in question, seems to have been again acknowledged by the court. The first is that of the London Grand Junction Railway Company *v. Freeman* (a), in which the defendant was sued for calls as the registered proprietor of shares in the above company; it appeared, on the trial, that the defendant was the purchaser of scrip certificates from an original subscriber, and on the passing of the act had sent in the scrip certificates so purchased claiming to be registered, and was accordingly registered; subsequent to registration he had taken no further steps, and never called for his shares nor executed any transfer of them according to the provisions of the act. On the part of the defendant it was contended that the sale of the scrip certificates was illegal, and that the original subscriber was the only party responsible in respect of those shares. Lord Denman, in his judgment, alluding to the defence set up, as to the illegality of the transfer of scrip, says, "The transfers thus made were said to be illegal according to the doctrine laid down by Lord Tenterden in *Josephs v. Pebrer* (b), and to the cases of *Duvergier v. Fellows* (c), and *Blundell v. Winsor* (d). We may observe that that doctrine was not necessary for the decision of the first mentioned case then before the court, nor will it be necessary for us now to investigate its soundness on general principles, or decide on the extent of its

(a) 2 Man & Gr., 607; see also *Same v. Graham*, 1 Ad. & E., N. S., 271; *Same v. Gunston*, 2 R. C., 870.

(b) 3 B. & Cr., 639.

(c) 5 Bing., 248.

(d) 8 Sim., 601.

application, if it shall turn out that parliament, in the act for forming this company, has in fact given its sanction to the transfer of shares which had actually taken place at that time. The other two cases fall extremely short of *Josephs v. Pebrer*.” His lordship goes on further to state that it was proved in evidence that original subscribers, who had paid their deposit, received a banker’s receipt for the money, and obtained scrip certificates in exchange for it, *and that such certificates were commonly sold to the amount of many thousands, and that while this course of dealing notoriously prevailed, the company obtained their act, in one of the clauses of which (that regulating and enforcing the payment of calls) terms were employed which evidently contemplated that there might be at that time others besides original subscribers who were entitled to shares, (a) whence it was clearly to be inferred that the sale and transfer of scrip was recognised, and therefore the validity of it admitted by the legislature.*

In another case (the converse of the last) (b) the purchaser of scrip certificates claimed to be registered as proprietor of shares, and it appeared that a number of scrip certificates had been fraudulently issued by the secretary, previous to the incorporation of the company, and the defence was that the register was already full. The legality of the sale of the scrip certificates did not come directly into question, yet it seems to have been admitted. Mr. Baron Parke says, “The plaintiff must show that he was entitled as assignee of an original subscriber, that there was great doubt as to whether he could show by merely producing the scrip certificates that he was entitled to be registered, and that the plaintiff would act wisely by deducing a title from the original subscriber, if he did that he would probably succeed, if he did not he would, probably, be defeated.”

Recognised by  
the courts.

The courts of common law have, therefore, so far recog-

(a) See also 8 Vic., c. 16, s. 8.

(b) *Thompson v. Daly*, 10 M. & W., 309.



nised this mode of dealing with scrip certificates as, in one case, to allow a railway company after obtaining their act to sue a party for calls who had been a purchaser of such scrip certificates previous to their incorporation, although he had only sent in the certificates for registration, had preferred no claim to the shares, nor taken any further steps to render himself liable as a shareholder. (a)

In the other case a purchaser of scrip certificates was held entitled to have his shares registered on the passing of the act provided, he could deduce a good title from an original subscriber. Hence we may infer that if the purpose for which the company was formed was not likely to be injurious to the public, (b) and not, therefore, a violation of the common law, that the purchase and sale of scrip certificates in railway companies previous to incorporation, like the purchase and sale of other choses in action, is not illegal, and that although there is no privity of contract between the purchaser and the company, so as to make the purchaser a partner in the undertaking in the place of the seller, still the seller may, nevertheless, give the purchaser such an interest therein (c) as that an agreement for the sale or purchase thereof may be enforced by an action or other legal remedy, in which case the measure of damages would be the difference between the value of the shares on the day appointed for the completion of the contract, and the day on which they were bought in or sold out (as the case may be), by the plaintiff in consequence of the defendant's default, such latter day being within a reasonable time after the contract was broken. (d)

(a) *London Grand Junction Railway Co. v. Graham*, 1 Ad. & E., N. S., 271.

(b) *Harrison v. Heathorn*, 6 M. & Gr., 181; *Ellison v. Bignold*, 2 Jac. & Wal. 503.

(c) *Bray v. Freemont*, 6 Madd., 5. *Tempest v. Kilner*, 3 Rail. Cas., 790; 15 L. J., N. S., 10 C. P.

(d) *Stewart v. Cauty*, 8 M. & W. 160. But see *Harrison v. Harrison*, 1 C. & P. 412; *Best. M'Arthur v. Lord Seaforth*, 2 Taun. 257; *Shepherd v. Johnson*, 2 East. 211. See also *Judgment of Parke*, B in *Shaw v. Holland*, 4 R. C. 150; 15 L. J., N. S. 87, Ex. 15 M. & W. 136

Legality of  
under 7 & 8  
Vict. c. 110.

We now come to consider whether the transfer of scrip certificates in railway companies established since the first of November, 1844, is at all affected by the 7 & 8 Vict. c. 110. On turning to the second section of that act we find it provided, that the act shall not apply to any company for executing any work requiring the authority of parliament, *except as thereafter specially provided.*

The 26th section which imposes restrictions, and prescribes certain formalities on the transfer and sale of shares, enacts, that until a joint stock company shall have obtained a certificate of complete registration, and until a subscriber shall have been duly registered as a shareholder in the Registry Office, it shall not be lawful for such subscriber to dispose by sale or mortgage of such share, or of any interest therein, and that every contract for the sale or disposal of such share or interest shall be void, and that every person entering into such contract shall forfeit a sum not exceeding "Ten Pounds." No mention whatever is made in that section of railway or other companies requiring the authority of parliament, nor can we infer from the general construction of the section that it was intended to include such companies. In fact, many of its provisions, especially those specifying how and when a shareholder would become entitled to receive the dividends and profits arising from the concern, are entirely inapplicable to railway companies.

Moreover, the statute itself being highly penal must be construed with strictness, and no effect be given to its prohibitory and penal clauses beyond what the terms of them absolutely require. Hence, from these considerations we may safely infer, that whatever might have been the intention of the legislature with regard to Railway companies in framing the section under consideration, such intention has not been so expressed as to bring them within its meaning and operation, and that, therefore, the sale of scrip certificates in railway companies still remains on the same footing as it did previous to the passing of the 7 & 8 Vict. c. 110.

Since the above remarks were written, the question of the legality of the sale of scrip has come before the Court of Exchequer in the case of *Young v. Smith*, (a) in which it was decided, that the 26th section of the 7 & 8 Vict. c. 110, did not render void the sale of shares of a railway company commenced after the passing of that act, and requiring an act of parliament for the execution of the railway; such companies not being specially included in that section within the meaning of the words in the second section, "except as hereinafter specially provided." (a)

The sale or purchase of scrip certificates is generally effected through a broker, who delivers a note to his principal, containing an account of the purchase or sale of the same, with the price at which they are bought or sold, together with the names of the contracting parties.

Sale of scrip,  
how effected.

It is incumbent on brokers concerned in the sale or purchase of scrip shares to name their respective principals, as if the name of his principal be not stated, the broker may become liable personally to the other contracting party for the completion of the contract. (b) Brokers will, in such cases, however, only be liable to such other parties or their brokers, and not to their own principals, should the contract be broken by the default of the other parties. A person employing a broker to sell shares cannot sue him for the value of the shares under the common counts for money had and received, unless it appear that he has actually received payment for them; but he must declare against him specially for negligence, as for selling to an improper person, or for selling on credit, when the

Liability of  
broker.

(a) *L. J.*, N. S. 15, Ex. 81; 15 M. & W., 121. Since the decision of the Court of Exchequer in *Young v. Smith*, a series of cases involving the same question have been determined by the Court of Queen's Bench in conformity therewith. See *Lawton v. Hickman*, *Loonie v. Oldfield*, *Fisher v. Aide*, *O'Neil v. Brendle*, *Ray v. Hirst*, T. T. 1846. 16 L. J. N. S. 20. 2 B.

(b) As to liability of agent, when the principal is not disclosed, see *Paley on Agency*, by Lloyd, 372, 373; *Smith's Mercantile Law*, 78, 79; and *Story on Agency*, p. 229, and cases there cited.

terms were for cash. If the broker retain the shares, never having parted with them, trover would lie to recover them. In the city of London a broker refusing or neglecting to name his principal, is liable to have the bond given, on his admission to the Stock exchange, put in suit, and to be prevented from acting, as a broker, within the city, for the future. Brokers are bound to comply exactly with the orders given, and will be held responsible for any mistake they may make in acting upon them. Thus an order to buy scrip will not be satisfied by the purchase of scrip which turns out not to be genuine (*a*), or by the purchase of a letter of allotment if there are scrip in the market. But where the order was to purchase shares, and it appeared that there were none in the market, but that it was the practice of the Stock Exchange to buy and sell letters of allotment in that railway as shares, the broker was held entitled to recover their value and his commission, if the jury should be of opinion that the order was to buy what was sold in the market as shares (*b*).

stamp on  
bought and  
sold notes.

It has been held that those bought and sold notes require a stamp, being agreements within the provisions of the stamp act, and not within the exemptions as to agreements relating to the sale of any goods, wares, and merchandise (*c*), although in an action by a principal against his broker for money had and received, when the broker had purchased a number of shares for the plaintiff, and represented that at the time of the purchase eight pounds per share had been already paid, when in fact only five pounds had been paid, it was held that the bought and sold note could be received in evidence, although unstamped (*d*). The distinction, however, is easy to be seen: in the case of *Knight v. Barber*, the bought and

(*a*) *Lambert v. Heath*, 15 L. J., N. S. 297 Ex.

(*b*) *Mitchell v. Newball*, 15 L. J., N. S. 292, Ex., 15 M. & W. 308.

(*c*) *Knight v. Barber*, 16 L. J., N. S. 18 Ex. *Pawle v. Gomme*, 4 Bing. N.C. 445; *Colt v. Nettervill*, 2 P. Wms. 304; *Bradley v. Holdsworth*, 3 M. & W. 422.

(*d*) *Tonkin v. Savory*, 9 B. & C. 704.

sold note would have to be put in evidence as a memorandum of an agreement between party and party, whilst in the latter it would not be used as evidence of any contract, but merely as evidence that the broker had been employed in a particular transaction. The amount of the stamp required on a bought and sold note is two shillings and sixpence; it is not, however, necessary that the instrument should be stamped at the time of the contract, whether the transaction is immediate or for the next account day, such account days happening every fortnight, and the stamp act permitting any memorandum or agreement to be stamped within fourteen days after the agreement shall have been made, without the payment of any penalty (*a*). Consequently, except in cases of contracts to be fulfilled at a future day, beyond the account days, it will be almost always sufficient to stamp the agreement, on the failure of the other party to complete his part of the contract. Moreover, in the London Stock Exchange, the brokers of each party, being considered primarily liable for their principals, it is seldom or never that one principal brings his action against the other for not performing his part of the contract; and in any action by a principal against his broker, arising out of such transactions, the note would be admissible as evidence of the transaction without a stamp (*b*).

Amount of

Although, if the agreement for the sale or purchase of scrip shares is in writing, the agreement must be stamped, it is by no means necessary that the agreement should be in writing, a mere parol agreement being sufficient, as neither scrip, shares, nor stock, are goods, wares, or merchandise, within the meaning of the seventeenth section of the statute of frauds (*c*), nor an interest in land

Agreement need not be in writing.

(*a*) 7 & 8 Vict. c. 21. s. 5.

(*b*) *Tonkin v. Savory*, 9 B. & C. 704; *Josephs v. Pebrer*, 1 Car. & P. 341.

(*c*) *Colt v. Nettervill*, 2 Pr. Williams, 304; *Powle v. Gomme*, 4 Bing. N.C. 445; *Humble v. Mitchell*, 2 Rail. Cas. 70; 11 Ad. & El. 205; see also *Hebblewhite v. M'Morine*, per Parke, 2 Rail. Cas. 67; 6 M. & W. 200; *Duncuff v. Albrecht*, 12 Sim. 189.

Mode of proceeding in case of default.

within the fourth section of that statute (a). In case either party refuse or neglect to complete his part of the contract, it is usual for the broker of the other party who is ready and willing to perform his part of the contract, to sell out or buy in, against the party making default, and debit such party or his broker with any loss arising on the transaction, that is with the difference between the price agreed on, and the actual price at the time of default, allowing a reasonable time for the sale or purchase of other shares (b). But previous to buying in or selling out against a defaulter, it is incumbent on the party ready to perform his contract, if he be the seller of scrip, to make a tender thereof to the other party; or if he be the purchaser, to avow his readiness to accept and pay the money. If the broker of the defaulting party has been compelled, by the custom of his own Stock Exchange, to pay the difference; he will be entitled to recover the amount against his principal in assumpsit for money paid; as a person who employs a broker on the Stock Exchange impliedly gives him authority to act in accordance with the rules there established, though such principal may himself be ignorant of them (c).

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#### SEC. VI.—*Rights and Liabilities of Vendors and Purchasers of Scrip.*

Rights and liabilities of purchaser if the act be obtained.

THERE has hitherto been no judicial decision as to the right of the purchaser of scrip to insist upon his being registered by the company for the number of shares represented by the scrip certificates, of which he is the holder, after the company shall have obtained their act.

(a) *Bradley v. Holdsworth*, 1 Horn & H. 156; 3 M. & W. 422.

(b) *Shaw v. Holland*, 4 Rail. Cas, 150; 16 L. J., N. S. 87, Ex.

(c) *Sutton v. Tatham*, 10 Ad. & Ell. 27, overruling *Child v. Morley*, 8 T. R. 610. As to the sale and transfer of *Shares*, and the duties and liabilities of brokers in respect thereof, see post.

In the case of *Daly v. Thompson*, (a) however, the observations of Mr. Baron Parke upon this point would lead to the inference, that a scrip holder had such a right. In that case the plaintiff, the purchaser of scrip shares in a company called "The Anti-Dry-rot Company," and which had obtained an act of incorporation, brought an action against the secretary of the company for refusing to register him as a shareholder after act obtained. The plaintiff however was nonsuited because the register was full, and the defendants had no power to add to the number of shares. It appeared that fictitious shares had been fraudulently issued by a former employee of the company. On motion for a rule to set aside the nonsuit and obtain a new trial, Mr. Baron Parke on granting the rule, observed, that the plaintiff must show that he was entitled as assignee of an original subscriber ; and there is a serious question, whether he could show that merely by production of the scrip certificate. A purchaser of scrip, however, is not impliedly bound, in the absence of any special contract to that effect with the vendor, to accept a legal transfer of the shares when the act of incorporation is procured, nor to indemnify the vendor against his liability to the company for future calls upon them. (b) But if the purchaser of scrip certificates do any thing after the act has been obtained acknowledging himself as the owner of shares, he will become liable to future calls, although he may not have become a proprietor according to the mode of transfer prescribed by the act. Thus where the purchaser of scrip certificates, in pursuance of notice by the company, sent in his scrip with a claim to be registered as a proprietor in respect thereof, and received from the company a receipt for the scrip certificates, with a notice that they could be exchanged for sealed certificates on demand, and they were registered

(a) 10 M. & W. 309.

(b) *Jackson v. Cocker*, 4 Beavan, 59; 2 Rail. Cases, 368. *Humble v. Langston*, 7 M. & W. 517; 2 Railway Cases, 533.

If the project  
is abandoned.

Accordingly ; it was held, that he was liable as a proprietor of those shares, although he never applied for or received such sealed certificates, nor was any regular transfer made to him as prescribed by the act. (a) Should the project be abandoned previously to any steps being taken to obtain an act of parliament, it has been decided that the purchaser of scrip would be entitled to call on his vendor to repay him the purchase money, on the ground of a failure of consideration ; and this without even tendering back the scrip certificates. The justice of this decision may fairly be questioned. It is obvious that the buyer purchases only the expectancy which the seller himself had, and that the amount of consideration is less than it would have been if the contingency had then been determined by the obtaining of the act. (b) That the contingency is ultimately determined unfavourably for the buyer, is surely no sufficient reason for avoiding a contract entered into with a full knowledge of all the circumstances. Or if this point were conceded, it is clearly a violation of our ordinary notions of fairness, that the purchase money should be recovered back while there is no restoration of the thing purchased.

Rights and  
liabilities of  
vendor.

The vendor loses all control over his scrip certificates on parting with the possession of them to a purchaser, yet (as we have just seen) he has no right of indemnity (c) against the future calls, in the absence of any express agreement to that effect, nor can he compel the buyer to register the shares. Therefore, where a vendor of scrip is desirous of getting rid of all future liability, he should make it part of the condition of the contract, that the purchaser indemnify him against all future calls in respect of the shares, and that he accept a proper transfer of the

(a) *London Grand J. Rail. Comp. v. Graham*, 2 Rail. Cas. 871 ; 2 M. & G. 607. Same *v. Freeman*, 2 Rail. Cas. 476 ; *Cheltenham & Gt. West. Union Rail. Co. v. Daniell*, 2 Rail. Cas. 728 ; 2 Q. B. 281.

(b) *Kempson v. Sanders*, 4 Bing. 58 ; *Watkins v. Huntly*, 2 C. & P. 410.

(c) *Jackson v. Cocker*, 4 Beavan, 59 ; 2 Rail. Cas. 368. *Humble v. Langston*, 7 M. & W. 517 ; 2 Rail. Cas. 533.



shares, after the act has been obtained, if so required by the vendor. On the passing of the act, the vendor, if an original subscriber, (a) may be compelled to register his shares and pay up all the calls, if the purchaser neglect or refuse so to do.

A question of considerable importance arises on this point: whether an original shareholder, having been compelled to register the shares and pay up the calls owing to the default of the purchaser, becomes absolutely entitled to such shares as against the purchaser, or whether the latter, on payment of all the back calls and interest, would be entitled, as against the original shareholder, to have such shares transferred to him in the manner prescribed by the Railway Companies' Clauses Act, 8 Vict., c. 16, or to have the original purchase money returned; and whether such purchaser would be entitled to any, and what remedy, either at common law or in equity. With regard to any remedy at common law, it is difficult to see how an action could be maintained either for damages for not delivering shares in the place of scrip, or for a return of the purchase money on the ground of a failure of consideration: as to the first case, reasoning by analogy to the cases in which it has been held that there is no implied undertaking on the part of a purchaser of scrip to indemnify the seller against liability for future calls (b), it would seem that there can be no such undertaking on the part of the seller to deliver, after the act has been obtained, the shares which give the legal right to the stock. As to the return of the purchase money for failure of consideration, the failure would have entirely arisen through the parties' own default (c). With regard, however, to any remedy in equity, it is submitted that, should the purchaser not have been guilty of any laches, and have been unable to get his shares registered owing to the company refusing to accept him as a shareholder; a court

(a) *West London Rail. Co. v. Bernard*, 13 L.J. N. S., Q. B. 68; 3 Q. B. 873.

(b) *Humble v. Langston*, 7 M. & W. 517;

(c) See, on this subject, *Rothschild v. Hennings*, 9 B. & C. 470.

of equity would decree a specific performance, compelling the original allottee to register the shares, and then transfer them to the purchaser in the manner prescribed by the act ; (a) it having been held that a bill will lie in equity for the specific performance of a contract for the purchase of stock, where it prays for the delivery of scrip certificates which give the legal title to the stock (b).

But the case is very different where the holder, by keeping back whilst the contract is disadvantageous, neglects to avail himself of the power he had of converting such scrip into registered shares, and by such conduct burthens the original allottee with liability on his covenants in the subscribers' agreement ; and then, on the shares rising in value, claims to be admitted to all the advantages arising from them. The lapse of time would be a sufficient bar to any equitable right ; time being the essence of a contract where the subject of the contract is of such a nature as to be exposed to a daily variation in its value (c).

From the above general remarks we may infer, in the first place, that a scrip-holder would not be entitled to have the shares transferred to him, on payment of calls and interest to the original subscriber, who had been, through his default, compelled to register ; and in the second place, that he would not be entitled to have the original purchase-money returned, as being money retained by the vendor, without consideration ; for that money was paid for the option which the scrip receipts gave the purchaser to become the registered owner of the shares on condition of sending in his scrip on or before the day named ; and, lastly, that the company having, under such circumstances, elected to register an original subscriber, will be bound to give him certificates of his shares without requiring the production of the scrip.

(a) 8 Vict. c. 16.

(b) *Doloret v. Rothschild*, 1 Sim. & Stu. 590.

(c) *Ibid.* and see *Prendergast v. Turton*, 13 L. J., N. S. Ch. 268 ; 1 Y. & C. N. C. 98.

SEC. VII.—*Complete Registration.*

IT is obvious, from many parts of the 7 & 8 Vict. c. 110, that the statute applies to railway companies, as well in the sections relating to complete registration, as in those relating to provisional registration, although the former is not made imperative on such companies. It may be a matter of more doubt as to how far a railway company is benefited by being completely registered. On turning to the 7th section of the Joint Stock Companies' Act, which expressly applies to every joint stock company, whether for executing any work under the sanction of the legislature, or for any other purpose (*a*), it appears, "That it shall not be lawful for any company, whether for executing any such work under the authority of Parliament, or for any other purpose, to act otherwise than provisionally in accordance with this act, until such company shall have obtained a certificate of complete registration."

Complete  
registration.

The section then goes on to enumerate the requisites for obtaining a certificate of complete registration, which, at first sight, would seem to be exclusively applicable to companies not requiring the authority of Parliament for the execution of their works; more especially as the 9th section expressly prescribes certain other preliminaries to the complete registration of railway companies, in respect of which it is enacted, "That if any company for executing any work which cannot be carried into execution without the authority of Parliament deposit at the proper offices of the two Houses of Parliament, in compliance with the standing orders of such Houses respectively, and at and within the time required by such standing orders, such deeds of partnership, or subscription contracts, as shall be required to be deposited by such standing orders, and also

Pre-requisites.

(*a*) 7 & 8 Vict. c. 110. s. 7.

return to the said Registry Office, a copy of such deeds of partnership, or subscription contracts, together with such certificate of the receipt of such plans, sections, and books of reference, as shall be appointed by the committee of Privy Council for Trade, thereupon such company shall be entitled to a certificate of complete registration." (a)

We shall specify more minutely, hereinafter, the documents which must be deposited as above, together with the times and places of deposit, and such other particulars as may be necessary to furnish a safe and sufficient guide to those whose duty it may be to manage this part of a company's affairs. Meanwhile, it is only necessary here to remark, that the returns required by the above section must be made by the promoters of the company, or some or one of them, unless they have appointed a solicitor to make them on behalf of the company.

These returns must be made within a year from the date of the certificate of provisional registration, unless in the mean time the company have been incorporated by Act of Parliament, or have applied to renew the certificate of provisional registration, which is of force only for twelve calendar months from the date thereof.

Certificate of.

Fee.

Return of  
on obtaining  
the act.

On the receipt of the requisite documents the registrar of joint stock companies will grant a certificate of complete registration, on which a fee of five pounds is payable by the company, with one shilling additional in respect of every thousand pounds value of capital, as declared in the formation of the company in the deed of settlement, or by any other special authority (b). It is afterwards provided, however, "That if within two years after a company shall have obtained a certificate of complete registration such company shall obtain an act for the incorporation thereof, then three-fourths of the fee paid by, or on behalf of, such company on such complete registration, in respect of the capital of the company, shall be reimbursed and repaid to

(a) Id. s. 9.

(b) Id. s. 21.

the said company, and that it shall be lawful for the said commissioners of Her Majesty's Treasury, and they are hereby authorised and empowered, to repay the same accordingly." (a) In the case of a railway company, therefore, this proportion of the sum paid on complete registration would be returned to the company, if the act should be obtained within the specified period.

It is quite clear from the above, that the act contemplates the complete registration of railway companies, although there is nothing contained therein making it compulsory on them to take such a step. We must now consider whether complete registration is of any and what service to a railway company.

Advantages of.

On examining the 23d section of the act we find, in the case of companies whose works cannot be carried into execution without the authority of parliament, that on provisional registration, it is lawful for them to assume the name of the intended company, to open subscription-lists, and receive deposits after the rate of ten shillings on every hundred pounds of the capital of the company, together with such sum as may be required by the standing orders of either House of Parliament; but not to make calls, nor to purchase or contract for or hold lands, or enter into any contracts, &c., unless conditionally, except contracts for services in making surveys, and performing all other acts necessary for obtaining an act for enabling the company to execute the works. Hence it appears, that all that a railway company, provisionally registered, can do unconditionally is to allot shares, receive deposits, and contract for surveys, and take other preliminary steps towards securing legislative sanction.

Powers on provisional registration.

The 25th section, after enumerating the privileges of joint-stock companies completely registered, ends with the following proviso:—"Provided always with regard to any company for executing works that cannot be carried into

(a) Ibid.

execution without the authority of parliament, that on the complete registration of such company, and before obtaining the act of parliament, it shall not be lawful for any such company to exercise the heretofore mentioned powers to enter into contracts, otherwise than conditionally upon obtaining such act; nor to exercise the power to purchase and hold lands as aforesaid; nor to exercise the power to receive instalments from shareholders, beyond the sum necessary to be deposited in compliance with the standing orders of either House of Parliament, or such other sum as may be requisite for obtaining the authority of parliament; nor to exercise the power of borrowing money, or declaring dividends; but, subject to the last mentioned exceptions, all the powers by this enactment given to any company completely registered, except the general power to perform all acts necessary for carrying on the business of the company, may be exercised as fully by any such company so completely registered as by any other company so completely registered."

The same section then proceeds, "Provided always that it shall be lawful for any such company to perform all acts which may be necessary for obtaining an act of incorporation, or other act for obtaining the authority of parliament;" and it then proceeds to state, that upon obtaining the act, all the powers given under the Joint Stock Companies' Act shall cease. What, therefore, are railway companies, completely registered, empowered to do?

Powers on  
complete  
registration.

They may use the name of the company, adding thereto, Registered.

They may have a common seal.

They may sue and be sued in their registered name.

They may sue in respect of any claim by the company, upon any person, whether a member of the company or not.

They may be sued by any person, whether a member of the company or not, in respect of any claim on the company.

They may issue certificates of shares.

They may hold general meetings periodically, and extraordinary meetings upon being duly summoned.

They may from time to time, at some general meeting, make bye-laws, if they are not inconsistent with the subscribers' deed.

And appoint directors to manage, &c.

In addition to the above powers, they may make contracts for purchase of lands and for carrying on works, conditional on obtaining their act; and in case the deposits originally paid are insufficient to meet the expenses of obtaining the act, they may compel the subscribers to pay such further sum as may be required for that purpose.

From the perusal of the above, it would appear that the most important of the powers acquired on complete registration, is that of suing and being sued in the registered name of the company, under which it is clear the company would be entitled not merely to sue the allottees who had neglected to take up their shares, but also third parties in respect of causes of action arising out of any breach of contract with the company, without incurring the danger of having the action released by any of the shareholders (a). Moreover, all actions must, in the first instance, be brought against the company in their registered name, as the only remedy against individual members, is by *scire facias*, should the effects of the company be found insufficient to satisfy the judgment. If the mode prescribed in the 7 & 8 Vic. c. 110, s. 9., be the only one by which a railway company can obtain a certificate of complete registration, the advantages secured by such a step would be but for a very limited period, should the company obtain their act of incorporation on their first application to parliament; as all the powers given on complete registration cease, and determine on the passing of that act. In this case, therefore, the certificate of complete registration would only

(a) *Rawsthorne v. Gandell*, 15 L. J. N. S. Exch. 291, 15. M. & W. 304,

be of force between the periods of depositing the plans and subscription contract, and of obtaining the act. But should the bill be rejected, and the company be desirous of proceeding in a future session of parliament, complete registration will be probably of great importance, as enabling the company to sue both their own members and third parties, with greater facility than they could whilst only registered provisionally.

It is not, however, altogether clear, that the only mode by which a railway, or other company requiring the authority of parliament, can obtain a certificate of complete registration, is by depositing plans and subscription contracts at the proper offices in compliance with the standing orders of either House of Parliament, as prescribed in the ninth section of the above statute. A careful investigation of that and the seventh section, will rather lead to the inference that such companies can obtain their certificate of complete registration by compliance either with the seventh or ninth sections. The seventh section states that it shall not be lawful for any joint stock company, for any purpose within the meaning of the act, whether for executing any work under the authority of parliament, or for any other purpose, to act otherwise than provisionally, in accordance with the act, until they shall have obtained a certificate of complete registration, as thereafter provided; and that no joint stock company shall be entitled to receive a certificate of complete registration, unless it be formed by some deed or writing under the hands and seals of shareholders; the section then proceeds to state what the deed must contain, and 'that every such deed of settlement must be signed by at least one-fourth in number of the persons, who, at the date of the deed, have become subscribers, and who shall hold at least one-fourth of the maximum number of shares in the capital of the company.' The words of the above section are clearly large enough to include railway companies, notwithstanding the proviso in the second section, which exempts rail-



way companies from the operation of the act except when specially provided for ; and, were it not for the 9th section, would point out the only mode by which such companies could obtain a certificate of complete registration. The 9th section, however, proceeds to state, that if any companies requiring the authority of Parliament deposit at the proper offices of the two Houses of Parliament, in compliance with the standing orders of such Houses respectively, and at or within the time required by such standing orders, such deeds of partnership or subscription-contracts as shall be required to be deposited by such standing orders ; and also return to the said registry-office a copy of such deeds of partnership or subscription-contracts, together with such certificates of the receipt of such plans, sections, and books of reference as shall be appointed by the said committee of Privy Council for Trade : then it shall be lawful for the registrar of joint stock companies, and he is hereby required, to accept the same *instead* of the deed of settlement required by the 7th section. The words of that section, *requiring the registrar to receive*, but *not requiring the members of the company to register* certain particulars in the place of those prescribed in the 7th section, necessarily lead to the inference that a railway company can obtain a certificate of complete registration under the provisions of either section, and that in case the company, either by the negligence of their engineers or surveyors in preparing the proper plans, or by the default of the subscribers in not paying up their deposits and executing the usual deeds, should be unable to deposit their plans and subscription-contracts, in compliance with standing orders, yet still, if not less than a fourth in number of subscribers, owning not less than one-fourth of the capital, execute a deed in compliance with the requirements of the 7th section, they would be entitled to a certificate of complete registration.

A consideration of the great difficulties in which the directors of railway companies have sometimes found them-

selves placed, by being harassed with numerous actions at the suit of creditors, and being unable to compel the subscribers to contribute towards the payment of preliminary expenses, or pay the deposit upon the shares allotted to them, when, from any cause whatever, they have been prevented from going to Parliament, or defeated in their application, has induced us to draw attention to the mode and advantages of complete registration, even in cases of companies requiring the sanction of the legislature for the accomplishment of their purposes.

## BOOK II.—INCORPORATION OF THE COMPANY.

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### CHAPTER I.

#### PRELIMINARY PROCEEDINGS RENDERED NECESSARY BY THE STANDING ORDERS OF THE HOUSES OF PARLIAMENT.

IN the present book we shall detail all the steps necessary to be taken for obtaining a Railway Act: hence it will include all needful directions for providing and depositing the requisite plans and documents, in compliance with the standing orders of the Houses of Parliament, giving all the notices to the public and to parties interested, preparing estimates and paying deposit, introducing and carrying through both houses the railway bill, with the formalities to be observed in all the stages of the measure; together with such other particulars preliminary to, and attendant upon the parliamentary proceedings on a railway bill, as may suffice for the guidance of those whose duty it is to prepare for and to conduct those proceedings.

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#### SEC. I.—*The Parliamentary Agent.*

It may be necessary in this place to remark, that most of the steps hereinafter mentioned must be taken through the intervention of a parliamentary agent.

Any person not being a member of Parliament may become a parliamentary agent, on subscribing a declaration Who may be.

- Undertaking of.** before one of the clerks in the Private Bill Office, engaging to pay all fees and charges which may be demanded, and to observe the rules and regulations of the House. It is usual also to enter into recognizance, in the sum of £500, for the due performance of this undertaking. He is then
- Registration of.** registered in a book kept in the Private Bill Office, and will be entitled to act as a parliamentary agent without the payment of any fee, upon the declaration, bond, or registry.
- Must be employed by petitioners for a Bill.** No notice can be received at the Private Bill Office, of any proceeding relating to a bill, until an appearance has been entered of some one who shall act as the parliamentary agent for the bill, nor until the same shall be entered in the Private Bill Office, in which shall also be specified the name of the solicitor (if any) for such petition
- And petitioners against it.** or bill (*a*). A similar requirement is made in the case of any petition against a bill, with this additional clause that the name of the counsel (if any retained) who appears in support of such petition must be specified in the appearance, and a certificate thereof, to be delivered to the agent, must be produced to the committee clerk. When any change of agent takes place, fresh appearances must be entered.
- Misconduct of.** Should any agent misconduct himself, or act in violation of the rules of parliament, the speaker can prohibit him from practising during his pleasure, provided that, upon the application of the agent, the speaker state in writing the grounds of such prohibition (*b*).
- The name, description, and place of residence of the parliamentary agent in town, and of the agent in the country (if any) soliciting a bill, are entered in the private bill office, and the register is open to public inspection (*c*).

(*a*) H.C. 138.  
 (*c*) H.C. 138.

(*b*) Parl. Paper 88, 1837.

SEC. II.—*Notices to the Public.*

(a) Notices by advertisement. When necessary.

WHENEVER application is intended to be made to Parliament (a) for leave to bring in a bill relating to the subjects included in the second class of works—that is, to the making, maintaining, varying, extending, or enlarging any aqueduct, archway, bridge, canal, cut, dock, ferry, harbour, navigation port, pier, railway, reservoir, tunnel, turnpike road, or waterwork, notices must be published in three successive weeks in the months of October and November, or either of them, immediately preceding the session of parliament in which application is to be made, either in the London, Edinburgh, or Dublin *Gazette*, as the case may be, and in some one and the same newspaper of the county in which the city, town, or lands, to which such bill relates shall be situate, or if there be no newspaper published therein, then in the newspaper of some county adjoining thereto (b)

When and how to be published.

From this order it appears, first, that the notice must be published in three consecutive weeks, in either of the months of October or November, in the *Gazette*, and also in some public journal published in every county through which the railway is intended to pass; secondly, that provided it is inserted in the *Gazette* once in each of those three weeks, it is not necessary to insert it in every *Gazette* or paper published in such weeks.

Requisites of generally.

The notice must contain the names of the parishes, townships, townlands, and extra parochial places, from, in, through, or into, which the work is intended to be made, maintained, varied, extended, or enlarged, and shall state the time and place of deposit of the plans, sections, and books of reference, respectively, with the clerks of the peace, parish clerks, schoolmasters, town clerks, postmasters, and clerks of the union, as the case may be (c).

(a) H.C. 18; H.L. 11th August, 1842.

(b) H.C. 19; H.L. 220, sec. (2).

(c) H.C. 26; H.L. 223, sec. (1).

The standing orders of the House of Lords require also that the notice should contain a description of all the termini, including those of the branches as well as those of the main line. And if it be the intention of the company to obtain power for the compulsory purchase of lands or houses, or for extending the time granted by any former act for that purpose, or to amalgamate with any other company, or purchase or lease the undertaking of any other company, or to sell or lease their undertaking, or to levy any tolls, rates, or duties, or to alter any existing tolls, rates, or duties, or to confer, vary, or extinguish, any exemptions from payment of tolls, rates, or duties, or any other rights or privileges, the notices must specify such intention, and the advertisement must be headed by a short title descriptive of the undertaking (a). In addition to the above notices, in case of bills to empower any company already constituted by act of parliament to execute any work other than that for which it was originally established, the House of Lords requires an advertisement to be inserted for four consecutive weeks in the newspapers of the county or counties wherein such new works are proposed to be executed, calling a special meeting of the proprietors of such company, to submit to them a draft of the proposed bill; such meeting to be called not earlier than seven days after the last insertion of such advertisement (b).

When bill is to give additional powers to an existing company.

Delivery of at the Gazette Office.

Notices required to be inserted in the London, Edinburgh, or Dublin *Gazettes*, must, by standing orders of the House of Commons, be delivered at the offices of such papers respectively at least two clear days previous to the day of publication. Thus, if they are intended to be inserted in the Friday evening's *Gazette*, they must be delivered at the printer's on the previous Tuesday.

Printer's receipt.

The 19th order declares that the printer's receipt shall be proof of the due delivery of the notice. It would be advisable for the solicitor or other agent delivering such

(a) H.C. 20; H.L. 220, sec. (3).

(b) H.L. 220, sec. (6).

notices to take a form of receipt, to be signed by the party into whose hands the notice is given.

With regard to the notices to be inserted in the provincial papers, no time of delivery is prescribed, nor is there any prescribed proof of such delivery, which must be proved, therefore, by the person actually delivering the same. Care must be taken that the notices are inserted in three consecutive weeks.

No time for the delivery of the notices at the *Gazette* office is prescribed by the orders of the House of Lords: hence it would appear that the House of Lords absolutely requires them to be published, and that the parties would not be excused for non-compliance, although they had delivered the notices in sufficient time to satisfy the orders of the House of Commons, and the non-compliance had arisen either from the default of the printer or from want of room in the *Gazette*.

In addition to the notices required to be inserted in the *Gazette*, the House of Lords requires notices, similar to those inserted in the *Gazette*, to be given at the general quarter sessions of each and every county, riding, and division, in or through which the work shall be made, at Michaelmas or Epiphany preceding the application to parliament, by affixing such notice to the door of the sessions-house of every riding, county, or division. The above order does not apply to the case of railways in Scotland, where the notices, instead of being affixed to the door of the sessions house, must be affixed to the church doors of all the parishes through which the line will pass, for three successive Sundays in each of the months of October and November preceding the application to Parliament (a).

Except in cases where notices are required to be affixed to church doors, no notice given, or application made, on a Sunday, or Christmas day, or before eight o'clock in the forenoon, or after eight o'clock in the afternoon, of any day, will be deemed valid (b).

(b) Notices at Quarter Sessions.

When and where to be given.

In Scotland.

(a) H.L. 223, sec. (2).

(b) H.C. 42; H.L. 224, sec. (7).

Notice to  
owners, &c.

### SEC. III.—*Notices to Owners and Occupiers.*

When neces-  
sary.

WHENEVER it is intended to apply to Parliament for leave to bring in a bill by which any houses or lands are proposed to be taken, or an extension of the time granted by any former act for that purpose is sought, an application in writing must be made to the owners or reputed owners, lessees or reputed lessees, and occupiers of lands or buildings, by or over which it is proposed to construct the works, on or before the 15th day of December immediately preceding the session in which application for the bill is intended to be made (*a*).

In the House of Lords, the notice is sufficient if delivered on or before the 31st (*b*) of December; this extended time, however, is only of importance when the bill has been read in the Commons, in the preceding session, and has been permitted to take its commencement in the Lords in the ensuing session.

Form of.

The form of application to the owners, &c., of the lands is to be found in the appendix A of standing orders of both Houses of Parliament. The notice generally states the intention to apply to Parliament in the ensuing session for leave to make a railway from a certain place to some other, and that certain property in which the party served is believed to have an interest, will be required for the purposes of the undertaking. It then proceeds to state the times and places of deposit of the plans, sections, and books of reference, and ends by requesting the party served to give an answer in writing expressive of assent, or dissent, or neutrality. Separate lists must be made of such owners, lessees, and occupiers, distinguishing which of them have assented, dissented, or are neuter, in respect thereof; (*c*) and these lists must be lodged in the Private Bill Office, and the receipt

Lists of as-  
sents, &c.

(*a*) H.C. 21.      (*b*) H.L. 220, sec. 4.      (*c*) H.C. 21; H.L. 220, sec. 4.



thereof must be acknowledged upon the lists themselves by one of the clerks of the Private Bill Office, and also upon the petition when deposited (*a*). The committee on the bill in each House is required to report specially the number of such assenting, dissenting, and neutral parties on the line, and the quantity and value of property belonging to each class, distinguishing the owners from the occupiers (*b*). The notice must be served both on the owners, or reputed owners, and the lessees, or reputed lessees, and occupiers. It may be served either by delivering the same personally, or by leaving it at their usual place of abode, or, in their absence from the United Kingdom, with their agents respectively (*c*). In the absence of other proof, the production of a written acknowledgment of the party applied to, of the receipt of such application within the given time, will be sufficient evidence of its having been duly delivered (*d*).

Service of  
notices.

Proof of.

If the act sought to be obtained is for the purpose of relinquishing any portion of a work authorized to be made by a former act, notice in writing of such bill must be given to the owners, or reputed owners, and occupiers of the lands in which the part of the said work intended to be relinquished is situate (*e*).

Notice in case  
of relinquish-  
ment.

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#### SEC. IV.—*Plans and Sections.*

THE plan must describe the line or situation of the whole work—no alternative line or work being in any case permitted—and the lands in and through which it is to be made, maintained, varied, extended, or enlarged, or through which any communication to or from the work shall be

Plans, &c.  
Requisites of.

(*a*) H.C. 139.

(*b*) H.C. 99, No. 15 ; H.L. 233, Part I. No. 14.

(*c*) H.C. 21 ; H.L. 220, sec. 4.

(*d*) *Idem*.

(*e*) H.C. 41 ; H.L. 223, sec. 12.

- made, and must be accompanied with a book of reference containing the names of the owners, or reputed owners, lessees, or reputed lessees, and occupiers, of such lands (*a*).
- Scale.** And it must be on a scale of not less than four inches to the mile (*b*), and must exhibit the distances in miles and furlongs from one of the termini; and a memorandum of the radius of every curve, not exceeding one mile in length, must be noted on the plan in furlongs and chains (*c*). Where it is the intention of parties to apply for powers to make any lateral deviations from the line of the proposed work, the limits of such deviation are to be defined on the plan, and all lands included within the limits to be marked thereon, and, except where the whole of the plan is on a scale of not less than a quarter of an inch to one hundred feet, an additional plan must be prepared on the scale of not less than a quarter of an inch to every hundred feet of any building, yard, court-yard, or land, within the curtilage of any building, or of any ground cultivated as a garden, whether such lands or buildings are on the original line or are included within the limits of deviation (*d*); if tunnelling be used instead of an open cutting, it must be marked by a dotted line on the plan (*e*).
- Tunnelling.**
- Section.** In every section of a railway, the line marked thereon shall correspond with the upper surface of the rails intended to be laid (*f*). The scale of the section must be drawn to the same horizontal scale as the plan, and to a vertical scale of not less than one inch to every hundred feet (*g*).
- Scale of.**
- Datum line.** It must show the surface of the ground marked on the plan, the intended level of the proposed work, and also a datum horizontal line, which shall be the same throughout

(*a*) H.C. 27; H.L. 223, sec. 3.(*b*) Ibid.(*c*) H.C. 48.(*d*) H.C. 29; H.L. 223, sec. 4.(*e*) H.C. 52; H.L. 227, sec. 7.(*f*) H.C. 49; H.L. 227, sec. 4.(*g*) H.C. 30; H.L. 223, sec. 5.

the whole length of the work, or of any branch thereof, and which datum line must be referred to some fixed point stated in writing on the section, near either of the termini (a).

The datum line is generally an imaginary line a certain number of feet above or below a fixed point, as convenience may suggest, and carried horizontally the whole length of the line. In an inland railway, it is generally fixed with reference to the level of a canal; if the railway be constructed near the sea, or any tidal river, the level of high water at spring tides is generally taken as the point from which it is calculated.

The distances, in miles and furlongs, must be marked on the datum line corresponding with the plan (b). Distances and dimensions.

A vertical measure must be taken from the datum line to the line of railway, and marked, in feet and inches, at each change of the gradient or inclination; and the proportion or rate of inclination in each such change must be marked (c).

The height of the proposed railway from the upper surface of the rail over, or depth under, any turnpike road, public carriage road, navigable river, canal, or railway, or junction with a railway, and the height and span of every arch of all bridges and viaducts, by which the railway shall be carried over the same, must be marked in figures at every crossing, together with the extreme height of every embankment, and the depth of every cutting, exceeding five feet (d). Crossings.

If the levels, or rate of inclination, of any existing turnpike or carriage roads, or railways, be intended to be altered, such alteration must be marked on the section and numbered; and cross sections, in reference to the said numbers, on a horizontal scale of one inch to every three hundred and thirty feet, and on a vertical scale of one inch Altered levels.  
Cross Sections of.

(a) H.C. 30; H.L. 223, sec. 5.

(b) H.C. 50; H.L. 227, sec. 5.

(c) Idem.

(d) H.C. 51; H.L. 227, sec. 6.

to every forty feet, shall be added to explain the nature of such alterations more clearly : that is to say, the intended alteration of level must be stated on the section, referring to the cross section made on the above scale, showing both the rate of the present as well as intended inclination (*a*).

Tunnelling and  
viaducts.

Where tunnelling and viaducts are substituted for cuttings and embankments, the tunnelling must be marked on the plan by a dotted line, and also on the section, and the viaducts must be marked on the section (*b*).

The line of railway also must be delineated on a published map, of a scale not less than half an inch to a mile, so as to show its general course and direction (*c*) ; in parts where the ordinance survey has been completed, and the maps published, it is usual to delineate the plan on one of the ordinance maps, which are made on the scale of an inch to a mile.

Deposit of.

The plans and sections, drawn in the manner before-mentioned, and the published map with line of railway marked thereon (*d*), and a duplicate of each, together with a book of reference, must be lodged on or before the 30th day of November preceding the session of Parliament in which application is to be made, with the clerk of the peace of the county, riding, or division, in England and Ireland, or in the office of the principal sheriff's clerk of each county in Scotland, through which the work is intended to be carried (*e*). The receipt of such plans, sections, and book of reference, by the clerks of the peace or sheriffs' clerks, as the case may be, must be acknowledged by a memorial in writing on such plans, sections, and books of reference, denoting the time (*f*) at which they were lodged in their respective offices. One copy of the plans, &c., is to be open for the inspection of any person at seasonable times of the day, who shall be at liberty to take

With Clerks  
of the Peace.

Inspection of.

(*a*) H.C. 51 ; H.L. 227, sec. 6.

(*b*) H.C. 52 ; H.L. 227, sec. 7.

(*c*) H.C. 53, 54 ; H.L. 227, sec. 1.

(*d*) H.C. 54.

(*e*) H.C. 27 H.L. 223, sec. 3.

(*f*) H.C. 31 ; H.L. 223, sec. 6.

extracts, &c. The other copy must be sealed up, and retained by the clerk of the peace until called for by order of either House of Parliament (a).

By 1st Vic. c. 83, sec. 2, clerks of the peace are compelled to allow all persons interested to inspect and make extracts or copies of such plans, sections, and books of reference, on payment of one shilling for each inspection, one shilling for every hour after the first, and sixpence for every one hundred words copied. And by sec. 3 of the above act, the clerk of the peace is liable to a penalty not exceeding £5 for neglecting or refusing to comply with the above provisions.

Making copies  
or extracts.

In addition to the deposit of copies of the plans, sections, and books of reference, with the clerk of the peace, it is provided by a standing order of the House of Lords, 223, sec. 11, that copies of the standing orders requiring such deposit should be delivered to the clerk of the peace, or sheriff's clerk, as the case may be, at the same time with the other documents.

Similar copies of the plans, &c., together with a published map, drawn to a scale of not less than half an inch to a mile, with the line of railway delineated thereon, so as to show its general course and direction, must be deposited in the office of the Railway Commissioners, on or before the 30th of November preceding the session of Parliament in which application for a bill is to be made (b).

Deposit with  
Board of  
Trade.

A copy of so much of the plans, sections, and books of reference, as relates to each parish in or through which the work is to be carried, must be deposited with the parish clerk of each such parish in England, with the schoolmaster of each such parish in Scotland, (or in royal burghs with the town clerk), and with the clerk of the union within which such parish is situate in Ireland, on or before the 30th of November (c).

Deposit with  
parish clerks.

(a) H.C. 31; H.L. 223, sec. 6.

(b) H.C. 53; H.L. 227, sec. 1.

(c) H.C. 32; H.L. 223, sec. 7.

A copy of so much of the standing orders of the House of Lords, as relates to the deposit of plans, sections, and books of reference with the parish clerks, must be delivered to such parish clerk, schoolmaster, town clerk, or clerk of the union, at the same time as the plans and books of reference are deposited with them, who must acknowledge the receipt thereof, &c.

Deposit with  
Board of Ad-  
miralty.

Where any of the works shall be situated on tidal lands, within the ordinary and spring tides, a copy of the plans and sections must be deposited at the office of the Board of Admiralty, on or before the 30th day of November (*a*).

Deposit in  
Private Bill  
Office.

A copy of the plans, sections, &c., must be deposited in the Private Bill Office of the House of Commons, on or before the 30th day of November (*b*), and in the office of the Clerk of Parliament on or before the 31st of December (*c*).

In all cases in which deposits of plans, &c., are required to be made, such deposits, to be valid, must be made between the hours of eight o'clock in the morning and eight o'clock at night (*d*).

Summary.

Thus we see that copies of the plans, sections, and books of reference, are required for every county, riding, and corporate town, through which the line is intended to pass: two for each clerk of the peace, and each town clerk, which must be deposited on or before the 30th of November; one for the Railway Board, to be deposited on or before the 30th of November; one for the Private Bill Office, to be deposited on or before the 30th of November; one for the Clerk of Parliament, to be deposited on or before the 31st of December; one for the Board of Admiralty, if any of the works are within high-water mark; and copies of so much of the plan as relates to each parish must be deposited with the parish clerks, &c., on or before the 30th of November.

(*a*) H.C. 23.

(*c*) H.L. 223, sec. 8.

(*b*) H.C. 33.

(*d*) H.C. 42.

SEC. V.—*Subscription Contract and Estimate.*

HAVING noticed, in a former chapter, the form of the subscription contract, we now only briefly recapitulate such provisions therein as are required by standing orders.

An estimate of the expense of the undertaking, under each bill, must be made and signed by the person making the same, and a subscription must be entered into, under a contract, to three-fourths of the amount of such estimate (*a*). Estimate.

The subscription contract must contain the Christian and surnames, description, and place of abode, of every subscriber, his signature to the amount of his subscription, with the amount which he has paid up, and the name of the party witnessing the signature, and the date of the same, respectively (*b*). And each subscriber must bind himself, his executors, and administrators, for the payment of the money subscribed by him. It must be filled up to the extent of three-fourths of the estimate hereinafter mentioned. Subscription contract.  
Form of.

To be valid in accordance with the standing order of the House of Lords relating to railways, the subscription contract must be entered into subsequent to the commencement of the session of Parliament, previous to that in which application is made for the bill to which it relates (*c*). When to be entered into.

The subscription contract, as required by the standing orders of the House of Commons, must be entered into subsequent to the day fixed in the session of Parliament previous to that in which application is made for leave to bring in the bill to which it relates, as the last day on which petitions for private bills may be presented (*d*).

The day fixed as the last day for receiving petitions for

(*a*) H.C. 34; H.L. 224, sec. 1.

(*b*) H.C. 37; H.L. 224, sec. 4.

(*c*) H.L. 224, sec. 5.

(*d*) H.C. 47.

private bills, will be appointed by the House at the commencement of every session. (a)

Consequently, to render the subscription contract valid as regards both Houses of Parliament, it must be entered into subsequent to the day appointed by the Commons as the last day on which they will receive petitions for private bills.

Deposit of  
copies at Vote  
Office and Pri-  
vate Bill Office.

Copies of the subscription contract, and estimates, with the names of the subscribers arranged in alphabetical order, and the amount of deposit paid up by the subscribers respectively; or where a declaration and estimate are substituted in lieu of a subscription contract, copies of such declaration and estimate must be printed at the expense of the promoters of the bill, and lodged at the Vote Office previous to the deposit of the petition, for the use of the members of the House (b). A copy also must be lodged in the Private Bill Office, and the receipt thereof acknowledged accordingly by one of the clerks of that office upon such copy, and also upon the petition (c).

And with clerk  
of parliament.

Similar copies must be printed and delivered at the office of the Clerk of Parliament, for the use of the members of the House of Lords, previous to the second reading of the bill in the upper House (d).

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#### SEC. VI.—*Petition, Declaration, and Bill.*

IN former sessions of Parliament the mode of introducing a bill into the House was by petition in a particular form, and it was only necessary that the prescribed formalities should be complied with previous to its presentation. The petition, itself, was not a preliminary document necessary to be deposited before the meeting of Parliament in com-

(a) H.C. 113.

(b) H.C. 40.

(c) H.C. 139.

(d) H.L. 224, sec. 6.



pliance with any standing orders. Now, however, by the standing orders passed in the session of 1846, the petition and bill, and agent's declaration, are made preliminary documents, and required to be drawn up in the manner directed, and deposited in certain offices on or before the days appointed. By the same orders the committee, and the sub-committees on petitions were abolished, and in their place an officer called the examiner of petitions appointed.

A petition for a bill must be in writing, as a printed petition will not be received. (1) Petition.  
(2) Form of.

Every petition for a private bill must be headed by a short title descriptive of the undertaking, corresponding with that at the head of the advertisement, and with the agent's declaration (a); and with the short title of the bill as entered on the votes. This title must be in accordance with the subject matter of the bill, and must not be changed unless by special order of the house (b). Heading.

The petition must be signed by the parties, or some of them, who are suitors for the bill, as the signature of the agent, although named as the agent of all the petitioners is not sufficient (c). Signature.

The petition of a corporation must be under seal, as being the only legal mode in which such a body can act.

The body of the petition is generally drawn up in the form of a prayer addressed to the House of Commons, in which the petitioners state, that a railway from a certain place to another certain place, passing through certain districts, would not only be of great advantage to the petitioners, but would tend to the improvement of the country, by offering a cheap, speedy, and safe conveyance for passengers, goods, and merchandize; and praying that leave may be given to bring in a bill for effecting the purpose aforesaid. Body.

(a) H.C. 140.

(b) H.C. 117.

(c) See *Gilden Modern Enclosure*, Com. Journ. 24th Feb. 1797.

Petition for supplemental bill.

In case additional provisions are required to be inserted in the bill in a subsequent stage of the parliamentary proceedings, they must, in like manner, be introduced by a petition for that purpose presented to the House; and all particulars required for the original petition, are also required in the petition for such additional provisions.

Must correspond with the bill.

The petition should be carefully drawn, and should correspond in all respects with the bill, and embrace all the powers sought to be obtained. For, although on its being discovered at a later stage of the proceedings, that the preamble of the bill is too large, a part of the matter may be withdrawn, without evidence being required of the truth of such part; yet, though the part withdrawn be unnecessary, still if it form the fundamental allegation of the petition on the credit of which leave was given to bring in the bill, the promoters will be held to the terms of their original application; and, unless the petition correspond with the bill, an objection may be taken at any stage of its progress, and on motion made in the House thereupon the bill is liable to be dismissed (*a*).

Appendages of.

The receipt of all documents required by the standing orders to be deposited in the Private Bill Office, must be acknowledged by one of the clerks thereof upon the petition (*b*).

Endorsement.

So it must be duly endorsed by the examiner of petitions (*c*), with his certificate as to compliance, or non-compliance with standing orders.

(2) Declaration.

In what cases necessary.

Annexed to the petition must be a declaration in writing by the agent for the bill, stating to which of the three classes of bills it belongs, in all cases in which it gives power to effect any of the following objects:—that is to say, power to take any lands or houses compulsorily, or to extend the time granted by any former act for that purpose; power to levy tolls, rates, or duties, or, to confer,

(*a*) See in the case of the Southwark Market Com. Sess. 1833, and the Lough Swilley and Lough Foyle Drainage and Canal Petition, 1836.

(*b*) H.C. 139.

(*c*) H.C. 112.

vary, or extinguish, any exemptions from tolls, rates, or duties, or any other right or privilege; power to amalgamate with any other company, or sell or lease their undertaking, or to purchase or take on lease the undertaking of any other company; power to interfere with any crown, church, or corporation property, held in trust for public or charitable purposes; power to make a burial ground; power to relinquish any part of a work authorised by a former act; power to divert into any intended cut, canal, reservoir, aqueduct, or navigation, or into any intended variation, extension, or enlargement thereof, respectively, any water from any existing cut, canal, reservoir, aqueduct, or navigation, whether directly or derivatively, and whether under any agreement with the proprietor thereof or otherwise; power to make, vary, extend, or enlarge any railway.

This declaration must state which of any such powers are given by the bill, and indicate in which clauses (referring to them by number) such powers are given; and shall further state, that the bill does not give power to effect any of the objects hereinbefore enumerated, other than those stated in the declaration. If none of the above powers are conferred by the bill, the declaration must be to that effect (a). The requisites of.

The bill must be properly entitled, and the short title of the bill, as first entered in the votes, must correspond with that at the head of the advertisement, and must not be changed without the special order of the house (b). (3) The bill. Title of.

In addition to the clauses required by standing orders to be inserted in all railway bills, it was usual previous to the session of 1845, to introduce every provision necessary for the regulation of a railway company, not only with regard to the internal management of the concern, as the making of calls, holding of meetings, special and general, the appointment of officers, the payment of dividends, the (a) Form of. Before 1845.

(a) H. C. 141.

(b) H. C. 117.

raising of loans, and all other matters connected with the government of the company, but also for the control of its external affairs, and its relations to third parties, as taking lands for the purposes of the railway, the mode of constructing and working the line, either as owners of it or as common carriers.

The insertion of so many sections in every bill not only rendered it exceedingly cumbrous, but at the same time, by reason of the doubts that frequently arose in respect of the construction of many of the clauses, opened the way to much litigation and dispute.

To remedy this evil, and to comprise in a few general statutes the provisions usually inserted in each special railway act; and also for the purpose of ensuring greater uniformity in the provisions thereof, three Acts of Parliament have been passed, which (save where they are expressly varied, controlled, or excepted, by any special act) are to apply to every railway Act receiving the royal assent subsequent to the 8th of May 1845, and are to be considered as incorporated therewith.

The Companies' Clauses Act.

The first of these statutes (7 and 8 Vic. c. 16), called "The Companies' Clauses Consolidation Act," prescribes the mode in which the amount of the capital authorized by the special Act to be raised shall be distributed into shares; the time and manner of the payment thereof; the forms and conditions of transfer and forfeiture of shares; the mode of borrowing money; the application of the capital; the calling of meetings, general and special, with the manner of voting thereat; the election of directors, their powers, liabilities, and duties; the appointment of auditors; the keeping of accounts; the declaring of dividends; the making of bye-laws; the settling of disputes by arbitration; the serving of notices by and upon the company; together with the mode of recovering damages and penalties from parties who have become liable thereto under the Act.

This statute contains all the powers ordinarily required

for the management of the internal affairs of the company ; but should the promoters require any extraordinary authority not therein conferred, they are at liberty, subject, however, to the approval of the legislature, to insert clauses in their special Act, to meet the particular exigencies of the occasion.

The statute next in succession (the 7th and 8th Vic. c. 18), Lands' Clauses Act. and known by the name of "The Lands Clauses Consolidation Act," prescribes the mode of taking the lands required for public undertakings, either by agreement or compulsorily, together with the mode of ascertaining the amount of compensation due to the parties whose property may be taken, or whose interests may be injuriously affected by the execution of the works.

It specifies further how the amount of such compensation is to be paid and recovered in different cases, the measure and mode of obtaining the costs, the forms and particulars of the conveyance to the company, and generally all other necessary particulars ; so that it can seldom, if ever, be needful to insert in the special Act any clauses relating to the voluntary or compulsory purchase and sale of lands for the purposes of the undertaking.

The last of the three general railway Acts (7 and 8 Vic. c. 20), called "The Railways Clauses Consolidation Act," Railways' Clauses Act. prescribes the mode of executing the works ; confers certain limited authority to make alterations in and deviations from the original plans ; provides for the temporary use of lands, and for the purchase of additional lands ; the crossing of turnpike and other roads and canals ; the construction of bridges ; levels ; works for accommodation of adjoining lands, for the making of branch railways ; the working of mines, and everything relating to the construction of the line ; and prescribes the mode of levying tolls for passengers and goods ; and the making of bye-laws necessary for the safe and convenient working of the line. In addition, it contains enactments concerning the construction and using of engines and carriages ; the mode of working railways

by lessees ; reference to arbitrations ; and the recovery of penalties.

Effect of the  
General Rail-  
way Acts.

A careful perusal of the above statutes will convince the reader that almost every possible case that can arise, either in relation to the self-government of the company, the taking of lands for the purposes of the undertaking, or the construction and working of the line, has been anticipated and provided for, and that consequently the length of the special Act is greatly reduced, and all the requisite provisions may be comprised in a small compass, whilst uniformity of legislation is secured in all railway Acts.

Notwithstanding these general and comprehensive statutes, it may, however, be necessary to insert special clauses in respect of the formation of the line, protecting, modifying, or extinguishing the interests of either private individuals or public bodies ; and the nature of the provisions so introduced will, of course, depend entirely upon the circumstances of each particular case.

The subjects most frequently requiring the introduction of special clauses as to the execution of the works, are the mode of crossing public roads, canals, &c., and of obtaining convenient access to lands severed by the railroad.

Subject to the requirements of the standing orders of the two Houses, and the provisions of the general railway statutes, the following will be found a correct enumeration of the clauses usually introduced into a special railway Act :—

Since 1845.  
Summary of  
clauses in a  
special Act.

The incorporation of the 8 Vic. cc. 16, 18, 20, with the special Act.

The name and title of the Act.

The incorporation of the subscribers.

The amount of capital.

The number of shares and amount of each.

The amount of call and time of making.

The power to borrow money.

The time and place of ordinary meetings.

The number of directors and their qualifications, with power to vary, &c.

The quorum.

The names of the first directors.

The public prints in which notices are to be inserted.

Power to make lines according to plans.

The line of railway describing the parishes.

Townships and extra parochial places in or through which the line is intended to be carried.

The quantity of land for extraordinary purposes.

The number of roads crossed on a level, with their names (by order 86 H.C., no roads can be crossed on a level unless specially reported by the select committee on the bill). Then any special clauses saving the rights of parties, regulating the construction of the works, and the interfering of road trustees, proprietors of canals and water communications, commissioners of public works, docks, drains, and of private individuals with whom any special agreement either has been or is required to be made.

The time of completing the railway.

The tolls for use of railway for propelling power. (a)

The regulations thereon.

The maximum (b) charges in respect of tolls for the use of railway and carriages together with locomotive power.

The Act to be deemed public and to be judicially noticed.

A printed copy of the bill annexed to the petition and agent's declaration must be deposited in the Private Bill Office on or before the 31st day of December, and there lie open for the inspection of all parties. (c)

(b) Deposit of.  
In Private Bill  
Office.

With commis-  
sioners of rail-  
ways.

A copy of the bill and petition must also be deposited

(a) Formerly the tolls and rates were left in blank; but now, by order 118 H.C., they must be inserted in italics in the printed bill.

(b) These must be inserted in italics in the printed bill by order of the House of Commons, 118.

(c) H.C. 140.

in the Office of the Commissioners for Railways on or before the 31st day of December. (a)

The receipt of all plans, sections, books of reference, lists of owners and occupiers, estimates, copies of the subscription, contracts, and declarations required by the standing orders of the House to be deposited, must be acknowledged on the petition when so deposited. (b)

List of bills.

A list of all petitions for private bills is to be kept in the Private Bill Office in the order of their deposit, according to regulations to be made by the Speaker. (c)

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### SEC. VII.—*Deposit.*

Deposit.  
Amount of.

A SUM equal to one-tenth part of the amount subscribed must, previous to the 15th day of January, be deposited with the Court of Chancery in England, if the railway be intended to be made in England; or with the Court of Chancery in England (d), or the Court of Exchequer in Scotland, if the work is to be done in Scotland; and with the Court of Chancery in Ireland when it is to be done in Ireland (e).

Application for  
permission to  
pay.

It is provided by the statute, 9th Vic. c. 20, sec. 2, that where any deposit is to be made, in compliance with any standing order of the House of Commons, the directors or managers of the company, in whose behalf it is to be paid, (not exceeding five in number), must apply to one of the clerks in the Private Bill Office for permission to make the deposit. On such application, the clerk applied to will, by warrant or order under his hand, direct that the money be paid.

To whom to be  
made.

Where any deposit is to be made, in compliance with any standing order of the House of Lords, application

(a) H. C. 45.

(b) H. C. 139.

(c) H. C. 142.

(d) But see 9 Vic. c. 20, s 2, and post p. 111.

(e) H. C. 46; H. L. 224, sec. 4.



must be made by the parties, in like manner, to one of the clerks in the Office of the Clerk of the Parliament, whose warrant or order will authorize the payment of the money.

Before the recent alterations, the above applications were required to be in writing, and signed by five of the directors, but the language of the Act of Parliament under which they are now to be made, is general, leaving it doubtful whether the application is to be in person or by writing. It would seem that, inasmuch as the parties from whom permission is now to be obtained, are clerks in the parliamentary offices, whereas formerly they were the chairman of committees of the House of Lords, and the speaker of the House of Commons, a personal application would suffice.

How to be made.

If, however, it be made in writing, the formalities heretofore prescribed in respect of that document had better be observed. Thus the application ought to state the name or description of the work or undertaking; the names and places of abode of the directors signing it; the sum of money required to be paid; and the bank and name into which the same is to be paid.

Form of.

If the undertaking is to be carried out in England, the money must be paid into the Bank of England, in the name of the accountant-general of the Court of Chancery; or if in Scotland, into some one of the banks in Scotland, established by Act of Parliament or Royal Charter, at the option of the parties, in the name of the Queen's Remembrancer of the Court of Exchequer in Scotland; or into the Bank of Ireland, to the name of the accountant-general of the Court of Chancery in Ireland, in case the work is to be executed in Ireland. It is observable that there is a discrepancy between the order of the House of Commons prescribing the deposit, and the stat. 9th Vic. c. 20, relating to the same subject, so far as regards the payment of deposit in respect of railways to be made in Scotland. The order gives the parties the alternative of paying the money either into the Court of Chancery in

Where to be paid.

England, or the Court of Exchequer in Scotland, but the statute only authorizes the payment of the money into the name of the Queen's Remembrancer of the Court of Exchequer of Scotland (a).

Warrant to  
pay.

The warrant or order of the clerk of Parliament, or of the clerk of the Private Bill Office, as the case may be, will be a sufficient authority for the officer, into whose name the money is to be paid, to permit an account to be opened in his name, in respect of the sum of money therein mentioned. On obtaining such warrant, therefore, the directors, after showing it to the officer named, and procuring his sanction, are entitled to make the required deposit in the name prescribed.

Mode of pay-  
ment.

Formerly it was incumbent on the directors to make the deposit in cash, and if they required the money to be invested in public securities, they were obliged to petition the court for leave to do so. Considerable expense and loss was thus incurred, as, in the first place, the directors were compelled to convert the securities, in which the deposits were invested, into money for the purpose of payment; and, secondly, if they did not wish the deposits to remain uninvested and unprofitable, they had further to incur the expense of reinvesting them. By a recent Act, however, it is provided, that when the directors shall have previously invested in three per cent. consolidated, or the three per cent. reduced bank annuities, exchequer bills, or other government securities, the sum or sums of money required to be deposited, in accordance with the standing orders of either House of Parliament; it shall be lawful for the directors named in the warrant or order to deposit such exchequer bills, or other government securities, in lieu of the payment of so much of the sum of money required to be deposited, as aforesaid, as the same exchequer bills or other securities will extend to satisfy; at the price at which the same were originally purchased by

(a) *Ib.* sec. 3.

the directors, such price to be proved by production of the broker's certificate of the original purchase.

Should the amount of deposit have been paid in cash, and should the persons named in the order or warrant, or the survivors of them, be desirous of having the money so paid in invested, they may, on a petition presented to the court in the name of the accountant-general, or other officer in whose name the same may have been paid, obtain an order that such sum shall, until the same be paid out of court in pursuance of the Act, be laid out in the purchase of three per cent. consolidated, or three per cent. reduced bank annuities, or any other government securities (a).

Petition to invest.

On the termination of the session of Parliament in which the bill is introduced, or on the rejection or final withdrawal thereof, by some proceeding in either House, or if the bill be not allowed to proceed, or if the parties who have made the deposit shall not have presented any petition for a bill, or if an Act shall have been passed authorizing the proposed works, then, in either of these cases, the parties who made the deposit are entitled, on proper application for that purpose, to have the cash paid returned, or the government securities in which it has been invested transferred into their names (b).

Repayment of deposit.

This application is made by petition to the court, in the name of whose accountant-general the sum of money mentioned in the warrant shall have been paid. The proper petitioners are the parties, or the survivors of the parties, who paid in the money; and although the Act provides that a majority of them are entitled to receive the deposit back, still the Court of Chancery has refused to grant the order, unless all the parties are named in the petition. In a case, therefore, where a railway company (whose bill at

Petition for.

(a) See *Re Manch. Huddersf. and Gréat Grimsby Rail. Com.* 4 R. Ca. 204.

(b) 9 Vic. c. 20, s. 5.

the close of a session of Parliament was before a committee of the House of Lords) sought by petition, under the 4th sec. of 1 and 2 Vic. c. 37, to get the deposit lodged by them in the Bank of England previous to such session, paid out to one of the five directors in whose names the deposit had been made, the court ordered the payment to be made to the five directors, it not appearing that the one named in the prayer of the petition had been legally appointed to receive it (*a*).

**Certificate.**

If the bill has been rejected in passing either House of Parliament, or has been withdrawn by the petitioners, the money will not be returned except upon the production of the certificate of the chairman of the committee in the House of Lords, or of the speaker in the House of Commons, stating that the bill has been so rejected or withdrawn (*b*).

**Injunction after order obtained.**

After one of the judges of the Court of Chancery has made an order on petition for the payment out of court of monies deposited by the committee of management of a railway company, under the standing orders of the House of Commons, one of the other judges of the court has jurisdiction, upon bill filed, to grant an injunction to restrain the committee from receiving the money; for the order being only made under a statutory power given to the judges of the Court of Chancery, if afterwards on the merits of the case, as disclosed in a bill filed, it should seem proper to enjoin the parties against availing themselves of the order to withdraw the monies, the judge before whom the bill was filed has power to grant the injunction (*c*).

(*a*) *Exp. Wilkinson and others, re the Lond. and Portsmouth Direct Rail. Com.* 4 R. Ca. 78.

(*b*) 9 Vic. c. 20, s. 5.

(*c*) *Castendirek v. De Burgh*, 15 L. J., N. S. 425, ch.

SEC. VIII.—*Examiners of Petitions.*

FORMERLY all petitions, after being presented to the House, were referred, as a matter of course, to one of the sub-committees on petitions, that they might ascertain whether the petitioners had complied with standing orders; but by an order of the House, in the session of 1846, the committees on petitions were abolished, and their duties transferred to officers called examiners of petitions. Examiners of petitions.

The Speaker is required to appoint one or more officers, to be called "Examiners of Petitions for Private Bills," with power to remove them and appoint others if he think fit (a). One of such examiners is to be appointed chief examiner (b). Appointment of.

Compliance with standing orders must now be proved before one of the examiners of petitions for private bills (c), and the examination of the petitions is to commence on the 15th day of January, in such order, and according to such regulations, as shall be made by the Speaker, and the chief examiner is to make arrangements for the distribution of the business among the examiners (d). Duties of.

The chief examiner of bills is required to give at least seven clear days' notice in the Private Bill Office of the day, appointed for the examination of each petition; and in case the promoters shall not appear at the time when the petition should come on to be heard, the examiner to whom the case shall have been allotted shall strike the petition off the list, and shall not reinsert the same except by order of the House (e). Notice of examination.

If the petition for a private bill shall have been struck out of the examiner's list, a petition must be presented to the House for its reinsertion, which will be referred to the select committee on standing orders (f), who will report whether, in their opinion, such petition ought or ought Striking out petition.

(a) H. C. 1.

(b) H. C. 2.

(c) H. C. 11.

(d) H. C. 9.

(e) H. C. 10.

(f) H. C. 116.

not to be inserted, and, if reinserted, under what (if any) conditions (a).

**Proceedings.**

On the day appointed, the agents of the petitioners for the bill must attend before the examiner, and proceed to give formal proofs of the several particulars required by the standing orders. Proof of compliance with those standing orders which refer to the affixing to the church doors the requisite notices, and to the applications to owners, lessees, and occupiers, may be given by the production of affidavits, sworn, in case of an English railway, before a justice of the peace, and, in case of a Scotch railway, before a sheriff-depute or his substitute, and, in case of an Irish railway, before any judge or assistant-barrister, unless, in any of the above cases, the examiner shall require further evidence (b). With respect, however, to the proof of compliance with all other requirements of the standing orders, evidence must be given by the parties who did the particular act enjoined; and the formal completeness of documents must be shown by the production of the documents themselves.

Thus the due deposit of plans, books of reference, subscription contracts, and other documents, with the proper parties, and at the proper times, must be proved by the persons who made the deposit.

The proper execution of the subscription contract must be proved by its production, and by the evidence of the attesting witnesses. The due insertion of notices in the *Gazette* and other public papers, together with the sufficiency thereof, will be evidenced by the production of the several papers.

**Certificate.**

The above formal proofs having been furnished to the satisfaction of the examiner of petitions, if there be no opposition on standing orders, he will endorse on the petition that the standing orders have been complied with.

If, however, there be any opposition with regard to such

(a) H. C. 60.

(b) H. C. 12, 13, 14.

prescribed formalities as do not come specifically under the notice of the examiner on proof of matters of form, such as objections to the accuracy and sufficiency of the several plans, sections, books of reference, notices, parliamentary contracts, and other documents, then the validity of such objections, and compliance in these respects with standing orders, will be inquired into by the examiner when the opposing petitioners are heard.

Any parties will be at liberty to appear, and be heard by themselves, their agents, and witnesses, upon *a memorial* addressed to the examiner, complaining of a non-compliance with standing orders, provided the matter complained of be specifically stated in such memorial, and that the party affected by the non-compliance with the standing orders shall have signed such memorial, and that such memorial be deposited in the Private Bill Office, three clear days before the day first appointed for the examination of the petition (a).

Opposition on  
standing  
orders.  
Memorial.

Requisites of.

If the proceedings before the examiner of petitions are to be regulated by the former rules as to proceedings before the committee on petition, and the memorial complaining of non-compliance with standing orders is to be looked at in the same light as a petition, the formalities prescribed in respect of the latter will also apply to the former.

Thus the name or short title by which the bill petitioned against is entered on the votes, must be written at the beginning of the memorial, otherwise the memorialists will not be heard by the examiner: so the memorial must state specifically the matters complained of, and no evidence of facts not stated will be admitted. If the memorial be generally against the bill, without enumerating any specific objections, the examiner of petitions will not be at liberty to take cognizance of any such general allegations.

(a) H. C. 11.

Who may oppose.

Formerly any party whatever, whether interested or not in the non-compliance with standing orders, was entitled to oppose by petition; but by the construction put upon the order relating to opposition before the committee on petitions (which order is similar to that relating to proceedings before the examiner), by the various committees sitting in the session of 1846, this rule has been somewhat, and not unreasonably, straitened. It is now held that any person whatever, whether affected individually or not, has a right to oppose on standing orders for any non-compliance therewith affecting the public, such as the incompleteness of the parliamentary contract, omission to deposit the necessary plans, or any other irregularity which cannot be said to affect an individual; but, on the other hand, if the non-compliance complained of is merely personal and private, such as the neglect to serve the proper notices, or any other oversight of a like nature, a petition must be presented signed by the party affected.

Proceedings.

The petitioners for the bill, and the memorialists complaining of non-compliance with standing orders, may appear, either in person or by their parliamentary (*a*) agent, and produce witnesses in support of the allegations of their respective petitions. It has, however, been held that the parties signing the petition in favour of the bill, if objected to, have no claim to be examined as witnesses in its support.

Attendance of witnesses.

No provision is made in the new order directing the appointment, and regulating the proceedings, of examiners of petitions for compelling the attendance of witnesses, or the production of documents. Nor is it easy to see in what manner these objects can be effected. Formerly, on the refusal of a witness to attend, and complaint thereof by the chairman of the committee on petitions to the Speaker of the House, steps were taken to compel his

(a) We believe the word "agent," which is the word used in the order, has been decided to mean *parliamentary agent* only.



attendance, or punish him for obstinate refusal. But, by the new orders, the examiners of petitions are to begin the discharge of their duties at a period earlier than that at which the House usually assembles, and whilst the Speaker has no authority over the parties whose evidence may be required. Under these circumstances, if the investigation before the examiner be either defeated or impeded through the obstinate refusal to attend of those whose testimony is required, either by the petitioners for the bill or the memorialists against it, the only course open to the parties would appear to be to apply to the examiner to adjourn the inquiry until, by the assembling of the House, the attendance of the witnesses might be compelled by the Speaker's authority; or if there be no power to adjourn, then for the examiner to strike the petition before him out of the list, endorsing thereon a minute of the circumstances under which that course was pursued, when, on proper application, after the session commenced, the petition could be re-inserted by special order of the House, and the investigation prosecuted, with the advantages of a compulsory power to obtain the witnesses and the documents which might be found necessary.

After the examiner of petitions has received evidence of the several particulars required, and also heard the parties in opposition, he is required to certify by endorsement on each petition which shall have been deposited in the Private Bill Office, whether the standing orders have or have not been complied with; and when they have not been complied with, he must also report to the House the facts upon which his decision is founded, and any special circumstances connected with the case.<sup>(a)</sup> Should he feel any doubt as to the due construction of any standing order in its application to a particular case, he is to make a special report of the facts to the House, without deciding whether the standing order in question has or has not

Certificate of  
examiner.

(a) H. C. 15.

been complied with ; and in such case he must endorse the petition with the words "Special Report," either alone, or, if non-compliance with other standing orders shall have been proved, in addition to the words "Standing orders not complied with." (a) The petition, with these endorsements, will lie in the Private Bill Office until required to be presented to the House.

(a) H. C. 17.

## CHAPTER II.

## PROCEEDINGS IN THE HOUSE OF COMMONS.

SEC. I.—*Petition for a Bill.*

Petition.

No private bill can be brought into the House of Commons except upon petition first presented, with a printed copy of the proposed bill annexed. The petition must be signed by the parties, or some of them, who are suitors for the bill, and be duly endorsed by the examiner of petitions.<sup>(a)</sup>

Form of.

The petition for leave to bring in a bill to form a railway must be placed in the hands of a member of the House for the purpose of presentation. Any member can present the petition, but it is usual to entrust it to the members of the city or place more immediately affected by the proposed measure, the parliamentary agent generally giving the member who has charge of the bill due notice and information as to the times when he will be required to make the particular motions.

Presentation of.

Who from.

On the day when the petition is to be presented, the member puts down his name on the Speaker's private business list. At the sitting of the House on the same day, on being called upon in his turn, the member in charge of it rises and presents it.

How.

The petition must be presented to the House on or before a day to be appointed at the commencement of the session.<sup>(b)</sup>

When.

If, however, the proper time elapses, another petition may be presented, praying leave to be permitted to present the

Petition for further time.

<sup>(a)</sup> H. C. 112.<sup>(b)</sup> H. C. 113.

original petition notwithstanding. This petition to allow the usual rule to be dispensed with is referred to the Select Committee on Standing Orders; and if the committee report that the prayer of it should be complied with, a petition will be presented as in other cases.(a)

Disposal of.

Until the recent alterations all petitions for private bills, on being presented to the House, were referred, as a matter of course, to the Committee on Petitions. This committee has, however, been abolished by the standing orders of last session (1846), and its duties transferred to the examiner of petitions, whose functions and proceedings have already been explained.(b)

When the petition has been presented, if it bear an endorsement, under the hand of the examiner, of compliance with standing orders, the prayer of it will be granted as of course, and leave given for the bill to be introduced. But if the examiner shall have endorsed thereon non-compliance with standing orders, or shall have made a special report to the House, in either of these cases the petition will be referred to the Select Committee on Standing Orders.(c)

Standing Orders Committee.

(a) Appointment and proceedings of.  
Time of meeting.

Mode of proceedings before.

## SEC. II.—*Select Committee on Standing Orders.*

THIS committee is appointed at the commencement of every session, and consists of eleven members, of whom five are a quorum.(d) The agent for the bill and the committee clerk appoint a day for meeting at the convenience of the chairman of the Committee on Standing Orders, a written notice of which day is given to the members of the committee, and also inserted in the daily votes. In those cases in which the petition referred to the committee is endorsed with "non-compliance with standing orders," if there be

(a) II. C. 116.

(c) II. C. 115.

(b) See *Supra*, pp. 115—120.

(d) II. C. 3.

any special circumstances or reasons why compliance with standing orders should be dispensed with, the parliamentary agent should make a written statement thereof, a copy of which should be delivered to the opponents (if they apply for the same) at least twenty-four hours before the meeting of the committee.

The committee may (though it is not usual to do so) hear the petitioners in proof or in explanation of this written statement; but evidence of no other facts than those contained in such statement and counter-statement can be received.

In those cases, however, in which there has been a special report of the examiner as to the construction of a standing order, the committee are to determine according to their construction thereof, and on the facts stated in such report, whether the standing orders have or have not been complied with; and they will then either report to the House that the standing orders have been complied with, or proceed to consider the question whether they should or should not be dispensed with. (a) Evidence.

After the committee have examined and considered the circumstances of the case, in which non-compliance with standing orders is endorsed, and the facts reported by the examiner of petitions, when there is a doubt as to the construction of a standing order, and have come to a determination, they make a report to the House whether such standing orders as have not been complied with ought or ought not to be dispensed with, and whether in their opinion the parties should be permitted to proceed with their bill, or any portion thereof, and under what, if any, conditions; and also a report of the construction which they put upon the standing order, in respect of which a special report shall have been made, together with their opinion as to whether or not in the particular case it has been observed or may be dispensed with. (b) Report.

(a) H. C. 58.

(b) H. C. 57, 58.

Effect of, if favourable.

If the committee determine that standing orders should be dispensed with, a report to that effect is made and a bill brought in, as in cases where the petition bore an endorsement of compliance with standing orders.

If unfavourable.

Should, however, the report be that standing orders disobeyed ought not to be dispensed with, the bill is generally considered at an end—at all events for that session of Parliament. Although it is usual in such cases to abandon the bill, the determination of the Committee on Standing Orders is not final and conclusive, as the promoters may petition the House to have the bill referred back, or to have the particular order disobeyed dispensed with, and so permit the bill to proceed, notwithstanding the unfavourable report of the Committee on Standing Orders. The House is very unwilling to interfere with the decisions of its committees, and it is only under very peculiar circumstances that the House will be induced to grant the indulgence prayed.(a)

(c) Petition for re-committal.

### SEC. III.—*Presentation and first Reading of the Bill.*

(a) Presentation of Bill.

If the report of the examiner of petitions, or of the standing orders' committee, be favourable, some member of the house must move that the report be read, and leave be given to bring in the bill. Leave having been given accordingly, the bill may be presented to the House on the next or any following day.(b) In urgent cases it has been permitted to present it on the same day.

(b) First Reading. Preliminaries.

The bill must be printed on paper of the size determined by the Speaker, with a cover of parchment to it, upon which the title, as first entered on the votes, has been

(a) In the case of the West Riding Union Bill (Session 1846), the House adopted this course in deference to the strong representations of the members for the localities through which the railway was to pass.

(b) H. C. 136.

written,(a) and printed copies must be delivered to the doorkeeper for the use of the members of the House (b) before the bill can be read the first time.

The first reading of the bill may take place on the day of presentation. It was formerly the practice of the House of Commons to fix a day in each session as the last in which private bills might be read a first time; but in the session of 1846 no day was fixed, the immense amount of business preventing the committees on petitions and standing orders from getting through all the cases referred to them in the ordinary time; but to obviate delay it was resolved by the House,(c) "That no private bill can be read a first time later than the next day but one after the report of the committee on petitions, or of the standing orders' committee, as the case may be, shall have been laid on the table by special order of the House." Should there be any particular reason for not reading the bill within the time limited, a petition must be presented praying for an extension of the time.

Time of.

Extension of time.

The House will grant or refuse the prayer of the petition as they may think fit; it ought, however, to be made before the time limited for the first reading has expired.

Previous to the sitting of the House on the day on which it is intended to present the bill, one of the members appointed to bring it in puts his name down on the Speaker's private list. At the sitting of the House the member seats himself at the bar, and is called on in turn by the Speaker, and the question is put—that the bill be now read a first time.

Mode of.

This is generally done as a matter of course; and although a member of the House is entitled to oppose a bill at any stage, the practice is never to do so on the first reading. At the time of the first reading, an order is made, as of course, for the second reading, which, however,

(c) Subsequent proceedings.

(a) H. C. 117.

(b) H. C. 119.

(c) Resolut. Feb. 19th, 1846.

does not take place immediately, the order being a permission to proceed at a future time.

After the bill has been read a first time, its name or short title should be copied by the clerks of the Private Bill Office, from the clerk's minute-book of the day, into a separate book, to be called the "examination book," wherein must be noted the number of such bill according to the order in which it was read, and the date of the first reading (*a*).

Custody of the bill.

After the title has thus been examined and copied for the votes, a private bill is in the custody of the clerks of the Private Bill Office, until laid upon the table for the second reading (*b*).

Breviate. Form of.

A brieve of the bill must be prepared, drawn out in the manner prescribed from time to time by the Speaker, containing a statement of the objects of the bill, and a summary of the proposed enactments, specifying any variation of the general law intended to be effected by the bill (*c*).

Examination of.

Between the first and second reading of any private bill, every such bill, according to its priority, is to be examined by the clerks of the Private Bill Office, as to its conformity with the rules and standing orders of the House; and if *not* in due form, the examining clerk will specify thereon the page in which any irregularity occurs, entering his name and the day of examination in the examination book (*d*).

To be laid on the table. Fees.

This brieve must have been printed and laid on the table of the House three clear days (*e*), and all the fees payable on the bill must be paid (*f*), before it can be read a second time. Though this has been the rule, however, the practice has been not to pay the fees until the bill is ready for the royal assent.

By a former standing order it was provided, that peti-

Petitions against the bill for non-compliance with S. O.

(*a*) H. C. 144.

(*d*) H. C. 146.

(*b*) H. C. 145.

(*e*) H. C. 124.

(*c*) H. C. 123.

(*f*) H. C. 125.



tions complaining solely of non-compliance with standing orders, in respect of any private bill, must be presented to the House previously to the second reading, unless in the case of those standing orders which must necessarily be taken into consideration by the committee on the bill (a); but inasmuch as parties complaining of any non-observance of standing orders are now to make their complaint by memorial presented to the examiner of petitions, the above provision is rendered unnecessary.

#### SEC. IV.—*Second Reading.*

Second Reading.

THERE must be three clear days' notice in writing, given by the agent for the bill to the clerk in the Private Bill Office, of the day proposed for the second reading of the bill (b).

Notice of.

There must be an interval of three clear days between the first and second readings (c), and of two calendar months from the day the last notice appeared in the *Gazette* or provincial papers (d). The House, however, by a resolution of February 12, 1846, resolved, that there must not be more than seven clear days between the first and second readings of any railway bill, except by special order of the House. This resolution, in case of the early meeting of Parliament, might conflict with the order as to the interval between the last notice in the *Gazette* and the second reading.

(a) Time of.

The above requisites having been complied with, the agent for the bill gives information, either to the member who presented the petition, or to any other member, as to the day for which the notice of the second reading has been given.

(b) Mode of.

(a) H. C. 111 (1845).

(b) H. C. 147.

(c) H. C. 120.

(d) H. C. 122.

The second reading of the bill may (at the desire of its promoters or its opponents) either be made an order of the day, or be inserted in the Speaker's private business list.

In the former case it is not moved with the private business, but is taken with the orders of the day; in the latter, (if permitted to take its course) it is called on in turn by the clerk at the table. The member having entered his name on the Speaker's private list, before the sitting of the House on the day appointed, moves, "That the order of the day for the second reading of the bill be now read; and that the bill be read a second time." Or if the bill had been entered on the Speaker's private business list merely, "That the bill be read a second time." On either of such motions, unless the bill has been successfully opposed, it is read a second time, and ordered to be referred to the committee named in the order. This committee is called the Committee of Selection (*a*), and the bill is then said to be committed, and is in the custody of the clerk of the committee, to which it is referred until reported (*b*).

(c) Effect of.

(d) Opposition on.

Opposition to the substance of the bill may be, and generally is, made at the second reading of it. Thus, if there is anything dangerous in its principle, as being against public policy, or some known rule of law, it should be mooted at this stage, whilst any objection to particular provisions is generally deferred, and urged before the committee on the bill.

Any opposition made to a bill by any other than a member of the House, must be by petition duly presented; but any member of the House is, of course, at liberty to oppose, without previously presenting a petition.

If the second reading be opposed, some member moves to leave out the word *now* from the motion before the House, and to substitute therefor the words "this day six months."

(a) H. C. 126.

(b) H. C. 145.

Should the second reading be postponed for six months, or be simply refused, no new bill for the same object can be brought into the House during that session.

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SEC. V.—*Committee of Selection, and Committee on an Unopposed Bill.*

ALL private bills, whether opposed or unopposed, after having been read a second time, are referred to a committee called the Committee of Selection (*a*). Once in their hands, however, the mode of proceeding is entirely different when a bill is opposed, from what it is if unopposed. We shall consider, in this section, the constitution and functions of the Committee of Selection in respect of both classes, and the constitution and functions of the committee to whom an unopposed bill is referred.

The Committee of Selection consists of the chairman of the Select Committee on Standing Orders, and the members of the general committee of elections, of whom three are a quorum (*b*).

(*a*) Committee of Selection.  
Constitution of.

It is the duty of this committee to refer every bill submitted to them, according as it is opposed or unopposed, to a committee formed as required in each case by the standing orders, and as more particularly mentioned below (*c*).

Functions of.  
To refer bills.

The clerk to the Committee of Selection must give seven clear days' notice to the clerks in the Private Bill Office, of the day appointed for the sitting of the committee on the bill, whether opposed or unopposed (*d*). Unless this be done, all the proceedings of the committee will be void.

To give notices.

So the Committee of Selection must give notice to the selected members (*e*) of a committee on an opposed bill,

(*a*) H. C. 126.

(*b*) H. C. 4.

(*c*) See post pp. 130 and 131.

(*d*) H. C. 148.

(*e*) See post p. 130.

that their names have been placed thereon, and of the time when the committee is to meet (*a*). They will also name such selected members (*b*), and direct what number of them shall be a quorum (*c*).

To fix times of meeting of committees.

Seven clear days must elapse between the second reading of a bill and the sitting of the committee thereon (*d*).

Subject to this order, however, the committee of selection are to fix the time for the holding of the first sitting of every committee, but, in the case of an unopposed bill, after communication with the members who are to form the committee thereon (*e*).

Effect of the grouping of Railway Bills.

The order requiring seven days to elapse between the second reading of a bill and the sitting of the committee, applies both to opposed and unopposed bills; but now that there is a classification of railway projects, and a division of them into groups, it may often happen that the promoters will be unable to comply with this order, as the day appointed for the meeting of the select committee on the group to which the bill in question is referred, may be even previous to the second reading of many of the bills included in such group. In such cases, the parties may either petition the House to have their bill admitted into the group without compliance with this order, or to postpone the meeting of the committee on the group.

(*b*) Committee on unopposed bills.  
Constitution of.

The committee on an unopposed railway bill, originated in the House of Commons, consists of the chairman of the Committee of Ways and Means, and the members ordered to prepare and bring in the bill (*f*), of whom the former and one of the latter are a quorum, and the former is chairman of the committee (*g*).

What is an unopposed bill.

No bill is to be considered by the Committee of Selection as opposed, unless a petition against it (*h*) has been presented, in which the petitioners pray to be heard by themselves, their counsel, or agent, except in cases where the

(*a*) H. C. 65.

(*b*) H. C. 63.

(*c*) H. C. 64.

(*d*) H. C. 127.

(*e*) H. C. 68.

(*f*) H. C. 6.

(*g*) H. C. 80.

(*h*) As to requisites of petition, see *post*. pp. 136, 137.

chairman of Ways and Means shall have reported to the House that in his opinion any bill should be so treated (*a*).

A copy of the bill, filled up as it is proposed to be submitted to the committee, and signed by the agent, must be deposited at the Private Bill Office one clear day before the meeting of the committee (*b*), and a similar copy must be laid by the agent before the chairman at the time of giving notice of the meeting of the committee thereon, and before each other member of the committee three days at least before the day appointed for their first meeting (*c*).

Deposits.

The committee having instituted a careful examination of all the clauses of the bill, and considered all the matters relating thereto, submitted to them by the agent and the promoters, will, if they deem the preamble of the bill to be proved, and are of opinion that there is nothing objectionable in its provisions, report to the House accordingly (*d*).

Proceedings of committee.

Report.

The chairman, however, is at liberty to report that, in his opinion, the bill submitted to them should be treated as an opposed bill, in which case it will be referred back to the Committee of Selection, and dealt with by them as an opposed private bill (*e*).

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#### SEC. VI.—*Select Committee on an Opposed Bill.*

If the bill be opposed, it is referred by the Committee of Selection to a select committee, for further consideration (*f*).

Committee on bill.

The committee on every opposed private bill consists of the members on the Speaker's list for that county, or division of a county, to which the bill specially relates, and of such number of selected members not locally interested in the bill in progress, and in such proportion as the Com-

(*a*) Constitution and jurisdiction of.(*a*) H. C. 66 and 81.(*b*) H. C. 149.(*c*) H. C. 82.(*d*) As to the bringing up and consideration of the report, see post pp. 147-150.(*e*) H. C. 81.(*f*) H. C. 63.

mittee of Selection may appoint, of whom five, including the quorum of selected members, is a quorum (*a*).

**Declaration of members.**

Each member of the committee, before he is entitled to attend and vote, must sign a declaration that he will not vote on any question without having duly heard and attended to the evidence relating thereto. In addition to this, each member nominated by the Committee of Selection must sign a declaration that his constituents have no local interest, and that he has no personal interest in the bill (*b*). The agent for the bill must give seven clear days' notice (and in case of a recommitted bill, three clear days' notice) in writing to the clerks in the Private Bill Office, of the day and hour appointed for the meeting of the committee (*c*).

**Deposits.**

A filled-up bill (signed by the agent), as proposed to be submitted to the committee, (or in case of a recommitted bill, as proposed to be submitted to the committee on re-committal) must be deposited in the Private Bill Office one clear day before the meeting of the committee, and all parties will be entitled to a copy thereof upon payment of the charges for making out the amendments of such bill (*d*).

**Meetings.**

The Committee of Selection, subject to the order that there be seven clear days between the second reading and the sitting of the committee, fix the time for holding the first meeting of the committee on an opposed bill (*e*).

Should any postponement of the first meeting take place, the clerk to the committee must give notice to the clerks in the Private Bill Office of such postponement (*f*).

**Adjournments.**

After the committee have once sat, notice of the hour and day to which they may adjourn must be given by the

(*a*) H. C. 5. This order was, under the pressure of railway business in the last session, varied by a resolution of the House, and a select committee on a railway bill ordered to consist of a chairman and four members appointed by the Committee of Selection. This arrangement has been again made this session (1847).

(*d*) H. C. 149.

(*b*) H. C. 69, 70.

(*e*) H. C. 68.

(*c*) H. C. 148.

(*f*) H. C. 150.

clerk of the committee to the clerks in the Private Bill Office (*a*). The committee on the bill will not be permitted to adjourn from day to day, or to a very remote day.

Should they attempt to delay the proceedings, the House, on application, will order them to meet and proceed forthwith (*b*); and should they adjourn without naming another day for resuming their sittings; or if, from the absence of a quorum, the committee be unable to proceed or to adjourn, they cannot meet again without an order of revival.

However, in cases in which any member is unable to attend, by reason of his illness, or death, or any other circumstance, the chairman will report the fact to the House, who usually thereupon give permission for the committee to proceed with a smaller quorum (*c*).

This committee have no authority to examine into the compliance or non-compliance with such standing orders as are directed to be proved before the examiner of petitions, unless by special order of the House (*d*). (*b*) Jurisdiction.

As there is a doubt whether they can compel the attendance of witnesses, it is usual to move the House that the committee on the bill (naming it) should have power to send for persons, papers, and records, and if the House shall be of opinion that due diligence has been used, and proper efforts made to procure the attendance of witnesses, and production of documents required, they will grant the order prayed. Power to summon witnesses and order papers, &c.

Should any party, after notice from the House that he is required to give evidence, neglect or refuse to attend, he will be guilty of a breach of the privileges of the House, and may be committed to Newgate, or detained in the custody of the serjeant-at-arms.

The committee clerk attends the committee, and pro-

(*a*) H. C. 151.

(*b*) Camberwell and South Lambeth Water Works Bill, 60 Com. J. 305; Berks and Hants Canal Bill, session 1825.

(*c*) See May's Usage of Parl. 413.

(*d*) H. C. 84.

duces the plans and books of reference, and all the papers that have been previously lodged in the Private Bill Office.

To alter preamble.

The committee have the power to make any alteration in the preamble of the bill, subject to the following restrictions:—That nothing in any degree inconsistent with the notices given, in compliance with the standing orders of the house applicable to the bill, should be introduced.

That every alteration, &c., made in a preamble, should be specially noticed in the report of the bill to the House; and that, together with the notices in the report of any alteration so made in the preamble, the ground of making it should be stated (*a*).

And clauses.

They have power, moreover, subject to the above limitations, to alter the various clauses of the bill.

And plans.

So they may, subject to the same restrictions, make alterations in the plans deposited. These alterations and amendments are to be marked by the chairman of the committee with his name and initials, in the manner prescribed by standing orders of the House of Commons (*b*).

Limit of this power to alter.

The most material alterations made in the preamble of a bill, during its progress through committee, generally relate to the abandoning of a portion of the line, or any branches, or postponing them to a future period. Should the committee, however, be desirous of making any alterations, such as the dividing a bill into two, or consolidating several bills, they have no such power of themselves, but must apply to the House for permission. Their jurisdiction seems only to extend to the bill before them, upon the whole or any part of which they are competent to decide.

(*b*) Opposition.

(1) Who may oppose.

Generally.

Although any individual whatever may petition the house against a bill, it may be laid down as a general rule that a person must have some interest likely to be affected by the execution of the proposed work, or he will not be per-

(*a*) Report on revision of standing orders, 1843. H. C. 94.

(*b*) H. C. 91, 92.



mitted to appear before the select committee, by his counsel and witnesses. As to the nature and amount of the interest so required, it is impossible to form any correct idea; there have been so many conflicting decisions on the subject by the various committees on railways, that any attempt to lay down a general rule would be likely to mislead.

Ordinarily the opponents of a railway bill are either the landowners whose property may be in some manner, and to some extent, injured by the formation of the line; or the promoters of rival schemes, who are attempting to obtain a bill for a similar purpose.

We will now consider what interest is sufficient to give a *locus standi*, first, to promoters of rival schemes; and, secondly, to landowners on the line.

All competing schemes, which are referred to the same committee, and their several promoters, have necessarily a *locus standi* in opposition; and if the necessary notices have been given, and deposits of plans, sections, and money, have been made, the projectors of such schemes will be entitled to be heard, although they have failed before the Committee on Standing Orders, through non-compliance with some of the formalities (a).

Promoters of rival schemes referred to the same group.

But it is not yet settled whether the projectors of a scheme, competing in some respects with another, but not included in the same group, have a *locus standi* as to such competing part.

Though they have failed before the S. O. Committee.

Schemes partly competing, and no different group.

When the projectors of a scheme having no *locus standi* are desirous of opposing, they generally do so by means of some landowner, who is put forward as the nominal petitioner, while the company, in fact, are the real opponents, and pay all the expenses.

The projectors of a scheme provisionally registered, who have not deposited their plans, given the proper notices, nor taken the necessary steps to come before Parliament, have

Scheme not before Parliament.

(a) Cambridge and Lincoln Railway, sess. 1845.

no *locus standi*, although it may be their intention to bring a plan before Parliament in the ensuing session, and which plan may be preferable to the one before the committee.

**Landowners.** It is very difficult to state what interest in land gives a person a *locus standi* to be heard in opposition to a bill.

**Named in book of reference.** Any person whose land has been included in the book of reference, as a matter of course, can be heard, either in person or by counsel; but the mere probability of the value of his property being lessened by the construction of the intended line, is not a sufficient ground of opposition, although, if the property be likely to be physically injured, as by throwing back water and rendering the drainage incomplete, or by making it less accessible to the owner thereof, even if not named in the book of reference, he would be entitled to be heard.

**Where damage consequential.** Some committees have received evidence of consequential damage very remote, and have even gone so far as to allow parties who have merely an easement in the property likely to be affected, although not included in the book of reference (a) to be heard; while, on the other hand, a canal company, whose lands were virtually cut through by the intended line, were held not to have a sufficient interest to entitle them to set up another line as preferable and less likely to injure them.

**(2) Opposition, how made. By petition.** Any opposition to a railway bill before committee must be by petition duly presented to the House, and no petition can be taken into consideration by the committee on the bill, unless it distinctly state the ground on which the petitioners object to any of the provisions thereof, and they can only be heard on the ground so stated; and if the committee should think the grounds are not stated with sufficient accuracy, they may direct that there be given in a more specific statement in writing, but limited to such grounds of objection as were before specified (b).

**Requisites of.**

A petition against the bill generally, not specifying the

(a) Perth Railway, sess. 1845.

(b) H. C. 78.

particular grounds of opposition, will not be referred to the committee, as it is regarded in the light of an ordinary petition concerning a bill before the House, and not requiring special consideration.(a)

The petition must be in writing (b), signed by the petitioners, or, in case of their absence from the United Kingdom, by their respective agents.(c) And if it be the petition of a corporate body, it must be under their common seal, or it cannot be recognised by the committee.(d) It must also have upon it the name or short title of the bill intended to be opposed, and must state whether the petition be *in favour of or against* the bill.(e)

If the name or title of the bill petitioned against be not inserted in the petition, or be inserted incorrectly, the petitioners will not be heard.(f) Care must be taken in specifying the grounds of opposition that they disclose sufficient to give the petitioners a *locus standi* before the committee; for unless that is done the petitioners will not be heard, although in reality they may have ample grounds of opposition to give them such a *locus standi*, and they may be directly injured by the passing of the bill. On the other hand, petitioners having specified in their petition sufficient to give them a *locus standi*, have been allowed to give evidence of consequential damage, which of itself would not have sufficed to give them a right to be heard.(g)

Must show interest sufficient to give *locus standi*.

The petitioners in opposition cannot be heard before the committee unless the petition shall have been presented to the House three clear days before the day appointed for the first meeting of the committee on the group, unless the matter of complaint has arisen during the progress of the bill before the said committee.(h)

When to be presented.

(a) May on Usage of Parl. 413.

(b) 72 Comm. Journal, 128.

(c) H. C. 112.

(d) Glasgow Gas Bill, 1843.

(e) H. C. 121. In the session of 1846, a petition was rejected, the word "against" having been omitted in the heading.

(f) H. C. 121.

(g) Syston and Peterborough Railway, 1845.

(h) H. C. 79.

In one case it was decided that the committee had no power to entertain a petition presented later than three days before the sitting (a) of the committee, although expressly referred to them by a vote of the House; the committee feeling bound by the standing order until it was expressly repealed.

The petitions against a bill are referred by the House to the committee on the bill, and an order is given that the petitioners be heard by themselves, their counsel and agents if they think fit, and that counsel be heard in favour of the bill against the petitioners.

(c) Proceedings before committee.

The committee having been duly convened, we come now to consider the order in which the various petitions for and against a bill are taken, together with the evidence required by the petitioners for the bill, and what is admissible against them.

Preliminaries.

The petitions against a bill are referred, as we have seen, if the grounds of opposition have been duly specified in the petition, to the committee to whom the consideration of the bill itself is entrusted. On the assembling of the committee, the first step generally taken is to read the petition for the bill, and then all the petitions against it, calling on the petitioners to support their case, and their agents to produce their certificates, that their names have been entered as such; and unless the agents produce these certificates, the petitioners will not be allowed to be heard.

Should the petitioners in opposition fail to appear, either in person or by their agents, their opposition is considered as abandoned, and they must state their intention to oppose the bill before the case is commenced, or otherwise, without the express sanction of the committee, they have no right to be heard.

Order in which bills are taken.

The bills relating to a particular district of country, whether they be rival schemes or otherwise, are generally referred in a group to one committee.

(a) Group N, 1845.

It is a common practice for the agents of the several bills to agree among themselves as to the order in which each bill is to be taken, and the committee usually accede to any suggestion made by the parties; but if no such arrangement has been made, the bills are taken in the order in which they were read a second time.

The proceedings of select committees in respect of the bills submitted to them have varied in different committees. It has been the practice with some to begin with the bill first on the list, hear evidence both for and against the preamble, and if satisfied that the petitioners for the bill have made out their case, to decide that the preamble is proved.

Practices of  
different com-  
mittees.

By this decision they consider themselves discharged from the obligation of entering upon the consideration of the rival schemes. Other committees, however, pursue a different course, and hear the evidence for and against all the bills in the group before they decide in favour of any.

Any committee having decided in favour of the preamble of the bill, named first in the group, without inquiring into the merits of the competing schemes, it then becomes unnecessary to investigate them if they propose to supply the same district of country with railway accommodation; but if they have decided that the preamble of the first bill has not been proved, the committee proceed to the next on the list; and so on through the whole number, until they are agreed to decide in respect of one that the preamble is proved.

This mode of proceeding may certainly in some cases be more expeditious, but it can scarcely be said to be fair to the promoters of those bills that happen to stand below the successful one on the list. The first scheme, no doubt, may be a very good one, but still it does not follow that the others may not be better, and that some one, the claims of which in this mode of inquiry may never be investigated, may possess decided advantages over all its

competitors in many respects, as in affording greater accommodation to the district through which it passes, in avoiding serious engineering difficulties and interference with valuable property. The other practice above alluded to is a fairer mode of conducting inquiries of this sort, and has been adopted by some committees. This is not only more satisfactory to the parties themselves, but more for the benefit of the public than the former. By pursuing this latter plan, the committee hear the evidence in favour of all the competing lines referred to them before they decide in favour of the preamble of any particular bill. This may possibly consume the time and tax the patience of the committee more than the system above mentioned, but it is undoubtedly the best mode of proceeding, and the most likely to effect the real object of investigation before a committee. The merits and advantage of all the proposed lines are fully elucidated and examined, and their defects exposed; and the committee are thus prepared to select from the various plans referred to them the one that may be best in every respect, both as to economy and facility of construction, public convenience and accommodation, and avoidance of serious and unnecessary injury to the landowners through whose property it is intended to be carried.

Mode of conducting the business.

If this mode of conducting the inquiry be adopted, the projectors of the line first on the list appear by counsel in favour of their own preamble, and produce evidence in support thereof. The witnesses are cross-examined first by the landowners, and then by the promoters of the various competing schemes, after which they are re-examined, as in the case of ordinary actions at *nisi prius*.

The scheme second on the list is then called on, and a similar course pursued; and so with all the others.

Whenever the landowners produce evidence against the scheme under consideration, its projectors have the right of reply; and when all the schemes have been

examined, the counsel for the first concludes the inquiry by a general reply.

The evidence required in support of a bill is very much regulated by the nature of the report to be specially made by the committee. (d) Evidence for promoters.

The petitioners usually give proof of all the particulars required to be reported on to the House by the committee, and enumerated in a subsequent part of this work. So proofs are frequently offered as to the direction and construction of the line, the sources of traffic, the number and situations of the stations, and the public accommodation offered, and any other matters which may become important in consequence of the line of argument adopted by their opponents. Hence the particulars of the evidence will depend on the number and nature of the objections to be answered, and will vary in each individual case. Directed to points to be embraced in the report.

Generally the promoters in support of the preamble of their bill first offer proof of the merits of the line by their engineers and surveyors, shewing its practicability and engineering advantages, and explaining the facilities and economy of its construction. Having done this, witnesses are called from the principal places on the line to give evidence as to the nature and probable amount of the traffic to be expected, and the public accommodation to be afforded; furnishing particulars as to the trade and resources of the district, the demand that exists for railway communication, and the support which the proposed scheme is likely to secure. Evidence of engineers as to merits of the line.

Formerly the projectors of railways were accustomed to deposit plans and serve the requisite notices for alternative lines, the selection from which was generally postponed until the bill was referred to the committee. When the projectors, with the advice of the committee, had decided upon one as the most desirable plan, they were at liberty to abandon the other, provided all the standing orders And of parties on the line as to expected traffic.

Evidence respecting alternative lines.

No evidence required on the part of the preamble withdrawn.

with regard to the one chosen had been complied with. But now, by standing order No. 27, the power of providing alternative lines is entirely taken away. Projectors may also withdraw part of the preamble of their bill, and be excused from going into evidence of the truth of the part withdrawn, provided such portion be unnecessary, and do not involve any of the fundamental principles on which the petition as originally presented was founded, or on which the House may be supposed to have granted leave to bring in the bill. Hence, in withdrawing any portion, great care must be taken not to take away what is material, lest the whole preamble should be destroyed, and the object of the promoters utterly defeated.

We have in a former portion of this work remarked on the necessity of caution in drawing the petition, that no unnecessary averments be introduced, as the petitioners may be called on to prove them, although the extraneous matter is quite irrelevant to the main objects of the bill, and separable therefrom.

(c) Evidence for opponents.

In inquiries before a parliamentary committee, the rules of evidence are not construed with the same strictness as in courts of law; otherwise the petitioners in opposition, whether landowners or projectors of rival schemes, would be restricted in their proof to those grounds of opposition specified in their petitions, and relating to matters solely affecting themselves.

Not confined to matters affecting the interest of the petitioner.

But if such grounds of opposition are specified in their petition as suffice to give them a *locus standi*, it is immaterial whether the other objections urged are such as affect themselves or third parties. Thus, for example, we find landowners are not merely allowed to give evidence of the amount of injury and inconvenience, they may personally suffer by the construction of the line, but to show by general evidence that another and more convenient course, both for themselves and the public, can be adopted.

Plans of rival companies.

Before some committees the landowners have been permitted to give in evidence the plans and sections of rival



companies, which have been duly deposited with Parliament and the clerks of the peace, previous to the presentation of the petition ; and before others opposing landowners have even been suffered to put in plans and sections of their own, showing how the line may be constructed so as to avoid their lands. This latter practice, however, is certainly objectionable, on the ground that the petitioners for the bill have had no opportunity of testing the accuracy of such plans. But the former cannot be said to be obnoxious to this objection, ample opportunity having been afforded to examine and scrutinise the correctness of the deposited drawings.

The rule which allows the opponents of a bill, having once established their right to be heard as parties affected by its provisions, to urge every argument which they find available for their purpose against it, is manifestly just and politic, as it has the effect of bringing before the committee more fully the real merits of the scheme under their consideration. Perhaps in some instances this indulgence has been carried further than the public interests required, and has had the effect of needlessly prolonging the inquiry.

It is unnecessary to dwell further on the nature of the evidence admissible in support of a petition against a railway bill. For further information the reader is referred to the appendix of Mr. Collier's able work on railways ; but, in conclusion, we may observe that while proper scope should be allowed on both sides, that a comprehensive view of the question may be taken ; it would put an end to much prolixity, and, consequently, most materially abridge the labours of the committees, were some precise and definite rules as to the admissibility of evidence, laid down by standing orders. Judging from the great improvements that have taken place in the mode of proceeding with private bills, both before the House on the several readings, and before the respective committees to which they are

Need of some definite rules of evidence.

referred, we may safely presume that some such step will be adopted.

(f) Decision on preamble and consideration of clauses.

Decision on preamble.

After the committee have heard the evidence on both sides, they consider among themselves whether the preamble of the bill be proved or not. If they decide that it is not proved, and that the promoters have failed to establish their case, the chairman of the committee reports to the house, "That the allegations contained in the preamble have not been proved to their satisfaction." The committee do not enter into any particulars, or assign any reasons, for the conclusions at which they have arrived. On the report being made to the House, the bill is ordered to lie on the table, and, generally speaking, no further steps in the matter are taken, at all events for that session.

Consideration of the clauses of the bill.

But if, on the other hand, the preamble is declared proved, the committee then proceed to consider each clause in the bill separately. The parties who have petitioned against the bill generally, or against particular clauses, are then allowed to offer any objections they may think fit. The opinion of the committee is taken *seriatim* upon each clause, until the whole of them have been discussed and settled. This was formerly a more tedious process than it is at present, but since the passing of 8 & 9 Vict. cc. 16, 18, 20, it has been much abridged.

After the bill, both in its preamble and its clauses, has been thoroughly considered, the chairman puts the question, "That I do report the bill;" and this concludes the labours of the committee.

Signing documents by the chairman.

It may be as well to remark that every plan and book of reference which is produced in evidence before the committee upon any private bill (whether it were necessary to be lodged in the Private Bill Office or not), must be signed by the chairman of the committee with his name at length, and he must also affix his initials to every alteration in the plans and books of reference sanctioned by the committee.(a) Such plans and books of reference, after

(a) H. C. 92.

being subscribed as above, are deposited in the Private Bill Office. (a) The chairman must also sign at length a printed copy of the bill called the committee bill, with the amendments fairly written, and put the initials of his name to every clause added in the committee. (b)

The committee must report that the allegations of the bill have been examined, that the parties concerned (when consent is required) have given their consent to the satisfaction of the committee (c), and that they have agreed, or not, to the preamble, and gone through the several clauses; and also, when any alteration shall have been made in the preamble of the bill, they shall specially state in this report the ground of making it. (d) They must also report specially the following particulars:— (e)

(g) Report of the committee.  
(1) Form of. Generally.

Specially.

1. *Capital and Loans*.—The proposed capital of the company formed for the execution of the project, and the amount of any loans which they may be empowered to raise by the bill.

2. *Shares and Deposits*.—The amount of shares subscribed for, and the deposits paid thereon.

3. *Names, &c. of Directors*.—The names and places of residence of the directors, or provisional committee, with the amount of shares taken by each.

4. *Local Shareholders*.—The number of shareholders who may be considered as having a local interest in the line, and the amount of capital subscribed for by them.

5. *Other Parties, &c.*—The number of other parties, and the capital taken by them.

6. *Subscribers for £2000 and upwards*.—The number of shareholders subscribing for £2000 and upwards, with their names and residences, and the amount for which they have subscribed.

7. *Whether Report from Board of Trade has been referred*

(a) H. C. 91.

(b) H. C. 92.

(c) H. C. 93.

(d) H. C. 94.

(e) H. C. 99.

*to the Committee, &c.*—Whether any report from the Board of Trade, in regard to the bill or the objects thereby proposed to be authorised, has been referred by the House to the committee; and if so, whether any and what recommendations contained in such reports have been adopted by the committee, and whether any and what recommendations contained in such report have been rejected.

8. *Assistant Engineers.*—What planes on the railway are proposed to be worked, either by assistant engines, stationary or locomotive, with the respective lengths and inclinations of such planes.

9. *Engineering Difficulties.*—Any peculiar engineering difficulties in the proposed line, and the manner in which it is intended they should be overcome.

10. *Ventilation of Tunnels.*—The length, breadth, and height, and means of ventilation, of any proposed tunnels, and whether the strata through which they are to pass are favourable or otherwise.

11. *Gradients and Curves.*—Whether, in the lines proposed, the gradients and curves are generally favourable or otherwise, and the steepest gradient, exclusive of the inclined planes above referred to, and the smallest radius of a curve.

12. *Length and Gauge of Line.*—The length of the main line of the proposed railway, and of its branches respectively, and on what gauge it is proposed to be constructed.

13.—*Whether passing any Highways on a Level.*—Whether it be intended that the railway should pass on a level any turnpike road or highway, and if so, to call the particular attention of the House to that circumstance.

14. *Amount of Estimates, and whether adequate.*—The amount of the estimates of the cost or other expenses to be incurred, up to the time of the completion of the railway, and whether they appear to be supported by evidence, and to be fully adequate for the purpose.

15. *Number of Assents, Dissents, and Neuters.*—The num-

ber of assents, dissents, and neuters, upon the line, and the length and amount of property belonging to each class traversed by the said railway, distinguishing owners from occupiers, and in the case of any bill to vary the original line, the above particulars with reference to such parties only as may be affected by the proposed deviation.

16. *Engineers Examined.*—The name of each engineer examined in support of the bill, and of any examined in opposition to it.

17. *Allegations of Petitions in Opposition.*—The main allegations of every petition which may have been referred to the committee in opposition to the preamble of the bill, or to any of the clauses, and whether the allegations have been considered by the committee; and if not considered, the cause of their not having been so.

18.—*Fitness in an Engineering point of view, and any other circumstance.*—And the committee shall also report generally as to the fitness, in an engineering point of view, of the projected line of railway, and any circumstance which, in the opinion of the committee, it is desirable the House should be informed of.

After the report, containing the special matter before-mentioned, has been made, the committee clerk delivers into the Private Bill Office a printed copy of the bill, with the written amendments made in the committee, in which bill all the clauses added by the committee must be regularly marked in those parts of the bill wherein they are to be inserted (a).

The report having been drawn up by the committee clerk, under the directions of the committee, the agent for the bill must apply to the chairman to appoint a day for bringing it up, which cannot be done until one clear day after the last sitting of the committee. (2) Bringing up the Report.

One clear day's notice in writing must be given by the agent for the bill, to the clerk in the Private Bill Office, of the day proposed for the bringing up the report (b).

(a) H. C. 153.

(b) H. C. 152.

He must also provide a fair bill, with the amendments and clauses as agreed to by the committee, to accompany the report.

Time of.

A day is appointed at the commencement of every session, as the last upon which reports from committees will be received. Should that day be near at hand, and there be no likelihood of terminating the investigation in committee before the intervening period has elapsed, the chairman should be instructed to obtain an extension of the time.

Extension of time.

For this purpose, he moves the House "That leave be given to the committee to report on or before a certain day." If the proceedings are not terminated within the extended time, and there is no chance of getting through both Houses that session, it is advisable for the promoters to withdraw their bill.

Mode of.

On the day named for bringing up the report, the chairman of the committee presents it at the bar of the House; the question is then put "That it be brought up," and it is thereupon ordered to lie on the table (*a*). The minutes of the committee ought to be brought and laid on the table of the House at the same time (*b*).

Subsequent proceedings.

After the report has been brought up, the bill, as amended in committee, (excepting in cases wherein the committee shall report the amendments to be merely verbal or literal,) is ordered to be printed at the expense of the parties applying for the same, and copies must be delivered to the door-keeper, for the use of the members, three clear days at least before the consideration of the report (*c*). A breviate also of the amendments made in committee must be submitted to the chairman of the Committee of Ways and Means, and laid upon the table of the House at least the day before the consideration of the report (*d*).

Printing amended bill.

Preparing breviate.

(3) Consideration of the report.

Formerly there was a standing order in the House, that

(*a*) H. C. 129.

(*c*) H. C. 131

(*b*) H. C. 95.

(*d*) H. C. 130.

there must be an interval of seven days between the time of bringing up the report and the further consideration thereof; but at present there is no such order, although some days must necessarily elapse between the bringing up the report and the consideration of it; as copies of the amended bill, printed for the use of the members, must be deposited with the door-keepers three clear days before the consideration of the report, and such copies cannot be printed until after the report has been brought up (a); and one clear day's notice in writing of the day appointed for the consideration of the report must be given by the agent for the bill to the clerks in the Private Bill Office (b).

Time of.

By a recent standing order (c) of the House of Commons, made with a view of affording an opportunity of discussion on reports relating to railway bills, *Tuesday* and *Thursday* in every week are specially appointed for this purpose, and the House will not take the report on such bills into consideration on any other day.

On the day appointed for the consideration of the report, the member who presented the petition moves, "That the report which, on \_\_\_\_\_ last, was made from the committee on the bill for making a railway from \_\_\_\_\_ to \_\_\_\_\_, be now taken into further consideration."

Mode of.

Under the former practice of the House, every member had the privilege of agreeing or disagreeing with the amendments made in committee, and of introducing new clauses into the bill, either upon the report, or the further consideration of the report, or on the third reading, as is done in passing public bills; but to prevent inconvenience and waste of time, it has been ordered, that when it is intended to bring up any clause, or to propose any amendment on the report, or the consideration of the report, or

Amendments.

(a) Order of the clerk of the House, 30th March, 1844.

(b) H. C. 152

(c) H. C. 135.

How dealt  
with.

on the third reading of any bill, notice thereof shall be given in the Private Bill Office on the day previous to such report, or consideration of the report, or third reading (a). When any clause or amendment is proposed upon the report, or the consideration of the report, or the third reading of any private bill, such clause or amendment is to be referred, on the day on which notice is given thereof in the Private Bill Office, to the chairman of the Committee of Ways and Means; and no clause or amendment can be offered in such case to the House, unless it shall have been so submitted, and unless the chairman of the committee of ways and means shall have reported whether the clause or amendment be such as ought or ought not to be entertained by the House, without referring the same to the Select Committee on Standing Orders (b).

Subsequent  
proceedings.

The clauses so proposed to be inserted must be printed, and any clause proposed to be amended must be printed *in extenso*, with every addition or substitution in different type, and the omissions therefrom included in brackets (c).

The above form of printing the original clauses, and marking intended alterations and omissions, greatly abridges the labour of the chairman of the Committee of Ways and Means, or the Select Committee on Standing Orders; their attention being drawn more immediately to the precise matter referred to them.

If the chairman of the Committee of Ways and Means should report to the House that the proposed alterations may be made in the bill without their being referred to the Standing Orders' Committee, they will be at once adopted; but in case he should report otherwise, they will be referred to the Select Committee on Standing Orders (d).

(A) Re-com-  
mittal of bill.  
Report of S.O.  
committee.

After they shall have been so referred to that committee, no further proceedings can be had until their report shall have been brought up (e). The Committee on

(a) H. C. 154.

(b) H. C. 132.

(c) H. C. 133.

(d) H. C. 132.

(e) H. C. 134.



Standing Orders must report to the House whether the proposed clauses or amendments ought to be adopted without the re-commitment of the bill, and whether they are of such a nature as to justify the House in entertaining them without recurring to that tribunal, or of such a nature as not in either case to be adopted by the house (a); and also whether such clause or amendment, where proposed on the third reading of the bill, ought or ought not to be adopted by the House at that stage (b).

If the Committee on Standing Orders report that the bill should be recommitted, it is referred to the original committee. (It may be as well to observe that no bill can be recommitted subsequently to the third reading.)

Order of re-commitment.

No member can sit on a recommitted bill who was not qualified to serve upon the original committee. It is usual to have the bill recommitted, with express reference to special provisions, as otherwise the whole of it would be open to reconsideration.

As the committee on the bill, after having made its report, is considered as *functus officio*, it is necessary, in order to give jurisdiction, to revive them. For this purpose an order of the House is made, "That the committee be revived, and that they sit on a given day."

Revival of select committee.

In case of a recommitted bill, three clear days' notice in writing must be given by the agent for the bill to the clerks in the Private Bill Office, of the day and hour appointed for the meeting of the committee, and all proceedings where such notice shall not have been given will be void (c), and a filled-up bill, as proposed to be submitted to the committee, on recommitment, must be deposited in the Private Bill Office one clear day before the meeting of the committee (d).

The mode of proceeding before such committee, on a recommitted bill, is the same in every respect as in the case of a bill originally referred to them; and, as we have

Proceedings before.

(a) H. C. 61.

(b) H. C. 62.

(c) H. C. 148.

(d) H. C. 149.

just observed, the whole bill is open to be reconsidered, unless it be recommitted with express reference to particular provisions only.

After the recommitment of a bill, it has to go through all the same formalities and the same investigation as before, and the mode of bringing up the report, &c., having been hereinbefore minutely described, it will be unnecessary to repeat it in this place.

Should, however, the Committee on Standing Orders, to whom a bill is referred, be of opinion that it is not necessary to have the bill recommitted, they recommend in their report whether any and what clauses and amendments ought to be adopted by the House.

All amendments allowed by the chairman of the Committee of Ways and Means, or by the Standing Orders' Committee, or on recommitment, are entered by one of the clerks in the Private Bill Office upon the printed copy of the bill as amended in committee, and the clerk must sign such amended copy in order to its being deposited and preserved in that office (a).

Subsequent  
proceedings.

If no amendments have been suggested, nor any alterations made in any of the clauses, or if the suggested alterations and amendments shall have been allowed or disallowed in the report of the chairman of the Committee of Ways and Means, or of the Standing Orders' Committee, as the case may be, the House will proceed to the further consideration of the report. The amendments made in the committee-room are read, and if the House agrees to the bill and the amendments, the member having the charge of it moves, "That the bill, with the amendments, be engrossed." The bill is then ordered to be engrossed.

For that purpose a copy of the bill, with all the amendments, must be sent to the engrossing office. In order to insure accuracy in these engrossments, the clerk of the House is required to provide a sufficient number of clerks to be examiners of engrossments.

(a) H. C. 156.

SEC. VII.—*Third Reading of the Bill.*

AFTER the bill has been reported and the report considered, the next step is the third reading, previous to which, however, but subsequently to the consideration of the report, it is necessary for the agent to give to the clerks in the Private Bill Office one clear day's notice in writing of the day proposed for the third reading (*a*). A certificate also must be endorsed on the paper bill, and signed by one or more of the examiners of engrossments, certifying that the engrossment thereof has been examined, and agrees with the bill as amended in committee. and on the consideration of the report (*b*). On the day appointed for the third reading, the bill, with the certificate endorsed and tied up with the engrossments, is laid upon the table; the member who has charge of the bill then moves—1. "That the bill be now read a third time." 2. "That the bill do now pass, and the title be, &c."

Third reading  
Preliminaries.

The opinion of the House is then taken on the whole bill with the amendments as it stands, and the House is divided on it. If the "Ayes" are in the majority, the bill, as far as the Commons are concerned, passes into law and becomes an Act.

Immediately after it has been read a third time, the member who had charge of it brings it out of the House, and the agent takes it to the engrossment office to have the title endorsed on the engrossment. It is then again returned to the table, and signed by the chief clerk, preparatory to its being carried to the House of Lords.

Subsequent  
proceedings.

(*a*) H. C. 155.

(*b*) H. C. 158.

## CHAPTER III.

SEC. I.—*Preliminaries to the Introduction of a Bill to the Upper House.*

Preliminary  
proceedings.  
Taking  
bill up from  
Commons to  
Lords.

AFTER a bill has been read a third time in the House of Commons it is taken up to the House of Lords, where, with little variation, it undergoes the same investigation as that to which it was submitted in the Lower House.

When a bill is to be transferred from the Commons to the Lords, it is entrusted to a member of the House for that purpose. It is usually sent by the hands of the member who had charge of it in the Lower House, he being accompanied by not less than seven other members, to the bar of the Lords (*a*), where he delivers the bill to the Lords' Speaker, who comes there to receive it.

Deposit of  
plans altered  
in Commons  
committee.

The preliminaries required to be observed previous to bringing a bill into the Upper House are, in most cases, precisely similar to those required before it is introduced to the House of Commons. Such particulars as can be ascertained before the presentation of the petition in the Lower House, and are required, are included in and specified amongst those mentioned in a former part of this work. Some, however, cannot be known until after the bill has passed the committee below, and these must be duly observed before it is submitted to the Lords. Thus, in respect of alterations made in the plans originally deposited, it is ordered by the House of Lords (*b*), "That where any alterations shall be made, or desired to be made, after the introduction of the bill into parliament, in any work the plans and sections of which shall have been

(*a*) May on Usage of Parliament, p. 288.

(*b*) H. L. 223, sec. 9.

deposited, and the notices for which shall have been given in compliance with standing orders, a plan and section of the alteration, on the same scale, and containing the same particulars as the original plans, with a book of reference, shall be deposited with the clerk of the peace of the county where the alteration is proposed; copies also of the alterations, so far as the same relate to each parish, with a book of reference thereto, shall be deposited one month previously to the introduction of the bill into the Upper House; and the intention to make the alteration must be published in the *London, Edinburgh, or Dublin Gazette*, as the case may be, and in some one and the same newspaper of the county where the alteration is situate, for three successive weeks previously to the introduction of the bill into the House; and personal application, with notice in writing, must be made to the owners, or reputed owners, lessees or reputed lessees, or, in their absence from the United Kingdom, to their agents respectively, and to the occupiers of land where any alteration is intended to be made. The consent of such parties to the making the alterations must be proved to the satisfaction of the Standing Orders' Committee.

Notices.

A map, plan, and section, of such work, showing any variation, extension, or enlargement, which is intended to be made in consequence of such alteration, of the same scale and containing the same particulars as the original map or plan, and section, must be deposited in the Office of the Clerk of Parliament (a), before the bill can be introduced to the Lords.

Plan of proposed variations.

Again, if the bill applied for is to empower a company to execute any work other than that for which it was originally established, it shall not be allowed to proceed, unless the Committee on Standing Orders, when such bill is referred to them, shall have specially reported,—

Bill to empower company to execute works other than those for which they were established.

1st, That a draft of the proposed bill was submitted to

(a) H. L. 223, sec. 10.

the proprietors of the company, at a meeting held specially for that purpose.

*2nd*, That the meeting was called by advertisement inserted for four consecutive weeks in the newspapers of the county or counties wherein the new works are proposed to be executed, or (in case no newspapers are published there) in that of the nearest county wherein a newspaper is published.

*3rd*, That the meeting was held at a period not earlier than seven days after the last insertion of the advertisement.

*4th*, That at the meeting the draft of the proposed bill was submitted to the proprietors then present, and was approved of by at least three-fifths of such proprietors (*a*).

And a copy of the bill, as brought into the House, must be deposited in the Office of the Commissioners of Railways (*b*).

Provisions  
required  
in railway  
bills.

With few additions or variations, the provisions required by the House of Lords to be inserted in railway bills, are the same as those required by the Lower House, most of which are now included in the General Railway Acts of 8 and 9 Vic. Those, however, which are not mentioned therein, have been specially referred to in a former part of this work (*c*).

Committee on  
Standing  
Orders.

(*a*) Constitu-  
tion and  
functions of.

## SEC. II.—*Committee on Standing Orders.*

WHILST there is a general similarity, there is, nevertheless, this difference in the mode of proceeding in the two houses. In the House of Commons, all bills must be introduced by petition, and compliance with standing orders is required to be proved before the prayer of the petition is granted, and a bill be suffered to be brought in. But

(*a*) H. L. 220, sec. 6.

(*b*) H. L. 227, sec. 2.

(*c*) See ante pp. 108, 109.

in the House of Lords, the bill, as brought up from the Commons, is read a first time, as a matter of course, and is then referred to the Committee on Standing Orders. No bill relating to a railway is permitted to be read a second time unless it shall have been referred to the Standing Orders' Committee, before whom compliance with standing orders must be proved (a).

The Committee on Standing Orders in the Upper House is formed at the commencement of every session, and consists of forty Lords, besides the chairman of the Lords' committees, who is always chairman of Standing Orders' Committee (b). Three Lords, including the chairman, are a quorum (c).

This committee combines in itself the functions both of the examiner of petitions and that of the Committee on Standing Orders in the Lower House.

After the bill has been read the first time, and before the Committee on Standing Orders can take any steps on it, the agent must deposit in the Office of the Clerk of Parliament a statement of the length and breadth of the space which is intended or sought to be taken for the proposed works, and for the sale of which the consent of the owners of the land has not been obtained, together with the names of such owners; and the heights above the surface of all proposed works on the ground of each such owner; and also a return shall be presented, at the same time, of the names of the owners and occupiers of any house situate within three hundred yards of the proposed works, who shall have, before the 31st day of December preceding the introduction of the bill into Parliament, deposited written objections to the said railway, with any public officer appointed to receive plans of the said railway, within the parish or township within which their property is situate; or if the railway be not proposed to be carried through that

(b) Proceedings before Preliminaries.

(a) H. L. 219, sec. 4.

(b) H. L. 219, sec. 2.

(c) H. L. 219, sec. 3.

township, in the one in which the railway is to pass in the manner objected to by the above-mentioned parties (*a*).

Notice of  
meeting.

Previous to the meeting of the Committee on Standing Orders, three clear days notice must be given at the Office of the Clerk of Parliament (*b*).

A copy of the standing orders of the House must be transmitted to the committee, together with the bill (*c*).

Opposition.  
Who may op-  
pose.

Any parties are at liberty to oppose, and be heard by themselves, their agents, and witnesses, upon any petition which may be referred to the committee, complaining of non-compliance with standing orders, provided the matter complained of be specifically stated in the petition, and that it be presented on or before the second day after the introduction of the bill into the Upper House (*d*). The petition complaining of non-compliance with standing orders must be endorsed with the name or short title of the bill to which the petition relates (*e*).

Dissentient  
member of  
company.

Where a company already constituted by Act of Parliament is applying for power to execute any work other than that for which it was originally established, any proprietor who dissented at the meeting of proprietors to which the draft of the proposed bill was submitted, may, on petitioning the House, be heard by himself, his counsel or agents, and witnesses (*f*).

The mode of proceeding before the Standing Orders' Committee, is almost identical with that before the examiner of petitions, previous to the introduction of a bill into the Lower House.

Witnesses.

This committee, however, has powers which the one below does not possess, viz., that of compelling the attendance of witnesses, and also of administering an oath previous to examination. No oral evidence will be received

(*a*) The above resolution was made on the 3d of July, 1845, although it has not yet been introduced into the standing orders.

(*b*) H. L. 219, sec. 7.

(*c*) H. L. 102.

(*d*) H. L. 219, sec. 5.

(*e*) H. L. Resol. 12th June, 1845.

(*f*) H. L. 234, sec. 2.



unless the witnesses have been previously sworn at the bar of the House. Should any witness refuse to appear, the House issues an order commanding his attendance; and if he still persist in refusing, he is taken into custody.

The proofs required by this committee are almost the same as those required by the examiner of petitions. Proofs.

The service of applications to owners, lessees, and occupiers of lands, may be proved by the evidence of the agent or solicitor, unless a petition complaining of the want of due service of such application shall have been referred to the committee (a).

Proof is also required of the preliminaries, as before the examiner of petitions (b).

By a resolution which was incorporated into the standing orders of last session, it was required "That in all bills introduced into the House for the purpose of establishing a company for carrying on any work into which the name of any person or persons shall be introduced, as managers, directors, proprietors, or otherwise concerned in carrying such bill into effect, proof shall be required before the Standing Orders' Committee that such persons have subscribed their names to the petition or to a printed copy of the bill as brought into the House (c).

The committee having heard evidence, are required to report whether the standing orders have been complied with; and if they decide that they have not been complied with, they state the facts upon which their decision is founded, and any special circumstances connected with the case, and also their opinion as to the propriety of dispensing with any of the standing orders in such case (d). (c) Report.  
Form of.

Should the committee report that the standing orders have not been observed, but recommend that they be dispensed with in that particular instance; it remains in the discretion of the House to decide whether they will adopt the recommendation of the committee. Consideration  
of.

(a) H. L. 220, sec. 5.

(b) See *supra* pp. 115—120.

(c) H. L. 225.

(d) H. L. 219, sec. 6.

If they refuse to adopt it, the bill falls to the ground as a matter of course. If, on the other hand, the recommendation is attended to, the petitioners are reported to have complied with standing orders, and the bill is ready for the next stage of the legislative process, namely, the second reading.

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### SEC. III.—*Second Reading.*

Second  
reading

BEFORE the bill is read a second time, copies of the subscription contract, with the names of the subscribers arranged in alphabetical order, (or of the declaration and estimate, in certain cases substituted therefor) printed and drawn out in the manner hereinbefore mentioned, together with printed copies of the bill as proposed to be submitted (a) to the House, must be deposited at the Office of the Clerk of Parliament, for the use of the Lords (b).

When the agent for the bill gives notice of the second reading, he is required by a recent order of the chairman of committees, to give in to Mr. Adam a written statement signed by himself, as to whether the railway is a competing line, and if so, the names of the lines with which it competes, and whether it is opposed or not, and the earliest day upon which the promoters will be ready for the committee on the bill (c).

Effect of

The preliminaries having been observed, the bill, on the day appointed, is read a second time. Here, as in the House below, the second reading affirms the principle of the bill, which, if it be objectionable, it is competent for any peer to oppose, by moving, as an amendment, "That the bill be read a second time this day six months;" upon which the sense of the House will be taken.

(a) H. L. 224, sec. 6, and see *supra*, pp. 101, 102.

(b) H. L. 96.

(c) H. L. 234.

If the bill be read the second time, it is immediately committed, and, if unopposed, it is referred to an open committee, of which the chairman of the Lords' committee (whose duties are similar to those of the chairman of the Committee of Ways and Means) is the chairman, together with any other peers that may be present on the day. Practically, however, the business in such cases is transacted by the chairman of the Lords' committee, assisted by the counsel attached to his office (a). Committal of the bill.

Although the bill be unopposed, and referred as a matter of course to an open committee, the chairman of the Lords' committee may, if he think fit, report to the House that, in his opinion, it should be proceeded with as an opposed bill, and thereupon it will be treated as such, and must pass through a similar investigation before committee as other opposed bills (b). If unopposed

#### SEC. IV.—*Committee on the Bill.*

Select committees.

PREVIOUS to the sitting of the committee on any opposed bill, the compliance with standing orders must have been proved before the Standing Orders' Committee (c). An opposed bill is referred to a select committee of five peers, (nor can it be referred to an open committee) (d), who choose their own chairman. This committee cannot be named on the day on which the bill was read a second time (e). (a) Constitution of.

Any peer having an interest in the bill is exempted from serving on the select committee. The chairman of committees, and four other Lords named by the House, are appointed each session as a committee to nominate the

(a) May on Usage of Parliament, 439.

(b) H. L. 219, sec. 19.

(c) H. L. 219, sec. 4.

(d) H. L. 219, sec. 10.

(e) H. L. 219, sec. 16.

five peers who shall form the select committee on each opposed private bill (a).

(b) Meetings.  
Time of.

The House appoint a day for the sitting of the committee, which must not be earlier than ten days after the day of the second reading of the bill.(b) All the five peers must attend during the whole continuance of the proceedings of the committee; nor can any other peer take any part therein.(c)

Hours of  
sitting.

The committee meet every morning not later than eleven, and sit until four o'clock, nor can they adjourn at an earlier hour without specially reporting the cause of such adjournment to the House at its next meeting; nor can they adjourn over any day except Saturday and Sunday, Christmas Day and Good Friday, without first obtaining leave of the House.(d)

Should any member of the committee, from illness or any other cause, be prevented from continuing his attendance, the committee must adjourn, and report the cause of such member absenting himself to the House at its next meeting. Nor can they resume their sittings without leave of the House.(e)

(c) Proceed-  
ings.

The proceedings before the committee on the bill in the House of Lords, are almost identical with those before the committee in the Lower House. The petitioners both for and against the bill are permitted to be heard by themselves, their counsel, and witnesses, provided the petition shall have been presented on or before the day on which the bill was read a second time.(f)

(d) Opposi-  
tion.  
*Locus standi*  
to oppose.

The same parties who would have a *locus standi* for opposing a bill below, would also be entitled to oppose it in this stage. Moreover, it would seem that any proprietor of a company which is applying for powers to execute works other than those for which it was originally established, who by himself, or any other person authorised to

(a) H. L. 219, sec. 14, 15, 16.

(c) H. L. 219, sec. 11 and 12.

(e) H. L. 219, sec. 18.

(b) H. L. 94.

(d) H. L. 219, sec. 17.

(f) H. L. 219, sec. 21.

act for him in that behalf, shall have dissented at the meeting called in pursuance of order 220, sec. 6, may be heard on petition by himself, his counsel, agent, and witnesses (a); a privilege that does not appear to have been given to such dissentient parties in the Lower House.

Dissenting proprietors of a company seeking new powers.

Proof of the same particulars in respect of capital, anticipated income, engineering difficulties, expenses, and other circumstances, as required by the Lower House, must be given before this committee, (b) but they are not empowered to inquire into the compliance with standing orders. (c) The House will not proceed with the further consideration of the report on any bill until it has received from the committee specific replies to each of the questions contained in the first part of the 233d order of the House, unless in cases where there shall be no opposition, or no parties shall appear in support of a petition against the bill, or where the opposition shall have been withdrawn; in either of which events it shall be in the discretion of the committee to determine how far it may be imperative on them to inquire into the facts necessary to be proved in compliance with the above-mentioned order in respect of railway bills.

(e) Evidence. Proofs by promoters.

Having instituted the usual inquiries, the committee proceed to draw up their report, which must contain specific notice of all the particulars required in Part I. of the 233d standing order.

(f) Report. Form of.

The report is generally adopted as a matter of course, as it is seldom that any amendments are offered, either on the consideration of the report or on the third reading of the bill.

Consideration of.

(a) H. L. 234, sec. 2.

(b) H. L. 233, part 1.

(c) H. L. 219, sec. 8.

Third reading.

SEC. V.—*Third Reading.*

**Preliminaries.** THE usual practice is when amendments have been made during the progress of the bill in the Lords' committee, not to read it a third time until it has been returned to the Lower House for their consideration, and the amendments have been agreed to.

**Amended bill returned to House of Commons.** Notice must be given in the Private Bill Office the day before the Lords' amendments are taken into consideration. (a) If agreed to, they are entered by one of the clerks in the Private Bill Office upon the bill as amended in committee, and the copy is signed by the clerk, in order to its being preserved and deposited in the Private Bill Office. (b)

**Consideration of amendments.** Should the House of Commons decline to sanction, or the House of Lords refuse to waive, such amendments, the bill will be lost for that session. Sometimes the one House offers amendments upon amendments made by the other, whereupon the two Houses come to an arrangement. But it must be understood as a general rule that neither House may, at this time, leave out or otherwise alter any thing which they themselves have already passed, unless the subsequent alteration or omission be immediately consequent upon amendments of the other House, which have been agreed to, and such as is absolutely necessary for carrying the amendments so sanctioned into effect.

**Amendments of one house upon those of the other.** Where amendments have been made in committee, the bill as amended must be printed for the use of the House previous to the third reading, unless the chairman of the committee certify that it is unnecessary. (c)

**Printing of amended Bill.** Copies of the bill must also be deposited three days before the third reading with the commissioners of railways. (d)

(a) H. C. 159.

(b) H. C. 156.

(c) H. L. 234 ; sec. 1.

(d) H. L. 234, sec. 4.

Before a railway bill can be read a third time in the House of Lords, provision must be made therein, restricting the company from raising by loan or mortgage a larger sum than one third of their capital, limiting the alteration of the level of turnpike roads to one in thirty, and of other roads to one in twenty, and prohibiting the railway from crossing highways on the same level, *unless the committee report that such restrictions ought not to be enforced*, and limiting the time for the completion of the work.<sup>(a)</sup>

Provisions to  
be inserted in.

These particulars are most of them provided for in the general railway acts, which are now incorporated in every special act.

Passing of the  
bill.

On the question being put that the bill be read a third time, if the "ayes" have a majority the bill is passed, and is ready to receive the royal assent.

#### SEC. VI.—*Royal Assent.*

THE two Houses having agreed upon the various amendments, and the bill having been read a third time in the Lords (being in the nature of a money bill), it is returned to the Commons before the royal assent is given, where it remains until several have accumulated, when notice is given to the lord chancellor that a commission is wanted. In the case of railway bills the royal assent is never given in person (unless they chance to be ready when her Majesty attends to prorogue Parliament), as that would delay their passing until the end of the session, and be productive of other inconveniences.

Royal assent.

The clerks of the House of Lords have power to stop all bills from receiving the royal assent upon which the fees of both houses of Parliament have not been paid, and thus to delay indefinitely their finally passing, unless these claims be satisfied.

(a) H. L. 233, sec. 4.

## CHAPTER IV.

## PARLIAMENTARY FEES AND AGENTS' AND SOLICITORS' BILLS.

SEC. I.—*Parliamentary Fees.*

**Fees of House of Commons.** BEFORE concluding this book it is requisite to make a few remarks as to the parliamentary fees, the non-payment of which may postpone or prevent the final passing of the measure.

The scale of fees payable in the House of Commons to the speaker, his secretary, the serjeant, the doorkeeper, housekeepers, messengers, and others, together with the charges for engrossments, copies, orders, affidavits, attendance of committee clerks, and the charges to be made in the Private Bill Office, are to be found in the copies of the standing orders, as published by the authority of the House.

**House of Lords.**

The scale of fees in the House of Lords can be obtained from the Office of the Clerk of Parliament.

For information as to the appropriation of parliamentary fees, the reader is referred to the 52d Geo. III. c. 11. The agent for the bill is primarily liable for the payment of those charges, he having his remedy against the petitioners.

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 SEC. II.—*Agents' and Solicitors' Bills.*

**Agents' Bills.** WITH regard to the demands to be made by parliamentary agents and others soliciting bills in Parliament, and for the purpose of checking exorbitant charges, and also for facilitating the recovery of the amount of their bills, an act was passed (6th Geo. IV. c. 123) authorising the taxing of such bills, and giving a more summary remedy for the



recovery of the amount after taxation. This statute only applies to costs and charges incurred in the House of Commons; but shortly afterwards another act (the 7th and 8th Geo. IV. c. 64) was passed to effect the same object in respect of the costs incurred in the House of Lords.

The earlier of the above statutes enacts that if any petitioner for or against a private bill brought into the House of Commons, shall make application to the Speaker of the house, complaining of the costs and charges made by any parliamentary agent or solicitor, or any person employed in soliciting or preparing a bill, or in complying with standing orders relative thereto, on behalf of such petitioner; the Speaker is authorised and required to direct that the costs and charges, so far as the same relate to the House of Commons, shall be taxed by such persons as the speaker may appoint.

(a) In House  
of Commons.  
Taxation of.

The taxing officer appointed by the Speaker is required to tax the bill submitted to him, and report to the Speaker the amount of such costs and charges which he shall think fit to be allowed after taxation; and any person interested will, on application to the Speaker, be entitled to a certificate, signed by him, of the amount of costs so to be allowed; such certificate to be conclusive evidence of all demands therein certified, and the receipt of the agent or solicitor receiving such amount (to be drawn at the foot of the certificate) will be a sufficient discharge for such costs and expenses.(a)

Certificate of  
Taxing Officer.

These provisions merely give a remedy to the petitioner or other party charged with costs; but the same section of that statute facilitates the mode of recovering such costs and charges by the agent or solicitor, and enacts that any agent or solicitor complaining that he is aggrieved by the non-payment of costs and charges in respect of any private bill, may have the costs taxed and a certificate issued; in which case, should the party liable refuse to pay the costs

Recovery of  
amount.

(a) 6 G. 4, c. 123, sec. 1.

Taxing officers' certificate to have the effect of a warrant of attorney.

so certified by the Speaker, and any action be commenced thereon, the certificate given by the Speaker shall have the force and effect of a warrant to confess judgment; and the court in which such action shall have been commenced shall, upon motion and production of such certificate, order judgment to be entered up for the sum specified in the certificate, in the same manner as if the defendant had signed a warrant to confess judgment to that amount.

The advantages of these provisions are that whilst, on the one hand, they do not preclude an agent or solicitor from his remedy at common law, but only facilitate his mode of recovery after action brought; on the other hand, should an action be brought by such agent or solicitor, the payment or tender of the amount certified by the speaker's taxing officer, together with costs, if any, incurred up to the time of payment or tender, will be sufficient to stay all further proceedings.

Agent need not deliver a signed bill.

A parliamentary agent does not come within the provisions of the 6 and 7 Vic. c. 73, as to the delivery of a bill signed by him a month previous to commencing any action thereon; and it is not altogether clear whether the bill of a solicitor employed in soliciting a bill in Parliament is affected by the above statute, where the charges are made in respect of services rendered partly parliamentary, partly otherwise.

At all events, the power of taxation given by the 6th Geo. IV. c. 123, to the Speaker of the House of Commons, relates only to business done in soliciting a bill in that House. The words of the 6 and 7 Vic. c. 73, s. 37, seem, however, sufficient to comprise all professional business done by a solicitor; and such portions of the bill, therefore, as would not be taxable under the 6th Geo. IV. c. 143, by the taxing officer of the House, may be taxed by order of the Master of the Rolls, or the Lord Chancellor (a).

(a) Since the above was written we understand that taxing orders have been obtained as mentioned for business done in relation to a proposed bill in Parliament, but which would not have been taxable as parliamentary business by the taxing officer of the House of Commons.

The taxing officer appointed by the Speaker is authorized to demand and receive for taxation such fees as are fixed from time to time by the resolutions of the House of Commons, and to charge the same at the foot of the report, either against the party applying for the taxation or the party complained of, or against both, in such proportions as he may think fit; consequently the question of costs of taxation is entirely under the control and within the discretion of the taxing officer; there being no rule, as in the taxation of costs at Common Law, or in Equity, regulating the infliction of the costs on the solicitor or the client, as the bill might be reduced, or not a given amount on taxation.

Costs of taxation.

The statute that was passed for the purpose of taxing bills of costs incurred in carrying bills through the House of Lords, namely, the 7 and 8 Geo. IV. c. 64, contains provisions similar to those of the 6th Geo. IV. c. 123, with this distinction: that the taxing officer is appointed by the Clerk of Parliament instead of the Speaker; and that the officer so appointed has power to administer oaths to any parties appearing before him in support of the bill of costs, or in opposition thereto, touching the matters relating to it; and to require the production of proper vouchers for all monies charged as having been paid by any parliamentary agent in the soliciting or opposing such private bill.

(b) In the House of Lords.  
Taxation of costs.

With the exception of the above power of administering oaths, all the other powers are the same; and the certificate granted by the Clerk of Parliament is of the same effect as that granted by the Speaker of the House of Commons.

There is, however, this material distinction between the two statutes under consideration: that the latter is framed so as expressly to include bills of costs incurred in opposing as well as soliciting bills in Parliament; whereas, in the former, the terms employed would seem to indicate that no remedy under the statute was intended to be given

Recovery of Amount.

where the charges sought to be recovered were for opposing or seeking to modify any private bill.

The scale of fees appended to the standing orders of the House of Commons is, nevertheless, found to include the latter; and as the House has thus recognized the claim, and regulated the demands of persons employed to oppose or modify a bill, it would seem natural to infer that the statute, giving a more facile remedy for the taxation and recovery of costs incurred for parliamentary business, was designed to apply as well to the opposing petitioners and their agents, as to those soliciting the bill (*a*).

(*a*) Where the bill of a solicitor for parliamentary business, partly in support of one bill and partly in opposition to others, was referred to the taxing officers appointed by the Speaker, they declined taxing those portions of the bill relating to opposing the bill in Parliament, on the ground that the statute gave them no jurisdiction. It would seem, however, that under the recent statute of the 6 and 7 Victoria, the Lord Chancellor or the Master of the Rolls would grant a supplemental order under which the other items of the bill would be taxable as in ordinary cases.

## BOOK III.—FORMATION OF THE LINE.

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WE shall treat, in this book, of all matters relating, more or less directly, to the construction of the railway, classifying them under three general divisions: first, the purchase and taking of lands; secondly, the rights acquired by a company, under the special and general railway acts, over property not purchased; and, thirdly, matters connected with the execution of the works. Our first division, the purchase and taking of lands, will include a consideration of what lands may be taken; what parties may claim compensation, and for what injuries; the mode of purchasing lands by agreement, with the parties to the contract and the form of it; the consideration of it, and its effect and force; the purchase of lands otherwise than by agreement, comprising the mode of settling cases of disputed compensation, by justices, arbitration, or a jury; and assessment thereof where parties are absent from the kingdom, or cannot be found. This will be followed by a section on the mode of paying the amount of compensation to parties variously circumstanced, as commoners, or persons under disability, or not absolutely entitled, or refusing to convey, or unable to make out title, or who cannot be found. We shall then proceed to the consideration of conveyances, both in ordinary cases and where parties are unable, or neglect, or refuse to convey. Entry on the lands purchased will next claim our attention, with the times at which such entry may be made in different cases; and the penalties incurred by, and the remedies given for,

Division of the  
subject.

a premature or wrongful entry by the company. We shall then treat of the special proceedings necessary to be taken in respect of lands subject to public, quasi-public, or peculiar rights and burdens, as copyholds, common lands, and lands subject to land-tax, and poor's-rate; and also of those subject to private rights and burdens, as lands in mortgage, subject to rent-charge, or held under lease; and shall conclude this general division by noticing the statutory provisions contained in the Lands' Clauses Act, respecting the interests in lands accidentally omitted to be purchased, with the mode of remedying the consequences of the error; and the sale of superfluous lands in the possession of the company after the works are completed.

In our chapter on the rights of a railway company over property not purchased, we shall devote the first section to a consideration of their right to make a temporary use of such property; either for the purpose of surveying and mapping it, or during the construction of the line, or to prevent or repair accidents, and of the temporary user of public and private roads by the company. The second section will treat of the right to make permanent alterations in the property not purchased; comprising a notice of the preliminaries to an entry thereon, the conditions and mode of using it, and the compensation to be given to the owners, with the remedies provided between the parties. The third section will give the instances in which the company may vary and restrict the rights of third parties over their property, as in the case of minerals; the conditions and limits under and within which the owner may work the same; the rights of the company to inspect them and adopt measures for the safety of the railway; and the compensation to be paid to the proprietors for these interferences with the ordinary rights of ownership.

The third chapter, on the execution of the works, will divide itself into the following sections: treating first of the general powers and restrictions imposed on a company in the construction of their line; secondly, of

deviations from the plans of the proposed railway, whether in respect of the level or the line thereof, or in respect of tunnels and viaducts; thirdly, of the subject of crossing and diverting turnpike and other roads, whether on a level or otherwise, including a consideration of all requisite notices and proceedings, the providing of sufficient substituted roads, the construction, maintenance, and repair of bridges and viaducts, with all their several fences and approaches, and the inclination of the roads over or under them; fourthly, of the nature and extent of the accommodation works to be provided by the company for the owners of adjoining lands, with the time within which they must be made, and the settlement of all disputes in respect thereof; fifthly, of branch railways—their construction and user; sixthly, of the provisions of the Railways' Clauses Act, relating to the drainage of lands in Ireland; and seventhly and lastly, of such miscellaneous matters connected with the execution of the works as did not fall properly under any of the foregoing divisions, such as the obligation of the company to construct and maintain the line of railway throughout, the setting up of mile-stones, the establishment and uses of electrical telegraphs, the provisions of the 9 and 10 Vic. c. 57 as to the gauge of railroads; and, lastly, the penalty imposed by the Railways' Clauses Act on persons obstructing the construction of the railway.

These various topics will be noticed in the order of their enumeration; and the treatment of them will, it is hoped, be found to comprise a consideration of every question of difficulty or importance which can arise between the company and third parties, in relation to the purchase of land or the formation of the railroad.

## CHAPTER I.

## PURCHASE AND TAKING OF LANDS.

Preliminary matters.

Construction of powers conferred on Railway Companies.

By the 6th section of the Railway Clauses Consolidation Act, (8 Vic., c. 20,) it is enacted, "that in exercising the power given to the company by the special Act to construct the railway, and to take lands for that purpose, the company shall be subject to the provisions and restrictions contained in this Act and in the Lands' Clauses Consolidation Act; and the company shall make to the owners and occupiers of, and all other parties interested in, any lands to be taken or used for the purposes of the railway, or injuriously affected by the construction thereof, full compensation for the value of the lands so taken or used, and for all damage sustained by such owners, occupiers, and other parties, by reason of the exercise, (as regards such lands,) of the powers by this or the special Act, or any Act incorporated therewith, vested in the company; and, except where otherwise provided by this or the special Act, the amount of such compensation shall be ascertained or determined in the manner provided by the said Lands' Clauses Consolidation Act for determining questions of compensation with regard to lands purchased or taken under the provisions thereof; and all the provisions of the said last mentioned Act shall be applicable to determining the amount of any such compensation, and to enforcing the payment or other satisfaction thereof."

To be construed strictly against the Company.

The extraordinary powers conferred by Parliament upon railway companies, unknown at Common Law, are so great and numerous that they will be watched with the utmost vigilance and jealousy, and construed by the Courts with a leaning against those for whose advantage they have



been conferred, and in favour of those whose private rights and properties are liable to invasion by the exercise of them.

Thus, speaking on this subject, Lord Cottenham says (*a*), "It is extremely important to watch over the interests of those whose property is affected by these companies, to take care that the company shall not be permitted to exercise powers beyond those which the Act of Parliament gives them. The powers given to these companies are so large, and frequently so injurious to the interests of individuals, that I think it is the duty of every court to keep them most strictly within those powers; and if there be any reasonable doubt as to the extent of their powers, they must go elsewhere and get enlarged powers: but they will get none from me by way of construction of the Act." Acts of Incorporation will therefore be construed strictly as against the company. Hence, where the language of an Act of Parliament obtained by a company for imposing a rate or toll upon the public is ambiguous, or will admit of different meanings, that construction is to be adopted which is most favourable to the public (*b*).

Nor are they to be extended by construction.

If the language be ambiguous to be construed in favour of the public.

In *Priestley v. Foulds* (*c*), Mr. J. Maule says, "Such a reasonable rule of construction ought to be put upon the words of this Act, (the Act empowering the company,) as is by Lord Tenterden, C. J., in the *Stourbridge Canal Company v. Wheeley* (*d*), that 'any ambiguity in the terms of a contract must operate against the adventurers, and in favour of the public; and the plaintiffs can claim nothing which is not clearly given to them by the Act.' " (*e*) These

(*a*) *Webb v. The Manchester and Leeds Rail. Com.* 1 Rail. Ca. 599.; 4 Myl. & Cr. 120. See also *Scales v. Pickering*, 1 M. and P. 195; 4 Bing. 448.

(*b*) *Barrett v. The Stockton and Darlington Rail. Com.* 2 Scott's N. R. 337; 2 Rail. Ca. 443.

(*c*) 2 Rail. Ca. 441; S. C. 2 M. & Gr. 175.

(*d*) 2 B. and Ad. 792.

(*e*) See also the *Hull Dock Comp. v. La Marche*, 8 B. & C. 51; 2 M. & R. 107; and the *Leeds and Liverpool Canal Comp. v. Hustler*. 1 B. and C. 424; 2 D. & R. 556.

And the Act treated as a contract between the promoters and the public.

words seem to convey an intimation, on the part of the learned Chief Justice, that these statutes for the incorporation of companies are to be treated as contracts between the company and the public, the terms of which the members of the respective companies have themselves prescribed, and which are therefore to be interpreted on the same principles as ordinary contracts; that is, against the contracting party. This view is further illustrated and confirmed by the judgment of the Court in the case of *Parker v. the Great Western Railway Company (a)*, in which it was laid down that the language of the Act is supposed to be the language of the promoters of it, who ask the legislature to give them certain great privileges, and profess to give the public certain advantages in return.

Yet the Courts will refuse to sanction unfair advantages against the Company.

The Courts, however, though jealous in protecting individual rights and private interests against the encroachments of companies armed with unusual powers, will nevertheless be careful not to assist persons who may seek to avail themselves of some accidental omission in the Act, for the purpose of extortion. In such a case, any legal right or remedy accruing to a party would be respected and enforced by the courts; but no equitable or discretionary aid would be afforded to a plaintiff in support of a claim so originated. He would be left to the strict vindication of his own rights by the strictest process of the law (*b*).

Powers of Railway Companies modified by agreement made before Act obtained.

The powers conferred on the company in the statute of incorporation are not only to be modified by the provisions contained in the Railway Clauses Consolidation Act and the Lands Clauses Consolidation Act, but will be influenced also by those agreements which the company has made with third parties before obtaining the Act. Such agreements will operate as restrictions on the rights

(a) L. J. R. 1844, C. P. 105; S. C. 3 Rail. Ca. 599; 7 Scott's N. R. 835.

(b) *Bell v. The Hull and Selby Rail. Com.* 1 Rail. Ca. 616.

and powers conferred by the legislature, and the Courts will enforce them wherever the contract has been duly entered into.

Therefore, where certain restrictive clauses, proposed by the trustees of a road to be introduced into a railway bill pending in Parliament, were withdrawn on the substance of them having been embodied in an agreement entered into between the trustees and the company; the Court of Chancery decreed that the company could not exercise the powers given by their Act in violation of the terms of that agreement (a).

Agreements to withdraw opposition may be enforced.

Nor will it make any difference, though the party contracting with the promoters for withdrawing opposition, for the purchase of land, or otherwise, were a peer or member of parliament (b).

Though entered into by a peer or member of parliament.

The effect of the agreements under consideration is further illustrated by the following case, in which the contracts of one company were held binding upon another, under the circumstances disclosed in the pleadings. An agreement to purchase certain lands (c) of the plaintiff had been entered into by the promoters of an intended railway company, and thereupon the plaintiff withdrew his opposition to their proposed bill in Parliament. The promoters of a competing railway company, who also proposed to pass through the plaintiff's lands, and to which he was likewise opposed; petitioned Parliament for a bill, and, under the direction of a committee of the House of Commons, the merits of the respective lines were referred to arbitration. The two companies agreed that the successful should adopt the engagements of the rejected

And powers of one company may be modified by agreement made with another under certain circumstances.

(a) *Edwards v. The Grand Junc. Rail. Com.*; 1 Rail. Ca. 173; 1 Myl. and Cr. 650.

(b) *Lord Howden v. Simpson*, 1 Rail. Ca. 347; 10 A. & E. 793; *Lord Petre v. The East. Coun. Rail. Com.*, 1 Rail. Ca. 462. See also *Vauxhall Bridge Com. v. Earl Spencer*, 2 Madd. 356.

(c) *Sir T. Stanley v. The Chester and Birkenhead Rail. Com.*, 1 Rail. Ca. 58; 3 Myl. and Cr. 773, 9 Sim. 264.

company, and to this agreement the plaintiff, by his agent, assented. The award of the arbitrators being in favour of the second company, their bill passed, and it was held by the Vice-Chancellor, and by the Lord Chancellor, affirming his Honour's decision, that the plaintiff having, on the faith of the agreement between the two companies, offered no opposition to the passing of the Act, the second company, as the condition of entering upon the lands of the plaintiff, were bound by the terms of the agreement between the plaintiff and the first company.

Yet there must be a consideration for the agreement.

The Courts, however, will not interfere, by injunction or otherwise, with the exercise of the powers conferred by a railway Act upon the company, unless a clear contract be made out, whereby the plaintiff surrendered some rights or advantages which he possessed, and the company received the benefit of that surrender, and afterwards refused to perform their part of the undertaking. Therefore, where an owner of land in the proposed line of the railway, refrained from opposing the bill, in consequence of an expectation, (arising from some statement of an agent of the company,) that a certain portion of his land which was afterwards taken would not be required, but did not so act as to preclude himself from opposing it, and was treated as a dissentient landowner by the company; the Court held that he had no equity against the company to prevent their entering on the land in question, they having received no consideration for the representation of their agent which led to the plaintiff's mistake (a). So, where the plaintiffs, after introducing restrictive clauses into a railway bill, continued their opposition up to the moment of its passing; the Court held that those clauses had not the effect of a contract between the company and their opponents, and therefore that if they were found

(a) *Hargreaves v. the Lancaster and Preston Junction Rail. Com.*, 1 Rail. Ca. 416. *Greenhalgh v. the Manch. and Birmingham Rail. Com.*, 1 Rail. Ca. 68. S. C. 9 Simp. 416.

inadequate to secure the objects desired by those who introduced them, still no equity existed against the company, who could not be enjoined from exercising fully the powers conferred by the Act (a).

Nor will a qualified assent to the proposed bill, on terms which are neither embodied in an agreement, nor adopted by the legislature, afford equitable grounds for restraining a company from exercising the powers conferred by their Act; as where the trustees of a turnpike road agreed to assent to a Railway Bill before Parliament, on condition that the line of railway should pass over the road at a certain elevation; and this assent was returned in both Houses of Parliament, and the bill passed, but no proviso as to the road in question, nor were the terms of the assent embodied in any agreement between the trustees and the company; it was held that such qualified assent could not in any way modify the powers conferred by the Act (b).

Qualified  
assent.

So it has been decided, (c) that a mere undertaking in Chancery has not the same effect as a contract with third parties on the future powers of the company, so as to control the provisions of the Act of Parliament. Nor will it restrain the company from petitioning Parliament for a bill, although in violation of the undertaking entered into by them with the Court of Chancery.

Undertaking  
in Chancery.

Where a contract has been entered into between a landowner and a railway company before incorporation for the purchase by the latter of certain lands, which the Act gives them no power to hold, it may become a question how far the powers actually conferred are modified, or the exercise of them is restrained, by the terms of such contract. An agreement to sell land and withdraw opposition has, in

(a) *Eton College v. The Great Western Rail. Com.*, 1 Rail. Ca. 200.

(b) *Aldred and others v. the North Midland Rail. Com.*, 1 Rail. Ca. 404.

(c) *Att. Gen. v. the Manchester and Leeds Rail. Com.*, 1 Rail. Ca. 436.

one instance, been held binding, although eventually the land contracted to be sold was not required for the purposes of the undertaking. (a) But there is no case in which a company has been restrained from exercising the general powers conferred by their Act until such an agreement has been specifically performed. In another case, where this point arose incidentally, the Court intimated a strong doubt whether specific performance of such a contract would be decreed. (b) It would seem, therefore, that no injunction would be granted under such circumstances, restraining the Company from going on with their works, but that the party would be left to any remedy at law to which he might be entitled.

### *Notices to Owners of Lands.*

(1) Service of  
Notices

When the company require to purchase or take any of the lands which they are authorised to purchase or take ; they must give notice thereof to all the parties interested in such lands, or to the parties enabled by the Railway Acts to sell, convey, or release the same, or to such of them as shall, after diligent inquiry, be known to the promoters ; requiring such parties within a certain time to give in full particulars of their estates and interest in the lands required, and of the claims made by them in respect thereof(c).

On whom to  
be served.

The term "parties interested" is not confined to the owner of the inheritance, but must be construed to mean any person who has any estate or interest likely to be injured. Thus, a tenant, whether from year to year,

(a) See *Simpson v. Ld. Howden*, 1 Rail. Ca. 326 ; *Same v. Same*, 10 A. and E. 793 ; 3 Rail. Ca. 294.

(b) *Tomlinson v. Manch. and Birm. Rail. Com.*, 2 Rail. Ca. 104.

(c) 8 Vict. c. 18. sec. 18.

or for a term of years, or for lives, is entitled to notice. (a) So one who has merely an easement (b) over the land required, is also to be served with notice, although his right to compensation does not accrue until an injury is actually inflicted; and, in general, the required notice must be served on all parties, whether they claim an absolute or only a particular interest, either in their own right or in a representative capacity, as guardians, committees of lunatics and idiots, trustees, feoffees, and the like. It would appear that notices need only be served on those parties whose lands have been included in the schedule and books of reference, and for such lands as are required for the purposes of the undertaking, and not upon those whose property is not included therein, although such property is likely to be physically injured by the execution of the works. In the latter case it seems to be the duty of the owner of the land, or the party suffering the injury, to take the initiative, by serving a notice on the company, requiring compensation (c).

In the case of private individuals, the notice must either be served on the parties personally, or left at their last usual place of abode, if it can be found; if not, on the occupier; or, if no occupier, it must be affixed to some conspicuous part of the land (d). In the case of property belonging to corporations aggregate, it must be served at the office, or, if there be no office, on some principal member of such corporation, and also on the occupiers, if any; or, if not, it must be affixed to the premises (e).

The notice to treat for the purchase of any interest in lands must contain such a description of the property proposed to be taken as shall be sufficient for the information

How served.

(2) Form of.  
Must contain a description of the property.

(a) *Exparte Farlow*, 2 B. & Ad. 341; *Lister v. Lobley*, 2 Har. & W. 122.

(b) *Thicknesse v. the Lancaster Can. Comp.*, 4 M. & W. 472; *Lee v. Milner*, 2 M. & W. 824.

(c) *Walker v. the London and Blackwall Rail. Com.*; 3 Q. B. 744.

(d) 8 Vic. c. 18, s. 19.

(e) *Id.* s. 20.

of the party served therewith, so as to enable him to make a proper demand (a). It must also include an offer, on the part of the promoters, to negotiate for the purchase thereof, and to make compensation for any damage that may be sustained (b); and any proceedings taken in pursuance of a notice containing no such offer may be treated as a nullity.

A very scrupulous exactness of phrase will not be required, provided the information afforded by the notice be sufficiently precise to enable a person of ordinary capacity to ascertain its meaning and purport (c). It is usual to send with the notice a plan of the property in question, with the line of railway and the land required marked in different colours. Great care should be taken in the drawing up of the notice, as the company will be bound by the terms of it (d).

And specify  
the exact quan-  
tity of land re-  
quired.

The exact quantity of land required should be distinctly specified, as, after service of notice, it is doubtful whether the company will not be precluded from demanding more or contracting for less. It has not yet, however, been absolutely decided whether the powers of the company under their Act are exhausted by the service of a notice, so far as relates to lands belonging to the same party, situate in the same place; and whether, supposing the company had issued a notice to treat for the purchase of certain property, and should afterwards find that they required more, they could issue a second notice for the additional land. Judging from the language held by Lord Cottenham, C., in the case of *Stone and others v. the Commercial Railway Company* (e), where the company,

(a) *Sims v. the Commercial Rail. Com.*, 1 Rail. Ca. 431.

(b) 8 Vic. c. 18, s. 18.

(c) *Sims v. the Commercial Rail. Com.* Ubi Supra.

(d) *Stone v. the Commercial Rail. Com.*; 4 Myl. & Cr. 122, 1 Rail. Ca. 375; *Doe v. the London and Croydon Rail. Com.*, 1 Rail. Ca. 257; *Rex v. the Hungerford Market Com.* 4 B. & Ad. 327; *Rex v. The Commissioners, &c.*, Manch. 4 B. & Ad. 333, note.

(e) 1 Rail. Ca. 402.



having given notice to the landowner for the purchase of a certain quantity of land, afterwards issued their precept to the sheriff for the assessment of a smaller quantity; we may conclude that a second notice to treat for additional lands could not be given after proceedings had been taken on the first. His Lordship says, "The Act requires that this step (the issuing of a precept to the sheriff) shall be preceded by a previous notice of what is to be the subject-matter of inquiry before the jury; but the jury notice comprises a fraction only of that which is comprehended in the previous notice; and if I were to consider this as within the provisions of the Act, it would be in the power of the company, having given notice for any portion of property, to subdivide that into as many proceedings before the sheriff as they might think fit. Having given notice for one hundred yards of land, they might have a separate jury process for each yard. There is nothing to prevent it if it be in the discretion of the company so to subdivide their contract, and to ask the opinion of the jury upon each particular portion of the land which they propose to take." For reasons similar to these we may perhaps infer that where a company, having an option as to the lands mentioned in their schedule and books of reference, have exercised that option by giving a notice to take a certain quantity, (a) they will not afterwards be permitted to serve a second notice for further lands; for if so, the evils pointed out by Lord Cottenham as likely to arise from a want of conformity, as regards quantity of land, between the precept to the sheriff and the notice to the landowner, might be produced by these repeated notices in respect of different portions of property; and the company might subdivide the contract for the land into as many separate notices and assessments as they might deem advantageous, to the great annoyance and injury of the owners, and in defiance of the spirit of the railway Acts.

(a) *Rex v. the Hungerford Mar. Com.*, 1 Nev. & M. 112; 4 B. & Ad. 327.

Moreover, the right of the company to take the lands arises exclusively under the Acts, and if it be regarded as in any respect analogous to a power conferred on an individual by deed or will, it may perhaps become a question whether proceedings taken in pursuance of a notice once served is not, so far as respects the property of that landowner in that locality, such an exercise of the right as exhausts the powers of the company.

(3) Effect of. The service of notice to treat for lands is considered, as we have seen, a determining of the option which up to that time the company had as to the purchase of the lands mentioned in the schedule to the Act. Hence, on granting a mandamus, compelling a company to summon a jury to assess the value of the lands included in their notice, Mr. Baron Parke said, "The company are not bound to purchase property mentioned in the schedule; but the question is, at what period they shall be said to have exercised their option. Now I think that is done when they have given notice, and that, according to reason and good sense, such notice ought to be as binding on them as on the owner or occupier (a).

The serving of the notice has also been decided to be an act establishing the relation of vendor and purchaser between the company and the owners or occupiers of the lands therein mentioned, and to preclude the company from varying the terms of the contract, by taking a smaller quantity of land than that for which they had given notice (b).

(a) *Rex v. the Hungerford Market Com.*, 1 Nev. & M. 112; 4 B. & Ad. 327. See also *Stone v. the Commercial Rail. Com.*, 1 Rail. Ca. 400; *Doo v. the London and Croydon Rail. Com.*, 1 Rail. Ca. 257.

(b) *Stone v. the Commercial Rail. Com.*, 4 Myl. & Cr. 122; 1 Rail. Ca. 375. See also *Doo v. the London and Croydon Rail. Com.*, 1 Rail. Ca. 257.

SEC. I.—*What Lands may be taken.*

A RAILWAY company is empowered by its Act of Incorporation taken in connection with the general Railway Acts, to purchase and hold lands. Such power, however, is limited to the quantity of land necessary for the formation of the line, and such other, (not exceeding, in the whole, the prescribed number of acres,) as may be necessary for extraordinary purposes; nor can the company take or hold more, whether they acquire possession of it by agreement with the owners, or under the compulsory powers with which they are endowed. There seems, however, to be this distinction between their obtaining possession of lands by private agreement, and under the compulsory powers of the Act; that in the former case the company may purchase, any lands within the limits of deviation, and not exceeding the quantity allowed to be taken for extraordinary purposes, whether such lands have been included in the plans and books of reference or not; whilst in the latter, they cannot obtain possession of any lands, whether for extraordinary purposes, or for the construction of the line, except such lands shall have been inserted in the plans and books of reference (a).

What lands may be taken for the line.

(1) Quantity specified in the Special Act.

Distinction between taking lands by agreement and compulsorily.

Where lands are the property of private individuals, public companies, corporations, or any body of persons, (other than lands under the jurisdiction of the Admiralty, or belonging to a municipal corporation,) the promoters of the undertaking can, either by private agreement, or under the compulsory powers given by their Special Act, in conjunction with the provisions of the public railway Acts, obtain possession of so much of them as may be required for the line, and which they are authorised by their Special Act to take.

Lands of private persons, &c.

Where the lands in question belong to any municipal

Lands belonging to municipal corporations.

(a) *Doe dem Payne, v. The Bristol and Exeter Rail. Com.* 6 M. & W. 343; 2 Rail. Ca. 75.

corporation, the promoters cannot, either by private agreement, or under the compulsory powers of the Act, obtain such lands without the approbation of the Commissioners of her Majesty's Treasury (a).

Or under the jurisdiction of Woods and Forests and Admiralty.

If the lands required are on the shore of the sea, or of any creek, bay, arm of the sea, or navigable river communicating therewith, where the tide flows and reflows, then the permission of her Majesty must be obtained, signified in writing under the hands of two of the Commissioners of the Woods and Forests, and of the Commissioners for executing the office of Lord High Admiral, and also under the hand of the Secretary of the Admiralty. In such cases the company can only take the land subject to any restrictions in the mode of executing the works imposed by such Commissioners of the Woods and Forests, and by the Lords of the Admiralty (b).

Or property of the Crown.

In the instance of lands belonging to the Crown, no provision is made in any of the Acts as to the mode of dealing with them; but the Commissioners of the Woods and Forests generally impose terms on the promoters previous to their going into Parliament, requiring them to give security to use the lands in such manner as the commissioners may prescribe, should the Act be eventually obtained.

(2) Lands for additional stations.

In addition to the lands which the promoters of a railway company shall be authorised to take under their compulsory powers, they may contract with any party willing to sell the same, for the purchase of any land adjoining or near to the railway, not exceeding in the whole the prescribed number of acres for extraordinary purposes; (that is to say), For the purpose of making and providing additional stations, yards, wharfs, and places for the accommodation of passengers, and for receiving, depositing, and loading or unloading goods or cattle to be conveyed upon the railway, and for the erection of any weigh-

(a) 8 Vic. c. 18, s. 15.

(b) 8 Vic. c. 20, s. 17.

ing machines, toll-houses, offices, warehouses, and other buildings and conveniences; for the purpose of making convenient roads or ways to the railway, or any other purpose which may be requisite or convenient for the formation or use of the railway.

The quantity of additional land which the company are hereby authorised to purchase of a party willing to sell is usually determined by a clause of the Special Act, and varies according to the circumstances of each case (a).

Besides the lands which a company may thus take for the line, and for extraordinary purposes, they may, in certain cases compel, or be compelled by, the owner of property intersected; when there is left on either side less than half a statute acre, or a piece worth a less sum than it would cost to make a bridge, culvert, or other communication; to sell or purchase such land in the place of making a communication, unless the owner have other land adjoining (b).

(3) Intersected lands.

So the promoters cannot require the owner of any house, building, or factory, to sell a part thereof, if he be willing and able to sell and convey the whole (c).

Portions of buildings.

It was formerly usual in Special Railway Acts to introduce a clause giving to the owners of property, which, though not taken nor directly interfered with by the company, was situated within a certain specified distance of the line, power to require the company to purchase the same. No such provision, however, is made in the general railway Acts, but parties having property injuriously affected by the execution of the works are left to the remedies given by the ordinary compensation clauses.

Upon the construction of such section in a Special Act, the Court held that though a part only of the building in question were within the specified distance, yet the owner

(a) 8 Vic. c. 20, s. 45.

(b) 8 Vic. c. 18, s. 93.

(c) Id. s. 92.

was entitled to require the company to purchase the whole (a).

But where it was enacted, that the company should not be empowered to take or use less than the whole of any house, garden, *yard*, warehouse, building, or manufactory, it was held that the word "yard" did not include *a bonded timber yard, three acres in extent*, but had reference to the enclosure or curtilage of a house or building (b).

## SEC. II.—*What Parties may claim Compensation, and for what Injuries.*

Compensation THE Railway Clauses Consolidation Act, 8 & 9 Vict, c. 20, s. 6, enacts, "That the company shall make to the owners and occupiers of, and all other parties interested in, any lands taken or used for the purposes of the railway, or injuriously affected by the construction thereof, full compensation for the lands taken and used, and for all damage sustained by the owners and occupiers, and other parties, by reason of the construction of the railway." The above general words provide compensation for every interest injuriously affected, whether permanently, or for a time only, by the execution of the works; and whether the injury be done by the absolute taking of property specified in the plans and books of reference for the purpose of the line, or of lands which, though not mentioned therein, are yet injured by reason of their contiguity to the railway.

(a) *Walker v. The London and Blackwall Rail. Com.* ; 3 Q. B. 744 ; 3 G & D. 549.

(b) *Stone and others v. The Commer. Rail. Com.* 1 Rail. Ca. 375 ; 4 Myl. & Cr. 122.

Clauses giving compensation to parties injured by the execution of public works will be liberally construed. Lord Denman speaking on this subject says (*a*), "When such large powers are entrusted to a company, to carry their works into execution without the consent of the owners and occupiers of the land, it is reasonable and just, that any injury to property which can be shown to arise from the prosecution of those works should be fairly compensated for to the party sustaining it. Where the intention to give compensation has been clearly expressed, every fair intendment ought to be given to effectuate that intention."

Clauses giving how construed.

In the first place we must consider the parties entitled to demand compensation, and the nature of the interest in the lands affected which will justify the claim. And, in the second place, what injuries are to be considered as the subjects of compensation.

(1) Who may claim compensation.

Any person having a present interest in lands required for, or injuriously affected by, the construction of the line, is entitled to compensation in respect of that interest; whether he claim as absolute owner of the fee, or as owner of a rent charge, or as owner of manorial rights, or as a tenant for life, or in tail, or for a term of years, or only from year to year. A lessee not producing his lease, or the best evidence thereof, will be treated as a tenant from year to year (*b*). Such parties will be entitled to compensation, not only for the lands in their possession actually taken, but for the inconvenience they sustain in respect of the severance of their other lands by the construction of the line.

Any person having a present interest.

So compensation may be demanded, though the claimant be entitled merely to an easement in the land, as a right of common, right of road, privilege of ancient lights, or other incorporeal hereditament.

Though only an easement.

(*b*) 8 Vic. c. 18, s. 122.

(*a*) Reg. v. Eastern Counties Rail. Com. 2 Rail. Ca. 752—754; 2 Q. B. 347.

And though the lands be neither taken nor touched by the company.

So, under certain circumstances, the owner or occupant of lands, which are not (nor could be) either taken or touched by the company, may be entitled to claim, and enabled to recover, compensation for damages (a).

But, where titheable land had been taken by a company under compulsory powers, and covered with water, the tithe-owner was held not entitled to compensation as a party interested therein (b). Now, however, where lands subject to a tithe-rent charge are taken by a railway company, the lands so taken continue to be subject to the charge, and a special remedy for the recovery of it, when in arrear, is provided by 7 & 8

Tithe-owners. Vict. c. 85, s. 22.

The compensation to be given for lands taken for, or injuriously affected by, the execution of railway works, is generally payable to two classes of persons in respect thereof; first, to those who have the right of property therein; and, secondly, to those who have the right of possession.

As to the first class, this compensation for the property in the land is not assessed in respect of each particular estate or interest therein, but in respect of the land itself. Thus the recompense for damage to an estate is not divided among the various interests, as so much to tenant for life, and so much to remainder-man, or reversioner; but is awarded, generally, in respect of the present enjoyment of the land, or of the rents and profits. Where the land is settled to particular uses, and could not be sold except under the powers conferred by the Lands Clauses Act, the amount of compensation must be settled to the same uses under the direction of the Court of Chancery (c).

As to compensation for the right to the possession, the

(a) *Reg. v The Eastern Counties Rail. Com.* 1 G. & D. 599; 2 Rail. Ca. 736. See also *Rex v. Nottingham Old Water Works Com.* 5 Nev. & M. 498.

(b) *Rex v. The Commissioners of the Nene Outfall*, 9 B. & C. 875.

(c) See post pp. 226—236.



party in actual occupation of the land will be entitled to such an amount as is proportioned to the nature and extent of the injury which he suffers, whether as tenant for a term, or from year to year.

It may be as well in this place to remark, with regard to the amount of compensation to be paid to mere tenants at will or from year to year, that they are only entitled to compensation in respect of the determination of their interest before the time that it would expire by a regular notice from the landlord (*a*). For this purpose, the company are put in the place of the landlord, and may compe the tenant, by their notice, expiring with the current year of the tenancy, to give up the premises without payment of any compensation, other than perhaps for fixtures or other articles, for which the party ejected would have been entitled to compensation, either from an incoming tenant or his landlord. But though a party is entitled to compensation for any absolute legal interest which he has in the lands required, he cannot claim compensation for any mere expectancy. Thus a lessee who makes improvements in the property, under an expectation of the renewal of his lease, is not entitled to be compensated by a company; nor a tenant from year to year who is ejected, having no reason to expect that his landlord would disturb him (*b*).

Tenants from  
year to year,  
&c.

The damage to lands may be either permanent, or temporary and continuing only during the period of the construction of the line. So it may be either immediate or consequential. When the lands are absolutely taken for the line, and other lands belonging to the same owner, although not specified in the plans and books of reference, suffer damage by severance, or from other causes, the injury is immediate, and there is no difficulty in ascer-

(2) Nature of  
damage to be  
compensated.

Generally.

(*a*) Reg. *v* The London and Southampton Rail. Com. 10 Ad. and E. 3; 1 Rail. Ca. 717; Reg. *v* Hungerford Market Com. 9 Ad. and E. 463. See also *Thicknesse v. Lancaster Canal Com.* 4 M. & W. 472.

(*b*) Reg. *v* The London and Southampton Rail Com. *Supra*.

taining the measure of damage. Or should the property be required for temporary purposes only, in such case there is no difficulty in ascertaining the amount of compensation. But where the lands of any party, not mentioned in the plans and books of reference, are damaged by the taking of other lands by the company, and by the construction of the line, it is often a matter of difficulty to ascertain whether the injury is not too remote to form the subject of compensation.

Physical injuries.

If the land be *physically* affected by the formation of the railway, the owner will, as a matter of course, be entitled to compensation, under the words "injuriously affected."<sup>(a)</sup> Thus a party has been held entitled to compensation for an injury to his land, occasioned by the lowering of a road on which the claimant's land abutted, by reason of which its value was diminished, by the impeding of the access to it, and by creating a necessity for additional fences <sup>(b)</sup>. So where the company had, in executing their works, raised the level of a water-course so as to throw the water back and inundate some coal pits, they were held liable to compensate the owner <sup>(c)</sup>. So in another case, for damage done to a house, (not mentioned in the schedule,) by the obstructions of its lights by a station erected, and by the dust drifted from the station and embankment <sup>(d)</sup>. So where the drainage of land was intercepted, <sup>(e)</sup> and where the lessee of minerals was prevented from working them under and within a certain distance of the line <sup>(f)</sup>; and so where the access to a wharf

(a) *Reg. v. The Eastern Counties Rail. Com.* 2 Rail. Ca. 736; 2 Q. B. 347. Lord Denman.

(b) *Same v. Same*, and *Rex v. Nottingham Old Water Works*, 6 Ad. & E. 355.

(c) *Reg. v. The Midland Rail. Com.* 2 Rail. Ca. 1.

(d) *Turner v. The Sheffield and Rotherham Rail. Com.* 10 M. & W. 425; 3 Rail. Ca. 222.

(e) *Reg. v. The North Union Rail. Com.* 1 Rail. Ca. 729; 8 Dowl. 329.

(f) *Fenton v. Trent and Mersey Navigation Com.*, 4 M. & W. 205; *Twibell v. The Barnsley Canal Com.* L. J. R. 1844, M. R. 434.

was impeded (a). The company are also liable to make good all damage done to the property of any water or gas company, and to make full compensation to all parties suffering any loss by reason of interference with the mains and pipes of the companies, or with the private service-pipes of any person supplied with water or gas (b). But parties are not entitled to compensation for loss of business in consequence of the execution of the works leading to the opening of new thoroughfares, or to the obstructing the access by old ones, whereby the custom of a house is diminished (c). Nor will the company be liable to compensate the owner of a mine whose land they have purchased, the working of which has been rendered more expensive by the execution of the works, where he did not claim compensation at the time (d). (For an injury of this nature, however, special provision is now made by sec. 81 of the stat. 8 Vic. c. 20.) Nor is a party entitled to compensation for any other than physical injuries.

Exceptions.

Future or contingent damages are not the subject of compensation, unless they are mentioned in the special Act, there being no provisions embracing them in any of the general Railway Acts; and even where they are included, the party demanding compensation must show that the cause of the injury exists in some work of the company already done. Thus where it was provided, that in case of disputes or difference between the company and the persons interested in the lands, &c., taken, used, damaged, or affected by the execution of any of the powers of the Act, a jury should ascertain "the sum of money to be paid for the purchase of such lands, and also what other separate sum or sums of money should be paid by way of recompense for the damages which shall or may, before

Future or contingent damages.

(a) *Bell v. Hull and Selby Rail. Com.* 6 M. & W. 699; 1 Rail. Ca. 616.

(b) 8 Vic. c. 20, ss. 18—23.

(c) *Rex v. the London Dock Company*, 6 Nev. & M. 390; 5 Ad. & E. 163.

(d) *Rex v. Leeds and Selby Railway Com.*, 3 Ad. & E. 683.

that time, have been sustained as aforesaid, *or for the future, temporary, or perpetual continuance of any recurring damages*, which shall have been occasioned as aforesaid, and the cause or occasion of which shall have been only in part obviated or repaired by the company, and which can or will be no further obviated, repaired, or remedied by them." The jury having assessed the value of the land at £6 present damages, future damages £2,800, it was held that that part of the verdict which related to future damages was void; as in order to enable the jury, under the Act of Parliament, to make a contingent assessment of damages, it is necessary that the cause of injury should exist in some work of the company that has already been done. (a)

#### Easements.

So a party entitled to an easement over lands purchased by a company was held not entitled to compensation until damage was actually done. (b)

#### Distinction between obvious and remote injuries.

There is this distinction in the mode of proceeding as to the lands purchased for the purpose of the undertaking, and the injury done to lands which, though not taken, are obviously liable to be injuriously affected by the proximity of the line, and those which are neither required for the execution of the works nor manifestly damaged thereby, that in the former cases it is incumbent on the company to serve the parties with notice of their intention to take the land required, and give compensation for the property injured; whilst, in the latter case, parties claiming compensation must serve notices upon the company, requiring them to give compensation, or to have the amount thereof settled in the mode prescribed by the Lands' Clauses Act (c). In clear cases of damage, as well as in those of purchase, the company must take the initiative, and give

(a) *Lee v. Milner*, 2 M. & W. 824; *Thicknesse v. the Lancaster Rail. Com.* 4 M. & W. 472.

(b) *Thicknesse v. The Lancaster Rail. Com.* *Supra*.

(c) *Walker v. The London and Blackwall Rail. Com.* L. J. R. 1843, Q. B. 88; 3 Q. B. 744. See also 8 Vic. c. 18, s. 68.

notice to the parties interested. But when the property is only remotely affected by the execution of the works, the owners, &c., must prefer their claim for compensation, and give notice of it to the company.

### SEC. III.—*Purchase of Lands by Agreement.*

FOR the owners, occupiers, and other parties interested in the lands required for the purposes of the railway, have received notice from the company to treat for the purchase of them, they have twenty-one days within which they may send to the company the requisite information as to the nature and extent of their interests and claims, and come to some amicable understanding as to the amount of the compensation which they are to receive (*a*). The answers to the company should specify the nature of the property which the claimant has in the land; whether as owner or occupier. If owner, whether his estate is in possession or reversion, for life or lives, or for years, or in fee; if an occupier, the nature of his occupation, whether as lessee, (and if so, the length of the unexpired residue of his term), and whether renewable or not, or tenant from year to year, or otherwise (*b*).

Purchase of  
lands by agree-  
ment.  
Notice to  
owners.

Answer  
thereto.

It is provided, by the 6th section of the Lands' Clauses' Consolidation Act, that the company shall be empowered to contract for and purchase the lands which they may require for the purposes of the railway, subject to the provisions of that Act, and of their Act of Incorporation.

(1) Parties to  
agreement.

With respect to the parties of whom those purchases are to be made, the 7th section enables all persons being seized, possessed of or entitled to any such lands, or any estate or interest therein, to sell and convey, or release

Parties having  
limited inte-  
rests, and par-  
ties under dis-  
ability.

(*a*) 8 Vic. c. 18, s. 21.

(*b*) See *idem* s. 18.

the same to the promoters of the undertaking, and to enter into all necessary agreements for that purpose.

The above section gives the company full power to treat with all persons having any interest in the land for the absolute sale thereof, and applies to all parties, whether absolutely entitled or having only a particular estate, and who, except under the Acts of Parliament, would not have power to part with more than their own interest. Such are tenants in tail, married women, seized in their own right or entitled to dower, trustees, feoffees in trust for charitable or other purposes, and parties entitled to the rents and profits of lands in possession, or subject to any dower, or to any lease for life or lives, year or years, or any less interest; so also mortgagees and the parties entitled to the equity of redemption.

Any agreement as to sale (but not as to the amount of consideration) made between such parties having limited interests, and the company, will be binding not merely on the parties themselves, their respective heirs, executors, and administrators, but on all persons entitled in remainder, reversion, or expectancy, in the same manner and to the same extent as if the persons in possession, or entitled to the rents and profits, had been absolutely entitled to the lands in question (*a*).

Persons filling  
a representative  
capacity.

So likewise persons filling a representative capacity, as guardians, committees of lunatics and idiots, executors and administrators, and the committee of persons entitled to rights of common, appointed in the mode prescribed by the Lands' Clauses' Consolidation Act, (*b*) may agree for the absolute sale of the interests of the respective parties whom they represent (*c*).

Corporations.

Corporations also, sole or aggregate, are entitled to treat for the sale of lands belonging to them, and may sell and convey them to the company absolutely. But municipal corporations are precluded from selling any property (other than that which the company are em-

(*a*) 8 Vic. c. 18, s. 7.

(*b*) See post pp. 250—253.

(*c*) 8 Vic. c. 18, s. 7.

powered to take compulsorily) without the approbation of the Commissioners of Her Majesty's Treasury, if they could not have sold it without such approbation before the passing of the company's special Act (a).

Married women entitled to dower, however, and lessees for life, or lives and years, and parties having less interests, are not enabled, under the Lands' Clauses' Act, to sell, convey, and release to the company, any interests other than their own (b). Married women.  
Lessees.

Although enabled by the statute under consideration to sell and convey lands, yet the parties having limited interests, and deriving authority under this Act, are not empowered to settle the value of the lands so sold, or receive the amount of compensation, but the assessment must be made and the compensation paid in the mode prescribed by the Act (c).

Any agreement for the sale of lands must be in writing, and signed by the party to be charged therewith, or some party lawfully authorised by him (d). (2) Form of agreement.

Though the agreement was made before the company was incorporated, it will be binding on them after incorporation, as in obtaining their Act all agreements made previous thereto are deemed incorporated therein (e). Before the passing of the statute, 8th Vic. c. 16, it was necessary for a railway company entering into a contract after their incorporation to make it under their common seal, otherwise whilst the contract remained executory it could not be enforced against them. But if either the company or the other contracting party by any subsequent recognition had adopted the contract, or performed their part of the agreement, either party would have been entitled to claim performance by the other, although the original contract was not under the seal of the company (f).

(a) 8 Vic. c. 18, s. 15.

(b) *Idem*, s. 7.

(c) *Idem*, s. 9.

(d) 29 Car. 2. c. 3, s. 4.

(e) *Edwards and others, v. The Grand Junction Rail. Com.* 1 Rail. Ca. 173, and see ante, p. 177, and cases there cited.

(f) *Fishmongers' Company v. Robertson*, 5 M. & G. 151; *London and Birmingham Rail. Com. v. Winter*, 1 Cr. & P. 57.

The ninety-seventh section of the above-mentioned statute seems, however, to alter the law in this respect, and enables the directors of a company to contract on its behalf in writing or by parol, as in the case of private individuals; the corporate seal being necessary only where the contract is of such a nature as under the general law would be required to be made under seal.

(3) Consideration for agreement.

If the party contracting with the company be absolutely entitled to the lands or interest in question, the consideration to be paid is of course a matter of agreement *inter se*; but in the case of parties who could not have sold and conveyed lands without the enabling clauses of the statute 8th Vic. c. 18, or of the special Act, the amount of the purchase money and compensation to be paid for damage is to be ascertained and determined by the valuation of two able practical surveyors, one to be nominated by the promoters of the undertaking, and the other by the other party; and in the event of their differing, then by a third surveyor, to be appointed by two justices upon the application of either party (a). The valuation is to be accompanied by a declaration of its correctness, signed by the surveyor (b). The amount of purchase money or compensation so ascertained is then to be paid into the Bank of England for the benefit of the parties interested, in manner hereinafter mentioned (c).

Annual rent-charge.

Persons seized in fee of, or entitled to dispose of absolutely for their own benefit, any lands, may sell and convey the same to the promoters of the undertaking, in consideration of an annual rent-charge payable by the said promoters; but in all other cases the consideration for the purchase of lands and for damage thereto must be in a gross sum (d). The yearly rents so reserved are to be charged on the tolls or rates payable under the special Act, and when in arrear may be recovered by action of debt or by distress (e).

(a) 8 Vic. c. 18, s. 9.

(b) Ibid.

(c) Post, pp. 226—236.

(d) 8 Vic. c. 18, s. 10.

(e) Idem, s. 11.



We have seen that a notice to treat for the purchase of any lands included in the schedule of their Special Act, as soon as it is served by the company upon the owner establishes at once the relation of vendor and purchasers between the parties. When a contract has once been entered into for the purchase and sale of lands, the Courts of Equity will enforce a specific performance of it, and will restrain the company from entering upon the land until the purchase money has been paid (a).

(4) Effect and force of agreement.

As we have before remarked, it is doubtful whether a Court of Equity will decree specific performance of a contract by a railway company to purchase land, if the company should afterwards so exercise their powers as to disable themselves from taking the same land; and whether the vendor has any, and, if any, what, remedy in such case (b). As to the enforcement by a Court of Chancery of such a contract, it would seem (to say the least) in the highest degree improbable, inasmuch as, under the circumstances supposed, the contract would be void, the company having no authority whatever to purchase or hold the lands included in it. At the same time, if by their own act and in the exercise of a discretion vested in them, the Company have disabled themselves from the performance of their agreement, it would appear to be only just that the vendor should recover from them a compensation in damages for the injury (if any) which he has sustained through their default.

Right to specific performance.

(a) *Jones v. The Great Western Rail. Com.* 1 Rail. Ca. 684; *Robertson v. Same*, 1 Rail. Ca. 459.

(b) *Tomlinson v. The Manchester and Birmingham Rail. Com.* 2 Rail. Ca. 104.

SEC. IV.—*Purchase of Lands otherwise than by Agreement.*

Purchase of lands otherwise than by agreement.

If the company cannot come to any amicable arrangement with the parties whose lands they propose to purchase, or if the owners and occupiers refuse or neglect for twenty-one days (a) to send any reply to the notices which have been served, or to treat for the sale of their property, the promoters of the undertaking are empowered by the Lands' Clauses Consolidation Act, in connexion with their special Act, to take certain steps to enforce a compulsory sale of the required land.

Preliminary matters.

Before proceeding to notice the formalities prescribed in cases where the company find it necessary to resort to their compulsory powers, we must remark on one or two preliminary matters of the greatest importance.

Compulsory powers cannot be implied.

And first, it is to be observed, that compulsory powers must be given to the company by the express words of the Act under which they are claimed, for they cannot be implied. Such powers being repugnant to the spirit of the common law must be distinctly defined, and the exercise of them will be jealously watched by the courts, lest those intrusted with them should arbitrarily interfere with the rights and interests of individuals (b).

Time within which compulsory powers may be exercised.

The time within which compulsory powers may be exercised is also limited either by the special Act, or, if no period be therein prescribed, then it is fixed by the Lands' Clauses' Consolidation Act, (c), at three years from the time of passing the special Act.

Board of Trade may extend this period if necessary for the public safety.

By the statute 5 & 6 Vict. c. 55, however, provision is made (d) for the extension of the time, and that Act, after reciting that it is in many cases expedient for the public safety,

(a) 8 Vic. c. 18, s. 21.

(b) *Webb v. the Manchester and Leeds Rail. Com.* 3 Myl. & Cr. 116; 1 Rail. Ca. 599.

(c) 8 Vic. c. 18, sec. 123.

(d) Sec. 15.

that additional lands should be taken for the purposes of the railway, proceeds to enact, that, in every case in which the Board of Trade "shall certify that the public safety requires additional land to be taken by any railway company, the compulsory powers of purchasing and taking land contained in the Act or Acts of such railway company, together with all the clauses and provisions relative thereto, shall, as regards such portion, or portions, of land as are mentioned in the certificate of the said Board," revive and be in full force for such further period as shall be mentioned in such certificate.

Fourteen days' notice must be given to the persons to be affected by this certificate of the intended application; during this period, any of the parties so to be affected may apply to the Board of Trade in opposition to the application, and if the application be refused, the company will have to repay to the opponents the costs of their opposition. These provisions apply only to the taking of any additional lands required for the public safety, and not to such lands as are required for the formation of the line, and which the company may have neglected to take within the prescribed period.†

Where the undertaking is intended to be carried into effect by means of a capital to be subscribed by the company, the whole amount of such capital must be subscribed under a contract, binding the parties, their heirs, executors, and administrators, for the payment of the same, before the company can put in force any of the compulsory powers with which they are endowed for the taking of land (a).

Capital to be subscribed before compulsory powers can be put in force.

Before giving notice to parties to treat for their lands, this preliminary should be observed, and some evidence of it should be given to those who are required to part with their property to the company. This may be easily done, inasmuch as, by the Lands' Clauses Consolidation

(a) 8 Vic. c. 18, s. 16.

Certificate of two justices to be evidence that capital be subscribed.

Act, a certificate under the hands of two justices is sufficient proof that the whole of the capital has been subscribed. (a). It does not appear that the company is bound to give any such evidence, inasmuch as the non-subscription of the required amount of capital being a defeasance of the compulsory clauses of the Act, should rather come by way of objection from the other side (b); but should they enter upon any lands previously to the subscription of the capital, they would be liable to an action of trespass at the suit of the party upon whose lands they entered, as they could not plead their power of entry under the Act unless they showed strict compliance with its provisions. So it is probable that a Court of Equity would restrain them by injunction from proceeding with the works. For, although it was formerly a matter of doubt whether the Court would interfere in such cases, on the ground of the insufficiency of the funds of the company; the 16th and 17th sections of the 18th chapter of the 8th Vict. seem to settle the question. In the former of those sections it is declared, that it shall not be lawful to put in force the compulsory powers of the Act, unless such subscription contract shall be completely executed; and, in the latter, such a mode of proving that complete execution is prescribed, as entirely removes any objection on the ground of difficulty or inconvenience in furnishing the required evidence. Although in two cases (c) injunctions were granted, restraining the promoters of the line from taking the lands of a person on the ground of the insufficiency of the capital to finish the undertaking; yet, in another case (d), it was refused by Lord Chancellor Cottenham. On examining the latter

(a) 8 Vic. c. 18, s. 17.

(b) *Doe dem Payne v. Bristol and Exeter Rail. Com.*, 2 Rail. Ca. 75; 6 M. & W. 320.

(c) *Agar v. the Regent's Canal Com.*, Coop. Ch. Ca. 77; *Blakemore v. Glamorganshire Canal Navig.* 1 Myl. & K. 164.

(d) *Salmon v. Randall*, 3 Myl. & Cr. 444, 445.

case, however, the injunction seems to have been asked, not on account of the incomplete execution of the subscription contract, but of the insufficiency of the subscription and estimate. But, although it would appear from the above, that the completion of the subscription contract is necessary before compulsory powers of taking lands can be enforced; yet an inquisition would not be void on account of its not naming the amount of such subscription (a).

(1.) *Settlement of Disputed Compensation.*

We have already considered the formalities required in giving notice to those whose lands will be wanted for the purposes of the company; and as those formalities are the same in all cases, whether the parties can settle amicably the amount of compensation or not, it is unnecessary to allude to them further in this place. Where, however, after notice given, it is found impossible to come to a satisfactory arrangement between the owners and the company, other steps are necessary to ascertain and determine the sum to be paid. Subject to certain exceptions (to be mentioned hereafter), the party claiming compensation is entitled to have its amount ascertained either by arbitration or assessment by a jury. The company, however, have no such option, but are bound under the Lands' Clauses Act to submit the dispute to the decision of a jury, unless the claimant signify his desire to have it settled by arbitration; or unless, having been so referred, the award of the arbitrators or of the umpire be not made within three months (b).

Settlement of  
disputed com-  
pensation.

And, first, if, for twenty-one days after the service of the notice to treat, no amicable settlement be effected,

(a) Settlement  
by two jus-  
tices—

(a) Doe dem. Payne v. the Bristol and Exeter Railway Com., 6 M. & W., 320; 2 Rail. Ca. 75.

(b) 8 Vic. c. 18, s. 23.

Disputes as to  
compensation  
not exceeding  
£50.

then, in all cases where the compensation *claimed* shall not exceed £50, the matter shall be decided by two justices.

The question is to be brought before this tribunal on the application of either party; when any justice may summon the other party to appear before two justices, who, on the appearance of the parties, or on proof of the service of the summons, may hear and determine the matter, and for that purpose may examine the parties and their witnesses upon oath. The costs of this inquiry are to be in the discretion of the justices, both as to their amount and the party to pay them (a).

For claims not exceeding £50, the parties have no power to incur the expenses of arbitration, or inquiry before a jury. If they cannot agree on the amount of compensation, it can be settled in no other way than by the two justices, as just mentioned. The vendor, however, may always evade this jurisdiction if he disapprove of it, inasmuch as the Act makes the amount of the *claim* the test of the mode in which the question shall be tried; so that, by asking for more than £50, the authority of the justices is at once set aside, and another tribunal must be resorted to.

Tenants at  
will &c.

The jurisdiction of two justices also applies to claims for compensation made by tenants at will, and tenants from year to year; nor can they choose any other mode of settling their differences with the company, whatever be the amount of their claims (b).

(b) Settlement  
by arbitration.

Where the amount of compensation claimed, or offered, exceeds the sum of £50, the claimant, if he desire it, may have the matter settled by arbitration. In such cases he must signify his wish by a notice in writing to the company, before they have issued a warrant to the sheriff, (as

Notices.

(a) 8 Vic. c. 18, ss. 22, 24.

(b) 8 Vic. c. 18, s. 121. As to other cases in which disputes relating to Railway Companies are referred to the decision of two justices, the reader is referred to post p. 217.

hereinafter mentioned), to summon a jury, stating therein the nature of his interest in the lands, and the amount he claims (*a*).

It may be convenient here to state that any summons or notices, or any writ, or any proceedings at law or in equity, which are required to be served on the promoters of the undertaking, may be served by the same being left at, or transmitted through the post, directed to their principal office, or one of their principal offices, if there shall be more than one; or being given, or transmitted through the post, directed to the secretary; or, in case there be no secretary, to the solicitor of the promoters (*b*).

In all cases which may or must, by the Lands' Clauses Consolidation Act, or the Special Act, or any Act incorporated therewith, be settled by arbitration, unless both parties concur in the appointment of a single arbitrator, each party, on the request of the other, shall appoint an arbitrator, to whom the dispute shall be referred. The arbitrator for the company is to be appointed under the hands of two of the promoters, or of the secretary or clerk; and the arbitrator for any other party, under the hands of such party; except it be a corporation aggregate, when it must be under their common seal. (*c*)

The appointment so made is to be delivered to the arbitrator, and is to be deemed a submission to arbitration on the part of the party making it, and will be irrevocable unless with the consent of both parties; nor will the death of either party operate as a revocation (*c*).

This appointment of an arbitrator, and the delivery to him of the instrument under which he is appointed, which is to be deemed a submission to arbitration (*c*), may be made a rule of any of the superior Courts, on the application of either of the parties (*d*). This should always be

(*a*) 8 Vic. c. 18, s. 23.

(*c*) *Idem.* s. 25.

(*b*) 8 Vic. c. 18, s. 134.

(*d*) *Idem.* s. 36.

done, in order to compel the attendance of witnesses, and the production of documents which may be required; for, although the arbitrators may call for any documents (a) in the possession of the parties that they may think necessary for elucidating the matter referred, and may also examine witnesses on oath; yet it does not appear that they have any power to enforce the attendance of witnesses, or the production of documents, unless the submission has been made a rule of Court. As soon as this is done, the Court by which the rule shall be made, or any Judge, may compel the attendance of parties and the production of documents; and any refusal to attend or produce will be deemed a contempt, and be punishable accordingly; provided that the proper expenses shall have been tendered to the witness, an appointment of the time and place of attendance have been made, and that he be not compelled to produce any documents which he would not be compelled to produce at a trial, or to attend more than two consecutive days to be named in the order (b).

On the failure of one party, the other to appoint an arbitrator to act on behalf of both.

If for fourteen days after the dispute has arisen, and after a request in writing, (in which the matter to be referred to arbitration has been stated,) has been served by the one party on the other; the latter fail to appoint an arbitrator, then the arbitrator appointed may act on behalf of both parties, and such arbitrator shall accordingly proceed to hear and determine the matters in dispute, and his award shall be final (c).

If an arbitrator refuse to act, the other to proceed.

So if more than one arbitrator have been appointed, and either of them refuse, or for seven days neglect, to act, the other arbitrator may proceed *ex parte* as in the last case, and his decision shall be as effectual as if he had been the single arbitrator appointed by both parties (d).

If arbitrator die, another may be appointed.

If, when two arbitrators have been appointed, before the award is made, either of them die or become incapable,

(a) 8 Vic. c. 18, s. 32.

(b) 3 & 4 W. 4, c. 42, s. 40. *Wansell v. Southwood*, 4 M. & R. 359.

(c) 8 Vic. c. 18, s. 25.

(d) *Id.* s. 30.



the party who appointed him may nominate some other person to act in his place; but if, after seven days' notice from the other party, for that purpose, he fail to do so, the remaining arbitrator may proceed *ex parte*. If an arbitrator be substituted for one dead or incapable, he will be invested with the same powers and authorities as those enjoyed by his predecessor (a).

Where only a single arbitrator has been appointed, and he dies or becomes incapable before his award is made; the matters are to be again referred to arbitration, under the Lands' Clauses Consolidation Act, or the Special Act, as though no arbitrator had been before appointed (b).

Where two arbitrators have been appointed, they shall, before they enter upon the matters referred to them, appoint, by writing under their hands, an umpire to decide on matters on which they shall differ, or which shall be referred to him; and if he die or become incapable, they shall forthwith, in the like manner, appoint another, whose decision shall be final (c).

If the arbitrators neglect or refuse for seven days after the request of either party to appoint an umpire; the Board of Trade, in any case in which a railway company shall be one party to the arbitration, and two justices in any other case, shall, on the application of either party, appoint an umpire, whose decision shall be final (d).

When more than one arbitrator has been appointed, and where both are acting, and they do not make their award within twenty-one days after the day on which the last of them was appointed, or within such extended time (if any) as shall have been fixed for that purpose by both of them under their hands: then the umpire shall determine the matters referred to them (e).

Before entering on his duties, every arbitrator and umpire shall make and subscribe a declaration, in the

If single arbitrator die, &c. the matter to begin *de novo*.

Arbitrators to appoint umpire.

If umpire die, &c. another to be appointed.

Board of Trade may appoint an umpire on neglect of arbitrators.

If arbitrators fail to make their award within twenty-one days, umpire to decide.

Arbitrator or umpire to subscribe declaration.

(a) 8 Vic. c. 18, s. 26.

(c) Id. s. 27.

(e) Id. s. 31.

(b) Id. s. 29.

(d) Id. s. 28.

presence of a justice, that he will faithfully, honestly, and to the best of his ability determine the matter referred to him; and this declaration must be annexed to the award when made; and any arbitrator or umpire wilfully acting contrary thereto will be guilty of a misdemeanour (*a*).

Which is to be annexed to award.

Proceedings of arbitrators.

The arbitrators, within reasonable time after their appointment, and within the time allowed by the Lands' Clauses Consolidation Act, should appoint a day for meeting and hearing both parties. The parties themselves and their witnesses must be heard; and although the admissibility or inadmissibility of evidence is entirely in the discretion of the arbitrators (*b*), and although it would be no ground for impeaching the validity of the award that the arbitrators were mistaken in law as to such admissibility (*c*); still a refusal to examine the witnesses produced by either party would be sufficient misconduct on the part of the arbitrators to induce the Court to set aside the award (*d*).

It is unnecessary in a work of this nature to specify minutely the various stages of proceedings by arbitration, as to which the reader is referred to the numerous works written on the subject; still it may be as well to remark, that the arbitrators are bound to act in a legal manner; and that, unless by the terms of the submission they are authorized to proceed in the absence of either party, an award made after an investigation at which one or both of the parties had been absent, would be set aside.

Award

The award must be in writing, and must settle all the matters in dispute which were referred.

Form of.

The compensation to be made in respect of each separate claim ought to be specifically awarded; for although the sections in the Lands' Clauses Act, which empower the owner of lands to refer his claim to arbitration, do

(*a*) 8 Vic. c. 18, s. 33.

(*b*) *Simes v. Goodfellow*, 4 Dowl. 642.

(*c*) *Armstrong v. Marshall*, 4 Dowl. 593.

(*d*) *Phipps v. Ingram*, 3 Dowl. 669.

not absolutely require the arbitrator to assess separately the value of the land taken and the compensation for damage done, as is directed in case of an inquiry and assessment by a jury (*a*); yet perhaps it is better to award separately under each claim. Nevertheless, even a verdict for a single sum, both for land taken and damage done, would not be void on that account, as it has been held that the clause on this subject is merely directory. (*b*)

It is especially provided that no award in respect of any matter referred to arbitration shall be set aside for irregularity, or error in matter of form (*c*); but if the award be bad on the face of it, in consequence of an omission on the part of the arbitrator to take into consideration all the matters referred, or of his refusal to hear the parties, or of his proceeding in the absence of either party, no notice having been given; it is submitted that on disclosure of these facts, the Court would set it aside.

Not to be set aside for error of form.

The award of the arbitrators must be made within twenty-one days from the day on which the last arbitrator was appointed, or within such extended time as they may have appointed under their hands. But, in every case, the award must be made within three months from the time the matter was referred to them; or it is to be withdrawn from them, and to be determined by the verdict of a jury (*d*).

Time of making.

When made, the award is to be delivered to the company, who forthwith, on demand, and at their own expense, are to deliver a copy thereof to the other party; and, retaining the original, are to produce it on demand, and allow it to be examined by the same party, or any person appointed by him for that purpose (*e*).

To be delivered to promoters.

As to the recovery of the amount of compensation

Recovery of compensation.

(*a*) 8 Vic. c. 18, s. 49.

(*b*) *Corregal v. The London and Blackwall Rail. Com.* 3. Rail. Ca. 411; 5 M. & G. 219. In *Re London and Greenwich Rail. Com.* 2 A. & E. 678; 4 N. & M. 458.

(*c*) 8 Vic. c. 18, s. 37.

(*d*) *Idem.* s. 23.

(*e*) *Idem.* s. 35.

awarded, no special remedy seems to be prescribed under the Act. Although a company are not allowed to enter on the lands until such sum shall have been paid, or deposited in the bank, as required in certain cases, without the consent of the parties; yet it may sometimes happen, that this consent having been given before the money is paid, it may become a matter of question as to the mode to be adopted for recovery of the purchase-money or compensation.

Under these circumstances, the claimant, by making the submission to arbitration a rule of Court, which may be done either before or after award made (*a*), may have his ordinary remedy by debt on the award, or by attachment for non-payment of the amount. Hence it would seem, that a mandamus could not be obtained to compel the company to pay the money, the law having furnished the party entitled with the above remedies (*b*).

Costs.

With regard to the costs of an arbitration, the company are to bear them in all cases where a larger sum is awarded to the claimant than they offered, and the amount of them is to be settled by the arbitrators. If the same or a less sum than had been offered by the company is awarded, then each party is to bear his own costs incident to the arbitration, and the costs of the arbitrators shall be borne by the parties in equal proportions (*c*). This arrangement seems scarcely fair to the company, who may be driven by an unreasonable vendor to incur the heavy expenses of arbitration; and on having a decision justifying their own offer, and condemnatory of the claim of the other party, are yet unable to recover any of the costs consequent on the extravagant demand.

Assessment by a jury.

If the amount of compensation demanded, or offered, exceed £50, and the party making the claim does not

(*a*) *Smith v. Symes*, 5 Madd. 74; *Featherstone v. Cooper*, 9 Vesey, Jun. 67.

(*b*) See further on this subject, post Ch. Mandamus.

(*c*) 8 Vic. c. 18. s. 34.

desire that it should be submitted to arbitration; or if, having so submitted it, no award is made within three months from the time of submission; then in such case the question is to be determined by the verdict of a jury. We proceed, therefore, to consider the steps proper to be taken in thus ascertaining the compensation to be made. Before issuing a warrant to summon a jury, the promoters of the undertaking are to give not less than ten days' notice of their intention to the other party; and must state, in their notice, the sum they are willing to give for the interest in the lands which they seek to purchase, and for the damage to be sustained by the party by the execution of their works (*a*). Any proceedings taken in pursuance of a notice not containing an offer on the part of the company to treat for the lands will be void (*b*). The due service of this notice is material to justify ulterior measures with regard to the payment of the purchase-money, and entry on the lands, if the claimant fail to appear. Notices.

Where, however, the claimant expressly waives his right to notice, he cannot afterwards object to the inquiry, on the ground of its not setting out such notice or the waiver of it (*c*). Indeed, all objections of a formal character are precluded by the 145th section of the Lands' Clauses Consolidation Act, which Act prescribes the steps to be taken in the proceedings under consideration, and provides in the above-mentioned clause, that no proceedings taken in pursuance of the Act shall be quashed or vacated for want of form. Notwithstanding this provision, however, it is absolutely necessary that the notice in question should be served upon the landowner, for the company have no power to summon a jury to assess the Waiver of.

(*a*) 8 Vic. c. 18, s. 38.

(*b*) *Stone and others, v. Commercial Rail. Com.* 1 Rail. Ca. 375; 4 Myl. & Cr. 122.

(*c*) *Reg. v. South Holland Drainage Committee of Trustees*, 8 A. & E. 429.

Warrant to  
Sheriff.

value of lands, as to which they have given no previous notice to treat. (a).

After the lapse of ten days from the service of the notice, and if no agreement be in the mean time made, the promoters are to issue a warrant to the sheriff, under their common seal, if they are incorporated, or under the hands and seals of two of them, if they are not incorporated; requiring him to summon a jury for the purpose of settling the question of disputed compensation (b).

If the company refuse to issue their warrant, the claimant has no power to do so. His only remedy formerly was by application to the Court of Queen's Bench for a mandamus to compel them, or by injunction in equity to restrain them from entering on the lands until the amount of compensation was assessed and paid. Now, however, by the 68th section of the 8 Vic. c. 18, if the promoters, on receiving a notice to that effect from the party claiming compensation, fail, for twenty-one days, either to enter into a written agreement for payment of the sum demanded, or to issue a warrant to the sheriff to summon a jury, they are to be liable to pay to the claimant the amount asked, which may be recovered, with costs, by action in any of the superior Courts.

Independently of these provisions, a party whose lands have been absolutely taken by the company for the purposes of the line, and entered upon before any compensation has been ascertained or deposited, may treat the company as trespassers, or stay their proceedings by injunction. But where the lands are not taken, but are injured by the execution of the works, the owner is precluded from bringing his action against the company for proceedings taken under their Act; his only remedy being (formerly) to apply for a mandamus, commanding the company to take steps for assessing compensation. Now, however, under the section just cited, the party injured

(a) *Stone and others v. The Commercial Rail. Com.* 1 Rail. Ca. 375; 4 Myl. & Cr. 122.

(b) 8 Vic. c. 18, s. 39.

would be entitled to recover in an action the amount he claims of the company. Inasmuch as a mandamus is only granted where there is no specific legal remedy, this clause would probably be held to take away the right of the injured party to this writ to enforce the payment of his demand (a).

The warrant issued must be in exact conformity with Form of, the notice given to the party, and must specify the precise quantity and the same parcels of land. Therefore, where a company had given a notice containing particulars of a certain quantity of land required for the purposes of the railway, and afterwards issued a warrant, summoning a jury to assess a smaller quantity than that mentioned in their notice; it was held by the Lord Chancellor that they had no power to do so. His Lordship says, "The Act requires that this step (the issuing of the warrant) shall be preceded by a previous notice what is to be the subject-matter of inquiry before the jury; but the jury notice comprises a fraction only of that which is comprehended in the previous notice; and if I were to consider this as within the provisions of the Act, it would be in the power of the company, having given a notice for any portion of property, to subdivide that into as many proceedings before the sheriff as they might think fit; having given notice for one hundred yards of land, they might have a separate jury process for each yard (b).

If the sheriff be a party interested in the matter in dispute, then the warrant must be directed to one of the coroners for the county in which the lands, or some of them, are situate. If all the coroners of the county be so interested, then application must be made to some person having filled the office of sheriff or coroner in such county, and who shall be then living there, and not be interested

If sheriff be interested, then warrant to be issued to coroner.

(a) See post, book on Remedies, ch. Mandamus.

(b) Stone and others v. The Commercial Rail. Com. 1 Rail. Ca. 375; 4 Myl. and Cr. 122. See also Rex v. Commiss. Manchester, 4 B. & Ad. 333; Rex. v. Hungerford Market Com. Ibid.

in the matter in dispute. With respect to the persons last mentioned, preference is to be given to one who shall have most recently served either of the said offices; and every ex-sheriff, coroner, or ex-coroner shall have power, if he think fit, to appoint a deputy or assessor (a). When the sheriff to whom the precept has been directed is an interested party, as a shareholder in the company, appearance before him is a waiver of the objection, so far as the company are concerned, inasmuch as they had the means of knowing from their own books whether he was a shareholder or not; and they cannot therefore be permitted, after having knowingly constituted one of their own body a judge in their own behalf, to avail themselves of their own wrong, by afterwards setting aside the proceedings for irregularity (b).

If warrant directed to coroner, sheriff to deliver juries' lists to him.

If the warrant to summon a jury be directed to a coroner or other person to whom it may lawfully be directed, the sheriff, on receiving notice of the same, must, on application, hand over the jurors' book and special jurors' list belonging to the county where the lands in question shall be situate, to the person to whom the warrant has been directed.

Summoning of jury.

On receiving the warrant above mentioned, the sheriff is to summon a jury of twenty-four persons, qualified to serve as jurors in the superior courts, to meet at a time and place to be appointed by him; such time to be not less than fourteen, nor more than twenty-one days after the receipt of the warrant; and such place not being more than eight miles distant from the lands in question, unless by consent of the parties interested; and shall give notice to the promoters of the time and place so appointed (c).

Selection of jurors.

Of the jurors who appear upon the summons, twelve

(a) 8 Vic. c. 18, s. 39. See also, *Letsom v. Bickley and others*, 5 M. & S. 144.

(b) *Corregal v. The London and Blackwall Rail. Com.* 5 M. and Gr. 219; 3 Rail. Ca. 411.

(c) 8 Vic. c. 18, s. 41.



are to be selected in the usual manner; or if an insufficient number attend, bystanders duly qualified may be called upon to serve. The parties are to be allowed their lawful challenges to the jurymen, but may not challenge the array (*a*).

At the request of either party, the inquiry may be instituted before a special jury. If the claimant require it, he must give his notice to the promoters of the undertaking before they have issued their warrant to the sheriff: that is, before the expiration of ten days after he has been served with a notice of their intention to issue such warrant. On receiving the notice, the promoters are to issue a warrant to the sheriff accordingly; and, on receipt of the warrant, the sheriff is to summon the parties before him at a convenient time, (not being less than five, nor more than eight, days after the service of such summons), for the purpose of striking a special jury in the usual manner. The sheriff shall then name a day—not less than eight days after striking the jury—for reducing the number of such jury to twenty; whereof he shall give four days' notice to the parties (*b*). On the inquiry, the special jury shall consist of twelve of the twenty who shall first appear on their names being called over; and any deficiency in the number may be supplied in the usual way (*c*).

The trial will be, in all respects, similar to that before a common jury, and the like penalties will be applicable. On the consent of the parties, any other inquiry may be tried before the same special jury (*d*).

No jurymen shall, without his consent, be summoned or required to attend any such proceeding more than once in a year (*e*).

On the trial, the sheriff, or his under-sheriff, must preside, nor can the latter appoint a deputy to act in his behalf; therefore, in a case where the under-sheriff appeared

(*a*) 8 Vic. c. 18, s. 42.

(*c*) *Idem*, s. 55.

(*b*) *Idem*, s. 54.

(*d*) *Idem*, s. 56.

(*e*) *Idem*, s. 57.

by his deputy, who was assisted by a barrister as assessor, although the court held that as the proceedings originated correctly, the section taking away *certiorari*, would prevent the issuing of a mandamus; yet they intimated a strong opinion that the course adopted by the sheriff was irregular (a). On this inquiry, the party claiming compensation is to be deemed the plaintiff, and is to enjoy all the rights and privileges incident to that character. If the sheriff be so requested, in writing, by either of the parties, he is to summon witnesses, and also to order the jury, or six, or more of them, to view the place or matter in controversy (b).

Penalties on  
sheriff for jurors  
making de-  
fault.

For any default of the sheriff he is liable to a penalty of £50., and any juror not attending, unless he furnish a reasonable excuse, is to forfeit £10., and be exposed to the other pains and penalties consequent on the neglect or default of jurors in any of the superior Courts. These penalties are to be applied in satisfaction of the costs of the inquiry, so far as the same shall extend (c).

Penalty on  
witness making  
default.

If any witness, having been duly summoned, and having had his reasonable expenses tendered to him, fail to appear without sufficient cause; or being present (whether summoned or not,) refuse to be examined on oath; he shall forfeit to the party aggrieved a sum not exceeding £10. (d).

Notice of in-  
quiry to  
claimant.

Having themselves received notice from the sheriff of the time and place of the inquiry, the promoters are to give not less than ten days' notice in writing of the same to the other party (e).

Order of the  
proceedings.

The parties are at liberty to appear by their counsel or attorneys, and reasonable costs and charges for fees, &c., will be allowed on the taxation of the costs. The sheriff,

(a) *Regina v. Sheffield, Ashton-under-Lyne and Manchester Rail. Com.*  
1 R. C. 537; 11 A. & E. 194.

(b) 8 Vic. c. 18, s. 43.

(d) *Idem*, s. 45.

(c) *Idem*, s. 44.

(e) *Idem*, s. 46.

or his deputy, *ex officio*, presides at the execution of the writ of inquiry; but he has no jurisdiction in the absence of the claimant, and, therefore, if the party claiming compensation does not appear he cannot proceed; but in such case the amount of compensation must be ascertained by a surveyor appointed by two justices (a). If the claimant attend, it would not seem that the proceedings are stayed by the non-attendance of the company; but the sheriff would proceed with the inquiry *ex parte* the person claiming compensation, who (as we have seen) is considered as the plaintiff, and is entitled to the same privileges as plaintiffs in actions at law. This provision has been construed as designed merely to regulate the proceedings, and to remove any doubts as to the right to begin (b).

The company should, in the first place, give some evidence of compliance with formal preliminaries, as that the whole of the capital is subscribed, as required by the Lands' Clauses Consolidation Act; that proper notices were served on the party whose lands are required, and that such party failed to treat within the proper time; that the land is authorised to be taken by the Special Act, and contained in the plans and books of reference, or omitted by mistake, and inserted under the certificates in such cases granted by two justices; that the party had due notice from the company of their intention to issue their warrant to the sheriff for the purpose of summoning a jury; and, also, that they had in such notice made an offer of the sum they were willing to give for the lands, and as compensation for damage; and that they had done every thing required to give the sheriff jurisdiction. These preliminary points being ascertained, the party claiming compensation begins, and produces witnesses to show the value of the property required, as well as the deterioration suffered in respect of

Proof of preliminaries.

Evidence for the parties.

(a) 8 Vic. c. 18, s. 47.

(b) *Rex v. Gardner*, 6 Ad. & E. 117. See also, *Reg. v. Sheriff of Warwickshire*, 2 Rail. Ca. 661.

what remains. The company are, of course, at liberty to cross-examine such witnesses, and after the plaintiff's case is finished, call witnesses on their own behalf. The claimant then has the privilege of reply.

**Verdict.**

Having heard the evidence, the jury are to give a verdict separately for the sum of money to be paid for the purchase of the lands required, or of the claimant's interest therein, and for the sum of money to be paid by way of compensation for the damage done to other lands belonging to the plaintiff, by severance, or otherwise, by the execution of the works (a).

**Separate assessment.**

This enactment as to the separate assessment of damages has, in previous Acts of Parliament, been held to be directory only, and not compulsory; so that a non-compliance with it does not avoid the verdict, at least on the ground of misdirection, where the point was not taken on the trial (b). If, however, there be several claimants, each having a separate interest in the subject matter of the dispute, and the jury does not find, nor the inquisition specify, the amount of purchase money or compensation to which each of them is entitled for his share or interest therein; the proceeding will be void, and the parties claiming compensation, may procure a mandamus compelling the company to take steps for a new inquiry (c).

**Judgment.**

When the verdict is delivered, the sheriff is to give judgment for the amount of purchase money or compensation assessed by the jury; and to sign the verdict and judgment, which are to be delivered to the clerk of the peace for the county in which the lands in question, or any part of them, are situate, and kept among the records of the general or quarter sessions. These documents are made evidence in all courts and elsewhere; inspection of them is to be al-

(a) 8 Vic. c. 18, s. 49.

(b) *Corrigal v. The London and Blackwall Rail. Com.* 5 M. and Gr. 219, 3 Rail. Ca. 411; in *Re London and Greenwich Rail. Com.* 2 Ad. & E. 678; 4 Nev. & M. 458.

(c) *Rex v. The Norwich and Watton Trustees*, 5 Ad. & E. 563; 1 Nev. & P. 32

lowed, on payment of one shilling; and copies or extracts (to be signed and certified by the clerk of the peace) are to be given, on payment of sixpence for every hundred words (*a*). Every preliminary required by the Lands' Inquisition. Clauses Act, and the Special Act to give jurisdiction to the sheriff, ought, as in other cases of local and limited jurisdiction, to be set out on the face of the inquisition (*b*). Thus the inquisition should state that notice was given to the parties to treat, and that they failed to come to any agreement (*c*). That notice was also given of the company's intention to issue their warrant to the sheriff; and the inquisition should show that the verdict corresponds with the warrant to the sheriff, and the warrant with the notice (*d*). If, however, sufficient appear on the face of the document to give jurisdiction, it does not seem that the same strictness is required in drawing up these inquisitions as in the records of inferior Courts in general (*e*). Form of.

Thus it has been held unnecessary to mention the certificate granted by two justices for the taking possession of land omitted by mistake in the schedule and books of reference (*f*); nor that the lands were included in the schedule and books of reference, or a certificate granted as before (*g*); nor that the capital required was wholly subscribed (*h*). As to the last point, it was decided that the non-subscription of the required amount of capital is a defeasance of the compulsory clauses of the Act, and need

(*a*) 8 Vic. c. 18, s. 50.

(*b*) *Doe dem. Payne v. The Bristol and Exeter Rail. Com.* 6 M. & W. 339, 2 Rail. Ca. 75. Mr. Baron Parke.

(*c*) *Rex v. The Mayor, Bailiffs, &c. of Bristol*, 4 Burr. 2244; *Rex v. Bagshaw*, 7 T. R. 363; *Rex v. The Trustees of the Norwich and Watton Road*, 5 A. & E. 563.

(*d*) *Stone v. the Commercial Rail. Com.* 4 Myl. & Cr. 122; *Corrigal v. The London and Blackwall Rail. Com.* 5 M. & G. 212, 3 Rail. Ca. 411.

(*e*) *Reg. v. Trustees of Swansea Harbour*, 8 A. & E. 449.

(*f*) *Taylor v. Clemson*, 2 Q. B. 978, 3 Rail. Ca. 65; S. C. in error, p. 725.

(*g*) *Reg. v. Manch. and Leeds Rail. Com.* 8 A. & E. 413; 1 P. & D. 164.

(*h*) *Doe dem. Payne v. Bristol and Exeter Rail. Com.* 6 M. & W. 320.

not be set out on the face of the inquisition, but ought to come by way of answer from the other side ; it not being incumbent on the promoters to prove a full subscription, but necessary for those who dispute it to disprove it.

Where several parties are interested.

If the interests of several parties be included in the same inquiry, the inquisition must set out separately the amount of compensation awarded for the interest of each party ; and if the verdict be found for one entire sum, it will be bad (*a*). For the general requisites and form of the inquisition, the reader is referred to the cases mentioned in the notes (*b*).

Inquisition is final and conclusive.

The inquisition is conclusive as to every thing submitted to and decided by the jury, and contained therein ; but it would seem that if the jury have failed to take into consideration all the matters referred to them, the Court of Queen's Bench would grant a mandamus compelling the sheriff to summon a jury for the purpose of determining the matter omitted. Thus where, through a mistake of the sheriff, in his judicial capacity, the inquiry before him was stopped, and no assessment made, the Court, on application of the party aggrieved, issued a mandamus to the sheriff to execute the precept (*c*). A very strong case must however be made out, or they will refuse to interfere. Thus, in one instance, when an inquisition had been duly held before the sheriff to assess damages in pursuance of a precept issued by a railway company, under their Act, which provided that such verdict should be final ; the Court refused an application for a mandamus to compel the issuing of a new precept, though made on the grounds of misdirection,—of the improper rejection of evidence, of the verdict being against evidence, and the damages grossly

(*a*) *Rex v. Trustees of the Norwich and Watton Roads*, 5 A. & E. 563.

(*b*) *Taylor v. Clemson*, 2 Q. B. 978, 3 Rail. Ca. 65 ; S. C. In Error, p. 725 ; *Reg. v. Sheffield, Ashton-under-Lyne, and Manchester Rail. Com.* 1 Rail. Ca. 537 ; 11 A. & E. 194 ; *Reg. v. Manch. & Leeds Rail. Com.* 8 A. & E. 413.

(*c*) *Reg. v. The Sheriff of Middlesex*, in *Re Walker v. London and Blackwall Rail. Com.* 3 R. C. 396.

insufficient,—saying they were asked to do indirectly what they could not do directly, that is, to amend the inquisition (a). In that case, however, the Special Act under which the inquiry was held, declared that the verdict and judgment should be *final and conclusive*; but the Lands' Clauses Act contains no such provision. The only clause on that subject (145) enacts that the proceedings in pursuance of the Act shall not be quashed for want of form, nor removed by *certiorari*, or otherwise, into the superior Courts.

And is not to be quashed by form or removed by *certiorari*.

The interpretation which will be put by the Court upon the above clause, may be gathered from their decision on a similar one in a Special Railway Act. By one of the sections of the latter, it was provided that where agreement for compensation for damages incurred in the execution of the Act could not be made, the company should issue their warrant to the sheriff to impanel a jury, who should, upon their oaths, inquire of, assess, and give a verdict for the sum to be paid for compensation for the damages sustained. The company issued a warrant to the sheriff to impanel a jury to assess the sum of money, *if any*, to be paid to the claimant, by way of compensation: the jury returned that he had sustained no damage; and the Court held on application for a *certiorari*, that though the words “if any” ought to have been omitted, the warrant gave jurisdiction, and therefore that the inquisition being a proceeding in pursuance of the Act, the writ could not issue (b).

Although it was formerly doubted whether any civil remedy existed for enforcing the verdicts and judgments in compensation cases; yet it is now settled that if the company fail to pay the sum awarded by the jury, the party entitled may recover it by action of debt on the inquisition.

Recovery of compensation.

(a) *Reg. v. Eastern Coun. Rail. Com.* 12 L. J. N. S. Q. B. 271, 3 Rail. Ca. 466.

(b) *Reg v Lancaster and Preston Junction Rail. Com.* 3 Rail. Ca. 725.

sition. (a) Before the decision of this case, the Court of Queen's Bench issued a mandamus compelling the company to pay the amount of damages assessed by the jury. (b)

Costs.

Who to pay.

All the costs of an inquiry before a jury are to be borne by the company in all cases where the verdict shall be given for a greater sum than that offered by them (c). These costs are to include all reasonable costs, charges, and expenses incurred in summoning, impanelling, and returning the jury, taking the inquiry, the attendance of witnesses, the employment of counsel and attorneys, recording the verdict and judgment thereon, and otherwise incident to the inquiry (d). Thus the costs to which the company are subject, on an inquiry before a jury where the verdict shall be for a larger sum than that offered by them, will include the general costs thereof, as in the case of an ordinary trial; the words of the earlier part of the 51st section taken in connection with the 52nd section being sufficiently comprehensive for that purpose. But when the verdict is given for the same or a less sum than that offered, or when the claimant having had due notice fails to appear, one half of the costs of summoning, impanelling, and returning the jury, and of taking the inquiry, and recording the verdict and judgment thereon (in case such verdict shall be taken), shall be defrayed by the owner of the lands, and the other half by the company; and each party shall bear his own costs other than as aforesaid incident to the inquiry. The latter provision, so far as it inflicts costs upon the claimant, does so in terms far less general than those above cited in respect of the company. As to what are included in the costs to be paid, in the cases supposed, by the party claiming compen-

(a) *Corrigal v. London and Blackwall Rail. Com.* 5 M. & G. 219; 6 Sc. N. R. 241; 3 Rail. Ca. 411.

(b) *Rex v. Nottingham Old Water Works Com.* 1 Nev. & P. 480.

(c) 8 Vic. c. 18, s. 51.

(d) *Idem*, s. 52.



sation, we may refer to the cases which have been decided on similar clauses in former Railway Acts.

A Railway Act provided for summoning a jury to assess compensation in case of disagreement respecting the purchase of lands, and the party claiming compensation should be plaintiff, and have all such rights and privileges as plaintiffs in actions at common law are entitled to. Another section enacted, "That in every case in which the verdict of the jury shall be given for the same or a greater sum than shall have been previously offered by the company, all the costs of summoning such jury, and the expenses of witnesses, shall be defrayed by the said company; if for a lower sum, then one moiety by each of the parties." It was then provided, "That all parties with whom the company shall have any such dispute, and who shall require a jury to be summoned, shall enter into a bond to bear and pay their proportion of the costs and expenses of summoning and returning such jury, and taking such verdict, and of the summoning and attendance of witnesses, in case any part of such costs and expenses shall fall upon them." In a case where no offer had been made by the company, but a jury had been summoned, and assessed compensation to the claimant, it was held that the above clauses (notwithstanding the provisions of the first-named section), did not entitle the claimant to the costs of the attorney's letters and attendances, nor to the expenses of plans, &c., paid to surveyors not called as witnesses (a).

What may be claimed.

Where a compensation clause in a Railway Act, enacted, "That the value was to be settled by a jury; and that in case the jury should give a greater sum than had been offered by the company, all the costs of summoning the jury, and the expenses of witnesses," should be defrayed by the company; but if the jury should give the same or a less sum than had been offered, one moiety of the said costs and expenses was to be defrayed by the party to

(a) *Reg. v. Sheriff of Warwickshire*, 2 Rail. Ca. 661. See also, *Rex v. J. J. of York*, 1 Ad. & E. 828; 3 N. & M. 685.

whom the land belonged; and a subsequent clause enacted that the party with whom the company should have any dispute should enter into a bond to pay his proportion of the costs and expenses of summoning and returning such jury, and taking such verdict, and of the summoning and attendance of witnesses, in case any part of such costs should fall upon him: the Court held, that the words, "the costs of taking such verdict," did not mean the costs of trial; and that the fees of counsel and costs of the attorney, respecting the preparing for and attendance at the trial, could not be allowed (*a*).

Taxation and  
recovery of.

In case of dispute, the question of costs is to be referred to one of the masters of the Court of Queen's Bench (*b*). If any costs payable by either party are not paid within seven days after demand, on application to a justice to issue his warrant for that purpose, they can be recovered by distress (*c*). This latter remedy being given by the statute, a mandamus would not be granted to compel the company to pay costs, at least until an endeavour had been made to levy them by distress (*d*).

## (2) *Compensation to Absent Parties.*

(2) Compensation  
to absent  
parties.

When parties whose lands are required for the purposes of the railway are either absent from the kingdom, or after diligent inquiry cannot be found, or fail to appear at the time appointed for the inquiry before the jury; then the amount of compensation to be paid for the purchase of such of the lands of those persons as are taken by the company, and for the damage of such as are injuriously affected by the execution of the works, is to be determined by an able

Assessment by  
surveyor.

(*a*) *Rex v. Gardner*, 1 N. and P. 308.

(*b*) 8 Vic. c. 18, s. 52.

(*c*) *Idem*, s. 53.

(*d*) *Reg v. The London and Blackwall Rail. Com.* 15 L. J. N. S. 42 Q. B.

practical surveyor, to be appointed by two justices (a) on the application of the promoters; who must show to the satisfaction of the justices that the parties entitled to compensation are either out of the kingdom, cannot be found, or have failed to appear before the jury (b).

Appointment  
of.

The surveyor having been appointed makes his valuation, and annexes thereto a declaration in writing, subscribed by himself, of the correctness thereof (c). Before proceeding to the appraisement he must make and sign a declaration, appended to the foot of his nomination, in the presence of the justices, or one of them, declaring that he will faithfully, impartially, and honestly, according to the best of his skill and ability, make the valuation intrusted to him. Any corrupt breach of this declaration is a misdemeanor (d).

Declaration of.

The nomination and declaration above-mentioned are to be annexed to the valuation; and the whole of the documents must be preserved by the company, who are to produce them to the owners of the lands in question on demand, and to all other parties interested therein (e). The whole expenses of the valuation and proceedings connected therewith are to be paid by the promoters (f).

Appraisement.

Costs.

If the owners be dissatisfied with the amount of the valuation, they may, on giving notice in writing to the company, have the question of value submitted to arbitration, in the same manner as in the cases before mentioned (g).

Appeal.

If the arbitrators decide that a sufficient sum has been already paid by the promoters, the costs of the arbitration are to be in the discretion of the arbitrators; but if they award a further sum to the claimant, then the costs are to be borne by the promoters of the undertaking; and the amount of the award, together with the costs, must be

Costs.

Who to pay.  
Recovery of.

(a) 8 Vic. c. 18, s. 58.

(c) Idem, s. 59.

(e) Idem, s. 61.

(g) Idem, s. 64.

(b) Idem, s. 59.

(d) Idem, s. 60.

(f) Idem, s. 62.

paid within fourteen days after the award made, or, on default, may be recovered by attachment, or action, in any of the superior Courts (a).

(3). *Payment and Application of Compensation.*

(3) Payment of compensation.

(a) To parties absolutely entitled.

In all cases in which the persons of whom purchases of property have been made by a company, having full power to sell for their own absolute use, shall have made a good title, executed the conveyance tendered by the company, and are not absent from the kingdom, the money must be paid to them before the company can enter; except in cases where an annual rent-charge has been the consideration for the purchase instead of a sum in gross. But where the purchase-money, or compensation, is coming to parties having limited interests, or incapable of selling, except under the provisions of the general or special Railway Acts, or not making title; it is to be disposed of as provided by the Lands' Clauses Compensation Act, or the Special Act incorporated therewith.

(b) To commoners.

In the case of compensation for commonable rights, where a committee has been appointed at a meeting of commoners duly convened, whether the sum to be paid has been fixed by agreement, or ascertained under the compulsory powers of the Act; the committee are the proper parties to receive the compensation, and the receipt of any three of them will be a discharge to the company for the amount; nor will the latter be bound to see to the application of the money among the parties interested. If there has been no committee appointed, the money must be deposited in the Bank, in the name of the Accountant-General of the Court of Chancery (b).

(c) To parties under disability.

Where the lands have been purchased by the company from any corporation, tenant for life or in tail, married

(a) 8 Vic. c. 18, ss. 66, 67.

(b) *Idem*, s. 107.

woman seized in her own right or entitled to dower, minor, guardian, committee of lunatic or idiot, trustee, executor or administrator, or person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same except under the provisions of the above-mentioned Acts, or one of them; then if the purchase-money, or compensation, to be paid for any permanent damage, amount to, or exceed the sum of, £200., it shall be paid into the Bank of England, in the name of the Accountant-General of the Court of Chancery in England, when the lands are in England or Wales; or in the name of the Accountant-General of the Court of Exchequer in Ireland, if the lands be there (a).

When purchase money amounts to £200.

The money so deposited is to remain until applied to some one or more of the following purposes: (that is to say,) In the purchase or redemption of the land-tax, or the discharge of any debt or incumbrance affecting the land in respect of which such money shall have been paid, or affecting other lands settled therewith to the same or the like uses, trusts, or purposes; or in the purchase of other lands to be conveyed, limited, and settled, upon the like uses, trusts, and purposes, and in the same manner as the lands in respect of which such money shall have been paid, stood settled; or, if such money shall be paid in respect of any buildings taken under the authority of this or the Special Act, or injured by the proximity of the works, in removing or replacing such buildings, or substituting others in their stead, in such manner as the Court of Chancery shall direct, or in payment to any party becoming absolutely entitled to such money (b).

Application of the money.

The Courts of Chancery have a discretion in the application of money deposited in their hands under the provisions of an Act of Parliament; therefore, where money is in Court under a Railway Act, previous to being laid out in lands to be settled "to the like uses," the Court

(a) 8 Vic. c. 18, s. 69.

(b) *Idem*.

will lend its aid to an advantageous purchase beyond the amount of the money in Court, and will direct the extra costs to be paid out of the money in Court (*a*). So a small sum of money deposited in Court to be laid out in lands to be settled "to the like uses," has been ordered to be applied in new erections (*b*).

The application of the money will be made by the Court, on the petition of the party who would have been entitled to the rents and profits of the lands of which it is the proceeds; and until the fund is so applied it may be laid out in the purchase of government securities, and the interest, dividends, and annual proceeds, be paid to the party who would, for the time being, have been entitled to the rents and profits of the lands (*c*).

Where owner dies before purchase is completed.

A question has sometimes arisen as to the effect of a contract for sale of lands to a railway company, where the vendor dies before the money is paid and the purchase completed,—whether, in such an event, the nature of the property has been changed from realty to personalty, so as to alter the mode of its devolution. In a case (*d*) decided by the Vice-Chancellor of England in Michaelmas Term, 1843, it was held, that under such circumstances the personal representatives were entitled to the purchase money.

Here it will be observed that the deceased, being absolutely entitled to the property in question, had himself contracted with the corporation of London for the sale of the land to them, and by his own act, therefore, had converted it into personalty. But where a party has land taken from him under compulsory powers, and he obstinately refuses to execute any conveyance, or accept the purchase money, and dies; the nature of the property would probably be held to remain unchanged; and the money paid into the bank in the manner directed in such

(*a*) Exp. Newton, 4 Y. & C. 518.

(*b*) Exp. Shaw, 4 Y. & C. 506.

(*c*) 8 Vic. c. 18, s. 70.

(*d*) Exp. Hawkins. 3 Rail. Ca. 505, note (*a*).

cases would belong to those who would have been entitled to the land. In such a case the party could not be said to consent, nor was the conversion of the property from realty to personalty his own act.

This view seems confirmed by the following case, the facts of which were as follow :—“A railway company, under the provisions of their Act, were empowered to take lands, and it was made lawful for all corporations, &c., and for all other persons whomsoever, to contract for the sale thereof, and convey the same to the company. The company gave notice of their intention to treat to A., who was at that time imbecile, but who, previous to his imbecility, had made a will, whereby he gave and bequeathed ‘all my money, goods, chattels, estates, and effects, of what nature or kind soever, and wheresoever the same may be found,’ to his wife for life, and after her decease to his children equally. A. died before the purchase money for the piece of land taken by the company, (which had been assessed by a jury,) had been paid. It was held, that the land was not converted by the proceedings under the Railway Act, and that the purchase money belonged to the devisees of the land; the Act not being intended to change the nature or quality, in point of devolution, of any man’s property, who was incapable of consenting (a).

Where the purchase money amounts to £20, but is less than £200, it may either be paid into the bank as above mentioned, and dealt with in a similar manner, or it may be paid to two trustees, to be nominated by the parties who were entitled to the rents and profits of the land. The nomination of the trustees must be under the hands of the parties, or if they are under incapacity, as in case of coverture, infancy, or lunacy, it may be made by their respective husbands, guardians, committees, or trustees; but in this case the money will not be paid to the parties nominated, unless the company approve of them. The

Payment where  
purchase  
money exceeds  
£20, but is  
under £200.

(a) Midland Coun. Rail. Com. v. Mary Oswin, 3 Rail. Ca. 497.

interest is to be paid as directed in other cases, but no order of the Court will be necessary for that purpose (*a*).

Where purchase-money is under £20.

If the purchase money be less than £20, it may be paid to the parties entitled to the rents and profits of the lands in respect whereof the same shall be payable, or in case of their coverture, infancy, or idiotcy, &c., to their husbands, guardians, committees, &c., as the case may be (*b*).

Application of monies paid into Court.

Where the purchase money of lands, the interest on which did not belong absolutely to the party who sold them, exceeds £20, it is to be paid into the bank, or to the trustees, as before mentioned. The parties who have so contracted for the sale of such lands, but who are not absolutely entitled, cannot retain any part of the purchase money, or of the compensation paid for damage, or interest paid in lieu of bridges, tunnels, or other accommodation works, or for assenting to, or not opposing the passing of the company's bill; but the whole is deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession as in remainder, reversion, or expectancy. The Court of Chancery in England, or the Court of Exchequer in Ireland, or the trustees in whose names the money (where it is under £200) is deposited, have a discretion, however, in the disposal of the fund, and may allot to any tenant for life, or for any other partial or qualified estate, for his own use, a portion of the same, as compensation for any injury, inconvenience, or annoyance, which he may be considered to sustain, independently of the actual value of the lands to be taken, and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works (*c*).

Where a Railway Act contained a provision that the purchase money of lands bought of corporations, tenants for life, &c., might be laid out in the redemption of the land-tax of other lands settled to the same uses as those

(*a*) 8 Vic. c. 18, s. 71.

(*b*) *Idem*, s. 72.

(*c*) *Idem*, s. 73.



purchased, the Court of Chancery permitted a tenant for life, who had redeemed the land-tax of the property sold before the passing of the Act, to be reimbursed out of the proceeds (a).

Purchase money or compensation deposited in the Bank, which has been paid in respect of any lease for a life, or lives, or years, or for a life, or lives, and years, or any estate in the lands less than the fee simple thereof, or for any reversion dependent on such lease or estate, on petition to the court into which the money has been paid by any party interested, may be laid out in such manner as the court may consider most equitable among the several claimants, according to their respective interests in the estate (b).

Money paid  
for lease or  
reversion.

When the owner of any lands purchased by the company refuses the purchase money and compensation agreed or awarded to be paid in respect of the same, and fails or neglects to make out a title to such lands, or to the interest which he claims therein, and refuses to convey or release the same to the promoters; in such cases, the amount must be paid into the Bank, as before mentioned, to the credit of the parties interested, subject to the control and disposal of the court.(c)

(d) To parties  
refusing to  
convey, who  
cannot shew  
title, or who  
cannot be  
found.  
Refusal to con-  
vey and neg-  
lect to make  
title.

Under this section, the refusal to make out a title or to execute a conveyance must be after the amount of compensation has been agreed on or awarded, since it has been held that the words of a clause similar to the above applied to a refusal to show title after such agreement or award, and at the time when the money became payable, and that the fact of the owner not making out a title before the inquisition is not sufficient to give the company a right to deposit the money, and enter on the lands, immediately after the finding by the jury, but that they must before

(a) Exp. Northwick, 1 Y. & C. 166.

(b) 8 Vic. c. 18, s. 74.

(c) Idem, s. 76.

doing so, and after the amount of compensation has been awarded, require the vendor to make out a title. (*a*)

But where a party whose lands were required for the purposes of a railway company refused to agree with the company for the sale and purchase thereof, after due notice, and who neglected, after notice, to attend the inquiry before a jury, held on the 27th of November, and the company on the 21st of June following, the owner still refusing to convey, paid the sum awarded into the Bank, under the provisions of their act of incorporation, and entered on the lands; on ejectment brought by the owner, it was decided, that there was reasonable evidence of a neglect and refusal to convey, so as to justify the company in the steps they had taken. (*b*)

A railway company, although they may have entered into an agreement with a landowner for the purchase of land, are not therefore precluded from afterwards disputing his title, and refusing to pay the money to him, as the previous agreement cannot be considered as amounting to an approval of his title, in the absence of any formal acceptance of it, and hence they may, on depositing the money in court, as in other cases of disputed title, enter on the lands. (*c*) Nor would they be bound by such a recognition of the title of an individual in the act by which they were incorporated as would be implied by alluding therein to the lands in question as lands belonging to A. B. (*d*) The company, however, cannot be compelled to pay the purchase-money into the Bank, even though after an award made they have objected to the title offered, unless the party applying for a mandamus for that purpose

(*a*) *Doe dem. Hutchinson v. The Manchester, Bury, and Rossendale Rail. Com.* 15 L. J. N. S. 208, Ex. S. C. Nom. *Hutchinson v. The East Lancashire Rail. Com.* 3 Rail. Ca. 748.

(*b*) *Doe dem. Payne v. Bristol and Exeter Rail. Com.* 2 Rail. Ca. 75; 6 M. & W. 320.

(*c*) *Hyde v. Great Western Rail. Com.* 1 Rail. Ca. 277.

(*d*) *Penney v. Great Western Rail. Com.* 1 H. & H. 247.

distinctly show to the Court that he cannot make a good title (a).

So, if the owner be absent from the kingdom, or after diligent inquiry cannot be found; or if he fail to appear, after due notice, when the jury are summoned to assess compensation, then the purchase-money or compensation is to be deposited as aforesaid.

Owner absent from kingdom, &c.

On petition, by any party entitled, the Court into which the money has been paid may, in a summary way, order the same to be invested or distributed, or the dividends and interest to be apportioned according to the respective estates and interests of the parties making a claim (b).

Disposal of the fund.

The parties who at the time when the lands were purchased were in possession of them as the owners thereof, or in receipt of the rents as being entitled thereto, are to be deemed the lawful owners thereof, until the contrary be shewn to the satisfaction of the Court; and, unless the contrary be shewn, the parties so in possession, and all parties claiming under them, or consistently with their possession, shall be deemed entitled to the money so deposited, or to the dividends and interest thereof, which will be paid to them accordingly (c).

Person in possession as owner to be deemed such until contrary shewn.

When a company, having contracted to purchase a piece of land of the party in possession, and having entered into possession under the contract, afterwards objected to the title, and paid the money into Court to the credit of the party with whom they had so contracted; it was held that such party, upon his own affidavit of title, was entitled to payment of the money out of Court to his own absolute use (d).

(a) *Reg. v. Deptford Pier Company*, 1 P. & D. 128; 8 A. & E. 910. The clause requiring parties to make a title *to the satisfaction of the promoters* gives the latter a power which is sometimes used for the purposes of oppression, being employed for the purpose of driving a vendor into a Court of Equity, or depriving him of the purchase-money to which he is entitled, except on some compromise advantageous to the company.

(b) 8 Vic. c. 18. s. 78.

(c) *Idem.* s. 79.

(d) *Exp. Grainge*, 3 Y. & C. 62. See also, *re Birmingham and Gloucester Rail. Com.* 3 Y. & C. 66.

Costs of payment and application of purchase-money.

In all the cases above mentioned of the payment of monies into Court (except that of wilful refusal to accept the same, and convey and release the lands, and of wilful neglect to make out a good title), the expenses incident to the deposit may be ordered by the Court to be paid by the promoters. Such expenses are to include the costs of the purchase or taking of the lands, or which shall have been incurred in consequence thereof, and the cost of investing such monies in government (a) or real securities, including broker's commission (b), and of the re-investment in the purchase of other lands, and also the costs of obtaining the proper orders for any of those purposes, and for the payment of interest or principal to the parties entitled, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants (c).

Of application for reinvestment.

The costs of only one application for reinvesting the money in lands will be allowed; except in those cases in which the Court may be of opinion that it is for the benefit of the parties interested in the money, that it should be laid out in the purchase of lands in different sums and at different times; when it is in the discretion of the Court to order such costs as may be thereby incurred, to be paid by the promoters of the undertaking (d). The whole policy and the main object of these provisions is perfectly to indemnify the party whose lands are taken from him under compulsory powers. Therefore where part of the purchase money remained in Court to await the decision of contested claims, the Eastern Counties Railway Company were, under a clause in their Act very similar to the above

(a) See *Exp. Bishop of Durham*, 3 Y. & C. 690.

(b) *Exp. Corporation of Trinity House*, 3 Hare 95.

(c) 8 Vic. c. 18, s. 80. See on the construction of similar clauses in Special Acts, *Exp. Hirst re Birmingham and Derby Junction Rail. Com.* 4 Y. & C. 468; *Exp. Cooke re Liverpool and Manchester Rail. Com.* 3 Rail. Ca. 137; *Exp. Onslow re London and Birmingham Rail. Com.* 1 Y. and C. 553.; *Exp. Northwick*, 1 Y & C, 166; *Exp. Trafford re Liverpool and Manchester Rail. Com.* 2 Y. & C. 522. And see *Shelford on Railways*, pp. 245, 246.

(d) 8 Vic. c. 18, s. 80.

provisions, held liable to pay the costs of the application of the person rightly entitled to have the money paid to him. Vice-Chancellor Wigram says, "The 48th section of the Act gives the Court power to order the reasonable costs of the parties, incurred in procuring the payment of their purchase money out of Court, to be paid by the company. The question here has arisen in consequence of the state of the property, a state in which the parties had a right to place it. It is clear that the Court has jurisdiction to order the costs to be paid, and it is the duty of the Court to give the costs, unless a special case is made out; otherwise the party has his estate diminished by its being taken from him by the company against his will. The company, however, are not to pay the costs of a party who claims, and turns out not to be entitled to the fund; yet the company must pay the costs of all persons who properly claim and are entitled to the fund, that is, the costs and charges properly incurred" (a).

So where power was reserved to the Court to order the reasonable expenses of reinvesting a sum of money in the bank, the produce of land purchased by the company, to be paid by the company, the Court will order the costs of two applications for reinvestment of parts of the same sum, to be paid by the company (b). So where the entire purchase money was very large, the costs of a third reinvestment were allowed to the vendor (c). But it has been held, under a similar provision in a Special Railway Act, that the costs of getting the money out of Court can only be made payable by the company in cases when such monies are to be reinvested in the manner *specifically* declared by the Act; thus when the company, in consequence of taking a part, were compelled to purchase the whole of

(a) Exp. Gardner, 3 Rail. Ca. 117.

(b) Exp. The Provost and Fellows of Eton Coll. in *re* Lond. and Birm. Rail. Com. 3 R. C. 271; Exp. Trustees of Waste Lands of Boxmoor in *re* Lond. and Birm. Rail. Com. 3 Rail. Ca. 513. See further on this subject Exp. Althorpe, 3 Y. & C. 396; and Mitchell v. Newell, 3 Rail. Ca. 515.

(c) In the matter of St. Katharine's Dock. Com. 3. Rail. Ca. 514.

the glebe land in a certain parish, and the vicar was empowered, under certain conditions, to lay out a portion of the money in purchasing or erecting a new vicarage house, but the Act did not declare by whom the costs of getting the money out of Court for this purpose should be defrayed; the Court held that the company were not liable to pay them (*a*). So when the petitioner sought to invest the sum paid into Court, added to another sum to be provided by him, in the purchase of other property, the Court held that the company ought not to pay the costs of such investment, nor of the application for that purpose (*b*).

#### Conveyances.

#### SEC. V.—*Conveyances.*

(1) In ordinary cases.

Upon tender, payment, or deposit in the bank, of the purchase money agreed upon, assessed, awarded, or claimed, and a requisition to that effect to the owners, or parties enabled to convey the lands, the promoters of the undertaking may require a conveyance thereof to be duly executed.

The Lands' Clauses Consolidation Act provides forms for the conveyance of lands purchased under the provisions of the Act, but allows the company to have a deed of conveyance in any form which they may approve. If either of the forms given in the schedule to the Act be adopted, the effect of it, on being executed, is to vest the lands thereby conveyed in the company; and it will also operate to merge all terms of years attendant on the estate or interest so conveyed, whether by express declaration or construction of law; and to bar and destroy all such estates tail, and all

(*a*) Exp. Madon *re* The Great Western Rail. Com. 4 Rail. Ca. 49.

(*b*) Exp. Tetley and another *re* The Great North of England Rail. Com. 4 Rail. Ca. 55. But see *re* North Midland Rail. Com. exp. Lord Palmerston, Id. 57.

other estates, rights, titles, remainders, reversions, limitations, trusts, and interests, whatsoever of and in the lands comprised in such conveyance, which shall have been purchased or compensated for by the consideration therein mentioned. The terms, though merged, will afford the same protection to the estate as though they had been kept on foot, and assigned to a trustee for the company, to attend the reversion and inheritance (a).

A conveyance of copyhold lands to the company must be enrolled in the usual way in the Manor Court (b). Copyholds.

Any interest in the estate conveyed which has been overlooked, or not purchased, will not pass by the conveyance nor become vested in the promoters. In such cases provision is made for correcting the omission (c). Interests omitted.

The costs of all such conveyances are to be borne by the promoters; and they include all charges and expenses, incurred on the part as well of the seller as of the purchaser, of all conveyances and assurances of any lands, and of any outstanding terms or interests therein; and of deducing, evidencing, and verifying, the title to such lands, terms, or interests; and of making out and furnishing such abstracts and attested copies as the promoters of the undertaking may require; and all other reasonable expenses incident to the investigation, deduction, and verification of the title (d). Costs.

But if the owner of lands contracted to be sold by private agreement to the company, subsequently to such agreement, either do, or omit to do, an act whereby the legal estate in the land is altered previous to the conveyance to the company, the expense thereby incurred will fall upon the estate, and may be deducted from the purchase-money. Thus, where an Act of Parliament imposed on a railway company the obligation of paying all

(a) 8 Vic. c. 18, s. 81.

(b) *Idem*, s. 95.

(c) *Idem*, s. 124. And see post, p. 261.

(d) 8 Vic. c. 18, s. 82. See also *Exp. the Trustees of Adley's Charity re Lond. and Greenwich Rail. Com.* 3 Rail. Ca. 119, 3 Hare, 22.

the expenses relating to the conveyance of lands, it was held that this provision did not include the expenses of a suit in Chancery, rendered necessary by the death of the landowner, after he had contracted for the sale of his lands to the company, whereby the legal estate therein descended to infants; but the costs of the suit, having been incurred through the fault of the deceased, were decreed to be defrayed out of the purchase-money (a).

In the absence of any decision on the point we may conclude, that although the lands are taken by the company under their compulsory powers, the same rules as to costs incurred by default of the proprietors would be upheld; for the company being, from the time of the service of notice upon the proprietors, the equitable owners of the lands comprised therein (b), it would be the fault of the landowner if he, knowing that the company would be the purchasers of the particular land, did not take steps to prevent the legal estate from passing into other hands.

Taxation of.

Any dispute as to the amount of the costs of a conveyance is to be settled by one of the Taxing-Masters of the Court of Chancery; and the costs of the taxation are to be borne by the promoters, unless one-sixth part of the amount claimed be disallowed, in which case they shall be deducted from the amount allowed (c).

This provision for taxation of costs under the statute, however, would seem to apply only in cases where the lands have been purchased under the compulsory powers of the Act, and no agreement has been made with the vendor as to the payment of costs. Therefore, where it appeared that a special agreement had been entered into between the parties, and the company applied by motion, under a similar clause in one of their Acts, for an

(a) *Midland Coun. Rail. Com. v. Wescomb*, 2 Rail. Ca. 211. See also *East. Coun. Rail. Com. v. Tuffnell and others*, 3 Rail. Ca. 133.

(b) *Stone and others v. Commercial Rail. Com.* 4 My. and Cr. 122; 1 Rail. Ca. 375.

(c) 8 Vic. c. 18, s. 83.



order of reference to tax a bill of costs sent in by the solicitor of a person of whom the company had purchased land; the Court refused the motion with costs, on the ground that on an application of this sort it had not an opportunity of considering, whether, under the terms of the agreement, the question of costs was, or was not, within the jurisdiction of the Court (*a*).

A stamp duty, as in ordinary cases, is payable upon the conveyances to a company under the provisions of their Special Act, or of any Act incorporated therewith. Stamp on conveyance.

If the parties whose duty it is to convey the lands, obstinately refuse, or neglect, or become incapable of doing so, the company are empowered (if they think fit) on deposit of the amount of compensation agreed or awarded, to effect the conveyance by a deed poll. This must be under their common seal, if they be incorporated, or, if not, then under the hands and seals of two or more of them (*b*). It should recite all the material facts of the transaction, the purchase of the lands, with a full description of them; the names of the parties from whom purchased; the deposit of the purchase-money and amount thereof, and the fact of default being made. This deed must be stamped with the stamp duty which would have been payable had it been an ordinary conveyance to the company (*c*). (2) In cases of inability, neglect, or refusal to convey.  
Stamp.

In default of conveyance by the owners to the company of lands, the value of which has been assessed by a jury under the provisions of the 8 Vict. c. 18, it will not be absolutely necessary for the latter to execute a deed-poll as above prescribed in order to give them a title to the land, because the verdict and judgment before the sheriff are by the statute made a record of the Court of Quarter Sessions, and will be conclusive evidence of the title Where deed is necessary.

(*a*) Exp. The Great Western Rail. Com. *re* Rhodes, Solicitor, 3 Rail. Ca. 516.

(*b*) 8 Vic. c. 18, ss. 75, 76, 77.

(*c*) *Idem*, s. 75.

of the company to the lands mentioned therein (a). But where no conveyance is made to the company of property which has been valued by a surveyor, or the compensation for which has been ascertained by arbitration, it is desirable for the company to convey by a deed-poll, in the form given by the statute, although it is not imperative upon them to do so (b).

Under this document, all the estate and interest which could have passed, or been conveyed by the parties therein named, is to vest fully and absolutely in the promoters, and against them and those for whom they were enabled to sell and convey, the promoters become entitled to immediate possession (c).

This deed poll is to remain in the possession of the company, but they would probably be held liable to allow inspection to any parties claiming an interest in the lands thereby conveyed.

Costs.

All the costs of this mode of conveyance are to be borne by the promoters.

Conveyance by  
Court of  
Equity.

The death of the vendor, before the contract is completely executed and the purchase-money paid by the company, may sometimes render necessary the assistance of a Court of Equity, to procure a conveyance of the lands. Thus, where a railway company, under the provisions of their Act, were empowered to take lands, and the company gave notice of their intention to treat, to A, who was at that time and continued until his death in an imbecile state of mind, and previously to becoming imbecile, he had made a will, whereby he gave and bequeathed all his property, real and personal, to his wife for life, and, after her decease, to his children equally, and died before the purchase-money for the piece of land taken by the company

(a) *Bruce v. Willis*, 3 P. & D. 220; 11 A. & E. 463.

(b) Quære whether if the submission to arbitration have been made a rule of Court, the award would not be deemed a matter of record.

(c) 8 Vic. c. 18, s. 75.

(which had been assessed by a jury) had been paid; it was held that the railway company could not pay over the purchase-money, or procure a conveyance, except under the direction of a Court of Equity (a).

## SEC. VI.—*Entry on Lands.*

Entry on  
lands.

### (1) *When it may be made.*

IN those cases in which the amount of purchase-money and compensation has been either agreed on or awarded, the company may not enter upon the lands until that amount has been tendered or paid, except by consent (b). But if the parties refuse to accept it, or to convey the lands, or to make a title, or if they cannot be found, then, on the deposit thereof in the bank as before-mentioned, the company will be entitled to enter.

(a) In cases where purchase-money has been agreed on or awarded. On tender, payment, or deposit.

With regard to the right of a company to enter on the lands, after deposit of the purchase-money in the bank, in cases where they are not satisfied with the title of the vendor, or he has neglected or refused to make out his title; it has been decided, on the construction of a clause similar to section 76 of the Lands' Clauses Act, that the refusal or neglect to make out title must be subsequent to the agreement, assessment, or award of the amount of compensation, and when it becomes payable; and that a failure to disclose such title at any previous period will not authorize the company to deposit the purchase-money, without calling upon the owner, after the amount of compensation has been ascertained or agreed, to make out his title—for although a party may be unable at first to make

(a) *Midland Coun. Rail. Com. v. Mary Oswin and others*, 3 Rail. Ca. 497.

(b) 8 Vic. c. 18, s. 84.

out his title, he may afterwards be enabled to do so, and ought, therefore, to have the opportunity. An entry after such unauthorized deposit would be illegal, and the company would be liable to be ejected from the lands (a). So where a railway company, the provisions of whose Act were similar to those under consideration, entered into an agreement with a landholder for the purchase of lands on the line of railway, and before acceptance of title, or payment, tender, or deposit of the purchase-money, entered upon the land; it was held by the Vice-chancellor that such entry was illegal. But it was also held by the Vice-chancellor, and by the Lord Chancellor affirming his Honour's decision that this was not a case within the Act, but rather a case for specific performance; and that on payment of the purchase-money into the Court in which the bill was filed, thereby securing it on behalf of the owner, in case he should succeed in making out his title, the company were entitled to enter, and that an injunction which had been obtained *ex parte* should thereupon be dissolved (b).

(b) In cases where no agreement has been come to.

On deposit of security.

In cases in which no agreement has been entered into, with regard to the amount of the purchase-money and compensation, nor any award thereof made, or verdict given, and the promoters are anxious to enter upon the lands before the preliminaries can be concluded; they are at liberty to do so on certain prescribed terms. They must deposit in the bank, by way of security, the amount of purchase-money and compensation claimed by any party entitled to sell the lands, and who objects to their entry; or such a sum as shall be determined to be the value of the lands, or of the interest of the party therein, by a surveyor appointed by two justices, as in the case of persons absent from the kingdom, or who cannot be found (c).

And giving a bond.

In addition to this, they are to give to the objecting

(a) Doe dem. *Hutchinson v. The East Lancashire Rail. Com.* 3 Rail. Ca. 748; 15 L. J. N. S. 208 Ex.

(b) *Hyde v. Great West. Rail. Com.* 1 Rail. Ca. 277.

(c) 8 Vic. c. 18, s. 85.

party a bond under their common seal, (if a corporation) and if not, under the hands and seals of two or more of the promoters, with two sureties, to be approved of by two justices if the parties differ, in a penal sum equal to the amount deposited, conditioned for the payment to such party, or the deposit in the bank to the credit of the parties interested in such lands (as the case may require) of such a sum as may be determined, in the manner prescribed in cases of disputed compensation, to be payable by the promoters in respect of such lands, together with interest thereon at *five per cent. per annum*, from the time of entry until the time of the payment or deposit of the money (a).

On depositing this sum, therefore, as a security, and on delivering or tendering to the non-consenting party a bond as above-mentioned, the promoters of the undertaking may enter on the lands, before the usual preliminaries are complied with.

A receipt will be given for the money paid into the bank, in the name of the accountant-general of the Court of Chancery by way of security, and it will remain there until disposed of at the discretion of the Court (b). Whilst the office of the accountant-general is closed, the money may be paid into the bank to the credit of the party interested, on the permission of the governor and company of the Bank of England, and of which their cashier will give a certificate on receiving the money (c). In cases where a railway company are entitled to enter on and take possession of any lands for the purposes of the Act, and the owner or occupier obstructs that entry and refuses to give up possession, the promoters may issue a warrant to the sheriff to deliver possession of the lands to the person therein-named, upon the receipt of which he will deliver possession accordingly (d). The effect of this

(a) 8 Vic. c. 18. s. 85.

(c) *Idem*, s. 88.

(b) *Idem*, s. 86.

(d) *Idem*, s. 91.

warrant is similar to that of *habere facias possessionem* in ordinary cases of ejectment.

Costs.

The costs of this proceeding are to be settled by the sheriff, and paid by the party refusing possession, and the amount of them deducted and retained by the promoters out of any compensation which may be then due from them to the party. If no compensation be then payable, or it be less in amount than the costs; the costs, or excess, as the case may be, can be levied by distress on the warrant of a justice (a).

Having detailed the various preliminaries to the rightful entry of a railway company upon the lands necessary for the purposes of the line, and which they are authorized by their Act to take, we shall now advert to the steps which landowners may adopt, where there has either been an illegal entry on the part of a company, or where, the entry having been legal, the company proceed in excess of their authority in their mode of dealing with the land. When there has been a wrongful entry, the promoters may be treated by the landowner as trespassers, and be visited with the penalties inflicted by the statute, or have an action of trespass, case, or ejectment, brought against them; or an injunction would be granted to restrain them from making any use of the land entered upon. But where the entry into possession was not illegal, but the subsequent proceedings of the company are such as are not authorized by their Special Act, they may be restrained by injunction. We shall treat of these in their order (b).

## (2) *Consequences of Illegal Entry.*

Penalty for trespass.

In addition to the actions at common law to which the promoters are liable, the 8 Vict. c. 18 has imposed certain

(a) 8 Vic. c. 18, s. 91.

(b) See further on this subject post, chapter on "Remedies."

penalties upon them for any wrongful entry upon lands. Thus if the promoters of the company, by themselves or by their servants and employers, wilfully enter upon and take possession of any lands which shall be *required permanently* for the purposes of the railway without having paid or tendered the purchase money, as before mentioned, or made such deposit as by law required, in certain cases, by way of security; a penalty of £10. is payable by the company, over and above the amount of the damage done to the lands. Both the penalty and the damage may be recovered before two justices, by the party in possession of the lands (a).

If after that, the company persist in retaining possession of the lands, they will incur a penalty of £25. to the party in possession, for every day of their unlawful continuance in possession. This may be recovered, with costs, by action in any of the superior Courts. The company, however, are not to be liable to the above penalties in any case where they have *bond fide*, and without any collusion, paid the amount of the compensation and purchase money agreed upon or awarded, in respect of such lands, to any person whom they may reasonably have believed to be entitled to such money; or have deposited the same in the bank for the benefit of the parties interested, or made such deposit by way of security (b). It has been decided under a clause in a Railway Act, very similar to the one under consideration, that where the company had, before entry on the plaintiff's land, *bond fide*, and without collusion, paid the money awarded by a jury into the Bank of England to the credit of the plaintiff, they were protected from the penalties of an illegal entry and continuance in possession, although they had not complied with all the requisites of the statute (c). Penal clauses in an Act will be strictly

(a) 8 Vic. c. 18, s. 89.

(b) Ibid.

(c) *Hutchinson v. The Manchester, Bury, and Rossendale Rail. Com.* 15 L. J. N. S. 293, Ex. 3 Rail Ca. 748.

construed ; but a proviso which has the effect of saving parties from penal enactments, should be liberally construed (a). In an action to recover any penalty for a wrongful entry on lands, the decision of the justices will not be conclusive as to the right of the promoters to enter (b).

**Injunction.**

Injunction is a remedy given to landowners both when there has been an original wrongful entry on their lands by the company, and also when, though the entry were lawful, there is a wrongful user of the lands taken. In general, with regard to the purchase and taking of lands under compulsory powers, the Courts of Equity will interfere, by injunction, to prevent railway companies from availing themselves of their parliamentary powers to take and enter upon lands not required for a *bond fide* purpose sanctioned by their Act. Nevertheless, although the first attempt to take the lands, under colour of the powers of the Act of Parliament, was for a purpose not contemplated by the Act ; yet if afterwards it become really necessary or desirable to take the land for a *bond fide* purpose, the Court will not interfere to prevent its being taken (c). So Courts of Equity will restrain railway companies from entering upon lands to be taken for the purposes of their Act, until the amount of compensation agreed on or awarded, be paid (d). An injunction, however, will be refused, in a case where the money is not paid to the party with whom the contract has been made, because the company is not satisfied with his title ; and on payment of the purchase money into the Court in which the bill is filed, the company will be allowed to take possession (e).

In cases where the disputed question turns upon a legal

(a) *Idem*, p. 295. Pollock, C. B.

(b) 8 Vic. c. 18, s. 90.

(c) *Webb v. Manchester and Leeds Rail. Com.* 4 My. & Cr. 116, 1 Rail. Ca. 576.

\*(d) *Robertson and others v. Great Western Rail. Com.* 1 Rail. Ca. 459. See also *Jones and others v. Great Western Rail. Com.* 1 Rail. Ca. 684.

(e) *Hyde v. Great Western Rail. Com.* 1 Rail. Ca. 277.



right, the course adopted is, "to put the parties into a situation to try as quickly as possible that legal right, and to protect the property to be affected until the legal right be ascertained" (a).

Laches, or apparent acquiescence on the part of the plaintiff, will prevent his obtaining an injunction; therefore the owner of land upon which a railway company empowered by Act of Parliament were about to enter, was held not entitled to an interlocutory injunction to restrain them from so doing, if by his silence and conduct he has permitted the company to carry on their works upon the supposition that they were entitled to enter on and take the land in question (b).

So a subsequent treating with a railway company will be considered by the Court as a waiver of objections to proceedings on the subject of the treaty, although those proceedings are not in fact authorised by the Railway Act; therefore, where a party, upon whose fields a railway company had entered without notice, or permission, filed a bill, and applied for an injunction to restrain them from digging away a part of one field, and depositing it on a certain other field; but it appeared that he had been disposed to treat in respect of the land, and that the steps taken by the company were necessary for the public safety, the Court refused the injunction, upon their undertaking to pay into Court the probable value of the land taken (c).

In cases of trespass under colour of title, when the mischief apprehended is irreparable, a Court of Equity will exercise its jurisdiction to grant an injunction; and, whether the mischief be irreparable or not, it will, by decree, if not by order upon motion, extend the jurisdiction of preventive justice to all cases of trespass in which damages would be an inadequate and uncertain remedy; and the

(a) *Kemp v. Lond. and Brighton Rail. Com.* 1 Rail. Ca. 504.

(b) *Greenhalgh v. Manch. & Birm. Rail. Com.* 3 My. & Cr. 784; 1 Rail. Ca. 68.

(c) *Tower and others v. Eastern Counties Rail. Com.* 3 Rail. Ca. 374.

protection of the right *in specie* is the only mode of doing complete justice (a). This subject will be treated more fully under the head of "Injunction" in the book on "Remedies." See *post*.

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SEC. VII.—*Proceedings in respect of Lands subject to Public, Quasi-Public, and Peculiar Rights and Burdens.*

HAVING hitherto treated generally of the steps to be taken in assessing compensation, and obtaining possession of lands by a railway company, we now proceed to notice more particularly certain classes of property in respect of which the Lands Clauses' Act has made special provisions, and which require, therefore, some further comment. Of these, the most important are copyhold lands, and lands subject to rights of common, or to public burdens, as land-tax and poor's-rate; in obtaining possession of which a company will be compelled to follow certain prescribed rules adopted specially to the circumstances of each case.

(1) *Copyholds.*

Copyholds.

All conveyances of copyhold lands purchased by a railway company must be enrolled in the Manor Court; and on payment of the fees which would be due to the steward on the ordinary surrender of such lands to the use of a purchaser, he will make the enrolment. A conveyance so enrolled will have the same effect as a conveyance of freeholds, but the lands will remain subject to the customary fines and services as before, until they are enfranchised (b).

(a) *The North Union Rail. Com. v. The Bolton and Preston Rail. Com.*  
3 Rail. Ca. 345.

(b) 8 Vic. c. 18, s. 95.

Within three months after the enrolment of the conveyance as above mentioned, or within one month after entry on the lands, (or if there be several parcels, entry on the last,) the promoters must enfranchise the lands, and pay the compensation agreed upon to the lord of the manor. In cases of dispute as to the amount of compensation it is to be settled as in other cases. In estimating compensation, the value of fines, heriots, and other services payable on death, descent, and alienation, and other manorial rights lost by the conveyance to the company, are to be allowed for (a).

Enfranchise-  
ment.

Compensation  
for.

On the payment or deposit of the money, the lord must enfranchise; and in case he refuse, a deed poll may be executed by the company, as in other cases, and thereupon the lands therein comprised are to be deemed enfranchised (b).

Deed of en-  
franchisement.

If part only of the lands subject to the customary rents and services be taken, the apportionment is to be settled by agreement between the owner of the land and the lord of the manor, on the one part, and the promoters on the other part; or in case of difference, by two justices. The customs affecting lands not taken will not be altered by the enfranchisement of those which are purchased, nor will the lord's rights and remedies in respect of the former be at all affected (c).

Apportion-  
ment of rents  
and services.

Where lands are purchased by the company of more than one tenant of the manor, or of one tenant holding parcels of the manor in several places, it will not be necessary to make separate agreements for the enfranchisement of the different parcels, nor to have separate assessments of compensation; but the whole must be included in one contract or one inquiry before the jury (d).

(a) 8 Vic. c. 18, s. 96.

(b) *Idem*, s. 97.

(c) *Idem*, s. 98.

(d) *Idem*, s. 96.

Common  
lands.

(2) *As to Common Lands.*

When a railway company become the purchasers of common lands, the claim upon them for compensation is always twofold; a claim in respect of the right to the soil, and a claim in respect of the easment to which the commoners are entitled. These rights may belong to the same or to different parties; but both must be purchased in either case, although the mode of assessing compensation will be different. Thus the right to the soil may be in the commoners, or it may be in some party other than the commoners, as the lord, or a stranger.

Assessment of  
compensation.

For right to  
soil.

Where lands subject to rights of common are taken by a company under the compulsory powers of their Act, the compensation in respect of the right in the soil, if it belong either to the lord of the manor, or to any party other than the commoners, is to be assessed and paid in the manner prescribed generally in respect of other lands by the 8 Vict., c. 18 (a). The compensation to the commoners in respect of their rights will then remain to be ascertained separately.

For common-  
able rights.

But where the right to the soil is in the commoners, then the compensation is to be assessed both for that right and also for their common rights, as mentioned below; the purchase both of the estate and the easement over it being effected at once. The amount of compensation may be settled either by agreement or under the compulsory powers given by the Act. Thus the 101st section of the Lands' Clauses Act provides that the compensation to be paid in respect of any lands being common lands, or in the nature thereof, the right to the soil of which shall belong to the commoners; as well as the compensation to be paid for the commonable and other rights in or over common lands, the right in the soil whereof shall not belong to the commoners; is to be determined by agreement between the

(a) See *supra*.

promoters of the undertaking and a committee of the parties entitled to commonable or other rights in such lands; to be appointed in the manner prescribed.

The promoters of the undertaking are to convene a meeting of the commoners, for the purpose of their appointing a committee to treat with them as to the compensation to be paid for the extinction of the commonable rights. This meeting is to be called by a public advertisement, which must be inserted once at least in two consecutive weeks in some newspaper circulating in the county or neighbourhood in which the lands are situate, the last insertion being not more than fourteen nor less than seven days before the meeting. Notices of the meeting must be also affixed to the church door (or other usual place of affixing notices) of the parish in which it is to be held, not less than seven days previous to the holding thereof; and if the common lands be parcel of a manor, the lord is also entitled to notice (*a*). This meeting, when convened (a majority of which will bind the minority and absent parties), is to appoint a committee of the commoners, consisting of not more than five persons (*b*).

Committee of  
Commoners.

How ap-  
pointed.

The committee thus appointed are to be deemed the representatives of the whole body, and are to treat with the promoters as to the amount of compensation to be paid; and their agreement will be binding on all the parties interested. The money is to be paid to them, and their receipt (or that of three of them), will be an effectual discharge to the company. The committee is then to apportion the compensation among the parties interested; but the company are not responsible for that apportionment, nor for the application of such compensation (*c*).

Their duties.  
To assess.

To apportion.

If the committee of commoners appointed to contract with the company cannot agree as to the compensation to be paid by the latter; or if there be no effectual meeting

(*a*) 8 Vic. c. 18, s. 102.

(*b*) *Idem*, s. 103.

(*c*) *Idem*, s. 104.

of the parties interested, and therefore no committee is appointed to negotiate, the company must obtain possession of the lands under their compulsory powers, and assess their value in the manner prescribed by their Act.

Where the committee and the promoters cannot agree, the matter is to be settled by arbitration or by a jury, as in other cases of disputed compensation (a).

If no committee, however, should be appointed by the commoners, and there be, in fact, no party with whom the company can treat; the amount of compensation is to be determined by a surveyor, nominated by two justices, as in the case of parties who cannot be found (b).

Payment of  
compensation  
for right to the  
soil.

The compensation for the right to the soil in common lands is to be paid to the lord of the manor, or to the party entitled; and on payment, or tender thereof, a conveyance shall be executed to the company, the effect of which shall be to vest the lands in them in the same manner as if the party conveying had been seized in fee simple. On neglect or refusal to convey, the company may execute a deed-poll, duly stamped, to operate as a conveyance, as in other cases where landowners neglect or refuse to convey. The lands being so vested in the company, they will be entitled to immediate possession; subject, nevertheless, to the commonable and other rights theretofore affecting the same, until such rights shall have been extinguished by payment or deposit of the amount of compensation (c).

For common  
rights.

Compensation for the commonable rights is to be paid (as we have seen) to the committee appointed by the commoners, or three of them; or, if there shall be no committee, then the money is to be deposited in the bank as in other cases. Upon such payment, or deposit, the company may execute a deed-poll, and thereupon the lands comprehended therein, will vest in the promoters freed

(a) 8 Vic. c 18, s. 105.

(b) *Idem*, s. 106.

(c) *Idem*, s. 100.

and discharged from all commonable or other rights, and they will be entitled to immediate possession (a).

The Court of Chancery in England, and the Court of Exchequer in Ireland, may by order, on petition, direct the payment of the money so deposited to a committee to be appointed by the commoners; or make such other order in respect thereof for the benefit of the parties interested as it shall think fit (b).

It thus appears, that although there had been no effectual meeting of commoners convened, and no committee had been appointed to negotiate with the company as to the amount of compensation to be paid, (which has been ascertained, in consequence, in other ways); yet the parties interested may afterwards appoint a committee to receive the money deposited in the bank, and to apportion it among the several claimants.

### (3.) *Lands subject to Land Tax and Poor's Rate.*

Where a railway company have become possessed of lands charged with the land-tax, or liable to be assessed to the poor's rate, they will be liable, until the works shall have been completed and assessed to such land-tax or poor's rate, to make good the deficiency which shall have been caused in those assessments by reason of their having become possessed of the lands. The deficiency is to be computed according to the rental at which such lands, with any buildings thereon, were valued or rated at the time of the passing of the Special Act. The promoters may, however, redeem the land-tax if they think fit, in accordance with the powers in that behalf given by the Acts for the redemption of the land-tax (c).

The above provisions leave no doubt either as to the liability of a railway company to poor's rate, or as to the

(a) 8 Vic. c. 18, s. 107.

(b) *Idem*.

(c) *Idem*, s. 133.

Lands subject to land-tax and poor's rate.

amount thereof, up to the period of the works being completed, and the railway itself assessed.

For the elucidation of the principles on which a railway company will be rated when the railroad is finished and in operation, we refer to a subsequent chapter.

### SEC. VIII.—*Lands subject to Private Rights and Burdens.*

#### (1.) *Lands in Mortgage.*

Lands in mortgage.

WHERE lands required for the purposes of a railway company are subject to mortgage, the promoters of the undertaking may redeem the interest of the mortgage, whether they shall have previously purchased the equity of redemption or not; and whether or not the mortgagee be entitled thereto in his own right or in trust for another, and whether or not he is in possession of the lands, and whether the mortgage affect such lands solely, or jointly with any other lands not required for the purposes of the Act (a).

(a) Payment of mortgage generally.

In order to redeem the mortgage, the company must pay or tender to the mortgagee the amount of the principal and interest due, together with his costs, and six months' additional interest; and thereupon the mortgagee shall convey his interest to the company; or the company may give six months' notice to pay off the mortgage. And if they or the owner of the equity of redemption have given such a notice, then, at the expiration thereof, or at any intermediate time, upon payment or tender of the principal and the interest which would become due at the end of the six months, together with costs, the mortgagee must convey or release his interest to the promoters (b).

(a) 8 Vic. c. 18, s. 108.

(b) *Idem.*



If the mortgagee fail to convey or to show a good title, the promoters may deposit the purchase-money in the bank as in other cases of the like kind, and may thereupon execute a deed poll, by which the interest of the mortgagee in the lands shall become vested in them, and they shall be at once entitled to possession if the mortgagee were himself entitled to possession (a). The deed must be stamped as in ordinary cases.

In cases where the lands in mortgage are of less value than the principal, interest, and costs secured thereon, the amount of compensation to be paid is to be settled between the promoters of the company on the one side, and the mortgagor (or party entitled to the equity of redemption) and mortgagee on the other side, by agreement, or, if they cannot agree, then such amount is to be determined as in ordinary cases of disputed compensation. The sum so ascertained and settled is to be paid to the mortgagee, in satisfaction of his debt, so far as it will extend, upon payment or tender of which he shall at once convey and release his interest in the lands to the company (b).

(b) When value of lands is less than mortgage.

Upon his refusal to convey, or failing to adduce a good title, the money may be deposited in the bank, and a deed poll executed by the promoters, as above-mentioned. This deed, however, will not affect any rights which the mortgagee may have against the mortgagor, in respect of so much of the mortgage debt as remains unsatisfied; but all rights and remedies between those parties, by virtue of any bond, or contract, or other obligation, except the right to the lands, will remain in full force (c).

When a part only of the lands is required for the purposes of the Act, and that part is of less value than the principal money, interest, and costs secured on such lands, and the mortgagee does not consider the remaining part of such lands as sufficient security for the money charged thereon, or is unwilling to release the part

(c) Apportionment of remaining mortgage to remaining lands.

(a) 8 Vic. c. 18, s. 109

(b) Idem.

(c) Idem, s. 111.

so required, then the value of the required portion, and the amount of compensation to be paid in respect of the severance, or otherwise, is to be settled by agreement between the mortgagor (or party entitled to the equity of redemption) and mortgagee, and the promoters; or referred to arbitration, or assessed by a jury. The sum, so settled, is to be paid to the mortgagee in satisfaction of his mortgage debt, so far as it will extend; and, on payment or tender thereof, he shall convey and release his interest in the purchased land. A memorandum of the sum so paid is to be endorsed on the mortgage deed, and signed by the mortgagee; and a copy thereof, to be furnished by the promoters, and at their expense, may be required by the party entitled to the equity of redemption (a).

On the refusal of the mortgagee to convey, the promoters have the power, as before-mentioned, of executing a deed poll on the deposit of the money in the bank.

The mortgagee will, however, retain the same powers and remedies for recovery or compelling payment of the mortgage money, or the residue thereof, out of the residue of the lands as he previously possessed in respect of the whole (b).

(d) Costs.

Wherever any lands subject to mortgages are taken for the purposes of a railway, and in the mortgage deeds a time is limited for the payment of the mortgage money, the promoters of the undertaking must, if they pay off the money before the expiration of that period, bear all the costs and expenses incident to a reinvestment of the sum; and if any dispute arise as to their amount, it is to be settled by one of the taxing-masters of the Court of Chancery, and the costs of the taxation are to be paid by the promoters, unless one-sixth part of the sum demanded be taxed off, in which case they shall be deducted from the amount allowed (c).

(a) 8 Vic. c. 18, s. 112.

(b) *Idem*, s. 113.

(c) *Idem*, s. 114.

If the rate of interest secured by the mortgage deed is higher than could be reasonably expected to be obtained on reinvestment, regard being had to the current rate of interest at the time of the money being paid off, then the mortgagee is entitled to compensation for the loss sustained by the premature paying off of his mortgage, which must be paid by the promoters before they can enter on possession of the lands. If the amount is disputed, it is to be settled as in other cases of disputed compensation (a).

(2.) *Lands subject to Rent-charge.*

WHERE the lands required are charged with any rent-service, rent-charge, or chief or other rent, or any other payment or incumbrance not specially provided for in the Lands' Clauses Act, any differences as to the amount of consideration for the release thereof, are to be settled by arbitration or assessment by a jury, as in other cases (b).

Lands subject  
to rent-charge.  
Compensation.

If part only of the lands so encumbered are required, the apportionment is to be settled by agreement between the owner of the lands and the owner of the rent-charge on the one part, and the company on the other; and if they differ, the dispute must be settled by two justices.

Apportion-  
ment.

If the remaining portion of the lands be a sufficient security for the charge, then, with the consent of the owner thereof, the party entitled to the rent-charge may release the lands required, on consideration of the other lands remaining subject to the whole of it. The rent-charge, or so much of it as remains unredeemed, will be chargeable on the remaining lands, and the owner thereof will have his ancient rights and remedies for the recovery of it (c).

Should there be any refusal to release after tender or payment of the money, the consequences of it may be

Release.

(a) 8 Vic. c. 18, s. 114.

(b) *Idem*, s. 115.

(c) *Idem*, s. 116.

obviated as in other cases, by deposit in the bank and a deed poll, the effect of which shall be to extinguish the rent-charge in respect of the lands therein comprised (a). The promoters of the undertaking, (or two of them,) on being required to do so, must subscribe a memorandum, to be endorsed on the instrument creating or transferring the charge, specifying the lands which have been purchased, or the portion of the charge which has been released, and the sum still remaining payable in respect of the remaining lands, or stating that the whole rent-charge is now chargeable upon such remaining lands. This memorandum is to be under the seal of the company, if incorporated, and is to be made and executed at their expense; and it will be evidence, in all courts of justice and elsewhere, of the facts therein stated, but not so as to exclude any other evidence of the same facts (b).

### (3.) *Lands under Lease.*

Lands under  
lease.

Apportion-  
ment of rent.

In regard to lands subject to lease, which may be required for the purposes of a railway, similar provisions are contained in the Lands' Clauses Consolidation Act, as in respect of lands subject to mortgage or rent-charge. If only part of the lands comprised in a lease for a term of years unexpired, be required, the rent payable in respect of them is to be apportioned between the lands to be purchased and the residue of them. If the parties cannot agree as to the apportionment, it must be settled by two justices. After the apportionment has been made, the lessee will only be liable to so much of the rent as shall be apportioned to the residue of the lands remaining in his possession; and in respect of such lands, the lessor's rights and remedies will remain as they were before. All the customs and conditions and agreements of the lease, (except as regards the rent,) will remain unaltered, and

(a) 8 Vic. c. 18, s. 117.

(b) *Idem*, s. 118.

continue in full force between the lessor and the lessee (*a*). The lessee will be entitled to compensation for the damage done to him in his tenancy by reason of the severance of the lands required from those not required, and otherwise by reason of the execution of the works (*b*).

Compensation  
to lessees.

Tenants for a year, or from year to year, if ejected by the company before the expiration of their terms, are entitled to compensation for the unexpired portion thereof, and for any just allowances which ought to be made to them by incoming tenants, and for any loss or injury which they may sustain. If the amount of compensation is disputed, it must be settled by two justices, and, on tender or payment thereof, possession of the lands is to be given to the company (*c*).

Tenants from  
year to year,  
&c.

In addition to the cases cited above (*d*), with regard to the nature of the interests for which compensation may be demanded of a railway company, the following have been decided:—

Exceptions.

Where a tenant from year to year was ejected by a notice from the company, expiring at the end of his tenancy, he was held not entitled to compensation. The situation of the parties is then the same as if a regular notice to quit had been given by the landlord. A company giving such a notice, expiring at the end of the current year, would not be liable to make compensation to the tenant. Nor, if after giving a notice intended to operate under the Act, and not ending with the current year of the tenancy, the company withdraw their notice and give an ordinary landlord's notice, or give permission to the tenant to continue until the regular expiration of his tenancy, and he avail himself of that permission, will the company be liable to make him any compensation. To entitle himself to compensation, the premises must be given up (*e*).

Where notice  
to quit ex-  
pires at the  
end of the te-  
nancy.

Or tenant re-  
main until his  
term is over.

So where a company, bound by their Act to give com-

No compen-  
sation is pay-  
able for a  
chance of  
renewal.

(*a*) 8 Vic. c. 18, s. 119.

(*b*) *Idem*, s. 120.

(*c*) *Idem*, s. 121.

(*d*) See *supra*. p. 191.

(*e*) Reg. r. Lond. and Southampton Rail. Com. 1 Rail. Ca. 717 ; 10 A. & E. 3.

pensation to tenants for the value of their unexpired term or interest, gave notice to one whose lease had been several times renewed for seven years, and who, at the last renewal, had been assured by his landlord that he should not be turned out at the end of the seven years; but meanwhile the landlord died, having sold his reversion to the company, and the company gave notice to the tenant to quit at the end of his term, the Court held that he had no claim to compensation under the Act (a).

Landlord entitled to rent to the end of the term though tenant neglect to claim compensation.

Notice to quit given to a tenant by a company, which expires before the time at which the tenancy might have been determined, will not alter his position in respect to his landlord, nor vary his liability for rent. He will be liable, therefore, to the payment of the rent for the interval between the time of eviction by the company and the proper expiration of the tenancy, although he had neither claimed nor received any compensation from the company in respect thereof. Therefore, when a tenant is ejected from premises by a notice to quit, given by a railway company under the powers of their Act, and such notice expires three months before the termination of the current year of the tenancy, the tenant was held liable to his landlord for the rent up to the end of the current year, although he had neglected to claim the compensation to which he was entitled on giving up possession (b).

Lessees to produce their leases.

Where a party claims compensation for any unexpired term or interest greater than that of a tenant at will, the promoters may require him to produce the lease or grant under which he claims, or to give the best evidence thereof that is in his power. If, after notice in writing to that effect, he fail to produce such document, or evidence of it, he will be considered and treated as only a tenant from year to year, and be entitled to compensation accordingly (c).

(a) *Rex v. Liverpool and Manch. Rail. Com.* 4 A. & E. 650; 6 N. & M. 186.

(b) *Wainwright v. Ramsden*, 1 Rail. Ca. 714; 5 M. & W. 602.

(c) 8 Vic. c. 18, s. 122.

SEC. IX.—*Interests omitted to be purchased, and the Sale of Superfluous Land.*

(1.)—*Interests omitted to be purchased.*

WHERE the promoters of an undertaking, having entered upon lands which they were authorised to purchase for the purposes of their Act, shall, at any time afterwards, discover that some estate, right, or interest in, or charge upon, such lands has, by mistake or inadvertence, been omitted to be purchased, they shall be at liberty to continue in possession and to purchase the interest so omitted, although the period shall have expired within which they were authorised to purchase lands (a).

Interests  
omitted to be  
purchased.

Within six months of receiving notice of the interests so omitted to be purchased, or within six months of the final establishment of the right of the claimant by law, the company must pay compensation for the same, and for the mesne profits or interest which would have accrued to the claimant in respect thereof, between the time of the entry of the promoters and the time of payment, so far as such mesne profits or interest may be recoverable in law or equity.

The amount of the compensation is to be settled in the same manner as it would have been (or as near thereto as possible) had the purchase taken place before the entry on the lands (b). The compensation is to be assessed with a view to the value of the lands at the time of the entry of the promoters, and not at the time of the assessment made (c).

Where the company have disputed the right of the claimant, and the dispute has been determined in favour of the latter, the company must pay the full costs and expenses of the litigation to the party with whom any such

(a) 8 Vic. c. 18, s. 124

(b) Ibid.

(c) Idem, s. 125.

litigation shall have taken place. In case of differences as to the amount of the costs, the sum is to be determined by the proper officer of the court in which the litigation took place (*a*).

(2) *Sale of Superfluous Lands.*

Sale of superfluous lands.

With respect to those portions of land which have been purchased by a railway company for the purposes of the Special Acts, and which remain unoccupied and undisposed of when the line and all the works are complete, the Lands' Clauses Consolidation Act makes certain provisions.

Notwithstanding the many statutory restrictions as to the land which a company is empowered to take, it is obvious that a considerable quantity will in most instances remain in their possession, after the railway and the stations are finished, which they do not require, and which are of no use to them. As it is impossible to anticipate exactly the width of the land which will be necessary for the construction of the line, inasmuch as it will depend for the most part upon the character of the soil and the nature of the works, whether cuttings or embankments; and as it is doubtful whether having once served a notice upon a landowner for a certain quantity of land, the company can afterwards issue a second notice requiring an additional quantity (*b*), it will frequently happen that they will possess themselves of more than is absolutely necessary. So also, from the effect of special clauses introduced into the bill by proprietors whose lands will be required, or under the general provisions of the Lands' Clauses Consolidation Act with regard to intersected lands, and parts of houses or other property, the company are compelled to purchase much more ground at first than will afterwards be found requisite for the railway works: such superfluous land the company are not permitted to retain, although they may

(*a*) 8 Vic. c. 18, s. 126.

(*b*) But see 5 & 6 Vic. c. 55, s. 15.



have been compelled to purchase it. On the contrary, they must sell and dispose of the whole within the time limited for that purpose in the Special Act; or if there be no time therein limited, then within ten years after the expiration of the time limited for the completion of the works (a). The purchase money is to be applied to the purpose of the Special Act. If the promoters fail to sell the superfluous land within the specified time, then such as remains unsold will vest absolutely in the proprietors of the adjoining lands, in proportion to the extent of their lands respectively adjoining the same (b).

Times within  
which they  
must be sold.

If the land so required to be sold is not within a town, and not built upon or used for building purposes, the promoters must first offer it to the party entitled to the lands (if any) from which it was severed; and on his refusal, or if he cannot be found, it must be offered to the person or persons whose land adjoins the land so proposed to be sold, provided such persons are capable of contracting for the purchase thereof. If more than one party is entitled to the right of pre-emption, the land is to be offered to them all in succession, in such order as the promoters of the undertaking shall think fit (c). The company are not incapacitated from contracting to sell lands, although they are incapable of conveying them, before they have offered them to the original owners, or to adjoining owners, and the Court will decree the specific performance of such an agreement against the party contracting with them. Therefore, when the defendant who had purchased lands of the company before they had been offered to the party having the right of pre-emption, sought to evade the fulfilment of his contract on that ground, and the company thereupon offered them to the party entitled, who declined to avail himself of his right, the Court decided that by the subsequent offer, the company had set themselves right, and were in a condition

To whom it is  
to be offered.

(a) 8 Vic. c. 18, s. 127.

(b) Ibid.

(c) Idem, s. 128.

to sell and convey the premises, and that the defendant was bound to complete his contract (a).

If the party to whom the land is offered, wish to purchase it, he must signify his desire to the promoters within six weeks after the offer is made. If he fail to do so, or if he refuse the offer, his right of pre-emption ceases. A declaration in writing made before a justice by a party not interested, that the offer was made and refused, or not accepted within six weeks, or that the parties having the right to it are out of the country, or cannot be found, or are incapable of contracting for the purchase, will be sufficient evidence in all Courts of either of these facts (b).

Parties under disability are enabled, by the 7th section of the Lands' Clauses Consolidation Act, to sell and convey lands to the company; but there is no enabling clause, either in that or in the Special Act, in virtue of which parties under disability can purchase lands of the company. Hence, any right of pre-emption which such persons might have in respect of superfluous land under the above provisions is a right of which they cannot avail themselves, so long as they are under disability. For a similar reason, it would seem that parties who are absent from the country, or who cannot be found, must lose their right of pre-emption.

Arbitration as  
to price.

If the person entitled to the first offer of the land, be desirous of purchasing it, and cannot agree with the promoters as to the sum to be given, it may be settled by arbitration, the costs of which shall be in the discretion of the arbitrators (c).

Conveyance.

On payment or tender of the purchase money, the company (if incorporated) must convey the lands to the purchaser by deed, made under their common seal; or (if not incorporated) under the hands and seals of the promoters of the undertaking, or any two of the directors or

(a) *Lond. and Greenwich Rail. Com. v. Goodchild*, 13, L. J., N. S. 224 Ch.; 3 Rail. Ca. 507.

(b) 8 Vic. c. 18, s. 129.

(c) *Idem*, s. 130.

managers thereof, acting by the authority of the body; and thereupon the interest in the lands purchased shall vest in the purchaser. A receipt under the common seal of the company, or otherwise (as the case may be), will be an effectual discharge to the purchasers for the amount so acknowledged (a).

In such conveyances by the promoters, the word "grant" will operate as express covenants on their part, for themselves and their successors, or for themselves, their heirs, executors, administrators, and assigns, (as the case may be), with the respective grantees therein-named, and the successors, heirs, executors, administrators, and assigns, of such grantees, according to the quality or nature of such grants, and of the estate or interest therein expressed to be thereby conveyed, as follows, except so far as the same shall be restrained or limited by express words contained in any such conveyance: that is to say, a covenant that, notwithstanding any act or default done by the promoters of the undertaking, they were, at the time of the execution of such conveyance, seized or possessed of the lands or premises thereby granted for an indefeasible estate of inheritance in fee-simple, free from all incumbrances done or occasioned by them, or otherwise, for such estate or interest as therein expressed to be thereby granted, free from all incumbrances done or occasioned by them:—

A covenant that the grantee of such lands, his heirs, successors, executors, administrators, and assigns, (as the case may be), shall quietly enjoy the same against the promoters of the undertaking, and their successors, and all other persons claiming under them, and be indemnified and saved harmless by the promoters of the undertaking, and their successors, from all incumbrances created by the promoters of the undertaking:—

A covenant for further assurance of such lands, at the expense of such grantee, his heirs, successors, executors, administrators, or assigns, (as the case may be), by the

(a) 8 Vic. c. 18, s. 131.

promoters of the undertaking, or their successors, and all other persons claiming under them :—

And all such grantees, and their several successors, heirs, executors, administrators, and assigns respectively, according to their respective quality or nature, and the estate or interest in such conveyance expressed to be conveyed, may, in all actions brought by them, assign breaches of covenants, as they might do if such covenants were expressly inserted in such conveyances (a).

**Costs**

No provision being made with respect to the costs of conveyances in case of the sale of superfluous lands by the company, it is to be presumed that the usual rule in contracts of this description, as between vendor and purchaser, will prevail. Obviously there is a great distinction between the case of lands purchased of the owner by the company under compulsory powers, and lands purchased voluntarily of the latter by any party willing to buy them. In the former, the legislature protects the owner so compelled to part with his property, against all costs and expenses which are consequent on the exercise of the extraordinary powers wherewith the company is invested, and make him liable to none except those incurred by his own extortion or misconduct. The latter is a mere ordinary case of sale and purchase, the only difference being that the company are compelled to sell—a distinction which, as it can have no relation to the subject of costs, can have no effect to vary the ordinary rule in regard to them.

(a) 8 Vic. c. 18, s. 132.

## CHAPTER II.

## RIGHTS OVER PROPERTY NOT PURCHASED.

RAILWAY and other companies endowed with extraordinary powers by the legislature for the accomplishment of their objects, are not only authorized under the general and special Acts respectively relating thereto, to purchase certain lands for the purposes of the company, but they are also entrusted with specific rights over property which they are neither compelled nor empowered to purchase. The exercise of those rights is properly subjected to the very stringent restrictions and regulations which are contained in the Railways' Clauses Act (8 Vic. c. 20), and the Lands' Clauses Consolidation Act (8 Vic. c. 18). We proceed to notice, under this head, the various rights which railway companies may have over the lands of others, the formalities prescribed in relation to the exercise of such rights, and the compensation which they are bound to make for injuries which may be inflicted upon any parties having an interest in the lands in respect of which they are to be exercised. These rights over property not belonging to the company may be divided into three classes, according to their nature and extent:—First, Rights to the temporary occupation and use of lands; Secondly, Rights to make permanent alterations in and upon such lands; and, Thirdly, Rights to vary and restrict the rights of others over their property. We shall treat of them in their order.

Division of the subject.

Temporary occupation of lands.

SEC. I.—*Right to the temporary occupation and use of Property not purchased.*

(a) Preliminary entry to survey, &c.

FIRST, then, a railway company have power to enter upon the lands of other parties without their consent, for the purpose of surveying and taking levels of such lands, and of probing, or boring, to ascertain the nature of the soil, and of setting out the line of works (a).

Notices.

Before entering for these purposes, notices must be given to the owners or occupiers, not less than three, nor more than fourteen, days previous to such entry; and compensation must be made by the company for any damage which may be occasioned thereby to the owners or occupiers (b).

(b) Use of adjoining lands during construction of railway.

So the company may, within the time allowed for the completion of the railway, enter upon any lands, being not more than two hundred yards distant from the centre of the railway (if no other limits be prescribed) and occupy them so long as may be necessary for the construction or repair of that portion of the line, or of the accommodation works connected therewith (c). In exercise of this power, the company may manufacture and work upon the lands any materials used in the construction of the railway, and may erect workshops and sheds, and other buildings of a temporary character. This provision, however, will not exempt the company from an action for nuisance, or any other injury inflicted in the exercise of these powers to the lands or habitations of any party other than the party whose lands are taken. Nor can any garden, orchard, park, plantation, or ornamental ground, within five hundred yards of the mansion-house, (if no other limit be prescribed), be taken possession of or used for the above purposes (d).

(a) 8 Vic. c. 18, s. 84. See *Fooks v. The Wilts, Somerset, and Weymouth Rail. Com.* 4 Rail. Ca. 210.

(b) *Ibid.*

(c) *Idem*, c. 20, s. 32.

(d) *Ibid.*

A railway company is also empowered (a) to enter upon lands adjoining to the railway without the consent of the owners or occupiers, for the purpose of preventing or repairing any slips or accidents in the cuttings, or embankments, or otherwise, and doing such works as may be necessary for those purposes. The permission of the Board of Trade must, however, be first obtained, except in cases of urgency, when the company may enter without such permission; but in those cases a report must be made to the Board, within forty-eight hours, of the nature and extent of the accident, or apprehended accident, and the works necessary to be done. If, after consideration of the report, the Board consider the works unnecessary, then, on certifying the same to the company, their powers shall cease.

(c) Entry on adjoining lands to prevent and repair accidents.

Any works which may thus become necessary, to ensure the public safety, are to be done with as much dispatch, and as little injury to the owners and occupiers of the lands, as is practicable; and for all unavoidable mischief, inconvenience, and annoyance occasioned to the owners and occupiers of the lands by the execution of the works, the company must make full and ample compensation.

Compensation to owners and occupiers.

If the amount of such compensation be disputed, the matter is to be settled in the same manner as is provided in cases of disputed compensation, by the Acts relating to the railway on which the works may become necessary (b).

Amounts how settled.

So a railway company have power, at any time within the period limited for the completion of the railway, to enter upon and use any existing private road, not being an avenue or a planted or ornamental road, or an approach to any mansion-house, and not being more than five hundred yards distant from the centre of the railway, as delineated on the plans (c).

Temporary occupation of roads.

What may be taken.

Three weeks' notice of their intention to use the road must be given by the company to the owners and

Notices.

(a) 5 & 6 Vic. c. 55, s. 14.

(b) Ibid.

(c) 8 Vic. c. 20, s. 30.

occupiers of it, and of the lands over which it passes. This notice must state the time during which, and the purposes for which, they intend to occupy such road.

Compensation  
for use of  
roads.

Compensation for the use of the road is to be made to the owners and occupiers of it, and of the lands over which it passes, either in a gross sum of money, or by half-yearly instalments, as may be agreed between the parties. If they cannot agree, the amount must be determined by two justices, in the same manner as in cases of disputed compensation under £50 for lands to be purchased by the company (a).

Objection to  
use of roads by  
owners and  
occupiers.

If the owners and occupiers of the road and the lands over which it passes, object to the company using it, they may give notice thereof in writing to the promoters, within ten days from the time of their receiving the above notice, as before-mentioned, stating that other roads which the company are authorized to use, or that some public road, is more suited to the purposes of the company. When this notice of objection has been duly served upon the promoters, such proceedings may be taken before two justices to determine the dispute, as are prescribed in respect of lands to be taken for temporary purposes (b).

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## SEC. II.—*Right to make permanent alterations in Property not purchased.*

### 1.—*As to Lands.*

Permanent  
alteration of  
lands.

IN addition to the right of using, for temporary purposes, lands and roads belonging to private persons, a railway company is also permitted, under certain circumstances, to

(a) 8 Vic. c. 20, s. 30.

(b) *Idem*, s. 31.



enter upon and make permanent alterations in the property of others.

Thus they may enter upon any lands within the limits prescribed by the Special Act; or, if no limits be prescribed, not being more than two hundred yards from the centre of the railway as delineated in the plans, and not being a garden, orchard, or plantation attached to a house, nor a park, planted walk, avenue, or ground ornamentally planted, and not being nearer to the mansion-house of the owner of the lands than the prescribed distance, or, if no distance be prescribed, then not nearer than five hundred yards therefrom, and may remain in the occupation of the said lands, so long as may be necessary for the construction or repair of that portion of the railway, or of the accommodation works connected therewith; and of the lands so entered upon, the company may make use for the following purposes:—

What lands  
may be entered  
upon.

For the purpose of taking earth or soil by side cuttings therefrom; of depositing spoil thereon; of obtaining materials therefrom for the construction or repair of the railway, or such accommodation works as aforesaid; or for the purpose of forming roads thereon to, or from, or by the side of the railway.

For what pur-  
poses.

It is not, perhaps, quite clear from the wording of the above section that the company have power, by compulsory process, to take land for the purpose of getting material to form an embankment on another part of the line. (a) That section gives them power to occupy the said lands "so long as may be necessary for the construction or repair of *that portion of the railway*." These words would seem to restrict their powers exclusively to the portion of the line adjoining the lands in question, but in a subsequent part of the same section their power to use material thus obtained seems not to be so restricted, but to extend to the line generally.

(a) *Webb v. Manch. & Leeds Rail. Com.* 2 Rail. Ca. 317; 4 My. & Cr. 116.

As to what may be considered "temporary occupation," see *Innocent v. North Midland Railway Company* (a).

In the exercise of these powers, the company may deposit and manufacture upon the lands all kinds of materials used for constructing the railway, and may dig any sand, clay, gravel, or stone, or other thing which may be found therein useful or proper for the purposes of the company; they may also erect on the lands workshops, sheds, and other temporary buildings.

What may  
not be entered  
upon.

No stone or slate quarry, brick-field, or other like place, which shall be commonly worked or used for getting materials therefrom for sale, can, however, be taken possession of by the company, or used as above mentioned.

Company lia-  
ble to action  
for nuisance,  
&c.

The company will also be liable to an action for any nuisance or other injury which may be inflicted on the lands, or the habitation of any party other than the owner of the lands so entered upon, if any such injury shall be occasioned by the exercise of their powers.

Notice of  
entry.

Where the company enter upon adjoining lands for the purpose of making spoil banks, or for side cuttings, or for obtaining materials, they must give three weeks' notice of their intention to the owner and occupier, and must specify the purposes for which the lands are required. If the lands be wanted for any other purposes than these, ten days notice must be given.

Requisites of.

In the notices so sent, the company must state the substance of the provisions contained in the Special Act, and those incorporated with it, respecting the right of the owner or occupiers to require the company to purchase any such lands, or to give compensation for the temporary occupation thereof, as the case may be. These notices are to be served personally on the owners and occupiers, or by being left at their last usual place of abode. If the owners cannot be found, or are out of the kingdom, then notices must also be left with the occupiers, or, if

Service of.

(a) 1 Rail. Ca. 242.

there be no occupiers, must be affixed on some conspicuous part of the lands (a).

With respect to the importance of specifying in the notices the purposes for which the lands are required, that it may be clearly ascertained whether the proposed mode of dealing with the property is authorised by their Act, and whether the company are acting *bonâ fide*, the following case, though decided on a clause containing provisions somewhat different from the above, may serve as a guide. Importance of.

The company having made their railway in a cutting through part of the plaintiff's field, which they had purchased and paid for, gave a notice of their intention to take the remaining part of it; and their solicitor, in reply to the plaintiff's inquiries, stated that the land was wanted immediately for the purpose of providing the company with earth for making the embankment, and that its further appropriation was not settled. The embankment here mentioned was at some distance from the field in question, and the company's Act did not empower them to take the soil thereof for the purpose of forming it. An injunction was therefore obtained to restrain the company from taking any further steps for summoning a jury to assess the value of the property, and from taking possession of it. In moving to dissolve this injunction, the company assigned as an additional reason for taking the land, that subsequently to the notice having been served on the owners, but before the statement of the solicitor above mentioned was made, it was found to be necessary to widen the slope on each side of the cutting through the field in question, and to remove the soil from the surface of the land to prevent the occurrence of accidental slips which were apprehended.

The Lord Chancellor said, "I must be satisfied that the company want the land in question for a *bonâ fide* purpose authorised by their Act, and that it is not a mere colour to

(a) 8 Vic. c. 20, ss. 33, 34.

cover another object. It must be considered whether subsequent events have given the company a title which they had not in the beginning; at the same time, whatever might be the object in giving the notice, if it appear that there now is a right, I do not think that would be a ground upon which this Court would interfere to prevent them exercising that right. I certainly cannot sanction their judging this piece of land to be necessary for the purpose of the slope, in order to enable them to take it for a purpose totally and entirely distinct; at the same time, I cannot so deal with the matter as to compel them to carry on these works under the direction of the Court, or take upon myself to decide on an engineering question, as to whether a particular piece of land is or is not necessary. I will look at the affidavits for the purpose of satisfying myself how far the parties are attempting to take this land for a *bond fide* purpose provided for by the Act" (a).

Objection by  
owners, &c.

In any case where a notice of three weeks is required to be given to the owners and occupiers of lands, they may, within ten days of the service of such notice, object (by notice in writing) to the company making use of those lands, either on the ground that the lands proposed to be taken, or the materials, are essential to be retained, to ensure the beneficial enjoyment of other neighbouring lands belonging to them; or on the ground that other lands lying contiguous would be more suitable for the company's purpose (b).

Disposal of.

Where an owner objects on the ground that it is essential to the beneficial enjoyment of his own property to retain the lands, he may summon the company before two justices. This summons must be returnable before the expiration of the three weeks' notice. If, on hearing the case, the justices shall be of opinion that the objection is well founded, they may order that such lands or materials, or some part thereof, shall not be taken by the com-

(a) *Webb and others v. Manch. and Leeds Rail. Com.* 1 Rail. Ca. 576; 4 My. & Cr. 116.

(b) 8 Vic. c. 20, s. 35.

pany; and, on the service of that order upon the company, they shall be precluded from taking possession of or using the lands without the consent of the owner (a).

If the owner object that other lands, lying contiguous to those proposed to be taken, would be more suitable for the company's purpose, and the company nevertheless refuse to occupy them in lieu of those mentioned in the notice, on the application of the owner, any justice may summon the company and the owners and occupiers of such other lands before two justices, at a time and place to be named; the time not being more than fourteen days after the application, nor less than seven after the service of the summons. On the appearance of the parties, the justices may order summarily what lands shall be taken by the company, and they shall thereupon be authorised to take and use the same (b).

It may be useful to observe here, that in all cases where proceedings before justices are directed, if the parties, or any of them, fail to appear at the time and place appointed, the case may be heard and adjudicated upon as if they were all present, if the due service of the summons upon the absent parties be satisfactorily proved.

Proceedings  
before justices.

If, on the inquiry before the justices, it should appear that the lands of some third party not before them would be more suitable for the purposes of the company than those of the party summoned, they may adjourn the inquiry, and summon such person to appear before them at any time, being not more than fourteen days after such inquiry, nor less than seven after the service of the summons; and, on his appearance, may proceed to determine the question as to what lands shall be taken (c).

Where the company have secured the sanction of the justices to enter upon any lands, they may, before taking possession of them, be required by the owner to find two sufficient sureties, (to be approved by the justices, if the

Sureties before  
entry on  
lands.

(a) 8 Vic. c. 20, s. 36.

(b) Idem, s. 37.

(c) Idem, s. 38.

parties differ,) who shall enter into a bond, in a sum to be agreed upon or determined by the justices, for the payment, by the company, of any amount of compensation for damages to which they may become liable (a).

Fences and gates.

Before using the lands for the purposes above mentioned the company, if so required, must properly fence them off from other and adjoining lands; placing in the fence all such gates as the owners may consider necessary for the convenient occupation of the lands. So to all private roads used by them they are to put fences and gates, in every case where they may be necessary to prevent cattle from straying. Where differences arise in respect of such fences and gates, two justices are empowered to decide the point (b).

Mode of using.

Where lands are taken for getting materials, they are to be worked by the company in such manner as the surveyor or agent of the owner shall direct, or as, in case of dispute, any justice applied to may think right to determine (c).

Company liable to purchase lands entered on.

When a company, in the exercise of the powers given by their Act, have entered upon any lands for the purpose of making spoil banks or side cuttings thereon, or for obtaining materials therefrom, they may, at any time while they continue in possession, and before the owners have accepted compensation at their hands, be required, by notice in writing, to purchase the said lands, or such interest in them as the parties giving notice to the company may be respectively capable of selling and conveying (d).

Notice.

The notice must contain the particulars of the estate and interest which the owners and occupiers respectively have in the lands, and the amount of the claim in respect thereof; and upon the receipt of the notice, the company will be bound to purchase (e).

Compensation for crops, &c.

In any case in which the company shall not be thus

(a) 8 Vic. c. 20, s. 39.

(b) *Idem*, s. 40.

(c) *Idem*, s. 41.

(d) *Idem*, s. 42.

(e) *Ibid*.

required to purchase, and in every other case where they shall take temporary possession of any lands, under the powers of their Act, they must, within one month after taking possession, upon being required so to do, pay to the occupiers thereof the value of any crop or dressing that may be thereon, as well as compensation for any other temporary injury which they may sustain by reason of the entry of the company.

Moreover, during the period of the companies occupation, they must pay half-yearly to the occupier a rent for the use of the lands, to be fixed by two justices in case of difference; and within six months after they shall have ceased to occupy the said lands, and not later than six months after the expiration of the time limited for the completion of the railway, pay to the owner or occupier, or deposit in the bank for the benefit of the parties interested, compensation for all permanent or other loss, damage, or injury, that may have been sustained by them by reason of the exercise of the company's powers; including the full value of all clay, stone, gravel, sand, and other things taken from such lands (a).

Rent.

Compensation for damages.

The amount and application of the purchase-money and compensation is to be determined in the same manner as is provided in the Lands' Clauses Consolidation Act, for determining the amount and application of the compensation to be paid for lands taken under the provisions thereof (b).

Amount and application how determined.

In the exercise of their large powers the company are to do as little damage as possible, and to make ample compensation to the parties who may be injured by the execution of the works. The following cases are instances of the liability of companies for mischief consequent on their proceedings.

Liability of company in execution of works.

A company were authorised by Act of Parliament to make, complete, and maintain, a new course or channel

(a) 8 Vic. c. 20, s. 43.

(b) *Idem*, s. 44.

for a river, the same to be of equal depth and breadth at the bottom, and of equal inclination at the sides with the old course or channel. They were also required to make compensation to persons interested in any houses and lands injured by the means of the execution of the powers thereby granted. The company for the purposes of their works, purchased the entirety of certain closes, parts of which, after the undertaking was completed, they sold in lots. One of the conditions of sale was, that a strip of land lying between the lots and the new channel of the river, should be for ever left open as a public road. This road was afterwards adopted and repaired by the parish, but a portion of it having given way, in consequence of the action of the tide causing a slip in the bank, (whereby the inclination of the sides of the new channel became altered,) the owners and occupiers of houses built upon the said lots since the sale, called upon the company to repair the bank, which they refused to do. On an application by the Corporation of Bristol, who are conservators of the river, on affidavits stating these facts, and also stating apprehensions of injury to the navigation, though not showing any actual impediment caused thereto, the Court granted a mandamus to compel the company to repair and maintain the bank (a).

Under a Railway Act which gave power to divert rivers, watercourses, &c., a company had raised the level of a brook, into which the sough of a coal mine had been accustomed to empty itself, and thereby caused the waters of the brook to flow into the sough, and inundate and stop the coal-works; upon the owner of them applying for a mandamus to the company, requiring them to summon a jury to ascertain and compensate him for the injury done to his works by such diverting of the brook; which was opposed by the company on the ground that on the claimant's remonstrance they had

(a) *Reg. v. Bristol Dock Com.* 1 Rail. Ca. 548; 1 G. & D. 287.



restored the brook to its former level, and that no damage had been done by the alteration, such stoppage having been frequently caused by the floods before; it was held, that it was a question for a jury whether any damage had been done to the claimant; and that his alleging that he was injured by the diverting (*i. e.* altering the level) of the brook, was sufficient to induce the Court to grant a mandamus (*a*).

A railway company in constructing their railway, may raise, sink, or otherwise alter the position of any of the watercourses, water-pipes, or gas-pipes, belonging to any of the houses adjoining or near to the railway; and also the mains and other pipes laid down by any company for the supply of water or gas; doing as little detriment as possible, and causing as little inconvenience to the company, or the inhabitants, as the circumstances will admit.

Alteration of  
gas and water-  
pipes.

These alterations must be effected under the superintendence of the company to which the pipes belong; and of the several commissioners, or trustees, or persons having the control of the pavements, sewers, roads, streets, highways, lanes, and other public passages and places within the district in which the alterations are made, or of their surveyor, if either he, or they, think fit to attend after receiving forty-eight hours notice to that effect (*b*).

To be made  
under superin-  
tendence of  
surveyor, &c.

Where a public company has a right to interfere with pipes laid down under the pavement of a street, the workmen they employ are bound to use such care and caution in doing the works as will protect the King's subjects (themselves using reasonable care,) from injury, and if they so lay the stones as to give such an appearance of security as would induce a moderately careful person to tread upon them as safe, when in fact, they

(*a*) Reg. v. North Midland Rail. Com. 2 Rail. Ca. 1. See also, Illingworth, v. Manch. and Leeds Rail. Com. 2 Rail. Ca. 187.

(*b*) 8 Vic. c. 20, s. 18.

are not so, the company will be answerable, in damages, for any injury such person may sustain in consequence (*a*). In all these cases the contractors employed in the execution of the works will be deemed the agents of the company, and the latter will be liable to an action for any wrongful act or omission of which they may be guilty (*b*).

New pipes to be laid before old ones disturbed.

But the company may not proceed to make any of these alterations so as to impede the passage of water or gas through the mains or pipes; and, therefore, before they interfere with the existing apparatus, they must provide good and sufficient mains or pipes, syphons, plugs, and all other necessary works, and lay them down ready for use, in a position as little varying from the position of those to be displaced as may be consistent with the construction of the railway, and to the satisfaction of the surveyor or engineer of the company whose works are so altered or removed. If the company cannot agree with this officer, the dispute is to be settled by a justice. (*c*).

The company may not lay down these gas or water-pipes contrary to the regulations of any Act of Parliament relating to the gas or water company; nor lower any road, so as to leave less than eighteen inches depth of covering over the pipes from the surface of the road (*d*).

Where the railway passes over any mains and pipes, the company must construct and maintain a good and sufficient culvert, so as to leave them accessible for repairs (*e*).

Penalty on company for interrupting the supply of gas, &c.

If, in executing their works, a railway company interrupt the supply of any water or gas, they will be liable to a penalty of £20 a day so long as the interruption continues, and the same may be recovered by summary proceeding before two justices. The penalty is to be appropriated to

(*a*) *Drew v. New River Com.* 6 C. & P. 754.

(*b*) *Semple v. London and Birmingham Rail. Com.* 1 Rail. Ca. 480.

(*c*) 8 Vic. c. 20, s. 19.

(*d*) *Idem*, s. 20.

(*e*) *Idem*, s. 22.

the benefit of the poor of the parish in which the obstruction may occur, in such manner as the overseers may direct (a).

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SEC. III.—*Right to vary and restrict the rights of others over their Property.*

In addition to the rights conferred on a railway company to use temporarily, or alter permanently, the property which they do not purchase, they are also empowered, in certain cases, to limit and modify the exercise of the rights of ownership on the part of others.

The most signal instance of this is their power to **Mines.** restrain and regulate the proprietor in working mines.

A railway company will not be entitled to any mines of **Company not entitled to.** coal, ironstone, slate, or other minerals, under any land purchased by them, unless, in the conveyance of the land, it is expressly named and has been purchased; except such portions of it as it may be necessary to dig and carry away, or to use in the construction of the works (b).

Where any person, being owner, lessee, or occupier of **Conditions of working.** any mines lying under the railway, or any of the works, or within the prescribed distance, or (if no distance be prescribed) within forty yards of the railway (c), wishes to

(a) 8 Vic. c. 20, s. 23.

(b) 8 Vic. c. 18, s. 77.

(c) The distance thus prescribed as that within which minerals are not to be worked, may be intended to include all such as lie within the limits of a line taken perpendicularly at a distance of forty yards laterally from the centre of the railway; or such as would be comprehended within a circle of a radius of forty yards, the centre being on the surface of the rail. If the former mode of measuring be adopted, the owner of the mine would be precluded from working it at any depth below, or any height above, the surface of the railway nearer thereto laterally than the prescribed distance; but if the latter be the correct mode of measuring, it may frequently happen that minerals may be worked both below and (in the case of a tunnel) above the line, so long as the works do not come within the forty yards.

work them, he must, before commencing his operations, give thirty days' notice in writing to the company of his intention to do so. On receipt of such notice, the company may cause the mines to be inspected by a person appointed by them for that purpose; and if it appear that the working thereof will be dangerous, or likely to damage the works of the railway, and the company be willing to give compensation, the owner, lessee, or occupier, will be precluded from working them. Any dispute between the parties as to the amount of compensation is to be settled as in other like cases, by arbitration, or by a jury (*a*). If the company do not express their willingness to give compensation before the expiration of thirty days, the party entitled may proceed to work the mines in a workmanlike and proper manner (*b*).

Repair of damage.

If any damage or obstruction be occasioned to the railway company by any improper working of the mines, the parties must repair or remove it, as the case may require, at their own expense; and if this repair or removal be not forthwith done, the company may (even without waiting for the other parties to do the works) execute the same, and recover the cost of it from the parties who have occasioned the mischief (*c*).

Liability for.

But where a railway company, after notice, make no offer to purchase a mine, and the owner proceeds accordingly to work it himself, he will be entitled to do so in the usual manner; and no damage caused to the railway by such customary mode of working the mine can be recovered from the owner thereof. The question in such cases will be—Whether the mine has been worked in an improper manner? Thus, where a Canal Act provided that the canal company should not be entitled to retain coal mines, but required the owners to give notice to the company of their intention to work them within ten yards of the canal, and empowered the company to inspect the mines and to

(*a*) 8 Vic. c. 20, s. 78.

(*b*) *Idem*, s. 79.

(*c*) *Ibid*.

stop the further working of them, paying compensation to the owners, and the works proceeding injury was done to the canal, it was held that the right of the owners to work within ten yards was left as before the Act, if, after notice given by them to the company, the latter did not purchase out their rights; and that, the canal being damaged by the nearer approach of the mine after such notice and non-purchase, no action lay against the coal-owner for such injury, which happened by the default of the company in not purchasing (a).

Where mines extend on both sides of the railway, and the working of them is prevented to some extent by reason of apprehended injury to the railway, the owners, lessees, and occupiers, may make airways, headways, gateways, or water levels, through the mines, measures, or strata, the working of which is prevented, for the purpose of ventilating, draining, and working the mines. If no dimensions or sections be prescribed by the Act, these various works shall not be greater than eight feet wide, and eight feet high, nor shall they be cut or made upon any part of the railway or works, or so as to injure the same or impede the passage thereon (b).

Accommodation works in mines.

Compensation.

The company must, from time to time, reimburse the proprietors of the mines extending on both sides of the railway such additional expense as shall be incurred, and compensate them for such losses as may have been caused, by reason of the severance of the lands by the railway, and make compensation also for the interruption of the continuous working of the mines, and for the restrictions imposed upon them in respect of such operations for the safety of the railway works. Any dispute as to the amount of this compensation is to be settled by arbitration (c).

(a) *Wyrley and Essington Can. Nav. Com. v. Bradley and others*, 7 East, 368. See also, *Dudley Can. Nav. Com. v. Grazebrook*, 1 B. & Ad. 59; *Rex v. Birmingham Canal Com.* 2 B. & Ad. 570; *Rex v. Leeds and Selby Rail. Com.* 3 A. & E. 683.

(b) 8 Vic. c. 20, s. 80.

(c) *Idem*, ss. 81, 82.

General result  
of provisions  
as to mines.

We may gather from the above provisions, that if, after notice given, a railway company makes no offer to purchase the mines, the owners may work them on certain conditions essential for securing the stability of the railroad. These conditions being necessarily injurious to the parties entitled to the minerals, all losses and expenses occasioned thereby are to be reimbursed by the company for whose benefit they are imposed. Therefore, the cost of making airways and other works of that description, rendered necessary by the severance of the lands by the railway, or by restrictions on the mode of working the mines, are to be borne by the company; and the value of all minerals which the proprietors of the mines are precluded from getting lest the railroad should be endangered, must be allowed to them. The following cases have been decided on clauses containing provisions similar to those we have been considering.

Compensation  
how estimated.

With regard to the amount of compensation to which the owner of minerals is entitled, and the time when he must make his claim, the following case, turning on provisions very similar to the above, has been decided. Minerals having been sold by the proprietor to a railway company, the lessee was held entitled to compensation for his interest in them, the amount of such compensation to be computed by estimating the profit to be derived from the mineral when gotten, after deducting the expense of getting it. (a)

When to be  
claimed.

This compensation must, however, be claimed and assessed at the proper time, or it cannot be recovered. By a Local Act, a company was empowered to take lands, with an exception of mines, for a railway; paying the value of the lands, and making compensation for damages sustained by reason of the execution of the works, and for damages, loss, or inconvenience sustained by reason of the execution of any of the powers of the Act; such value and

(a) *Barnsley Canal Nav. Com. v. Twibill*, 3 Rail. Ca. 471.

compensation to be fixed by agreement, or assessed by a jury : mines were to be worked by the owner, so that no damage should be thereby done to the railway ; and in case of damage, the owner was to repair it at his own expense ; or the company, in case of his neglect or refusal, might repair it, and recover the expenses from the owner. The owner of land taken by the company, and for which compensation has been paid, cannot, upon afterwards discovering that a mine to which he is entitled cannot be worked without doing damage to the railway, claim further compensation in respect of the loss sustained thereby. Compensation in respect of such contingent loss should have been claimed at the time of the original agreement or assessment. (a)

Besides compensating the owners and occupiers of the mines for injury and loss which they may sustain by reason of the making of the railway, the company must also make compensation to the parties owning or occupying the lands over the mines, the works of which shall have been interrupted or prevented, for any loss or damage sustained by them by reason of any airway or other works which would not have been necessary had not the working of the mines been restricted by the conditions imposed by the company. (b)

Due to owners,  
&c. of lands  
over mines.

To avoid danger to the stability of the line, the company may at any time, after giving twenty-four hours notice in writing, inspect the mines which are being worked in the neighbourhood of the railway, and for that purpose make use of the apparatus or machinery belonging thereto, and adopt any means which they may deem necessary for ascertaining the distance of the railroad from the part of the mine being (or about to be) worked. (c) For every

Inspection of  
mines.

(a) *Rex v. Leeds and Selby Rail. Com.* 5 N. & M. 246 ; 3 A. & E. 683. In this case, however, the provisions of the Act varied in some respects from those of the Railways Clauses' Act relating to this subject. See also, *Fenton v. Trent and Mersey Navigation Com.* 2 Rail. Ca. 837.

(b) 8 Vic. c. 20, s. 82.

(c) *Idem*, s. 83.

## Penalty.

refusal of the owner of the mines to allow such inspection, a penalty of £20 will be incurred, payable to the company. This penalty is recoverable in a summary manner before two justices. (*a*)

Where, on inspection, it shall turn out that the mines have been worked contrary to the provisions of the Act, the company may give notice to the owners to adopt such means for securing the safety of the railway as they may think fit; and upon their neglect or refusal to execute the works, the company will be at liberty to do so, and to recover the expense thereof from the owners by action in any of the superior courts. (*b*)

(*a*) 8 Vic. c. 20, s. 84.

(*b*) *Idem*, s. 85.



## CHAPTER III.

## EXECUTION OF THE WORKS.

**BEFORE** commencing the execution of the works, corrected plans and books of reference must be duly deposited with the proper parties. If any omission or mis-statement has been made in the books of reference, plans, or schedule of the Act, as to the owners, lessees, or occupiers of any lands, the company, on giving ten days' notice to the parties whose interests may be affected, may apply to two justices for the correction thereof, who shall, if it so appear, give a certificate that the omission or mis-statement arose from mistake, and specify the particulars of such error or omission.

**Preliminaries.**

Mistakes in plans, books of reference, and the schedule of Act how corrected.

The certificate so obtained is to be deposited with the clerks of the peace in the several counties where the lands affected by the alteration shall be situate, and with the parish clerks of the several parishes in England, and with the postmasters of the post towns in, or nearest to, such parishes in Ireland in which the lands lie. This certificate is to be left with the other documents relating to the matter, and the plan, book of reference, or schedule, are to be deemed to be corrected accordingly. (a)

With respect to the alterations made by parliament in the original plans and sections of the railway, it is the duty of the company to deposit (as above) correct plans and sections of such alterations, on the same scale, and containing the same particulars, and subject to the same right of inspection and copying, as the original plan and section of the railway. (b) True copies of the plans and books of reference, with the alterations, or extracts thereof, certified

Plans and sections of alterations made in Parliament.

Certified copies of plans, &c. to be evidence.

(a) 8 Vic. c. 20. s. 7.

(b) *Idem*, s. 8.

to be correct by the Clerk of the Peace, are to be received in all courts of justice, or elsewhere, as evidence of the contents thereof.

Plans of railways in Ireland to be submitted to Drainage Commissioners.

By the 25th section of the Railway Clauses Consolidation Act, (8 Vic. chap. 20) any company authorized by Act of Parliament to construct a railway in Ireland, must, before they commence the execution of the works, submit their plans to the commissioners appointed under the statute 5 & 6 Vic. cap 89, to superintend the execution thereof, in regard to the drainage of lands in Ireland. The commissioners are to examine and report on the nature and extent of the works necessary for drainage, and, on their approval of the company's plans, are to grant a certificate to that effect, without which it will not be lawful for the company to commence their proceedings. (a)

### SEC. I.—*General Powers and Restrictions in the Execution of the Works.*

General powers of a railway company in the execution of their works.

THE general powers conferred on a railway company in the execution of their works, are enumerated in the following section of the 8 Vic. cap. 20, which provides that, subject to the provisions and restrictions in that Act, and the Special Act, and any Act incorporated therewith, it shall be lawful for the company, for the purpose of constructing the railway, or the accommodation works connected therewith, to execute any of the following works, that is to say:

Inclined planes, &c.

They may make or construct in, upon, across, under, or over any lands, any street, hills, valleys, roads, railroads, or tramroads, rivers, canals, brooks, streams, or other waters within the lands described in the said plans, or mentioned

(a) See post, p. 323.

in the said books of reference, or any correction thereof, such temporary or permanent inclined planes, tunnels, embankments, aqueducts, bridges, roads, ways, passages, conduits, drains, piers, arches, cuttings, and fences, as they think proper.

They may alter the course of any rivers not navigable, brooks, streams, or watercourses; and of any branches of navigable rivers, such branches not being themselves navigable, within such lands, for the purpose of constructing, and maintaining tunnels, bridges, passages, or other works, over or under the same, and divert or alter, as well temporarily as permanently, the course of any such rivers, or streams of water, roads, streets, or ways, or raise or sink the level of any such rivers or streams, roads, streets, or ways, in order the more conveniently to carry the same over, or under, or by the side of the railway, as they may think proper.

Alteration of  
course of  
rivers, &c.

They may make drains or conduits into, through, or under any lands adjoining the railway, for the purpose of conveying water from or to the railway.

Drains, &c.

They may make, erect, and construct such houses, warehouses, offices, and other buildings, yards, stations, wharfs, engines, machinery, apparatus, and other works and conveniences, as they may think proper.

Warehouses,  
&c.

They may from time to time alter, repair, or discontinue the before-mentioned works, or any of them, and substitute others, in their stead.

Alterations  
and repairs.

And they may do all other acts necessary for making, maintaining, altering or repairing, and using the railway.

General  
powers.

Provided always that in the exercise of the powers by this or the Special Act granted, the company shall do as little damage as can be, and shall make full satisfaction in manner herein and in the Special Act, and any Act incorporated therewith, provided, to all parties interested, for all damages by them sustained, by reason of the exercise of such powers (a).

Proviso as to  
damages.

(a) 8. Vic. c. 20, s. 16.

The above are the general powers conferred on railway companies in executing their works; and in the latter part of the above section provision seems to be made for damage done to any parties by the construction of the works, and for which compensation may not have been given under the Lands Clauses' Act. The amount of any such compensation must be determined in the manner prescribed thereby.

Modification  
of works.

In addition to these powers, the company may, in certain cases of hardship, be relieved from the necessity of constructing their works in exact conformity with the requirements of the General and Special Acts. Thus, where a strict compliance with the provisions of a Railway Act would be impossible, or attended with inconvenience to the company, without adequate advantage to the public, an appeal may be made to the Commissioners of Railways, should any difference arise as to the construction, alteration, or restoration of any road, or bridge, or other public work of an engineering nature, between the company and the trustees or commissioners having the control of, or being authorized by law to enforce the construction of such road, bridge, or work.

Certificate of  
Commissioners  
of Railways.

Either party, on giving fourteen days' notice to the other of his intention, may make this appeal; and after hearing the parties, the commissioners may certify the mode in which such work shall be done: and being executed in conformity with the certificate, it will be deemed to be executed in conformity with the Act. This certificate will not be granted in any case in which existing private rights and interests might be injuriously affected thereby (a).

Authentica-  
tion of.

Certificates of the Commissioners of Railways are to be authenticated as issued by that body, if they purport to be signed by some officer appointed by them for that purpose, without proof of his authority or of his signature, which are to be presumed until the contrary is proved.

(a) 8 Vic. c. 20, s. 66.

Any such certificate left at one of the principal offices of a railway company, or sent to the secretary by the post, will be deemed to be served upon the company (a). Service of.

The company in the execution of their works must not act capriciously, but are bound so to execute them, as to inflict *as little damage as possible*; and if by any reckless mode of carrying out their plans, injury is done which ought to have been avoided, a Court of Equity will interfere, and restrain them by injunction (b). General restrictions. Company may not act capriciously.

And although a railway company acting *bond fide* are deemed to be the most competent judges of the best mode of forming the line (c), still the legislature will not permit them to do damage to the property of any person, if, by adopting a different mode of construction, it may be avoided; as nothing but absolute necessity can authorise a company to inflict injury on an individual; and any heedless or wanton exercise of their powers, regardless of the rights and convenience of others, is an excess of the authority conferred on them, which is limited, in the provision which regulates the execution of the works, by the words "doing as little damage as may be." (d.) Nor do any avoidable injury.

In addition to the general restrictions in the formation of the line above alluded to, there are others more specific, which deserve notice. Such are those imposed by private agreement with the company, or by the provisions of the General and Special Acts in respect of particular classes of property.

Thus, if any agreement has been made by the company with landowners or others before the passing of the Special Act, in relation to the manner in which the works shall Works to be executed in conformity with agreements.

(a) 8 Vic. c. 20, s. 67. All documents required to be sent to the Commissioners of Railways must either be delivered at their office or forwarded by the post.—Ibid.

(b) *Manser v. East. Coun. Rail. Com.* 2 Rail. Ca. 380.

(c) *Lond. and Birm. Rail. Com. v. Grand Junc. Rail. Com.* 1 Rail. Ca. 238; *Priestley v. Leeds and Manch. Rail. Com.* 2 Rail. Ca. 134.

(d) Per Lord Cottenham C. in *Manser v. East. Coun. Rail. Com.* 2 Rail. Ca. 391.

be executed at any particular part of the line, and such agreement is not in contravention of the provisions of the general Railway Acts, the company will be bound to execute the works in conformity with the terms of their agreement; and a Court of Equity would restrain them by injunction from proceeding in violation of the conditions of their own contract, or enforce specific performance thereof, even though it were not embodied in the Special Act. Agreements with respect to these matters are most frequently entered into by the company with the owners of public works, such as the proprietors of navigations, Drainage Commissioners, and trustees of turnpike roads; but sometimes also with landowners who impose restrictions as to the mode of constructing the works where the line passes through their property, as the condition of their assent to the undertaking (a).

Modes of dealing with particular property.

Works between high and low water-marks, &c.

So where the railway interferes with public or government property, provision is made for securing government control over the company in the execution of the works. Thus works between high and low water marks must be carried on subject to the approval and inspection of the Lords of the Admiralty and Commissioners of her Majesty's Woods and Forests. (b) Nor can any works be constructed on the shore of the sea, or of any creek, bay, or arm of the sea, or navigable river communicating therewith, where the tide flows and reflows, without the consent in writing of the Lords of the Admiralty, as well as of the Commissioners of Woods and Forests. The works must also be constructed according to plans provided, and under such restrictions as may be imposed, by the Lords of the Admiralty and the Commissioners of Woods and Forests.

Should the promoters form any part of the line without such consent, or in contravention of their instructions, the

(a) See *Edwards v. The Grand Junction Rail. Com.* 1 Rail. Ca. 173; *Storer v. The Great Western Rail. Com.* 3 Rail. Ca. 106; 2 Y. & C. 48.

(b) 8 Vic. c. 20, s. 17.

Lords of the Admiralty may abate and remove all such constructions, and restore the site to its former condition, at the cost of the company: such costs are to be ascertained by two justices, and are recoverable in the same manner as other penalties imposed by the Act<sup>(a)</sup>; namely, by distress on the goods of the company, if not paid within seven days after demand <sup>(b)</sup>.

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SEC. II.—*Deviations from the proposed Line.*

WHEN the plans prepared by a company have been sanctioned by Act of Parliament, the latter will not be permitted, in constructing the line, to deviate from those plans, except within certain limits, and subject to certain conditions and restrictions. Deviations.

The deviations allowed to be made may be either deviations from the level of the railway, as referred to the datum line marked on the sections, and the consequent variation of the gradients; or deviations laterally from the line of the railroad as shown on the plans, including the alteration of the radius and direction of curves; or, lastly, they may be alterations in respect of tunnels and viaducts, or the substitution therefor of cuttings and embankments.

A company may not deviate, in any part of the line, from the levels of the railway, as referred to the common datum line described in the section, to a greater extent than five feet; nor to a greater extent than two feet in passing through a town, village, street, or land continuously built upon, without the previous consent, in writing, of the owners and occupiers of the lands in which the deviation is proposed to be made. Where a street or

<sup>(a)</sup> Deviations in respect of levels and gradients.

<sup>(a)</sup> 8 Vic. c. 20, s. 17.

<sup>(b)</sup> *Idem*, s. 140.

public highway is to be affected by such deviation, the consent of the trustees or commissioners having the control thereof must be obtained ; or, if there be no trustees or commissioners, then the consent of two or more justices of the peace, in petty sessions assembled for that purpose, and acting for the district in which the street or highway in question is situate.

Fourteen days' notice of the holding of a petty sessions for this purpose must be given in some newspaper circulating in the county, and must also be affixed on the door of the parish church, or other place on which notices are usually affixed.

So where the proposed deviation will affect any public sewers, canal, navigation, gas works, or water works, the consent of the commissioners or proprietors thereof, as the case may be, must be previously obtained.

Lowering of  
embankments,  
&c.

There are some deviations from the level sanctioned by Parliament which will, however, be permitted without the consent of any parties. Thus the company may lower to any extent any solid embankment, or viaduct, provided they leave the proper height of headway below as prescribed by their Act, wherever roads, streets, or canals, pass under the railway. (a)

Public notices  
of proposed  
deviation.

If the company wish to make any greater deviation from the level of the line than the five feet or two feet, they must, after having obtained the consent of the owners and occupiers above mentioned, give three weeks' public notice thereof, once, at least, in two newspapers, or twice in one newspaper, circulating in the district or neighbourhood in which the deviation is proposed to be made.

Appeal.

The owners of the lands prejudicially affected by the proposed deviation are at liberty, at any time before the deviation is commenced, after giving ten days' notice thereof to the company, to apply to the Commissioners of Railways to decide whether, having regard to the interests

(a) 8 Vic. c. 20, s. 11.



of the applicants, it is proper that the proposed deviation should be made. The Commissioners of Railways may, if they think fit, entertain and decide the question, and give a certificate in writing either to authorise or disallow the proposed works, and they may sanction their execution, either simply or with such modifications and conditions as to them may appear right. But when such a certificate is once granted, the company can only make the proposed deviation in conformity therewith (a).

Subject to the provisions in regard to altering levels, the company may improve the inclination or gradients of the railway to any extent, and may increase them as follows (that is to say): in gradients of an inclination not exceeding one in a hundred, to any extent not exceeding ten feet per mile, or to such further extent as the Commissioners of Railways may certify to be consistent with the public safety, and not prejudicial to the public interest; and in gradients of or exceeding the inclination of one in a hundred, to any extent not exceeding three feet per mile, or to any further extent which shall be so certified as aforesaid by the Commissioners of Railways (b).

Alteration of  
gradients.

It would appear from the above provision, that a railway company may, if they think fit, and without the consent of any persons, make deviations from the level of the line to the extent in any place of not more than five feet; and in streets and places continuously built upon, of not more than two feet. So they may lower solid embankments and viaducts more than five feet, or two feet, without any consent, if the proper headway be left below.

Recapitulation.

But if they propose to deviate from the original level more than five feet, or two feet (as the case may be), then, in addition to the sanction of the owners, or of the justices in petty sessions, or of the commissioners or

(a) 8 Vic. c. 20, s. 12.

(b) *Idem*, s. 14.

trustees whose consent may be required, the company must also advertise their intention to deviate as above mentioned. If application is made to the Commissioners of Railways, and the board decide that the deviations may be made, under certain conditions, and with certain modifications, the company must either relinquish the proposed alterations, or carry them out as the certificate directs. If the commissioners refuse to entertain or decide the application, and the company persist in executing the works with the proposed deviations, a mandamus might be obtained by the owners of the lands, commanding them to execute the works according to the original plans. So, if the certificate of the commissioners were disobeyed, a mandamus would be the only mode of compelling obedience, as the commissioners would seem to have no authority to enforce their own order.

(b) Deviations  
from the line  
of railway.

The company may deviate from the line delineated on the plans, provided that no such deviation shall extend to a greater distance than the limits of deviation therein described. Where a railway passes through a town, village, or lands continuously built upon, the deviation must not exceed ten yards, and elsewhere it must not exceed one hundred yards. In those deviations, however, the line must not be made to extend into the lands of any person, whether owner, lessee, or occupier, whose name is not mentioned in the Books of Reference, without the prior consent in writing of such person, unless the name shall have been omitted by mistake. (a)

In these cases of unintentional error which the company are anxious to correct, they must give ten days' notice to the parties to be affected by the correction, and may then apply to two justices, who, if satisfied that the omission was accidental, may certify the same, stating the particulars of the omission. On the deposit of this certificate with the clerks of the peace, or other officers appointed to

(a) 8 Vic. c. 20, s. 15.

receive the same, the Book of Reference is to be deemed corrected. (a)

Although the Standing Orders of the two Houses of Parliament provide that all lands included within the limits of deviation shall be described on the plans, and scheduled, and proper notices be served upon the owners and occupiers, yet they do not prescribe any distance beyond which those limits may not extend. The effect of the enactment above cited, however, is to confine the lateral deviations of the line to ten yards, or one hundred yards (as the case may be), provided such deviations are not made without consent into the lands of persons not named in the Book of Reference. Should any alteration have been made in the plans by Parliament, and the limits of deviation were not made sufficiently large, the company may be precluded from availing themselves of the power conferred as above, in consequence of the omission from the plans and books of reference of the lands into which it might be desirable to deviate. Hence it may be worthy of consideration in certain cases, whether more than one hundred yards should not be taken on the plans as the limit of deviation.

The company are empowered to diminish the radius of any curve described in the plan to any extent which shall leave a radius of not less than half a mile, or to any further extent authorised by a certificate as above mentioned from the Commissioners of Railways. This power will be limited in its exercise by the provisions made in respect of lateral deviations.

Alteration of curves.

The time within which the company can elect to deviate from the line, if there be no period expressly mentioned in the Special Act for that purpose, would doubtless be held to continue as long as the company were privileged to exercise compulsory powers for the purchase of land, which by the Lands' Clauses Consolidation Act is

Time within which deviation to be made.

(a) 8 Vic. c. 20, s. 7. See also, *Taylor v. Clemson*, 3 Rail. Ca. 65; 2 Q. B. 978.

fixed at three years from the passing of the Special Act. On this point, see the *River Don Navigation Company v. The North Midland Railway Company* (a).

Same rights, &c., attach in respect of deviated as original line.

Where the company are allowed to deviate from their line within certain limits, and under certain conditions, the same rights and powers will be incidental to the deviated as to the original line. Therefore, where by a clause in a Railway Act it was provided that the lands to be taken for the line of the railway were not to exceed twenty-two yards in breadth, except in places required (*inter alia*) for embankments and cuttings; and by another clause (which gave powers to deviate in the line and section), the deviation from the line delineated on the plan deposited with the clerks of the peace was limited to one hundred yards: it was held that the company were not limited to one hundred yards in those places in the deviation required for embankments and cuttings, but only in the actual line of the railway; and that the line or centre, from which measurements were to be made, was the *medium filum* of the twenty-two yards of land to be taken, and not of the space between the two rails (b).

Who may object.

Those persons only whose interests are injuriously affected, or whose rights are invaded, by the deviation from the line by the company, can obtain the interference of a Court of Equity. It must appear that the complainant as an individual suffers by the illegal Act complained of, and not only that he is affected by it as one of the public (c).

Where a company exceeds its powers, either by deviating beyond the limits allowed, or by deviating without their consent into the lands of persons whose names were omitted from the Book of Reference (and which omission had not been supplied by two justices in the manner pre-

(a) 1 Rail. Ca. 134.

(b) *Doe d. Payne, v. Bristol and Exeter Rail. Com.* 2 Rail. Ca. 75; 6 M. & W. 320.

(c) *Lee v. Milner*, 2 Y. & C. 611.

scribed by the Act), the proper remedy is an action of trespass (a).

Where the plans of a railway as approved by Parliament show a tunnel or viaduct at any point on the line, the company are bound to execute it accordingly, unless the owners, lessees, and occupiers of the land through or over which it was intended to be made, shall consent that an open cutting or embankment shall be substituted in the place thereof (b). Nevertheless, it will be lawful for the company to make a tunnel, not marked on the plan or section, instead of a cutting, or a viaduct instead of a solid embankment, if authorised by a certificate from the Commissioners of Railways (c).

(c) Deviations in respect of tunnels and viaducts.

### SEC. III.—*Crossing, Diverting, &c., Turnpike and other Roads.*

IN addition to the various matters already mentioned as connected with the formation of the line of railway, many others are made the subjects of specific enactments in the general Railway Acts, and in the Special Acts. Of several of the most important we propose, before dismissing this part of the subject, shortly to treat; and, first, as to crossing, diverting, &c., turnpike and other roads.

It is a general rule that where the line of a railway crosses the line of a turnpike road, or public highway, either the railway should be carried over the road, or the road over the railway, as may be most convenient under the circumstances, regard being had to the respective levels; the company not being permitted to cross the road on a level without the special permission of the Legislature, and clauses to that effect inserted in the Special

(a) Crossing over or under roads.

(a) *Reg. v. Bristol and Exeter Rail. Com.* 2 Rail. Ca. 99; 11 A. & E. 202.

(b) 8 Vic. c. 20, s. 13.

(c) *Idem*, s. 14.

Act. Wherever the line is carried over or under the highway, the company are bound to make the bridge of the height and width, and with the ascent or descent, by their Act prescribed. They are, moreover, at all times thereafter to maintain and repair the bridge at their own expense, and the immediate approaches, and all other necessary works connected therewith.

In cases where railways now cross turnpike and other roads on a level, and the company are willing to carry them over or under the railway at their own expense, but are not empowered to do so by their Acts, the Commissioners of Railways may give the requisite authority for that purpose, if they are satisfied that the safety of the public will be thereby promoted, and at the same time no private existing rights or interests be violated, without adequate compensation. All interested parties must be heard before the commissioners decide, and they may then accede to the proposal of the company simply or subject to such conditions and modifications as to them may appear right (a).

(b) Crossing roads on a level.

The company may, with the consent of two or more justices in petty session, carry the railway across any highway other than a public carriage road on the level (b). Fourteen days' notice of the holding of a petty session, at which application is intended to be made for this purpose, must be given in some newspaper circulating in the county, and also be affixed to the door of the parish church, or other place where notices are usually affixed (c). Parties feeling themselves aggrieved by this decision of the justices, may appeal to the quarter sessions. Such appeal must be entered within four months next after the making of the order, and ten days' notice thereof, stating the nature and grounds of such appeal, must be given to the opposite party. The appellant must also enter into recognizances

(a) 5 & 6 Vic. c. 55, s. 13.

(b) *Idem*, s. 46.

(c) *Idem*, s. 59.

with two sufficient sureties before a justice conditioned duly to prosecute such appeal (*a*).

Where a railway crosses any highway other than a public carriage road on the level, the company must at their own expense provide and maintain proper approaches, guarded with sufficient fences and hand-rails, and supplied with the necessary gates, if the road be a bridle way, or gates or stiles if it be a footway (*b*).

On failure of the company to make these approaches, two justices may, on the application of the surveyor of the road, or of two householders within the parish or district in which the crossing shall be situate, after ten days' notice to the company, order them to complete such approaches within a time to be limited in the order. On the company's default, they may be convicted in a penalty of £5 for every day they fail so to do. This penalty is to be applied at the discretion of the justices in the execution of the required works (*c*).

When, under the provisions of their Act, a company are required to maintain or keep in repair any fence, approach, gate, or other work executed by them, and any such work shall be out of repair, two justices may order them, after ten days' notice, and on the complaint of the surveyor, or of two householders in the district, to put the same into repair within a specified time. On their neglect or refusal to comply with this order, they will be liable to a penalty of £5 a day, which may be applied in the execution of the works under the direction of the justices (*d*).

Where the company are permitted by their Special Act to cross any turnpike road or public highway on a level, they must at their own expense erect, and at all times maintain, good and sufficient gates across such road, on each side of the railway, where the same shall communicate therewith; and employ proper persons to open and shut them.

(*a*) 8 Vic. c. 20, s. 60.

(*c*) Idem, s. 62.

(*b*) Idem, s. 61.

(*d*) Idem, s. 65.

The gates are to be kept constantly shut across the road on both sides of the railway, except when they are opened for the passage of cattle or vehicles. The gates are to be of such dimensions as to form a barrier across either the highway or railway, and to be so constructed as that, whether they be closed across the one or the other, they shall fence in and enclose the railway, so that no cattle can stray on to the line from the road (a).

The legal meaning of the words "turnpike road," is a road on which parties have by law a right to erect gates and bars for the purpose of taking toll, and of refusing the permission to pass to all persons who refuse to pay (b).

In cases where the Board of Trade are of opinion that it would be more conducive to the public safety to have the gates at such crossing made to close across the railway instead of across the road, they are to be kept so closed, and opened only to allow the passage of trains and engines along the line (c).

The person having the charge of any gate is to be liable to a penalty of 40s., if he neglect to close it as soon as the vehicles, cattle, train, or engine, shall have passed through. This penalty may be recovered as in other cases (d).

(c) Altering  
and diverting  
roads.

Before any carriage road, horse road, tram road, or railway, either public or private, is crossed, cut through, raised, sunk, or used under the powers of a Railway Act, so as to render it impassable or dangerous, or extraordinarily inconvenient to passengers or carriages, or to the persons entitled to the use thereof; the company shall, before the commencement of any such operations, cause a sufficient road to be made instead of the road to be interfered with, and shall at their own expense maintain such substituted road in a state as convenient for passengers

Substituted  
road.

(a) 8 Vic. c. 20, s. 47.

(b) Northam Bridge and Roads Com. v. London and Southampton Rail. Com. 6 M. & W. 428; 1 Rail. Ca. 665.

(c) 8 Vic. c. 20, s. 47.

(d) Idem, s. 140.



and carriages as the road so interfered with, or as nearly so as may be (a).

If the company fail to make another sufficient road before interfering with the existing road, they will be liable to a penalty of £20 a day for every day during which such substituted road shall not be made after the existing road shall have been interrupted. This penalty may be recovered with costs by action in any of the superior courts, and is to be paid to the trustees or commissioners, surveyor, or other person having the management of such road, if a public road, and shall be applied for the purposes thereof; or, in the case of a private road, shall be paid to the owner thereof (b). Penalty.

For special damage to any person having a right of way over the road in question, the company are liable to an action on the case at the suit of the injured party, who may recover compensation for such damages together with his costs in any of the superior courts, whether he shall have previously sued for the above penalty or not, and without prejudice to the right of any party to sue for the same (c). Damages.

If a railway company under the powers of their Act obstruct a highway before providing a good and sufficient substituted road, in addition to the penalties imposed by the statute, upon the company, their servants will be liable to an indictment at common law for such obstruction. Indictment.

By a Railway Act a company was empowered to divert and alter the course of any roads or ways, in order the more conveniently to carry the same over, or under, or by the side of the said railway. By one of the sections it was enacted that in all cases wherein in the exercise of such power, any part of the carriage road, &c., should be found necessary to be cut through, raised, sunk, taken, or so much injured as to be impassable, or inconvenient for pas-

(a) 8 Vic. c. 20, s. 53.

(b) *Idem*, s. 54.

(c) *Idem*, s. 55. See also *Collinson v. Newcastle and Darlington Rail. Com.*, 1 Car. & K. 546.

sengers, or carriages, &c., or to the persons entitled to the use thereof; the company should at their own expense, before any such road, &c. should be so cut through, &c., cause a good and sufficient carriage road, &c., to be set out and made instead thereof; as convenient for passengers and carriages as the former road, or as near thereto as might be. The company had diverted a highway and obstructed the old road by building a wall across it, and had made a new road, which was neither as convenient to the public as the old one, nor as near thereto as might be. It was held that the servants of the company were indictable, in the common form, for obstructing the highway (*a*).

**Mandamus.**

The Court of Queen's Bench will also grant a mandamus compelling a railway company to set out and make a good and sufficient substituted road, as convenient for passengers and carriages, and for all purposes as the former. And where a question arose as to the sufficiency and expediency of such substituted road, Lord Denman told the jury that he considered that every right of way that was rendered less convenient for passengers under any circumstances, in the case of a drift way as well as any other, was a proper subject for inquiry by the jury. "That although the company may have made the new road better than before, in some respects in which the old road might have been made as convenient by proper care and attention, yet, if by making it narrower, it is in that respect less convenient to the public, the other advantages of the new road over the old should not be considered an equivalent. And it appeared to him to be a matter of necessity, that contracting a road makes it less convenient, and that the Act intended to comprise passengers under all circumstances, with flocks and herds, as well as horses and carriages (*b*).

**Injunction.**

Or an injunction will be granted on the application of

(*a*) Reg. v. Scott and others, 3 Rail. Ca. 187; 3 Q. B. 543.

(*b*) Reg. v. Lond. and Birm. Rail. Com. 1 Rail. Ca. 325. N. P. Sittings in Middlesex, Feb. 1839.

a party injured by the conduct of the company in stopping up or rendering impassable an existing road before another has been provided equally convenient; although it be a public nuisance for which an indictment would lie. A railway company was empowered to cut through public and private roads, provided that if the same should be thereby rendered impassable, or inconvenient for the persons entitled to the use thereof, the company should previously cause another sufficient road to be made instead thereof, and equally convenient, or as near thereto as might be. On the first of June the company, as it was alleged, had completely cut through a certain public road without having complied with the provisions of the Act, by previously causing such a substituted road to be made, whereby the plaintiffs sustained special damage. On the twentieth of June the plaintiffs filed their bill, praying an injunction to restrain the company from continuing to cut through, or stop up the road, and for other relief; and it was held by the Vice Chancellor, on a motion for an injunction, that in the case stated the Court would not only restrain the further cutting of the road, but enjoin the company from continuing to stop up the same, and thereby compel them to restore it to its original state (*a*).

But when the company have failed to make a substituted road according to the provisions of their Act, before using the old one for their own purposes, it would seem that the trustees of the latter will not be justified in obstructing the company in their use of it; but their remedy would be to apply either to a Court of Equity for an injunction against the company, or to a Court of Law, for a *mandamus* (*b*). On such an application being made, the company cannot be permitted to allege expence or inconvenience, as grounds for not complying with the provisions of their Act; nor will the fact of their having made a

(*a*) *Spencer and another v. Lond. and Birm. Rail. Com.*, 1 Rail. Ca. 159.

(*b*) *Lond. and Brighton Rail Com. v. Blake*, 2 Rail. Ca. 322.

road, if it be more circuitous and less convenient than the one which their Act obliges them to substitute for the original road, be a sufficient compliance therewith. A Court of Equity will not deprive a party of what he is entitled to, because it is inconvenient to another party; and it is the misfortune of the company if they have failed to obtain those powers which may be necessary for the convenient execution of their works (*a*).

A liberal interpretation will be put on remedial clauses in Railway Acts, in respect of roads to be substituted for those taken by the company; so as to give a party injured by the execution of the works, the remedy which he was intended to have. Thus a *bodily* injury to a road or wharf is not necessarily the only injury for which the party may recover damages. "The Hull and Selby Railway Act" provides that in all cases in which in the exercise of any of the powers thereby granted, any part of any quay or wharf, either public or private, shall be found necessary to be cut through, &c., or so much injured as to be impassable or inconvenient for the transporting, conveying, landing, shipping, or depositing of any goods or merchandise; the company shall at their own expense, before any such quay or wharf be cut through or injured as aforesaid, cause another good and sufficient quay or wharf to be set out and made instead thereof, as convenient for the transporting, conveying, landing, shipping, or depositing goods or merchandise as the quay or wharf so to be cut through, taken, or injured as aforesaid, or as near thereto as may be. The railway was made to pass in front of a wharf belonging to the plaintiff, between it and low water mark, separating the frontage from the water, thereby causing inconvenience and risk to the plaintiff in loading and unloading vessels; and it was held that the plaintiff's wharf

(*a*) Per Cottenham C. in *Kemp v. The London and Brighton Rail. Com.* 1 Rail. Ca. 507. See also *Coates v. Clarence Rail. Com.* 1 Russ. & M. 181; and *Spencer v. London and Birmingham Rail. Com.* 1 Rail. Ca. 159.

was injured within the meaning of the Act, and that he was entitled to have a new wharf erected for him by the company, and was not bound to come in under the ordinary compensation clause (a).

It has, however, been held, that under a clause in a Railway Act similar to those now under consideration, the execution of the works is to be carried on with a view to the fit accommodation of the company and the public. By a Railway Act, a company were empowered to divert or alter any roads or ways in order the more conveniently to carry the same over or under the railway. The company, in carrying a road under the railway, had erected a skew bridge, which diverted the road to an angle of forty-five degrees instead of thirty-four degrees, which was the angle made at that particular point by the old line of road. At the trial of an indictment against the company's engineer for so doing, the learned judge directed the jury that, if the public sustained inconvenience by the alteration, they should find for the crown; but that, if the work was done in a mode in which an experienced engineer would do it, having reasonable regard to the interest both of the company and the public, the company had the right to make such diversion. The jury having found for the defendant on the ruling, the Court refused to grant a new trial; and it was intimated that "*conveniently*" means conveniently both for the company and the public (b).

Although in this case a favourable summing up procured a verdict for the company, yet, inasmuch as in cases where the construction of any engineering work of a public nature, in conformity with the requirements of their Act, would be of serious inconvenience to the company without adequate advantage to the public, the company may be relieved by an appeal to the Commissioners of Railways. It would seem to be the better course, in all cases of dis-

(a) *Bell v. Hull and Selby Rail. Com.* 2 Rail. Ca. 279; 6 M. & W. 699.

(b) *Reg. v. Sharpe*, 3 Rail. Ca. 33.

pute on this subject, for the company to get from the Commissioners authority for varying the works, rather than endeavour to justify any deviation by doubtful interpretations of the words of their Act. (*a*)

Original road  
to be restored  
if possible.

Wherever a road has been interfered with by a railway company, in the course of executing the works, and such road can be afterwards restored consistently with the formation and use of the railway, the company are bound to restore it. In such case, they must leave it in as good condition as it was in when they first interfered with it, or as near thereto as may be.

Or substituted  
road put into  
permanent  
and substan-  
tial repair.

If the road cannot be restored consistently with the use of the railway, then the company must put the substituted road into a permanently substantial condition, equally convenient as the former road, or as near thereto as circumstances will allow (*b*). As to the interpretation to be put upon this clause, see the cases of the *Queen v. The London and Birmingham Railway Company*, and the *Queen v. Sharpe*, cited above (*c*).

Limited period  
therefore.

The restoration of the former road, or the proper repair of the substituted road, must be completed, in the case of a turnpike road, within six months after the first interference with the original road; and, in the case of any other than a turnpike road, within twelve months from the time of such interference. The commissioners and trustees having the management of the road in question, may, however, by writing under their hands, consent to an extension of the period.

Extension of.

Penalty.

On failing to restore or repair such road, as the case may be, within the prescribed period, the company will be liable to forfeit £5 per day to the trustees, commissioners, or surveyor of the road interfered with, if it be a public road, or to the owner, if it be a private road, for every day after the expiration of such period during which the restoration or repair remains unfinished. This penalty

(*a*) See 8 Vic. c. 20, s. 66, and *supra*, p. 290.

(*b*) 8 Vic. c. 20, s. 56.

(*c*) *Supra*, pp. 304 and 307.

is recoverable before two justices, who may order it to be laid out in executing the work in respect whereof it was incurred. (a)

Where the company, in the execution of their works, use or interfere with any existing road, they must repair all the damage done by them to such road. If any dispute arise in regard to such repairs, it is to be settled by two justices, who may direct such repairs to be done, and within such period as they think right; and may impose a penalty of £5 per day on the company for refusing to carry such repairs into effect. This penalty is to be paid to the surveyor or other person having the management of the road, if it be a public road, and be applied for the purposes of such road, or to the owner, if it be a private road. In determining any question relating to the repairs under consideration, the justices are to have regard to, and make due allowance for, any tolls that may have been paid by the company on such road in the course of using it (b).

Dispute as to repairs.

With regard to the height and dimensions of bridges constructed for carrying the railway over any road, it is, by the 49th section of the Railway Clauses Consolidation Act, provided that "every bridge to be erected for the purpose of carrying the railway over any road, shall (except where otherwise provided by the Special Act) be built in conformity with the following regulations (that is to say): the width of arch shall be such as to leave thereunder a clear space of not less than thirty-five feet, if the arch be over a turnpike road, and of twenty-five feet if over a public carriage road, and of twelve feet if over a private road. The clear height of the arch from the surface of the road shall not be less than sixteen feet for a space of twelve feet, if the arch be over a turnpike road, and fifteen feet for a space of ten feet if over a public carriage road; and in each of such cases, the clear height at the springing of the arch shall not be less than twelve feet.

(d) Construction of bridges and viaducts to carry railway over road.

(a) 8 Vic. c. 20, s. 57.

(b) *Idem*, s. 58.

The clear height of the arch for a space of nine feet shall not be less than fourteen feet over a private carriage road.

What is required of the company by this section is, that they shall, in the cases specified, form arches of the respective widths of thirty-five, twenty-five, and twelve feet, clear; and should the road crossed exceed these widths respectively, they are not compelled to construct an arch having a span equal to the width of the road; but, provided they have an arch of the prescribed span, they may erect piers on the road, and have several arches for the purpose of carrying the railway over the existing highway (*a*). Although the Legislature will not compel a company, where the road to be crossed is of a greater width than that prescribed for the span of the arch, to carry the railway on one arch, still it will enforce the construction of the line strictly in compliance with the Act. But the Act will be construed reasonably. Thus, where a railway company were compelled by their Act to carry their line across a road by a bridge thirty feet span, so as to form a clear carriage road of twenty-four feet, and footpath of six feet wide, and also to have the height of the bridge eighteen feet clear from the surface of the road, by lowering the bed of the road to a certain inclination, and, in the construction of the works, they sunk the carriage road to the required depth, but not the footpath; it was held (in error, reversing the decision in the Court below) that they had complied with the Act, as the words "bed of the said road" related to the carriage way only (*b*).

To carry road  
over railway.

It is further provided, in regard to bridges over railways, that every bridge erected for carrying any road over the railway shall (except as otherwise provided by the Special Act) be built in conformity with the following regulations; that is to say:

(*a*) *Attor. Gen. v. Lond. and Southampton Rail. Com.* 9 Sim. 78; 1 Rail. Ca. 302.

(*b*) *Manch. and Leeds Rail. Com. v. Reg.* 3 Rail. Ca. 633.



The road over the bridge shall have a clear span between the fences thereof of thirty-five feet, if the road be a turnpike road, and twenty feet if a public carriage road, and twelve feet if a private road.

In cases, however, where the average available width for the passage of carriages of any existing roads, within fifty yards of the points of crossing the same, is less than the width above prescribed, the bridges need not be of a greater width than the roads, provided that such bridges are never of less width than twenty feet, in the case of a turnpike or public carriage road. Excepted cases.

And also, if the width of the road be afterwards increased, the company shall widen the bridge at their own expense to such an extent as the trustees of the road may require, not exceeding the width of the road, or the maximum width above prescribed (a).

Where the maximum width of a bridge is less than that of the road, the company may not contract the latter in the approaches to the bridge by narrowing it between the wing walls and parapets which extend beyond the span of the bridge over the railway (b).

Where a company were building a bridge not in conformity with the provisions of their Act, it was held that a mandamus would lie to compel them to build it in the prescribed manner, although the Act gave the plaintiff power in such case, on application to justices, to obtain an order enabling him to build the bridge at the company's expense (c).

The descent made in the road, in order to carry the same under the bridge, or the ascent, in order to carry it over the bridge, shall not be more than one foot in thirty feet, if the bridge be over a turnpike road, one foot Inclinations roads.

(a) 8 Vic. c. 20, s. 51.

(b) Reg. on prosecution of Inhabitants of Pinner, v. Lond. & Birm. Rail Com. 1 Rail. Ca. 317. See also, Reg. v. Birmingham and Gloucester Rail. Com. 2 Rail. Ca. 694 ; 2 Q. B. 47.

(c) Reg. v. The Norwich and Brandon Rail. Com. 15 L. J. N. S. 24, Q. B.

in twenty, if over a public carriage road, and one foot in sixteen feet if over a private carriage road, not being a tramroad or railroad; or if the same be a tramroad or railroad, the descent or ascent shall not be greater than the prescribed rate of inclination; and if no rate be prescribed, the same shall not be greater than as it existed at the passing of the Special Act (*a*).

Existing inclinations need not be improved.

If, however, the mean inclination of any road within two hundred and fifty yards of the point of crossing the same, or the inclination of such portion of the road as may require to be altered, or for which another road, shall be substituted, shall be steeper than the inclination above prescribed; then the company will not be bound to improve such existing inclination (*b*).

A company will not be precluded from exercising the powers thus conferred on them to alter the existing levels of roads, for the purpose of more conveniently carrying them over or under the railroad, although their exercise may be in some respects and to some extent inconvenient and detrimental. Thus where a railway company were empowered in the execution of their works to "raise and sink roads or ways, in order the more conveniently to carry them over or under, or by the side of the railway, and, in the case of a bridge for carrying the railway over a road, were to make the arch of a certain specified height from the surface of the road; it was held that they were authorised to sink the original surface of a turnpike-road, in order to give the specified elevation to the arch of a bridge, although the effect, from the peculiar situation of the road, would be, to render it liable to be occasionally flooded (*c*).

Fences.

A good and sufficient fence is to be made on each side of every bridge, by which a road is carried over a railway at the expense of the company—such fence is not to be

(*a*) 8. Vic. c. 20, s. 49.

(*b*) *Idem*, s. 52. See also, Standing Orders, H. C. 51 and 97.

(*c*) *Aldred and others, v. North Midland Rail. Com.* 1 Rail. Ca. 404.

less than four feet high, and on each side of the immediate approaches of the bridge not less than three feet (a).

Where any bridge or fence which is to be maintained by the company is out of repair, on complaint by the surveyor of the road, or of two householders in the district, and ten days' notice to the company, two justices may order the necessary repairs to be done within a certain specified time. If the company fail to obey such order they will be liable to a penalty of five pounds a day, which shall be applied in the execution of the necessary works at the discretion of the justices (b).

Disputes as to repairs to be settled by two justices.

We have already seen (c), that disputes as to the mode in which bridges and other engineering works are to be constructed, are to be settled by the Commissioners of Railways on the application of either party.

Where the trustees and commissioners of any turnpike road, or the surveyor of any highway, apprehend danger to the passengers on such road, in consequence of horses being frightened by the sight of engines or carriages travelling upon the railway, they may apply to the Commissioners of Railways upon the subject, after giving fourteen days' notice thereof to the company. If it shall appear to the commissioners that such danger might be obviated or lessened by the construction of any works in the nature of a screen near to the road, they may certify to that effect, and require the company to execute the works within a certain time after the service of the certificate, under a penalty of five pounds a day to the commissioners, trustees, or surveyor, for every day during which the works remain incomplete after the expiration of the period appointed by the commissioners.

Screens for turnpike roads.

These screens will probably diminish the risk of accidents, for the consequences of which, the law afforded no means of recovering compensation. For where the locomotive engine on a railroad running parallel to and close

(a) 8 Vic. c. 20, s. 50.

(b) *Idem*, s. 65.

(c) See *supra*, p. 290.

alongside of a turnpike-road, frightened the horses of persons using it as a carriage road, it was decided that the company were not indictable as for a nuisance, inasmuch as an interference to that extent with the right of the public, must be taken to have been contemplated and sanctioned by the legislature, when they gave an unqualified right to use engines on the railway(b).

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SEC. IV. — *Works for the accommodation of adjoining Lands.*

Nature of accommodation works.

WITH respect to works for the accommodation of lands adjoining the railway, it is provided by the sixty-eighth section of the Railways' Clauses Consolidation Act, as follows, "The company shall make and at all times thereafter, maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway ; (that is to say,)

To give access to lands.

Such and so many convenient gates, bridges, arches, culverts, and passages, over, under, or by the sides of, or leading to or from the railway, as shall be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway shall be made; and such works shall be made forthwith, after the part of the railway passing over such lands shall have been laid out or formed, or during the formation thereof.

To enclose railway.

Also sufficient posts, rails, hedges, ditches, mounds, or other fences for separating the land taken for the use of the railway from the adjoining lands not taken, and protecting such lands from trespass, or the cattle of the owner or occupiers thereof from straying thereout, by reason of the railway, together with all necessary gates, made to

(a) *Rex v. Pease*, 4 B. & Ad. 30 ; 1 N. & M. 690.

open towards such adjoining lands, and not towards the railway, and all necessary stiles; and such posts, rails, and other fences shall be made forthwith after the taking of any such lands, if the owner thereof shall so require, and the said other works as soon as conveniently may be."

With respect to the gates to be provided by the company for the purpose of giving the owners of lands adjoining the line access thereto, it is provided by the Railways' Clauses Act, that if any person omit to shut and fasten any gate set up at either side of the railway for the accommodation of the owners and occupiers of adjoining lands, as soon as the cattle, &c., have passed through, he will be liable to forfeit for each offence the sum of forty shillings, recoverable as in the case of other penalties incurred under the Act (a).

Also all necessary arches, tunnels, culverts, drains, or other passages, either over or under, or by the sides of the railway, of such dimensions as will be sufficient at all times to convey the water as clearly from the lands lying near or affected by the railway as before the making of the railway, or as nearly so as may be; and such works shall be made from time to time as the railway works proceed.

To afford passage for water.

Also proper watering places for cattle, where by reason of the railway, the cattle of any person occupying any lands lying near thereto, shall be deprived of access to their former watering-places, and such watering places shall be so made, as to be at all times sufficiently supplied with water as theretofore, and as if the railway had not been made, or as nearly so as may be; and the company shall make all necessary watercourses and drains, for the purpose of conveying water to the said watering places. Under a similar clause in a Special Act, the Court issued a mandamus to the company whose line had intersected certain closes of the plaintiff in which there were ponds,

Watering-places for cattle.

(a) 8. Vic. c. 20, s. 75.

the access to which was cut off from the several portions by the railway, commanding them to make proper watering-places in such closes respectively, which they refused to do. On a traverse of the return to this mandamus, a doubt was expressed whether the statute applied at all to cases where the fields in which the watering-places were situated, were actually intersected by the railway; and whether the damage was not a matter of compensation under the Act; but it was held that, at all events, the writ was erroneous in ordering the company to do more than the Act required, namely to make a pond in each of the several portions of the closes, which had been cut off from the residue of such closes, and that there was nothing on the face of the writ to shew that one watering-place would not have been sufficient and proper for the whole of the severed portions (*a*).

Disputes.

Penalty on company.

The company cannot be required to make accommodation works in such a manner, as would prevent or obstruct the working or using of the railway (*b*), nor to make any accommodation works with respect to which, the owners and occupiers of the lands shall have agreed to receive, and shall have been paid compensation instead of the making of them (*c*). Any disputes as to the nature and number of the accommodation works, or as to their repair are to be settled by two justices, who shall also determine the time within which such works shall be commenced and executed by the company (*d*). If for fourteen days next after the time appointed for commencing the works, the company shall fail to commence them, or to proceed with them, the owner of the lands, or the party aggrieved by such failure, may execute them at the expense of the company, and the cost; if disputed, is to be settled by two justices. If the owner or

(*a*) The York and North Midland Rail. Com. *v.* Sir W. Milner (in error).  
15 L. J. N. S. 379, Q. B.

(*b*) 8 Vic. c. 20, s. 68.

(*c*) Ibid; and see Manning *v.* The Eastern Counties Rail. Com. 3 Rail.  
Ca. 637.

(*d*) 8 Vic. c. 20, s. 69.

occupier of the adjoining lands execute the works, he must not obstruct or injure the railway or any of the works connected therewith for a longer time, nor use them in any other manner, than is necessary for the execution of such works (*a*). If the accommodation works executed by the company be thought insufficient by the owners or occupiers of the adjoining lands, they may make at their own expense such others as they may think necessary, and as shall be approved of by the company, or in cases of dispute, as shall be authorised by two justices (*b*). But such works must be constructed under the superintendence of the company's engineer, if the company desire it. Nevertheless the company may not require that plans should be adopted involving a greater expense than that incurred in the execution of similar works by the company, or that the plans selected should be executed in a more expensive manner than that adopted in similar cases by the company (*c*).

Additional accommodation works.

The power thus given to a party under the above clauses to make the accommodation works on the default of the company would not, it appears, take away his right to a mandamus calling upon the company to complete any such works (*d*).

After the prescribed period, or if no period be prescribed, after the expiration of five years from the completion of the works, and the opening of the railway for public use, the owners and occupiers of lands adjoining the railway cannot compel the company to make additional accommodation works (*e*).

Not to be required after five years.

Until the company have completed the bridges, or other proper communications, which they are bound by their Act to make between lands intersected by the railway, the owners and occupiers inconvenienced by such want of communication, and any other person whose right

Owners, &c. may cross railway till communications made.

(*a*) 8 Vic. c. 20, s. 70.      (*b*) *Idem.* s. 71.      (*c*) *Idem.* s. 72.

(*d*) *Reg. v. The Norwich and Brandon Rail. Com.* 4 Rail. Ca. 113.

(*e*) 8 Vic. c. 20, s. 73.

of way shall be affected, are at liberty to cross the railway, by themselves, or their servants, with horses, carriages, and cattle.

**Conditions.** They can only cross, however, on that part of the line which intersects their lands, and they must cross directly; and so as not to injure the railway or obstruct the traffic. Moreover, they can only cross for the purpose of occupying the lands, or for the exercise of the right of way. And as soon as the communications are completed the right ceases (a).

**Exceptions.** In cases where the owners or occupiers of the lands have either made arrangements with the company to receive, or have received compensation for or on account of such communications, instead of their being made, or have had the amount of compensation for the property assessed and awarded, on the footing that there was to be a total severance of the lands without any communication being made, they are not at liberty to cross the line (b). Therefore, where a person whose property was intersected by the railway had the amount of compensation for his lands assessed, on the footing of their being completely severed, and had been paid that amount, it was held that he was precluded from the right of crossing the line, and that he might be treated as a trespasser by the company for so doing (c).

But if no such agreement have been come to with the company, and the latter have neglected to make proper communications, proprietors and occupiers of lands intersected by the line are permitted to cross it at any point within their own property; and even where by a Railway Act the privilege was limited to certain places to be appointed, it was held, that the words "to be appointed" must be read with the addition of the words "when such places shall have been appointed," and that the parties

(a) 8 Vic. c. 20, s. 74.

(b) *Idem*, s. 74.

(c) *Manning v. Eastern Coun. Rail. Com.* 12 M. & W. 237; 3 Rail. Ca. 637.



entitled might cross anywhere within the limits of the land which they owned or occupied until such places were appointed; nor were they precluded from doing so until they had given notice to the company to make the proper communications (*a*); inasmuch as the duty of making them is cast upon the company, and their liability cannot be evaded either on the ground of expense, or on the ground of having made some less convenient and more circuitous communications than they might. Special powers in their Act applying to the particular case, or an assessment of damages in respect of the severed lands which contemplates and includes compensation for such circuitous and inconvenient mode of access, can alone discharge the company from the obligation resting on them (*b*).

But the right of crossing the railway under certain circumstances thus secured to individuals must be exercised only for the purposes for which it was given, therefore, where the proprietors of lands adjoining the railway have made communications across it (as they alledge) for the more convenient occupation of their property, and an action of trespass is brought against them by the company, it will be a question for the jury whether such communication has been made *bonâ fide* for the purpose alleged, or with some ulterior object (*c*).

The Railways' Clauses Act, casts upon the company the duty of making proper communications between the lands intersected by the line, unless they have compensated the owners and occupiers therefor. But, besides these agreements for compensation, the promoters of the undertaking may contract with the parties interested to make the necessary communications themselves subject to certain restrictions; or they may stipulate with a landowner to make the required communications for him in some particular mode. In the latter case, after a request and

(*a*) *Grand. Junc. Rail. Com. v. White*, 2 Rail. Ca. 559; 8 M. & W. 214.

(*b*) *Kemp v. Lond. and Brighton Rail. Com.* 1 Rail. Ca. 495.

(*c*) *Monmouthshire Canal Com. v. Harford*, 1 C. M. & R. 614.

refusal, a Court of Equity will decree a specific performance of the agreement by the company, wherever the interest of the plaintiff in the matter is such that he cannot be adequately compensated for its non-performance by damages at law (*a*).

The duty of maintaining all such accommodation works as they are bound to erect and provide is thrown on the company, and should they at any time fail to keep them in repair, the Court of Queen's Bench will compel them by mandamus, or they will be liable to indictment, or to an action at the suit of the party suffering damage by their negligence (*b*).

#### SEC. V.—*Branch Railways.*

WE shall treat first of the right to construct and the mode of constructing branch railways, and then of the manner in which, and the conditions under which, they may be used.

Who may  
make.

The owners and occupiers of lands adjoining the railway, and any other persons, may lay down branches of railway either on their own lands or on the lands of other persons with their consent, for the purpose of bringing carriages to, from, or upon the railway (*c*). No branch railway, however, can be laid down parallel to the trunk line.

The company are bound when required, at the expense of the parties who have laid down the branch, to make openings in the rails and such additional lines of rails as may be necessary for effecting the required communication, in places where such communication can be made with safety to the public, and without injury to the railway,

(*a*) *Storer v. Great Western Rail. Com.* 3 Rail. Ca. 106.

(*b*) *Reg. v. Bristol Dock Com.* 2 Q. B. 64; *Priestley v. Foulds.* 2 M. & Gr. 175.

(*c*) 8 Vic. c. 20. s. 76.

or inconvenience to the traffic. But the company is not bound to make any such openings in any place which they shall have set apart for any specific purpose, with which such communication would interfere, nor upon any inclined plane or bridge, nor in any tunnel (*a*). All disputes between the company and other parties as to the proper places for openings in the ledges or flanches of the rails are to be settled by the Commissioners of Railways (*b*).

In addition to the above conditions to be imposed by the company in respect of the construction of branch railways, the legislature has made it necessary in all cases where the railway into which such branch railways are to be brought is a passenger railway, (that is where more than one-third of the gross revenue arises from the carrying of passengers) that the permission of the commissioners of railways should be obtained before any junction can be effected (*c*).

In using the branch railways so constructed, the persons making or using them, shall be subject to all bye-laws and regulations of the company from time to time made with respect to passing upon, or crossing the railway and otherwise. So the persons making or using the branch railways are to construct, and from time to time as need may require to renew, the offset plates and switches according to the most approved plan adopted by the company, and under the direction of their engineer (*d*). User of.

The privilege of making and using branch railways given as above, extends not only to the owners and occupiers of lands adjoining the railway, but to any other persons for all time, so that a universal right, subject to the restrictions and conditions above mentioned, and to the consent of the parties over whose lands they are made, is accorded to parties who may wish to construct such branch lines.

(*a*) 8 Vic. c. 20, s. 76.

(*c*) 3 & 4 Vic. c. 97, s. 19.

(*b*) 5 & 6 Vic. c. 55, s. 12.

(*d*) 8 Vic. c. 20, s. 76.

From the terms of the section above cited, it is not clear whether the owners of the lands intersected by the line are authorised to cross it as well as communicate with it, by a branch railway. The words of the section reserving the right are “branches of railway to communicate with the railway, *for the purpose of bringing carriages to or from, or upon the railway;*” which do not necessarily import a right of crossing the line, but rather lead to the inference that the power was conferred in order to give to the parties the advantages of a railroad from their own property, for the purpose of transit or for the conveyance of minerals, or otherwise. It is submitted that by the clause of the Act now under consideration, no power is given to carry a railroad across the main line on a level; and that such power can only be claimed under a provision of the Special Act, or by the custom of the country; unless a right to do so may be considered to be given to the owners of lands intersected by the railway under those provisions of the statute which relate to accommodation works (*a*). This question becomes of importance where a line of railroad traverses a mineral district, and the owners would be precluded from any profitable working of the mines, unless they were enabled to construct tramroads across the railway on a level.

Wherever the right of crossing the principal railway by a branch line on the level has been claimed, it has been so claimed either under special provisions in the Act, or by virtue of some peculiar custom of the country; although in one case it was contended (but the point was not decided), that such a right existed at common law (*b*).

The authority conferred by the 76th section of the Railway Act to construct branch railways being (as we have seen) conveyed in general terms, it is not confined to those who at the time of the passing of the Special Act were

(*a*) 8 Vic. c. 20, s. 71. Semble, that this section is not qualified by the 73rd section limiting the time within which the works must be done.

(*b*) Monkland and Kirkintilloch Rail. Com. v. Dixon, 3 Rail. Ca. 273.

owners or occupiers of the lands adjoining the railway. Even in the cases in which the right was reserved to the owners and occupiers of adjoining land, it has been decided that the right would attach to all future holders of the lands under all future conditions of the estate (*a*).

So also the right extends not only to the making and using of the railway, but to the employment of locomotive engines thereon, although when the Act was passed such engines were not in use (*b*).

On the refusal of a company to make the required openings in their own lines of rails, for the purpose of effecting a communication with new branch lines, if the claimants can show to the satisfaction of the Commissioners of Railways, or of the Court, that no danger will arise to the public, or any inconvenience or obstruction be created on the railway, on their request being complied with, a mandamus will be granted, compelling the company to do the necessary works. Yet such a right can in no case be exercised so as to create any public inconvenience or obstruction (*c*).

#### SEC. VI.—*Drainage of Lands in Ireland.*

By the Statute 5 & 6 Vic. c. 89, entitled, "An Act to Promote the Drainage of Lands and Improvement of Navigation and Water Power in Connection with such Drainage in Ireland," certain commissioners are appointed to carry the Act into execution. By the Railways' Clauses Consolidation Act, section 25, it is provided that, wherever a Special Act shall be passed authorising a company to

Drainage of  
lands in Ire-  
land.

Inspection of  
plans by com-  
missioners.

(*a*) *Monkland and Kirkintilloch Rail. Com. v. Dixon*, 3 Rail. Ca. 273. See also, *Sirhowy Tram. Road Com. v. Jones*, and *Homfray v. Jones*, 3 A. & E. 640.

(*b*) *Bishop v. North*, 3 Rail. Ca. 459; 11 M. & W. 418.

(*c*) *Rex v. Morris*, 1 B. & Ad. 441.

construct a railway in Ireland, the company shall submit their plans to the above-mentioned commissioners before they commence forming the line, that they may decide upon the number and adequacy of the waterways of all bridges, culverts, tunnels, watercourses, and other such works across the line, for the free and uninterrupted discharge of waters from the intersected lands, and upon the height and adequacy of all bridges over waters which are or may hereafter become navigable.

**Certificate of approval.**

Without any unnecessary delay, the commissioners are to investigate these matters and report thereon; and having decided, are to give a certificate to the company specifying the numbers, nature, dimensions, and situation, of all such works connected with drainage as they may deem essential, and according to which the company will be bound to execute the works. Nor can the formation of the line be commenced until this certificate be obtained.

**Compliance with.**

And after it is granted, no deviation from it will be allowed without the written approbation of the commissioners (*a*).

**How enforced.**

If the company either fail to submit the plans for inspection, or to execute any of the works in conformity with the certificate, the commissioners may apply, in a summary way, by petition to the Court of Chancery, and the Court may thereupon order the company to construct the various works as directed by the commissioners, or may restrain them by injunction from proceeding in defiance or neglect of those directions, and may award costs to be paid by the company. No powers conferred on a company by any Special Act, or any Act incorporated therewith, will at all prejudice or affect the powers of the commissioners above mentioned (*c*).

**Works may be executed by commissioners.**

In addition to these powers of the commissioners to see that proper provision is made by the railway company for the drainage of the lands through which the line is

(*a*) 8 Vic. c. 20, s. 26.

(*b*) *Idem*, s. 27.

(*c*) *Idem*. s. 28.

carried, they are further authorised to interfere if any works connected with the formation of a watercourse for manufacturing purposes should become necessary in connection with the railway, such as a culvert, tunnel, or watercourse beneath it, or an aqueduct over it; and differences should arise between the directors of the railway company and the persons interested in obtaining the water power, in respect of the manner of executing the proposed works, or the amount of compensation to be paid, and either party may appeal to them; and on such appeal they are empowered to settle the dispute, and prescribe the works to be executed, and their decision thereon will be final and conclusive. If they should be of opinion that such works can be executed without injury to the railway, and if they think proper so to do, they may undertake so much of the works as may be in connection with the railway at the expense of the parties for whose benefit the watercourse shall be made, and with all the powers and authorities which they have for the execution of works for drainage in general (a).

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SEC. VII.—*Miscellaneous Matters connected with the Formation of the Line.*

BEFORE concluding this chapter on "The Formation of the Line," notice may be taken of one or two subjects which did not conveniently fall under any of the foregoing divisions.

And, first, we may observe, that a company, having obtained an Act for the construction of a railway between two termini, are bound to complete it; and if there be any reasonable doubt as to their intention to do so, a mandamus will be granted compelling them. Thus, where a

(a) Obligation of the company to complete a railway throughout.

(a) 8 Vic. c. 20, s. 29.

company incorporated for the purpose of making a railway from L. to N., had only purchased lands, and commenced works on a part of the line (from L. to C.), and it appeared doubtful, from the circumstances stated on affidavit, whether the company intended to proceed farther than C., a mandamus was issued, calling upon them to complete the whole line, to set out any proposed deviations from the original line, and to proceed to purchase lands on the remainder of the line (from C. to N.), pursuant to the provisions of the Act (a). The writ was afterwards quashed on the ground of its containing no averment that the company had given up their design, or that they were not effecting it with all convenient speed, and that the Court could make no inference to that effect. But Lord Denman, in pronouncing the judgment of the Court in this case, has so ably and eloquently expounded the principles on which large Parliamentary powers are conferred upon companies, and the grounds upon which the Courts will interfere to regulate and enforce the exercise of those powers, that we shall make some extracts from the judgment illustrative of those points. His lordship says, "This is an application for a mandamus, to do certain acts therein specified; and it was observed on both sides, in the course of the discussion, and we think with truth, that the questions involved in it are of much novelty, and of at least equal importance; because as, on the one hand, much mischief may ensue if this Court should providently enjoin the performance of things impracticable or improper, so, on the other, is there no higher duty cast upon this Court than to exercise a vigilant control over persons entrusted with large and extensive powers for public purposes, and to enforce within reasonable bounds the execution of such purposes, in compliance with such powers; and the more so, as we are not aware of any other efficient remedy. The principle upon which these powers

(a) *Reg v. East. Coun. Rail. Com.* 1 Rail. Ca. 509; 2 P. & D. 648.



are conferred by the Legislature upon undertakers of this description, are now so fully understood, that it is not needful to do more than generally refer to them. They are thus laid down by Lord Eldon in the well known case, *Blakemore v. The Glamorganshire Canal Company* : (a)—‘I apprehend those who come for these Acts of Parliament do, in effect, undertake that they shall do and submit to whatever the Legislature empowers or compels them to do, and that they shall do nothing else; that they shall do and forbear all that they are required to do and forbear, as well with reference to the interests of the public as with reference to the interests of individuals.’ The same doctrine was acted upon by this Court, in its fullest extent, in the case of *Rex v. The Inhabitants of Cumberworth* (b). It remains only to be added, that these cases and principles have been recently recognised by the Court of Exchequer in the case of *Lee v. Milner*. (c) The reasons also which regulate the practice of this Court in regard to writs of mandamus are very plain and intelligible. This interference is occasioned by inferior Courts or persons refusing to proceed in some course prescribed by law, and not in consequence of any misapprehension or error in their course, provided they have entered upon it. And, accordingly, if it had appeared that the company were substantially complying with the terms of their undertaking, there would have been at once a satisfactory answer to the application. Now the objects and purposes for which the company have been incorporated and empowered; or which (in the words of the passage cited) ‘The legislature has empowered and compelled them to do and submit to,’ are too clear to admit of any doubt. The title of the Act itself is, ‘for making a railway from London to Norwich and Yarmouth;’ and the preamble recites, that the opening of an additional, certain, and expeditious communication, not only between

(a) 1 Myl. &amp; K. 162.

(b) 2 B. &amp; Ad. 108.

(c) 2 M. &amp; W. 824; 2 Y. &amp; C. 618.

the towns then particularly enumerated, but also between the metropolis and the eastern districts of the kingdom, would be of great public advantage ; the eastern terminus being a seaport of greater consequence than any in the eastern districts. The Act then gives a minute description of the whole line, and a particular enumeration of all the places through which it is to pass ; so that all question on this matter is entirely precluded. We consider it to be equally undeniable, that to carry the railroad through a portion only of the prescribed line,—such as a third or a half—is a nominal, not a real compliance with the meaning of the Act of Parliament. We are aware, that we are met in this part of the argument by remarks upon the difficulties or impossibility attending the execution according to the prescribed terms. We confess, however, that we should have felt more pressed by observations of this nature, if we had not observed in the preamble of the Act, which we must consider to have been proved, that certain persons therein named (and we consider the obligation as extending to their successors, who may from time to time constitute the company) were willing at their own costs and charges to carry the said undertaking into execution. Such difficulties, be they more or less, should have been duly estimated before the undertakers pledged themselves to the execution, for the sake of obtaining such large and extensive powers as are most certainly vested in them for the purposes already mentioned.

This is not a complaint by a majority of proprietors against the governing body, but by a minority against the conduct of the company itself, which they charge substantially with a breach of faith towards them, by stopping short of a *bona fide* execution of that purpose which induced them to become subscribers. They strongly urge upon us the consideration, that all the sacrifices which they have made in furtherance of their own interests may go unrequited, or even may entail upon them additional loss, by giving advantages to others in which they cannot

share. To say that a majority of the whole body are satisfied with the dividends they are likely to receive and are unwilling to risk more expenditure, is obviously no answer to them, or to the public, who created their great powers for different purposes, or to the Parliament which was induced to grant them by the promise of public benefits much more extensively diffused" (a).

Nor is the neglect or refusal of the company to complete the railway throughout, the only mode of evading the obligations imposed upon them by their Act of Incorporation, for they are bound not only to construct the line, but to maintain it in such a state of repair as shall make it suitable for the purposes contemplated by the Legislature, in conferring authority to make it. Therefore where a railway was made under the authority of an Act of Parliament by which the company was incorporated, and by which it was provided that the public should have the beneficial enjoyment of the same, and the company afterwards took up the railway, a mandamus was issued, compelling them to reinstate it (b).

And to maintain it in repair.

A railway company is bound to have the line measured, and to cause milestones, posts, or other conspicuous objects to be set up and maintained along the whole length thereof, at the distance of one quarter of a mile from each other, with numbers or marks described thereon denoting such distances; and it is only when these milestones are erected, and so long as they are properly maintained, that tolls can be taken on the line. Any person wilfully pulling down, defacing, or destroying any such milestones, will incur a penalty not exceeding five pounds for every such offence, recoverable summarily before two justices (c).

(b) Milestones.

Penalty on destroying, &c.

At the request of the Commissioners of Railways, the company are bound to allow any person or persons au-

(c) Electrical telegraph. Construction of.

(a) See 1 Rail. Ca. 518—522.

(b) *Rex v. Severn and Wye Rail. Com.* 2 B. & A. 646.

(c) 8 Vic. c. 20, s. 95.

thorised by them, with servants and workmen, to enter upon their lands, and to lay down, adjoining the line of the railway, a line of electrical telegraph for her Majesty's service. For the privilege of constructing and using this telegraph, reasonable remuneration is to be paid to the company, and if they cannot agree with the Commissioners as to the amount, it is to be settled by arbitration. Subject to the prior right of her Majesty, the company may use the telegraph for the purposes of the railway, upon terms to be agreed on between the parties, or settled by arbitration (*a*).

User of.

If a telegraph have been established on a railway by the company, or by any other persons, otherwise than for the exclusive use of the company, or for the exclusive use of her Majesty, or for both, all persons alike are to have the privilege of sending and receiving messages by it at equal charges, and subject to reasonable regulations by the company (*b*). Under this section a railway company are not to be compelled to establish a telegraph for the purposes of the public, but in case one has been established and used otherwise than exclusively for her Majesty or the company, it will be open to the user of all; upon the payment of equal charges.

(*d*) The Gauge Act.

By the 9 & 10 Vic. c. 57, provisions are made, regulating the gauge of railways thereafter to be constructed; and it is enacted (*c*) that after the passing of the Act (*d*), it shall not be lawful to construct any railway for the conveyance of passengers on any gauge other than four feet eight and a half inches in Great Britain, and five feet three inches in Ireland; but existing railways of any other gauge may be maintained as at present, and new lines of rails laid down when necessary at any point within the original limits of deviation of such railways. The general rule above prescribed as to gauge will not apply to any railway to be constructed under any existing or future Act, which defines

(*a*) 7 & 8 Vic. c. 85, s. 13.

(*b*) *Idem*, s. 14.

(*c*) Sec. 1.

(*d*) 18th August, 1846.

the gauge or gauges thereof; nor to any railway which in its whole length shall be southward of the Great Western; nor to any in the counties of Cornwall, Devon, Dorset, or Somerset, for which Acts were obtained in the last session of Parliament, or which were then in course of construction. The Act further excepts out of its operation certain branches and continuations of the Great Western Railway (a); and the general effect of it is to appropriate a certain district of England and Wales to the advocates of the broad gauge, leaving the rest of the kingdom to be accommodated by lines formed on the narrow gauge. Since the passing of this measure it is not lawful to alter the gauge of any passenger railway (b). A penalty of ten pounds per mile per day will be inflicted on the company for any construction or alteration of their line inconsistent with the above provisions; and the Commissioners of Woods and Forests, or the Commissioners of Railways may abate and remove the portions so unlawfully constructed or altered, and restore the site to its former condition (c).

A penalty is imposed upon all persons obstructing the construction of a line of railway by the 24th section of the Railways' Clauses Consolidation Act which enacts that, "If any person wilfully obstruct any person acting under the authority of the company in the lawful exercise of their power in setting out the line of the railway, or pull up or remove any poles or stakes driven into the ground for the purpose of so setting out the line of railway, or deface or destroy any marks made for the same purposes, he shall forfeit a sum not exceeding £5 for every such offence, to be enforced summarily by two justices. A contractor for the execution of railway works is an agent of the company (d), and within the protection of this clause.

(e) Penalty for obstructing the construction of railway.

(a) Ss. 2, 3, and 5.

(b) S. 4.

(c) Ss. 6 and 7.

(d) *Semple v. London and Birm. Rail. Com.* 1 Rail. Ca. 480; 9 Sim. 209.



## BOOK IV.—WORKING OF THE LINE.

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UNDER this general head it is proposed to treat, of such preliminaries as are required by statute to be observed previous to the railway being opened for traffic: of the common law and statutory obligations and liabilities of the company, both as owners and proprietors of the line, and as carriers of goods and passengers upon it: of the regulations made by the Legislature (or under powers conferred by them,) in respect of the construction and user of engines and carriages, whether belonging to the company or to third parties: of parliamentary provisions as to trains for specified purposes, required to run at certain times and rates of speed, and under certain restrictions: of tolls, fares, and charges, their publication and revisal, the amount which may be demanded, and the mode in which they may be recovered: of such bye-laws as relate more immediately to the user of the railway, as those prescribing the duties of the company's servants, and regulating their conduct and that of the public who come upon the line: of the public burdens cast upon railway companies in respect of their profits as owners of the line and common carriers, and in respect of their occupation of the land on which the railroad and the stations are constructed, as duties levied in respect of passengers, poor's rate, and tithe rent charge: and, lastly, of those returns required to be made to Government, or certain public officers, which are closely connected with the working of the line, such as returns of tolls, of traffic, and of accidents.

Division of  
the subject.

## CHAPTER I.

## OPENING OF THE RAILWAY.

## Notices.

WHEN the works on a railway are so near completion as to enable the company, with a due regard to the safety of the public, to open the line for traffic, one calendar month's notice in writing of an intention so to open it must be given to the Commissioners of Railways (*a*); and a notice of ten days of the time when, in the opinion of the company, the line will be sufficiently completed for the safe conveyance of passengers, and will be ready for inspection (*b*). These notices may be served, either by being left at the office of the Commissioners in London, or by transmission through the post directed to the secretary at their office (*c*). A penalty of £20 will be incurred by the company for every day during which the railway, or any part of it, shall have been opened, and continued open, before the service and expiration of these notices. This penalty may be recovered in any of Her Majesty's Courts of Record, or in the Court of Session, or in any of the Sheriff's Courts in Scotland (*d*).

## Penalty.

## Inspection of the line.

Within the period limited by the above notices, the Commissioners of Railways are to make arrangements for an examination of the works, to ascertain their fitness and stability, with a view to secure the safety of the public. For this purpose they may authorise any proper person or persons to inspect the railway, who shall thereupon have full power, at all reasonable times, to enter upon and examine the line, and the stations, works and buildings, and the engines and carriages belonging thereto (*e*). The provision (*f*) that no person shall be eligible to the appoint-

(*a*) 5 & 6 Vic. c. 55, s. 3.(*b*) *Id.* s. 4.(*c*) *Id.* s. 19.(*d*) *Id.* s. 5.(*e*) 3 & 4 Vic. c. 97, s. 5.(*f*) *Ibid.*



ment of inspector who should within one year have been a director, or have held any office of trust or profit under a railway company, has been judiciously repealed (a). Its effect must necessarily have been to exclude from the office of inspector all the persons best fitted by education and experience for the efficient discharge of its duties, and without any adequate reason. These inspectors are not permitted to interfere in any way in the affairs of the company (b).

If any person wilfully obstruct an inspector duly appointed in the execution of his duties, he will be liable to forfeit the sum of £10 for every such offence, recoverable before a justice of the peace, who, on default of payment within the time limited for that purpose, may commit the offender to prison for any period not exceeding three months, to be at once determined, however, on payment of the fine (c). Penalty.

If the person appointed to inspect the railway and works report to the commissioners that, in his opinion, the opening of the line at the time proposed would be attended with danger to the public, by reason of the incompleteness of the works or permanent way, or the insufficiency of the establishment for working such railway, and state the grounds of that opinion in his report, the commissioners may order the opening to be postponed for any period not exceeding one calendar month. If, at the expiration of that period, and on further inspection, he should still report it unsafe to open the line for traffic, the commissioners may again defer the opening for a month; and so on from time to time, until it appear to the commissioners that such opening may take place without danger to the public (d). If the company, in defiance of the order of the commissioners, proceed to open the railway, or any part of it, they will incur a penalty of £20, recoverable as in ordinary cases, for every day during which it shall con- Postponement of opening.

(a) See 7 & 8 Vic. c. 85, s. 15.

(b) Ibid.

(c) 3 & 4 Vic. c. 97, s. 6.

(d) 5 & 6 Vic. c. 55, s. 6. Penalty.

tinue open contrary to such order. This penalty, however, will not be incurred unless, together with the order of the commissioners, there be delivered to the company a copy of the report of the inspector on which the order was made (*a*).

Before the company can take any tolls for the use of the railway (and, therefore, practically, before it is opened), lists of the tolls and rates chargeable thereon must be made out, and exhibited as hereinafter mentioned (*b*). So no tolls can be demanded by the company until they shall have caused the railway to be measured, and mile-stones, posts, or other conspicuous objects, to be set up at the distance of one quarter of a mile from each other, with numbers or marks thereon denoting the distances (*c*).

These several preliminaries having been duly observed, and the sanction of the Commissioners of Railways obtained in the manner prescribed, the company may proceed to open their line for traffic, and to use it both by themselves and the public for the carriage of goods and passengers; demanding and receiving, therefor, certain tolls and rates, under and subject to all the restrictions and regulations hereinafter particularly mentioned.

(*a*) 5 & 6 Vic. c. 55, s. 6.

(*b*) See post, p. 385.

(*c*) 8 Vic. c. 20, s. 94.

## CHAPTER II.

## USER OF THE LINE.

A RAILWAY may be worked in several different ways : either by the company, as owners of the road, exacting a toll for the use thereof from any parties who may choose to claim and exercise their right under the general and special Railway Acts to run trains thereon, finding their own engines, carriages, and trucks ;—which may be called a user by the public ; or, secondly, by the company themselves, both as owners of the road and as carriers, with their own vehicles, and engines, or, thirdly, in case they have special powers in their Act for that purpose, by their leasing the railway to any person, or other company. If the first plan be adopted (which, however, for reasons hereinafter assigned, rarely happens) the rights, duties, and liabilities of the company in respect of third parties will be regulated by the special Act in conjunction with the general Railway Acts ; if they run their own trains upon the line for their own profit they will be common carriers, and as such (unless specially exempted by some particular statute) will be bound by the custom of the realm relating to that class of persons, subject to the provisions in respect of tolls and charges contained in their Special Act, and will have the same rights, remedies, duties, and liabilities, and be exposed to the same penalties for negligence, fraud, or misconduct. If the line be leased, all the rights and liabilities of the company, as owners and proprietors thereof, will be transferred to the lessees ; and the latter will acquire and incur such claims and responsibilities as are incident to the position (whether as carriers of goods or passengers), in which they place themselves as workers of the railway.

SEC. I.—*User of the Railway by the Public.*

A RAILWAY company are bound, under the General Railway Acts, to permit any of the public to run their own engines and carriages on the line, paying certain tolls for the exercise of that privilege. This may be done either under the provisions in the General and Special Railway Acts, or by virtue of some contract or agreement entered into with the company.

(a) User of railway by third parties under rights reserved in the Acts.

It appears to have been the object of the Legislature, whilst they conferred large and extensive powers on railway companies for the formation and maintenance of their lines, to reserve and secure to the public the right of using them under certain conditions as public highways; for by the enactments of the railway statutes, a railway is to be open to all persons to run trains thereon, with engines and carriages properly constructed, upon tender or payment of the tolls by the Special Act authorised to be taken. Those who propose to exercise this right must comply with all the provisions of the 8 Vic. c. 20, as to the construction of engines and carriages (a), and with the several bye-laws and regulations made and published by the company, in respect of the rate at which the trains are to run, their times of starting and of stopping, the mode of loading and unloading the trucks, the receipt and delivery of goods, and the like (b). Any refusal on the part of a company to permit a user of the line by persons ready to perform and submit to all the required conditions, would render them liable to have a writ of mandamus issued, compelling them to comply in this respect with the terms on which their extensive powers and privileges were conferred.

A railway company regarded in this light, as simply owners of the way on which others may place steam power

(a) See post, ch. 3, p. 358.

(b) See 8 Vic. c. 20, ss. 108—111.

and carriages, and convey persons and goods, stand in much the same relation to the parties so using it as the trustees of a turnpike road to the coach and postmasters and carriers conveying goods and passengers upon it. (a)

Although any of the public have an abstract right to run their own engines and carriages upon a line of railway, or to become common carriers thereon, and could enforce it against a company by process of law, still there are, practically, so many difficulties and hindrances in the way of its profitable exercise, that it is rarely, if ever, attempted by parties in a hostile or even independent manner. Thus there is no mode of compelling a company to supply the engines of such persons with water or fuel, or to give facilities and accommodation for the loading and unloading of goods; so that it is clear that, unless with the permission of, or under some private arrangement with, the company, the power reserved is nugatory and unavailable. Moreover, the maximum rate of tolls that may be lawfully demanded is far too high for the lucrative user of the railway by third parties; and hence the right for that purpose secured to them by the letter of the law is rarely attempted to be enforced. With the great advantages, too, which the company possess, they find it more profitable to exercise their power of carrying goods and passengers on their own account; and hence it is seldom that any of the public have made use of the line with their own engines and carriages, except in particular branches of trade, such as the carrying of coal or minerals, and under the terms of some express arrangement with the company. The stipulations and conditions of contracts of this nature vary, of course, as frequently and as widely as the circumstances and objects of the contracting parties, and no general rule can be laid down upon the subject. All such agreements must, however, be made with a reference to that provision of the 8 Vic. c. 20, which requires that all tolls should be

(b) User by third parties under a special contract with the company.

(a) Judgment of Lord Denman, C. J. in *Reg. v. Lond. and South Western Rail.* Com. 2 Rail. Ca. 648; 1 Q. B. 558.

charged equally to all persons under like circumstances, and renders any reduction or advance in such tolls, either directly or indirectly in favour of or against any particular company or person, illegal. (a) The arrangement most commonly made between railway companies and carriers, or other persons using the line, is, that the company shall find the locomotive power required, charging therefor so much per ton per mile, including mileage and all other dues; shall provide sheds and warehouses for the reception of goods; and platforms, turn-tables, cranes, and all other apparatus necessary for loading and unloading; whilst the other contracting party undertakes to furnish the requisite carriages and trucks, truck-sheets, and other articles of that nature, and to load, unload, collect, and deliver the goods. Whatever be the precise terms and conditions of the agreement, the party contracting with the company, and using the railway under that contract, is subject to all such bye-laws and regulations of the company as to carriages, trains, tolls, &c., as the latter may lawfully make and enforce.

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SEC. II.—*User of the Railway by the Company as Common Carriers.*

Company not compelled to become carriers.

ALTHOUGH a railway company is empowered, it is not compelled to work the line with its own engines and carriages, there being no statutory or common law obligation upon them to that effect. The "Railway Clauses Consolidation Act" only provides that "it shall be *lawful* for them to use it in such manner, and to make reasonable charges in respect thereof, not exceeding the rate of tolls by the special Act authorised to be taken (b). Hence the Court of Queen's Bench will not issue a mandamus to

(a) 8 Vic. c. 20, s. 90. See also on this subject, ch. 5, post p. 376.

(b) 8 Vic. c. 20, s. 86.

compel a company to find engines and carriages for the conveyance of the goods of a party; nor, unless the company have made themselves common carriers by taking goods of other persons, would he have any right at common law against the company for not carrying his goods when offered (*a*). His purpose could only be effected by his availing himself of his right to put his own engines and carriages upon the line, in conformity with the regulations of the company in that behalf, or by his employing some other person, who was a common carrier running trains thereon, to convey his goods.

Although, however, it is not, in the first instance, compulsory upon a railway company to become common carriers, yet they may avail themselves of their right to unite both characters, (that of owners of the way and carriers upon it) and having once made their election by conveying goods in the latter capacity, they will be liable accordingly, on the ordinary principles of the common law, and irrespective of the provisions of their act of incorporation. Therefore where a railway Act authorised the company, if they should think fit, to carry goods and passengers on the railway, they being bound to keep and repair the fences of the same; and the company undertook to carry some horses to be delivered safely at a particular place, but in consequence of some of the fences being broken down, an accident happened to the train, whereby the horses were injured, and the owner brought an action against them, as common carriers, to recover damages, they were held not entitled to notice of action under the clause to that effect in their Act, as for something done or omitted to be done in pursuance thereof, but their common-law liability as carriers might be enforced by the ordinary remedies as in other cases, and irrespective of any privileges or protection conferred on them in relation to other matters in their Special Act (*b*).

(*a*) *Ex parte Robins*, 7 Dowl. 566.

(*b*) *Palmer v. Grand Junction Rail. Com.* 4 M. & W. 749; 7 Dowl. 232.

Except in certain cases.

But whilst it is true that, generally speaking, a railway company are not compelled to make themselves carriers of goods and passengers, yet in certain cases (to be noticed hereafter (*a*), as the conveyance of mails, of military and police, of public stores, &c., this obligation is expressly imposed upon them by the legislature. Subject to these statutory provisions the company are entitled and empowered to convey goods and passengers upon their own line, and also to contract with the owners of other railways for the use of them in connection with their own, by which means they become common carriers, not merely over their own road, but also over the others so contracted to be used (*b*).

Their liability in general.

The Railways' Clauses Consolidation Act expressly provides (*c*) that nothing contained either in that or the Special Act, shall extend to make a railway company liable further or in any other case than where, according to the laws of the realm, stage-coach proprietors and common carriers would be liable; nor in any degree to deprive the company of any protection or privilege which common carriers or stage-coach proprietors may be entitled to; but, on the contrary, the company is, at all times, to be entitled to the benefit of every such protection and privilege. Hence it will be necessary to notice briefly the leading rights, duties, and responsibilities of railway companies, considered as common carriers. In doing so we shall, in the first place, treat of a company as carriers of goods; and, in the second place, as carriers of passengers.

### (1) *Rights and Obligations of a Railway Company as Carriers of Goods.*

(*a*) To carry for reasonable hire.

A RAILWAY company, as common carriers, are bound by the custom of the realm to receive and carry all goods, such

(*a*) See ch. 4, post p. 366.

(*b*) See *Muschamp v. Lancaster and Preston Rail. Com.* 2 Rail. Ca. 607; 8 M. & W. 421.

(*c*) 8 Vic. c. 20, s. 89.



as they are in the habit of carrying, brought to them for the purpose of transport, upon receiving a suitable hire (*a*) ; and on their refusal to comply with the request of a party ready and willing to make a reasonable compensation, they will be liable to an action at law (*b*).

Although the party requiring goods to be carried must be ready and willing to pay a reasonable compensation in respect thereof, yet it is not necessary, in order to sustain an action against the company for refusal to carry on the tender of a reasonable sum, that he should have made a strictly legal tender of the amount of toll, if a readiness to pay it be shown. The receipt of the goods by the company, and the payment of the charge for carriage, are contemporaneous acts; the carrier being bound to receive the goods on the money being paid or tendered, and the party delivering them being bound to pay the reasonable amount demanded on the acceptance of the goods (*c*). The demand, therefore, must be made by the railway company at the time of the goods being offered; and it is only on the neglect or refusal of the party to pay it, that the company can refuse to carry the goods.

But if the particular train by which the goods are re- Exceptions.  
quired to be conveyed be full, or if the goods are of a dangerous nature, as combustibles or explosive and detonating compounds; or such as they are not in the habit and have not the means of carrying; or if they are delivered for the purpose of carrying at an unreasonable time (*e*) ; in any of these cases, the company will have reasonable

(*a*) Story on Bailments, sec. 508. *Pickford v. Grand Junc. Rail. Com.* 3 Rail. Ca. 193, 598; 10 M. & W. 399.

(*b*) *Pickford v. Grand Junction Rail. Com.* 2 Rail. Ca. 592. See also, *Boulston v. Sandiford*, Skin. R. 279; *Jackson v. Rogers*, 2 Show, 328; 1 Saund. R. 312, c.; *Riley v. Horne*, 5 Bing, 217, 224; *Macklin v. Waterhouse*, 5 Bing, 212.

(*c*) *Pickford v. Grand Junction Rail. Com.* 2 Rail. Ca. 592; 8 M. & W. 372.

(*d*) *Pickford v. Grand Junction Rail. Com.* 12 M. & W. 766.

grounds of refusal, and may defend with success an action brought against them for such refusal (*a*).

Dangerous articles.

As to articles of a dangerous nature, such as gunpowder, aquafortis, lucifer matches, and the like, not only are the company not required by law to carry them, but a penalty is imposed (*b*) upon any person sending by a railway any such goods, unless the nature of them be distinctly marked on the outside of the package, or notice in writing be given to the book-keeper, or the servant of the company with whom they are left; and the company may refuse to carry any goods which they suspect to be of a dangerous nature; or they may require the parties to open the packages to ascertain the fact. Public policy in relation to the safety of the public, and of the servants and porters of the company, and the security of other goods conveyed upon the line, obviously require and justify the above restrictions.

Delivery at unseasonable times.

The company, under their power to make bye-laws, are authorised to regulate the time for the receipt of goods to be carried by them; and they cannot be compelled to carry any, unless the party offering them comply with all reasonable regulations made in that behalf. Thus, when a railway company gave notice that goods delivered after a particular hour would be forwarded on the next working day, it was held that they were not bound to forward goods received after that hour the same evening; and that the company were not liable to damages in a case where the articles (which were of a perishable nature) suffered deterioration by the delay (*c*). So, on the other hand, whilst they should be sent in time for the train by which they are to be carried, the goods should not be sent too soon, as the company are not obliged to receive them until within a reasonable time of the period fixed for setting out on the

(*a*) *Batson v. Donovan*, 4 B. & Ald. 32; *Edwards v. Sharratt*, 1 East, 604.

(*b*) See 8 Vic. c. 20, s. 105.

(*c*) *Pickford v. Grand Junction Rail. Com.*; *Sittings after Hilary T. 1844*; S. C. 12 M. & W. 766.

journey (a). Consequently, it would be no breach of their duty as common carriers to refuse to take in goods which were not to be forwarded till some time subsequently, and which would therefore require to be warehoused in the interval; although, if they did receive them, they would be liable for their safe custody until their carriage and delivery, as in ordinary cases.

A railway company is entitled to reasonable compensation for the carriage of goods, and may demand such compensation previous to taking charge of the goods; and if it is not paid, may refuse to take them. As to what charges are reasonable and equal, see post (b).

A railway company is not only bound to receive and carry for reasonable hire the goods offered for transport, but also to take proper care of all such goods committed to their charge from the moment they receive them; to obey the directions of the owner in respect to them; to carry them safely to the proper place of destination; and to make a right delivery of them there according to the usage of trade or the course of business (c).

(b) To use due care and diligence.

These general duties of a railway company as common carriers will involve the obligation of providing suitable vehicles for the carrying of goods (d), with proper truck-sheets, coverings, and tarpaulins; to protect the goods both from fire, rain, and robbery; also to provide suitable places for the deposit of the goods previous to delivery, and to appoint a sufficient number of servants for the protection of the property committed to their charge.

The common-law liability of carriers for losses and injuries occurring in respect of goods conveyed by them, attaches the moment the goods are intrusted to their charge, and continues until they are delivered into the

Commencement and termination of liability.

(a) *Lane v. Cotton*, 1 Lord Raym. 652; 1 Com. R. 105.

(b) Ch. 5, p. 376.

(c) *Story on Bailments*, s. 509.

(d) *Walker v. Lond. and South Western Rail. Com.* Kingston Spring Assizes, 1843; *Walford on Railways*, p. 250. See ch. 3, p. 358.

hands of the party to whom they are consigned ; and in the case of a railway company which have made themselves carriers, even though the final place of destination be not upon their own line of railway, and the loss or damage occurs after the goods have been safely delivered to another railway company, to be forwarded to the consignee. Thus where a parcel directed to a person in Derbyshire was delivered at Lancaster to the Lancaster and Preston Railway Company, whose line extended only to Preston, and they delivered it safely to another company, they were held responsible for it; Rolfe, B. telling the jury in his summing up, that if a party brought a parcel to a railway station, knowing at the time that they only carried to a particular place, and they received and booked it to the place to which it was directed, without limiting their responsibility by express agreement to a part only of the distance, that is *prima facie* evidence, that they undertake to carry it to that place; and the Court of Exchequer, on motion for a new trial, on the ground of misdirection, confirmed that view. (a).

The duty of a company to deliver, and their responsibility for the proper and safe delivery of goods received and booked by them to the place of their destination will, however, depend on the general usage and course of their trade (b). If they have adopted the practice of collecting and delivering goods for one party they may be compelled to do so for another, but if the course of trade has been to carry only from terminus to terminus, they cannot be compelled to deliver. It is a general practice for common carriers to contract with a railway company to carry for them, and in such cases the liability of the company ordinarily extends no farther than between the termini of the line or lines of railway along which the goods are to be

(a) *Muschamp v. Lancaster and Preston Rail. Com.* 8 M. & W. 420 ; 2 Rail. Ca. 607.

(b) *Golden v. Manning*, 2 W. Bl. 916 ; 3 Wils. 429.

carried, the carriers undertaking the collecting and transmission of them to the company's warehouses, and the forwarding and delivering of them to the consignees. In any such case the carrier is, so far as the company are concerned, the consignor at one end of the line and the consignee at the other, and the safety of the property in the interval is all that the company are responsible for. A railway company transmitting goods along their line under such a contract, are not common carriers in relation to the individual owners of the goods, nor responsible to them as such for any loss or damage which may arise during the journey, but are to be regarded in law as the servants of the carrier to whom the property is entrusted; and to whom the common law liability will attach, whilst the company will be liable even to him for negligence or defaults. Under these circumstances the company would only be responsible to the owner of goods in a case in which the carrier was exempt, and for the consequences of their own neglect or misconduct.

The liability under consideration is said to extend to all losses except those occasioned by the act of God, or the King's enemies: to which may be added those which are attributable entirely to the defaults or neglect of the consignor. Thus a company would not be responsible to a party for any damage or injury which occurred through the improper packing of the goods by the latter; nor for the consequences of internal decay in the case of goods of a perishable nature; nor for any mischief resulting to animals consigned to them for conveyance from excessive timidity or a vicious temper, provided all reasonable precautions have been taken for the prevention of any such loss or injury (a).

Its nature and limits.

By the expression "the act of God," is to be understood not only natural accidents and events, such as lightnings, earthquakes, tempests, frosts, and floods; but inevitable

(a) *Walker v. Lond. and South Western Rail. Com.* Kingston Spring Assizes, 1843.

casualties arising from no negligence on the part of man, and which human prudence could neither have foreseen nor prevented (*a*).

The Carriers'  
Act.

The great responsibility amounting to that of insurers (*b*), which attached to carriers at common law, and which they made many efforts to limit by notices and agreements, has been at length restricted in certain cases by the legislature. Thus the 11 Geo. 4, and 1 W. 4. c. 68, commonly known as "The Carriers' Act," after reciting the responsibility of common carriers and coach proprietors, and their liability for depredations committed in respect of parcels and packages of great value in small compass, entrusted to them for conveyance, enacts "That from and after the 23rd July, 1830, no mail-contractor, stage-coach proprietor, or other common carrier by land for hire shall be liable for the loss of, or injury to, any article or articles, or property of the descriptions following: (that is to say) gold or silver coin of this realm, or of any foreign state, or any gold or silver in a manufactured or unmanufactured state, or any precious stones, jewellery, watches, clocks, or time-pieces of any description, trinkets, bills, notes of the Governor and Company of the Bank of England, Scotland, and Ireland respectively, or of any other bank in Great Britain or Ireland, orders, notes or securities for the payment of money English or foreign, stamps, maps, writings, title-deeds, printings, engravings, pictures, gold or silver plate, or plated articles, glass, china, silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials, furs or lace, or any of them, contained in any parcel or package which shall have been delivered either to be carried for hire or to accompany the person of any passenger in any mail, or stage-coach, or other public conveyance, when the value

(*a*) See, on this subject, Story on Bailments, pp. 515—532.

(*b*) See *Macklin v. Waterhouse*, 2 M. & P. 319; 5 Bing. 212; *Riley v. Horne*, 5 Bing. 217, 224; 2 M. & P. 331; *Forward v. Pittard*, 1 T. R. 27; *Hyde v. Trent and Mersey Navigation Com.* 5 T. R. 389; 1 Esp. 36.

of such article or articles, or property aforesaid, contained in such parcel or package shall exceed the sum of *ten pounds*; unless at the time of the delivery thereof at the office, warehouse, or receiving-house of such mail-contractor, stage-coach proprietor, or other common carrier, or to his, her, or their book-keeper, coachman, or other servant, for the purpose of being carried, or of accompanying the person of any passenger as aforesaid, the value and nature of such article or articles or property shall have been declared by the person or persons sending or delivering the same, and such increased charge as hereinafter mentioned, or an engagement to pay the same, be accepted by the person receiving such parcel or package."

As the liabilities of railway companies when they become common carriers, are identical with those of the latter, whether at common law or as restricted by the statute, the cases which have determined the nature and limits of those liabilities, will be applicable also under similar circumstances to railway companies. Thus a company (having duly notified, by public notice affixed in their office, the increased rate of charges authorised by the Act) (*a*), will not be liable for the loss of any goods of the kinds enumerated in the above section, unless the party offering them states their nature and value at the time of delivery, and pays or engages to pay an increased charge according to the scale given in the Act. It was formerly doubted whether the Act protected a carrier from the consequence of gross neglect, where loss or damage thereby occurred in respect of any of the enumerated articles, although the consignor had failed to comply with the conditions imposed; (*b*) but it has been recently held that the carrier is, in such case, exempted from liability, even though the mischief happened through the gross negligence of his servants (*c*). The latter, however, remain

Cases decided  
thereon.

(*a*) 11 Geo. 4, and 1 W. 4, c. 68, s. 2.

(*b*) *Boys v. Pink*, 8 C. & P. 361, Denman, L.C.J.

(*c*) *Hinton v. Dibdin*, 2 G. & D. 36; 6 Jur. 601.

responsible, as before, for the results of their own personal neglect and carelessness (*a*), and the carrier remains liable as before for their felonious acts (*b*).

Notices ineffectual to limit liability.

The ordinary responsibility of a carrier is restricted by the above statute only in respect of the articles therein enumerated, and from and after the period of its coming into operation, no notice or declaration made on the part of any public carrier will avail to limit or in any way affect his liability of common law in relation to goods not expressly named in the Act (*c*). The latter provision is of importance at the present time, inasmuch as railway companies, by public notices exhibited at their various stations, attempt to limit their liability in respect of articles not within the words nor even the spirit of the Carriers' Act. Thus notices are frequently posted limiting their liability for passengers' luggage unless specially booked and a receipt given for it; and as to horses and other valuable animals that they will not be liable for them beyond a specified amount, unless they are insured on certain terms; and in many other instances. It is hardly necessary to remark that all such notices are entirely nugatory, and that companies cannot thereby exonerate themselves from the consequences to which they are liable by the custom of the realm for injury or damage occurring through their default to passengers' baggage, or any other articles not enumerated in the statute (*d*). Nor will any such public notice, though brought to the knowledge of a consignor, operate in any way, or to any extent, as by the terms of a special contract between the parties in relation to the classes of goods therein mentioned, so as to vary the common law liability of the company as carriers.

Special contract.

The statute 11 Geo. IV., and 1 Wm. IV. c. 68, does not preclude the parties from entering into a special contract

(*a*) 11 Geo. 4, and 1 W. 4, c. 68, s. 8.

(*b*) Ibid.

(*c*) S. 4.

(*d*) See further as to luggage of passengers, post, pp. 356, 357.



as to the conveyance of goods of any description or value. Under such contract the carrier may stipulate for a limited liability in respect of the goods to be carried, and (subject to the provision in the Railways' Clauses Act that charges be equal) for the amount of remuneration to be paid for the conveyance. But a refusal on the part of an individual to enter into any agreement on the subject, will not exonerate the company from their duty as common carriers to carry the goods of such a party on tender or payment of a reasonable sum; or (if the goods be within the Carriers' Act) of the sum thereby authorised. Nor, if entered into, will any such agreement have the effect of exempting the company from liability in cases of gross negligence and fraud. The issuing of public notices by advertisement or printed bills, or the affixing them on boards in the receiving-houses and offices of the company, will not (as we have seen), though known to the consignor or owner of the goods, be deemed to constitute a special contract. As to what will be considered sufficient proof of such contract, see *Palmer v. Grand Junction Railway Company (a)*.

(2). *Rights and Obligations of a Railway Company as Carriers of Passengers.*

The company are bound to carry any person offering himself as a passenger by any of their ordinary trains, on payment or tender of the usual fare (b), provided he is sober and in a proper state to travel, and is willing to comply with all reasonable regulations made by the company in respect of passengers. Should they refuse to

(a) To carry for reasonable hire.

(a) 4 M. & W. 749; 7 Dowl. 232. The reader may also consult on the subject of this section generally, Story on Bailments (3rd. ed.) pp. 494—580; Smith's Leading Cases, pp. 96—104; Chitty and Hulme's Collection of Statutes, 2nd vol. pp. 92—95; Chitty on Contracts, pp. 480—495, 3rd ed. Petersd. Ab. Tit. Carriers; Supplement to ditto, Tit. Carriers.

(b) As to the payment and recovery of fares, see ch. 5, post, p. 376.

carry any person so presenting himself they will be liable to an action at the suit of such party (*a*). It does not appear, however, that the company are bound to carry any person offering himself either at a terminal or at any intermediate station unless there be room in the carriages about to start. With respect to intermediate stations, it is customary for the company to affix a notice in their offices, that they do not engage to carry passengers except conditionally on there being sufficient room in the train, and that if all who have taken tickets cannot be accommodated, preference will be given to those travelling longer over those travelling shorter distances.

The company are also bound to convey passengers to their journey's end, and to put them down at the usual place of stopping (*b*). If the passenger travels by a train advertised to stop at certain intermediate stations, the company must put him down at any one of such stations for which he may have booked himself and paid his fare, and to give him due notice of his arrival at that station. For any neglect or omission in this respect they will be liable; but if they have taken due care, the passenger, if he be carried beyond his destination, must bear the consequences himself.

#### Special trains.

Many railway companies are in the habit of letting out, at increased prices, special trains for the immediate and speedy conveyance of parties requiring such accommodation. There seems to be no obligation upon them, either by statute or at common law, to furnish such trains to any party applying; yet it would seem that if such application has been granted, and the passenger has taken his seat, they would be bound to proceed if the fare were tendered (*c*).

(*a*) Story on Bailments, ss. 591, 591 a.

(*b*) Id. s. 600.

(*c*) See *Massiter v. Cooper*, 4 Esp. 260—Ellenborough. It may often happen on occasions of particular importance that the granting of a special train to A. and refusing it to B. would be such a favouring of one before another as would be in direct contravention of the spirit of the general Railway Acts. But it is not easy to discover any remedy in such cases.

The company are bound to use the utmost care and diligence, and to take all proper precautions against accidents to passenger trains. Hence they must provide suitable engines and carriages for the conveyance of persons travelling by the railway; and, as carriers of passengers, they will be liable for any accident occurring either through a defect in their original construction, or through any want of proper repair (*a*). So they will be liable for any overloading or improper arrangement of the carriages in a train, and for any mismanagement in the hours or order of starting, whereby collision, or other accident, is occasioned. They must, moreover, provide able and skilful persons as engine-drivers, guards, &c.; and for any rashness, ignorance, or misconduct of their servants, by means of which injury is caused to a passenger, they will be responsible (*b*).

(*b*) To take due care.

They must also, as proprietors of the line, make, and at all times maintain, the railway itself in such a state as that trains may pass along it without risk of accident; and if any mischief occur through the improper laying of rails or sleepers, through any slips in embankments or cuttings, through any displacement of the rail or obstruction thereon, which greater caution might have enabled them to avoid, they will be answerable for the consequence. For, by the custom of the realm, their undertaking is to carry passengers safely (so far as human care and providence can extend (*c*)), to their place of destination; and, therefore, for the results of any unfitness for the purposes of travelling of the railroad itself, or of the engines and carriages of the train; or of any incapacity, negligence, or misconduct, on the part of those employed by them; or of any forgetful-

(*a*) *Sharp v. Gray*, 9 Bing. 457; 2 M. & Sc. 621; *Bremner v. Williams*, 1 C. & P. 414; Best.

(*b*) *White v. Boulton, Peake*, 81; Kenyon. See also, *Brucker v. Fro-mont*, 6 T. R. 659.

(*c*) Story on Bailments, s. 601. See also, *Lancaster Canal Navigation Com. v. Parnaby and others*, 1 Rail. Ca. 696; 11 A. & E. 223.

ness, oversight, or want of diligent precaution, they will be liable (*a*).

Although, however, a railway company undertake for the employment of the utmost care, diligence, and caution in carrying passengers, and will, therefore, be responsible even for slight negligence; yet, as not being insurers, or undertaking absolutely, and without qualification, for the safe conveyance of their passengers, they will not be responsible for mere accidents; that is, for casualties the result of no imprudence or negligence of theirs, and against which even extreme precautions would have been no protection (*b*). When everything has been done which human care and foresight can suggest, the company are exonerated; hence, though a passenger be injured by an accident occurring to the train by which he is travelling, the company are not liable unless there has been negligence (*c*). Nevertheless, in proving that the train and railway are exclusively under the care of the company, the plaintiff makes out against them a *prima facie* case of negligence, which they must disprove, by showing the cause of the occurrence, and explaining how it happened (*d*); and in the absence of any such explanation, the ordinary liability will attach, and the company will not be exonerated from the consequences of the accident.

Action by  
executors.

A railway company are liable to an action not only at the suit of persons who may be injured through their default, but, if the injury prove fatal, to an action by their executors or administrators. Until recently, the law of England, whilst it gave an individual who suffered an injury through the wrongful act, neglect, or default of another, a remedy by action, by which he might recover a compen-

(*a*) Story on Bailments, s. 601. See also, Lancaster Canal Navigation Com. v. Parnaby and others, 1 Rail. Ca. 696; 11 A. & E. 223.

(*b*) Christie v. Griggs, 2 Camp. 86; Story on Bailments, s. 602.

(*c*) Carpue v. London & Brighton Rail. Com. 3 Rail. Ca. 692; Aldridge v. Great Western Rail. Com. 2 R. C. 152; 3 M. & G. 315.

(*d*) Carpue v. London and Brighton Rail. Com. 3 Rail. Ca. 692.

sation in damages for the loss he sustained, afforded no relief if the consequences of such negligence or misconduct were fatal to the person affected. In such cases, a penalty was imposed upon the party in default, in the shape of a deodand upon the chattel which was the immediate cause of death, but no satisfaction was given to the injured parties. Thus, for the less injury of fracture or contusion, compensation might be recovered; but for the greater the law afforded no remedy. But by the 9 & 10 Vic. c. 93, this anomaly has been removed, and it is provided that in all cases in which, if death had not ensued, the party injured would have been entitled to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony. The second section of the statute enacts, that every such action shall be for the benefit of the wife, husband, parent, and child of the person whose death shall have been so caused, and shall be brought in the name of his executor or administrator, and the damages recovered shall be divided among the parties for whose benefit the action is brought, as the jury may direct. Any action by executors or administrators under these circumstances must be brought within twelve calendar months after the death of the deceased; nor can more than one such action be maintained for the same subject matter of complaint.

It is the duty of a company not only to protect the lives and limbs of their passengers, but also to attend to their convenience and comfort (for which the passengers are understood to contract), and to secure them by such reasonable rules and regulations as they are empowered to make and enforce. Thus, the trains must start at the times, and stop at the places, indicated in the time-table; the usual intervals must be allowed for refreshment, ex-

cept in cases of emergency, or unusual delay arising from accidents; nor should any of these arrangements be altered arbitrarily or capriciously, or without notice to the public (*a*). So the journey should (accidents and unavoidable hindrances, from the state of the weather or otherwise, excepted) be performed within a reasonable limit of the time appointed; and although the non-arrival of the train at the terminus, or at any intermediate station, might not give a passenger a right of action against the company for any injury which he may sustain thereby; unless, perhaps, the delay arose from the gross negligence or default of the company; yet should the train be dispatched before the time appointed, it is probable that an action would be maintainable against the company for damages, at the suit of a party who had suffered any loss thence arising (*b*).

Passengers'  
luggage.

The liability of the company extends not only to the persons but also to the baggage of travellers, nor can this liability be limited or varied by any notice of their own (*c*). When once the baggage of a passenger has been entrusted to any properly authorised servant of the company, the latter will be responsible for its safe transit and delivery, and will be liable to make good any loss or injury which may occur whilst it is in their custody; even though it may not have been booked and paid for separately (*d*). Nor does this responsibility cease on the arrival of the train at the terminal or other station to which the passen-

(*a*) Petersd Ab. Carriers, p. 48, note; Story on Bailments, s. 597. Since writing the above, a bill has been introduced into parliament, by which, if it pass into a law, the above doctrines will be confirmed and their advantages secured by express enactment.

(*b*) It may frequently happen that serious loss may be incurred by persons about to embark at a sea-port, if the train by which they propose to travel start before the time, and they by missing it should lose their passage and forfeit their passage money.

(*c*) See Shelford on Railways, p. 366.

(*d*) Story on Bailments, ss. 498, 499. See also, *Lane v. Cotton*, 12 Mod. 487; Jones on Bailments, 94.

ger has booked himself, but continues until his luggage is delivered to him. Yet he must claim it within a reasonable time (*a*). In relation to all such personal baggage as they are accustomed to carry, and the passenger is entitled to take, their responsibility is that of common carriers of goods ; although no specific compensation be given for its conveyance, that being deemed part of the service for which the fare is paid (*b*). By baggage is to be understood such articles of necessity or personal convenience as are usually carried by passengers for their personal use, and not merchandise or other valuables, although carried in the trunks of passengers, which are not designed for any such use, but for other purposes, such as a sale and the like (*c*). The Special Act usually contains a clause prescribing the quantity of luggage which a passenger in each class of carriages shall be permitted to take without extra charge ; and the general railway statutes contain regulations on this subject in relation to passengers by cheap trains, and by trains for the conveyance of military and police (*d*).

(*a*) Story on Bailments, s. 604.

(*b*) Id.

(*c*) Story on Bailments, s. 499 ; and the authorities there cited.

(*d*) See 7 and 8 Vic. c. 85, ss. 6 and 12.

## CHAPTER III.

## ENGINES AND CARRIAGES.

Division of the  
subject.

THE duties and responsibilities of railway companies, and of the parties running trains upon a railroad, in respect of the engines and carriages to be used, spring from three sources:—from the custom of the realm, which requires them as common carriers to provide such as are fit and suitable for the purpose:—from the Railways' Clauses Act, which prescribes certain definite regulations in respect of them:—and from the bye-laws of individual companies who are, by statute, empowered to lay down and enforce many rules and restrictions which will be binding on all other companies and persons running trains over their lines of railway. We shall treat, first, of the common law obligation, and then of the statutory, as it relates to companies running trains on their own lines; and afterwards of the provisions and regulations affecting third parties, whether companies or individuals, putting their own engines and carriages upon a railway.

(a) Liability  
of a company  
in respect of  
engines and  
carriages at  
common law.

A railway company, whether regarded as common carriers or as carriers of passengers, are bound by the common law to provide suitable engines for propelling the trains, and proper carriages, trucks, waggon, vans, horse-boxes, and other vehicles for the conveyance of persons, horses, cattle, and goods (a). These must severally be rightly constructed and kept in sufficient repair, and the company will be liable as well for the consequences of a bad principle of construction as for dilapidation. Therefore any accident happening through the improper construc-

(a) *Walker v. London and South West. Rail. Com.* Kingston Spring Assizes, 1843. See also, Walford on Railways, p. 250.



tion of any engine, carriage, or other vehicle, will be attributed to negligence on the part of the company, even though the defect be out of sight and not discoverable on ordinary examination ; (a) for the law requires of them, as being entrusted with the lives and limbs of their passengers, not ordinary care and diligence only, but the utmost care and diligence of very cautious persons ; (b) and, as common carriers, they are insurers of the goods conveyed against all injuries except such as arise from the act of God or the Queen's enemies (c).

Hence it is the duty of the company not only to have their carriages properly constructed, but to see that they are kept in proper and sufficient repair. For this purpose they are bound to have them examined before each journey, that it may be ascertained whether they are sufficiently secure to perform it ; and they will be answerable for the consequences of omitting to do this, even though there had been an examination previous to the second journey before the accident, and the vehicle had been very recently constructed or repaired (d).

These remarks and cases are of the greater importance in relation to railway companies, inasmuch as actions have been brought, and damages recovered against them for the consequences of accidents occurring through some defect in the engines or carriages which the most cautious and rigid scrutiny could not have detected ; as where axletrees apparently sound have broken during a journey from some original latent flaw in the metal, or some defect produced by their action in the course of being used. It is not necessary, in an action against a company for negligence in the carrying of passengers whereby, through the breaking down of a carriage, injury was caused to the plaintiff, in order to prove the negligence to shew that the

(a) *Sharp v. Gray*, 9 Bing. 457 ; 2 M. & Sc. 621.

(b) *Story on Bailments*, s. 601, a.

(c) See *supra*, p. 347.

(d) *Bremner v. Williams*, 1 C. & P. 414 ; *Best*.

defect in the vehicle was one which could have been observed by the eye; for if it be shewn that it might have been detected in any other way, as by striking metal with a hammer; or that it might have been ascertained on scientific principles, as in the case of change produced in the substance of the material by atmospheric influences, friction, or revolution in a particular manner, and for a given period, it will be sufficient to fix the company with liability; the law requiring that all these precautions should be taken where the lives of individuals are concerned.

Nor is the responsibility of a company in respect of their engines and carriages confined to those whose persons and goods are entrusted to them. They are bound so to construct them as to guard against accidents to the buildings and property through or near to which the railroad passes. They must, therefore, take all reasonable precautions against the escape of fire and heated cinders from the furnaces and funnels of their engines; and if through any negligence in this respect, as for want of a cap to the top of the funnel, or a fire-plate, or from not shutting off the steam whereby the emission of sparks might be prevented or much diminished, any houses, stacks, standing corn, or other things, are set on fire; they will be liable to make compensation. And the mere fact of the accident having occurred by means of a spark from a steam engine, is *prima facie* proof of negligence in the owner of it (a).

(b) Statutory obligations of company as to engines and carriages.

In addition to the common law liability of a railway company for the proper construction and repair of their engines and carriages, there are some statutory obligations imposed. Thus, by 8 Vic. c. 20, s. 114, it is provided that "every locomotive steam engine to be used on a railway shall, if it use coal or other similar fuel emitting smoke, be constructed on the principle of consuming, and so as to consume its own smoke;" under a penalty of five pounds per day so long as this regulation shall be disobeyed.

(a) *Piggot v. Eastern Coun. Rail. Com.* 15 L. J. R., N. S. 235 C. P.

Certain legislative restrictions formerly existed as to the construction of railway carriages, so that no waggon or carriage could be used on a railway which when loaded exceeded the weight of four tons. These restrictions have, however, all been removed by a recent Act of Parliament (*a*); and the size, form, and weight, of all the vehicles to be used are left entirely to the discretion of the company, who are to regulate them by enacting and enforcing bye-laws on the subject, to be binding both on themselves (*b*) and all other companies and persons who would bring engines or carriages upon the line.

Although it is left to individual companies to determine for themselves, generally, the size and form of their carriages, yet provisions are made by statute in certain cases in relation to this subject. The principal of these relate to carriages for the conveyance of letters and the convenience of the servants of the Post Office in mail trains, and to those to be provided for military and police, and for third class passengers.

On receiving a notice from the Postmaster-General to that effect, a railway company are required to provide sufficient carriages and engines for the conveyance of mails to the satisfaction of the Postmaster-General (*c*); and also to furnish a separate carriage, or carriages, fitted up as may be required, for the purpose of sorting letters (*d*). The company are bound also to appropriate exclusively any carriage in a mail train to the carrying of letters if so required (*e*). On all carriages to be provided for the service of the Post Office the Royal arms are to be painted, instead of the name of the owner, and of the number of the carriage, and of all other requisites (if any) prescribed in respect of carriages upon the railway; but the want of the Royal

Carriages in  
mail trains.

(*a*) See 5 & 6 Vic. c. 55, s. 16.

(*b*) 8 Vic. c. 20, s. 118.

(*c*) 1 & 2 Vic. c. 98, s. 1.

(*d*) Id. s. 3.

(*e*) Id. s. 2.

arms will not be an objection to the running of the carriage (a).

Carriage for the conveyance of military and police.

By the 7 & 8 Vic. c. 85, s. 12, it is enacted, that, for the conveyance of soldiers, marines, and privates of the militia or police force, their wives, widows, and children, carriages shall be furnished provided with seats, with sufficient space for the reasonable accommodation of the persons conveyed, and which shall be protected against the weather.

And third-class passengers.

By the 6th section of the last mentioned Act, it is provided as to the carriages to be attached to the cheap trains, which the company are to run daily for the accommodation of the poorer class of travellers, that they shall be furnished with seats, and be protected from the weather in a manner satisfactory to the Commissioners of Railways.

(c) Obligations of third parties as to engines, and carriages.

We have already seen (b) that railway companies are empowered and required to draw up in writing, and under their common seal, the regulations to be observed by other companies and persons using the railway, in respect of carriages brought upon the line. It does not appear, however, that any such regulations need be made as to engines, the company being left free (subject to the restriction as to the consuming of smoke) to adopt the size, form, and class of engine most suitable for their purpose. But all engines to be brought upon the line by other companies or persons are to be subject to the approval of the company.

Engines to be approved by the company.

Thus it is provided by the Railways' Clauses Act, that no engine, or other locomotive power, must be brought upon a railway until it shall have been approved by the company, to whom notice must be given by the party desirous of bringing it on the line; when, within fourteen days after the service of such notice, the company are to appoint an engineer or agent to inspect the same at some place, to be appointed by the owner, not more than three

(a) 1 & 2 Vic. c. 98, s. 10.

(b) *Supra*, p. 361.

miles distant from the railway, and to report thereon to the company. Within seven days after the making of this report, if the company approve of the engine, they are to give a certificate of approval to the party requiring it, on the receipt of which it may be used on the railway (a).

Whenever the engineer or agent of a company reports that any engine is out of repair or unfit to be used, the company may require it to be removed, or forbid it to be used until repaired to their satisfaction, of which a certificate is to be given if required. In case of differences between the owner of an engine and the company as to its fitness or unfitness for the purpose of being used, the matter is to be settled by arbitration (b).

If the owner, or person having the care, of any engine, Penalty. or moving power, bring or use the same on the railway without having first obtained a certificate of the company's approval as above-mentioned; or if, after notice given by the company to remove, or not to use any such engine, such person fail to remove or continues to use it, without having first repaired it to the satisfaction of the company, and obtained a certificate to that effect, he is liable to a penalty of £20., to be recovered by summary process before two justices. In either of the above cases of breach of their regulations, the company are also empowered to remove the engine in question from the railway (c).

The provisions contained in the statute under consideration respecting carriages are similar to the above, with this distinction, however, that as to carriages the company must draw up bye-laws (d) to be binding upon themselves as well as upon third parties, which in the case of engines they are not required to do. These bye-laws must be in writing, and be authenticated by the

Carriages to be constructed according to regulations.

(a) 8 Vic. c. 20, s 115.

(c) Id. s. 116.

(b) Ibid.

(d) Id. s. 118.

common seal of the company, and a copy of them given by the secretary to any person requiring it.

No carriage can be used upon any railway unless it be, so long as it shall be used, of the construction, and in the condition, required by the regulations of the company for the time being; and all disputes between the owners of such carriages and the company as to their construction or condition, are to be settled by arbitration (*a*). If, contrary to the regulations then in force in respect thereof any person use a carriage of improper construction or condition, he will be liable to a penalty of £10 for every such offence, and the company may remove the carriage from the line (*b*).

**Over-loading.** A company not only have control over all vehicles used upon the line in respect of the principle of their construction and their state of repair, but also in respect of their loading. Therefore, if the loading of any carriage using the railway be such as to be liable to collision with other carriages properly loaded, or be otherwise dangerous; or if the person having the care of it, or of the goods, suffer it or them to remain upon the railway so as to obstruct the passage or working thereof, the company may cause the carriage or goods to be unloaded or removed, so as to prevent collision or obstruction, and may detain the same until the expenses of unloading, removal, and detention, have been paid (*c*). The company will not be liable for any but wilful or negligent damage to a carriage or goods so dealt with; nor be responsible for the safe custody of such goods or carriage unless wrongfully detained, and then only during the period of wrongful detention (*d*).

**Registry of carriages.**

The owners of carriages using a railway must enter with the secretary of the company, or other person appointed for that purpose, the names and places of abode of the owners of such carriages respectively, with the numbers, weights, and gauges of their respective carriages; all which parti-

(*a*) 8 Vic. c. 20, s. 117.

(*c*) Id. s. 122.

(*b*) Id. s. 119.

(*d*) Id. s. 123.

culars, if the company so require, are to be painted in legible characters on the outside of such carriages, so as to be always open to view. The carriages may also be weighed, measured, and gauged at the expense of the company (a). On the failure of any party to comply with these provisions, the company may refuse to allow his carriages to be brought upon the line, or may remove them from it until he complies (b).

The owners of engines and carriages using the railway will be liable for any trespass or damage done by their engines or carriages, or by their servants, to or upon the railway, or machinery, or works; or to the property of any other persons. Any servant or other person so offending may be convicted of the offence before two justices; and upon such conviction, the owner of the engine or carriage, or the employer of the servant, shall pay to the company, or to the person injured, as the case may be, the amount of damages to be ascertained by the justices, if it do not exceed the sum of £50 (c); and the owner or employer may recover the amount from his servant, or the person in default, in the same manner as it has been recovered from him (d).

Injury done by  
carriages, &c.  
of third parties.

(a) 8 Vic. c. 20, s. 120.

(c) Id. s. 124.

(b) Id. s. 121.

(d) Id. s. 125.

## CHAPTER IV.

## TRAINS.

THE regulations with regard to the trains on a line of railway, both as to their number, description, hours of starting, rate of travelling, and other particulars, are (with the exceptions mentioned below) to be made by the directors of the company. This power is, however, subject to some restrictions and exceptions in certain cases; but such regulations will be binding on all the parties using the line, provided they are not such as to prevent the passage of trains at all reasonable times. The number and character of the trains on a railway will generally be adapted to the public convenience, so as to ensure the largest amount of remuneration to the proprietors. In like manner, the speed will be determined by the demands of passengers and the ability of the company. But it is provided by 8 Vic. c. 20, s. 48, that when the railway crosses any turnpike road on a level near a station, no train shall travel faster than four miles an hour over that crossing.

Although the company are entrusted with the general control and disposal of their business in the regulation of trains, yet, in certain instances in which the public interests require it, they are put under statutory obligations to provide a particular class of trains as prescribed by government. The principal of these are:—the trains to be furnished for the conveyance of the mails; for the carriage of military and police, and the transport of arms and ammunition; and for the accommodation of the poorer class of travellers at cheap rates. We shall briefly enumerate the several enactments on these subjects in order.

(1) Convey-  
ance of mails.

By the statute 1 & 2 Vic. c. 98, s. 1, it is provided, that the Postmaster-General may require any railway company



to furnish conveniences and facilities for the conveyance of the mails. For this purpose, he will give a notice to the directors of the company, requiring them from and after a day therein named (not being less than twenty-eight days after the service of the notice), to convey and forward the mails, or post-letter bags, together with the guards having charge thereof, and any other officers of the post-office, either by the ordinary or by special trains, as need may be, at such hours of the day or night as the Postmaster-General may appoint. This notice will be deemed to have been duly served on a company when it shall have been given or delivered to any one or more of the directors of such company, or to the secretary or clerk of the company, or shall have been left at any station belonging to the company. (a) Regulations as to trains.

On the day named in the above notice, the company, having provided the requisite carriages and engines (a), must receive and convey all the letter-bags tendered to them for that purpose, together with the guards and other officers of the Post Office; and must also receive, deliver, and leave all such letter-bags, guards, &c. (b), at such places in the line of the railway, at such hours or times in the day or night, and subject to all such reasonable regulations and restrictions as to speed of travelling, places, times, and duration of stoppages, and times of departure and arrival, as the Postmaster-General shall from time to time direct. They must also provide such proper trucks for the conveyance of mail coaches, carts, or carriages for sorting letters, as may be directed (c).

The Postmaster-General may require that the mails be forwarded at any rate of speed which the Inspector-General of Railways for the time being shall certify to be safe, not exceeding twenty-seven miles in the hour, including stoppages (d).

(a) See *supra*, p. 361.

(b) As to who are to be deemed "officers and servants of the Post Office," &c., see 7, W. 4, and 1 Vic. c. 36, s. 47.

(c) 1 & 2 Vic. c. 98, ss. 3, 4, and 5.

(d) 7 & 8 Vic. c. 85, s. 11.

The Postmaster-General may also send any mail-guard with bags not exceeding the weight of luggage allowed to any other passenger (or subject to the general rules of the company for any excess of that weight), by any trains other than a mail train, upon the same conditions as any other passenger. But in this case the company will not be responsible for the safe custody or delivery of the mail bags so sent, nor will the train by which they are conveyed be subject to the regulations made by the Postmaster-General in respect of regular mail trains. Neither can that officer require a regular mail train to be converted into an ordinary train (*a*).

For the greater security of the mails, all companies employed in carrying them, with their officers, servants, and agents, are to obey and observe all such reasonable regulations in respect of the conveyance, delivery, and leaving of such mails, &c., as the Postmaster-General, or any officer appointed by him for that purpose, may from time to time make. Nevertheless, no officer of the Post Office can be permitted to interfere with, or give orders to the engine-driver; but if any cause of complaint arise, it must be stated to the conductor or other officer of the railway company having the charge of the train, or to the chief officer at any station on the railway; and the company will be wholly responsible for any default or neglect on the part of any of their officers or servants to comply with any of the regulations of the Postmaster-General (*b*).

If any bye-laws of the company, made either before or after the mails shall be conveyed upon the railway, are repugnant to the regulations issued by the Postmaster-General, or to any of the enactments of the 1 & 2 Vic. c. 98, they are to be deemed absolutely void, and of no effect, as though they had never been made or passed (*c*).

Penalty.

If any railway company refuse or neglect to convey the mails, or to receive, deliver, and leave the letter-bags,

(*a*) 7 & 8 Vic. c. 85, s. 11.

(*b*) *Id.* s. 5.

(*c*) *Id.* s. 11.

&c., when tendered, according to the directions for that purpose given, at the places and times therein prescribed; or to observe and obey the rules and regulations made by the Postmaster-General, or his appointee; or if any of the company's agents or servants make default in any of these matters, the company shall be liable in every such case to a penalty of £20, to be enforced by warrant of distress granted by a justice after summons of the offender, as prescribed by the 1 Vic. c. 36, s. 13 (*a*). This penalty will be in addition to that to which the company may be liable under the bond hereinafter mentioned (*b*).

The remuneration to be paid to the company for the conveyance of the mails is to be settled by agreement with the Postmaster-General, made either before or after the commencement of the company's service, which is not to be suspended or postponed until the agreement shall be concluded (*c*).

(*b*) Remuneration of company.

In every case where the amount of compensation payable by the Postmaster-General to the company, for services rendered, or otherwise, is disputed, the matter is to be referred to two arbitrators, one to be nominated by each party; and, if they cannot agree, then to an umpire (to be appointed by the arbitrators before entering on the inquiry), whose award (or that of the arbitrators) will be binding and conclusive on the parties, their successors and assigns (*d*). On default of either party to name an arbitrator for fourteen days after notice, the arbitrator of the other party may nominate a second, and both may proceed in the reference. If they do not make their award within twenty-eight days after their appointment, the matter must be left to the decision of the umpire; and if he fail to decide the question within twenty-eight days after his appointment, the arbitrators are to nominate another umpire, on whose neglect in like manner to make an award within the period limited, a third umpire must be named; and

(*a*) 7 & 8 Vic. c. 85, s. 12.

(*b*) See post, p. 371.

(*c*) 1 & 2 Vic. c. 98, s. 6.

(*d*) Id. s. 16.

so "*toties quoties*," until a decision of the matter is obtained (a).

When any agreement has been entered into between a railway company and the Postmaster-General, or an award made, as to the amount of remuneration to be paid to the company for their services to the Post Office, such agreement or award will not prevent the Postmaster-General (on giving a notice to that effect to the company) from requiring of them from and after a certain day (not being earlier than twenty-eight days after the service of notice) additional services beyond those in respect of which the agreement or award has been made ; and thereupon (and also in case of a discontinuance of any service theretofore rendered) a new agreement is to be made by the parties as to the amount of remuneration to be paid and received for such increased (or diminished) services. The alteration (or suspension) of the services is not, however, to be postponed, although the terms of this agreement cannot be settled (b). So the Postmaster-General may terminate the services (or any part thereof) of the company, by giving them six months' notice in writing under his hand to that effect ; and upon the expiration of that period the services comprised in the notice, and the remuneration therefor, shall cease. So without giving any notice, or on the giving of a shorter notice, an end may be put to the services or any of them. In either of these latter cases, however, when the services of the company shall have been determined without any cause whatever, or for any other cause than the default of the company in their performance, or breach of any of their engagements with the Postmaster-General, then the latter must make to the company full and fair compensation for all loss thereby occasioned (c). Not only may the terms of an original agreement between the Post Office authorities and a railway company be submitted to arbitration ;

(a) 1 & 2 Vic. c. 98, s. 18.

(b) Id. s. 7.

(c) Id. ss. 8 and 9.

but also those of any substituted agreement in the case of the alteration, suspension, or determination of their services, and the amount of compensation to which they may be entitled for loss occasioned by the sudden termination of their engagements with the Postmaster-General (a).

And even in case of a contract, the terms of which have been settled by arbitration, and no subsequent alteration has been made in the nature and amount of the services required and rendered, the company may, if they feel themselves aggrieved in respect of the amount of remuneration therein fixed, after it has been in force for a period of three years, by notice under their common seal to the Postmaster-General, require that it be referred to arbitrators, to determine (as in other cases) whether any and what alteration should be made therein; the services of the company under it, in the meanwhile, not being interrupted or suspended (b).

The Postmaster-General may require the company to give security for the due performance of the services contracted for, and obedience to the regulations made. For this purpose they are to give a bond (to be renewed when forfeited, or as often as required) to her Majesty, her heirs and successors, in such terms as the Postmaster-General may name, conditioned to be void on the due fulfilment of the agreement between the parties. For any neglect or refusal on the part of the company for one month to enter into, or renew, this bond, they will be liable to a penalty of one hundred pounds, for every day of such neglect or refusal after the expiration of the said one month; to be recovered by action in any of the superior courts, if sued for within one year after the penalty has been incurred. Where any railway had been leased before the passing of the 1 & 2 Vic. c. 98, the lessees are to be subject to all the provisions and regulations above mentioned during the

(c) Security.

(a) 1 & 2 Vic. c. 98, ss. 7, and 16.

(b) Id. s. 17.

(c) See 1 Vic. c. 36, s. 24.

continuance of their lease, instead of the proprietors of the line; but they are not to be compelled (not being a body-corporate or a company) to give security as above required to any amount exceeding a thousand pounds; nor to be liable in any one year to have damages recovered against them on any such bond, to a greater amount than one thousand pounds and costs of suit (*a*).

Where persons are required to give security by bond to the Post Office, they may, with the consent of any three of the Lords of the Treasury, transfer to, or deposit with the Postmaster-General, stock or exchequer bills, for such an amount as, in the judgment of such lords, shall be a sufficient security against breach of the duty for the performance of which such security is required (*b*).

(2) Convey-  
ance of military  
and police.

By the 7 & 8 Vic. c. 85, s. 12, amending the 5 & 6 Vic. c. 55, s. 20, provisions are made for the conveyance of any of her Majesty's forces of the line, ordnance-corps, marines, militia, or the police force, by railway. These provisions apply to every company incorporated after the passing of the Act (*c*). And also, as far as regards the providing of cheap trains (*d*), to every company which although previously incorporated, has since obtained any extension or amendment of the power before conferred. The Act prescribes the fares and charges to be made by the company (*e*), and which are not to exceed twopence per mile for each commissioned officer proceeding on duty, such officer being entitled to conveyance in a first-class carriage; and not exceeding one penny per mile for each soldier, marine, or private of the militia or police force, and also for each wife, widow, or child above twelve years of age of a soldier, entitled by Act of Parliament, or by competent authority to be sent to their destination at the

(*a*) 1 & 2 Vic. c. 98, s. 14.

(*b*) 6 & 7 W. 4, c. 28, s. 1; 1 & 2 Vic. c. 61; Shelford on Railways, p. 15.

(*c*) August 9th, 1844.

(*d*) See s. 6.

(*e*) See s. 12; also post, pp. 391, 392.

public expense. Children under three years of age so entitled are to be taken free of charge, and those between the ages of three and twelve years, at half the price of an adult.

Each officer conveyed is to be entitled to take with him one hundred weight of personal luggage without extra charge, and every soldier, marine, private, wife or widow, may take with him or her half a hundred weight of personal luggage without extra charge, all excess over the above weights being charged for at the rate of not more than one halfpenny per pound per mile.

All public baggage, stores, arms, ammunition, and other necessities and things, (except gunpowder and other combustibles,) must be conveyed at charges not exceeding twopence per ton per mile; the assistance of the military or other forces being given in loading and unloading such goods. Public stores.

The company are only bound to convey gunpowder and other combustible matters at such prices and upon such conditions as shall be from time to time contracted for between the Secretary at War and themselves (a). Gunpowder.

By the Act abovementioned, provision is made for the accommodation of the poorer class of travellers, and all railway companies which come under its operation, are required to convey third class passengers by means of one train, at least, to travel along their railway from one end to the other of each trunk, branch, or junction line, belonging to or leased by them, so long as they shall continue to carry other persons over such trunk, branch, or junction line, once at the least each way, on every week-day, except Christmas-day and Good Friday, (such exception not to extend to Scotland); such third class passengers to be conveyed to and from the terminal and other ordinary passenger stations of the railway, under the obligations contained in their several Acts of Parliament, and with the immuni- (3) Cheap trains.

(a) See s. 12.

ties applicable by law to carriers of passengers by railway; and also under the following conditions: (that is to say,)

Such train shall start at an hour to be from time to time fixed by the directors, subject to the approval of the Lords of the Committee of Privy Council for trade and plantations.

**Speed of.** Such train shall travel at an average rate of speed, not less than twelve miles an hour for the whole distance travelled on the railway, including stoppages (a).

**Stoppage.** Such train shall, if required, take up and set down passengers at every passenger station which it shall pass on the line.

**Carriages.** The carriages in which passengers shall be conveyed by such train shall be provided with seats, and shall be protected from the weather, in a manner satisfactory to the Lords of the said Committee.

**Fares.** The fare, or charge, for each third class passenger by such train shall not exceed one penny per mile for each mile travelled.

**Luggage.** Each passenger by such train shall be allowed to take with him half an hundred weight of luggage, not being merchandise, or other articles carried for hire or profit, without extra charge; and any excess of luggage shall be charged by weight, at a rate not exceeding the lowest rate of charge for passengers' luggage by other trains.

Children under three years of age accompanying passengers by such train shall be taken without any charge; and children of three years, and upwards, but under twelve years of age, at half the charge for an adult passenger.

And with respect to all railways subject to these obligations which shall be opened on or before the first day of

(a) A bill is now pending in parliament (1847) which contains a provision requiring not only that an average rate of twelve miles per hour be maintained, but also an uniform rate.



November next, these obligations shall come into force on the said first day of November; and with respect to all other railways subject to these obligations, they shall come into force on the day of opening of the railway, or the day after the last day of the session in which the Act shall be passed by reason of which the company will become subject thereunto, which shall first happen (a).

For every refusal or neglect to comply with the above provisions on the part of any railway company, and every attempt to evade their operation, the company shall forfeit to Her Majesty a sum not exceeding £20, for every day during which such refusal, neglect, or evasion shall continue (b). Penalty.

Commissioners of Railways have a discretionary power with regard to the above provisions (except as to the fare for each passenger, which must in no case exceed the rates provided), so that on the application of any company they may dispense with them, if it shall appear to them that other arrangements contemplated by the company in regard to speed, covering from the weather, seats, or other particulars, would be more beneficial and convenient for the passengers by the cheap trains than those prescribed.

The company will not be liable for non-observance of any conditions so dispensed with (c).

Where the company shall run trains on Sundays for the conveyance of passengers, they must provide sufficient third class carriages for the accommodation of passengers to be attached to the train which stops (each way) at the greatest number of stations, such passengers to be conveyed at rates not exceeding one penny per mile (d). (4) Sunday trains.

(a) 1 & 2 Vic. c. 98, s. 6.

(c) Id. s. 8.

(b) Id. s. 7.

(d) Id. s. 10.

## CHAPTER V.

## TOLLS, RATES, AND CHARGES.

WE propose in this chapter to treat of the law as it relates to the amount of remuneration to be charged and received by a railway company, whether for privileges afforded by them to the public as owners and proprietors of the line, or for services rendered as carriers of goods and passengers over it. In the several Acts of Parliament relating to the subject (whether general or special), the terms "toll," "rate," "charge," appear to be used almost interchangeably, or, at least without any distinct and definite appropriateness. Nevertheless, the first, in strict legal signification, would seem to apply only to the sum to be demanded and taken by a company for the liberty granted by them as owners of the railroad to a third party to pass along and use it with his own engines, carriages, and trucks; and which is identical with that taken by canal proprietors for the use of the navigation; and analogous to that paid on a turn-pike road for the use thereof to the trustees.

The words "rate," "charge," are not distinguishable in meaning, but both relate to the monies payable to and receivable by the company as carriers of goods and passengers in their own carriages, propelled by their own engines, and over their own line, or the lines of other companies with whom they have contracted for that purpose. For convenience sake we shall endeavour to preserve throughout this chapter the distinction above alluded to, considering the word *tolls* to refer exclusively to the remuneration paid to a company as owners of the line for its user, and rates and charges to refer to their remuneration as carriers of persons and goods on it on their own account. The rights and remedies, and both the

common law and statutory obligations of the company, and of third parties, differ very materially in the two cases, and they must, therefore, be treated separately. Nevertheless there are certain general principles and provisions which apply alike to both, and the consideration of which may, therefore, well precede any reference to those matters which belong exclusively to either.

These topics of general application to the subject of this chapter comprise (as of chief importance) the following:—the right to take tolls and charges, with the construction put upon it in Courts of Law and Equity; the right to vary such tolls and charges, with the limits within which, and the conditions under which, such variation may be made; the necessity of making and maintaining all such tolls and charges both reasonable and equal; and, lastly, the obligation of the company to make periodical and accurate returns of them to the Commissioners of Railways; and the right of the latter to revise and alter the scale thereof, under certain circumstances, and at fixed times.

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SEC. I.—*General Legal Principles and Provisions in relation to Tolls, Rates, and Charges.*

THE right of a railway company to take tolls for the user of the line arises under their Special Act, and is recognised in the 92d section of the Railways' Clauses Act (a), which provides, "that upon payment of the tolls from time to time demandable, all companies and persons shall be entitled to use the railway." The Special Act usually fixes the maximum of all such tolls and charges.

(a) Right to take tolls, &c.

Their right to constitute themselves common carriers, and to make charges for the conveyance of goods and pas-

(a) 8 Vic. c. 20.

c c

sengers is also given by their Act of Incorporation, taken in connection with the provisions of the above statute, which, in the 86th section, empowers them to employ locomotive engines or other moving power, together with carriages and waggons, and to convey passengers and goods upon the line, and to make therefor such reasonable charges as may be determined on, not exceeding those by the Special Act authorised to be taken.

With respect to the right of a public company to take a toll under the powers of their Act, it has been decided that the empowering clauses of the statute are to be considered as the terms of a bargain between the company and the public, and any ambiguity in them must, therefore, according to the usual rule of construction, operate against the company and in favour of the public. The right to take tolls, as it arises exclusively under the Act, is to be limited strictly to the terms of it, and nothing can be claimed which is not clearly given thereby. This rule is well illustrated in the following case. A canal was formed upon two levels which were connected by a chain of locks. Upon the upper level there was no lock whatever. By the Act of Parliament for making the canal, all persons were at liberty to navigate thereupon with boats, upon payment of such rates and dues as should be demanded by the company, not exceeding the rates therein mentioned; and by another clause the company were authorised to take certain rates and duties for every ton of iron and other goods navigated on any part of the canal, and which should pass through any one or more of the locks; and power was given to the owners of adjoining lands to use pleasure boats on the canal without paying dues, so as the same did not pass through any lock, and were not used for carrying goods. It was held that this Act gave no right to demand toll for boats navigating the upper level of the canal in which there were no locks (a).

(a) *Stourbridge Canal Com. v. Wheeley*, 2 B. & Ad. 793.

In addition to the rule above mentioned that Special Acts are to be construed as bargains between the adventurers and the public, and ambiguity in the terms of the contract must operate against the adventurers and in favour of the public, it is a general principle to be adopted in the construction of statutes, that no tax should be considered as imposed unless the language is clear and unambiguous, especially in the case of Private Acts where that tax is for the benefit of private individuals or companies (a).

A railway company may vary the tolls upon the railway with the view of accommodating them to the circumstances of the traffic, so that the variation be not made collusively, or for the purpose of prejudicing any particular parties, or unfairly creating a monopoly; or so as in any case to exceed the maximum rate of charges prescribed by the Special Act. Thus they have the power of varying the rate of tolls by the Special Act authorised to be taken, either upon the whole, or any particular portions of the railway as they shall think fit; provided that all such tolls be at all times charged equally to all persons, and after the same rate per ton per mile, or otherwise, in respect of all passengers, and of all goods or carriages of the same description, and conveyed or propelled by a like carriage or engine; passing only over the same portion of the line of railway, under the same circumstances; and no reduction or advance in any such tolls is to be made, either directly or indirectly, in favour of, or against, any particular company or person travelling upon or using the railway. (b)

(b) Right to vary tolls, &c.

Both the original and the altered scale of tolls and rates imposed on the public by a railway company must

(c) Reasonableness and equality of tolls, &c.

(a) See on this point *Barrett v. Stockton and Darlington Rail. Com.*, 2 Sc. N. R. 337; 2 M. & Gr. 134; *Kingston on Hull Dock Company v. Browne*, 2 B. & Ad. 58; *Leeds and Liverpool Canal Company v. Hustler*, 1 B. & C. 424; *Priestley v. Foulds*, 2 Rail. Ca. 422; and *Hull Dock Company v. La March*, 8 B. & C. 51; 2 M. & R. 107. See also Judgment of Lord Cottenham, C., in *Webb v. Manchester and Leeds Railway Company*, 1 Rail. Ca. 576; 4 Myl. & Cr. 116.

(b) 8 Vic. c. 20, s. 90.

be *reasonable* and *equal*. As to what are to be deemed reasonable and equal charges, the case of *Parker v. Great Western Railway Company* (a) may furnish some information. The company were empowered under their several Acts to make certain reasonable charges, and to vary the scale within certain limits, so that such variations should be equal and impartial. The company constituted themselves common carriers, charging the public at the rates specified in their printed bills for carriage of goods; such charges including the collection, weighing, loading, unloading, and delivery of the goods. They also carried goods for other carriers, allowing them a certain deduction for the trouble of collecting, &c., which was performed by the carriers. In their dealings with a particular carrier they refused to make such allowance, but were willing to perform for him all the things which formed the consideration of that allowance, and which in fact he performed for himself. It was held, that the company were not justified in withholding the allowance from such carrier, and, therefore, that the charges to him without that deduction were not equal or reasonable.

It further appeared, that the company made the following distinction as to their charges for carriage, in their dealings with the public and with carriers. In the case of the public, if there were several packages from one consignor to several consignees, or *vice versa*, the charge was made upon the aggregate weight: in the case of carriers, if there were several packages consigned by or to different individuals, the charge was upon the separate weight of each package, unless it was known that more than one package belonged to the same consignor, or was going to the same consignee, in which case they were charged on the aggregate weight. In all cases of carriers the company dealt with and recognised the carrier only as their consignor and consignee of the goods: it was

(a) 7 Sc. N. R. 835; 3 Rail. Ca. 563.

held, that they were bound to treat them so for all purposes, including the mode of charging them in the aggregate, and had no right to make a distinction in that respect between them and individuals.

So also, in the case of *Pickford v. The Grand Junction Railway Company (a)*, the question of reasonableness and equality of charges came before the Court; and it was decided that where the company in their list of rates imposed a charge of one penny per pound weight "for boxes, bales, hampers, or other packages, when they contained parcels or other packages or things under one hundred and twelve pounds weight each, directed, consigned, or intended for different persons, or for more than one person," that such a charge was not *reasonable* in the case of a package of above five hundred pounds weight, made up by a carrier, and directed to one person, although containing a number of parcels under one hundred and twelve pounds weight each, directed or consigned to different persons.

So where the company became carriers on another line, and published a list of rates, to which was appended a notice that goods were brought to their terminus without extra charge, and that there was no charge for booking, or delivering in L.; and they made a contract with certain parties, that the latter should carry from their terminus, and deliver in L. all goods brought by the railway, receiving therefor a certain per centage or proportion of the whole charge to the customer; it was held that the whole charge could not be imposed on persons ready to receive their goods at the terminus, and that it was in their case both *unreasonable* and *unequal (b)*.

It appears from the above, that the Courts will watch the proceedings of railway companies with great jealousy, to see that they do not abuse their large powers for the purposes of oppression, and with a view to establish any unfair monopoly. Most of the disputes on the subject

(a) 10 M. & W. 399; 3 Rail. Ca. 538.

(b) *Ibid*.

under consideration which have led to litigation, have arisen between such companies and common carriers, and seem to have originated from attempts on the part of the former to obtain a complete monopoly of the carrying trade, to the utter exclusion of private persons and firms. The language of the statutes, general and special, and the firmness of the Courts have, however, been too strong for the companies making these illegal attempts; and it is not easy to see how the latter can evade the law thus clearly expressed, fairly interpreted, and justly administered, so as to inflict upon the public those crying evils of monopoly against which all these precautions have been taken. In one case, in the Court of Chancery (*a*), a doubt was expressed whether a company, being carriers only to Birmingham, could legally make the same charge to A. for delivery of goods at Birmingham as they make to B. for delivery of goods at Worcester; B. agreeing to give the company his whole custom, and agreeing to pay on certain articles an increased price; and, inasmuch as such an arrangement for charges, unequal as between one party and another, seems to be an infraction of the terms of the railway Acts, no less than an invasion of their spirit, it would most probably in a court of law be held illegal and void.

Although the Courts are jealous in the exercise of their jurisdiction over companies armed with parliamentary powers, to maintain the public rights, and restrict a company to the limits prescribed by their Act, yet they will not interfere summarily in a doubtful case. It will depend, therefore, upon the facts and circumstances disclosed on the application whether an injunction will be granted to restrain a company from making certain charges alleged to be unfair, or whether the complainant will be left to establish their illegality in an action at law. Thus, in a case where the company gave an option to a party sending packages containing small parcels to pay according to an

(*a*) *Pickford and Another v. Grand Junction Rail. Com.* 3 R. C. 538.



average, or to pay for the parcels separately, it was held that if the principle of an average were legal, and the amount of it reasonable, although the alternative requiring the party to pay for the separate parcels may be *per se* illegal, yet that that would not render the demand to pay according to average illegal; and an injunction to restrain the company from making such charges was refused (*a*).

But if the rate of tolls exacted by a railway company be not equal, and in accordance with the terms of their Act, and they refuse to make them so, a mandamus will be granted to compel them (*b*). But no mandamus will be granted, nor will the Court of Chancery interfere by injunction, except in cases in which there is a clear evasion or infringement of the Act, and when the public interests are thereby affected. And although tolls and charges are to be equal, yet this equality is not always to be determined by an arithmetical computation; for it would seem that a passenger for a short distance may legally be charged more per mile than one for a longer distance (*c*).

If any tolls be taken by a company exceeding the rate specified in the Special Act as the maximum to be charged, the party who has paid it may recover back the overcharge in an action for money had and received (*d*).

To protect the public from the serious evils of monopoly in the conveyance of goods and passengers, and to secure to them the privilege of travelling, or transporting goods, on fair and reasonable terms, the scale of charges imposed by railway companies is liable, in certain events and at certain times, to be revised by the government. Thus,

(*d*) Revision of scale of tolls, fares, and charges.

(*a*) *Pickford v. The Grand Junction Rail. Com.* 3 Rail. Ca. 548.

(*b*) See *Reg. v. Leicestershire and Northampton Union Canal Company*, 3 Rail. Ca. 1; *Rex v. Grand Junction Canal Company*, 3 Rail. Ca. 14. note; *Rex v. Glamorganshire Canal Com.* 3 Rail. Ca. 16 note; in which several cases, although the rule was discharged, yet it was on special grounds, and the right to mandamus in such cases was admitted.

(*c*) *Attorney-General v. Birmingham and Derby Rail. Com.* 2 Rail. Ca. 124.

(*d*) *Parker v. Great Western Rail. Com.* 3 Rail. Ca. 563; 7 Sc. N. R. 835.

by the statute 7 & 8 Vic. c. 85, s. 1, it is provided, with respect to all railways authorised by any Act of that or any succeeding session, that if at any time after the end of twenty-one years from the 1st of January next after the passing of any Act authorising the construction of a passenger railway, the clear amount of profits divisible upon the subscribed and paid up capital stock of the said railway, upon the average of the then three last preceding years, shall be ten per cent. or more, then the Commissioners of Railways, on giving three months' notice to the company, may revise the scale of tolls to such an extent as, supposing the same quantities and kinds of traffic to continue, shall in their judgment be likely to reduce the divisible profits to ten per cent. This revised scale is to be accompanied by a guarantee that the divisible profits, if any deficiency occur, are to be made good to the amount of ten per cent.; nor can the scale be again revised for twenty-one years, unless with the consent of the company. Any railway on which one third or more of the gross annual revenue shall be derived from the carriage of passengers, will be a passengers' railway, within the meaning of the statute under consideration (*a*). The companies subject to the above provisions are for the three years next preceding the period of revision, to deliver half-yearly to the Commissioners of Railways accurate abstracts of the receipt and expenditure on their several lines, duly audited and certified by two directors, and to permit the inspection of their books by any persons to be appointed by the commissioners to test the accuracy of the original returns (*b*).

These provisions will be found practically to apply to almost every railway company in existence, although incorporated before the passing of the Act in which they are contained, because there is scarcely any company which has not been compelled to make subsequent application to Parliament for enlarged and amended powers, which they

(*a*) See 5 & 6 Vic. c. 56, sec. 12, and 7 & 8 Vic. c. 85, s. 25.

(*b*) 7 & 8 Vic. c. 85, s. 5.

have secured on condition of their becoming subject to the regulations of the recited statute.

If the company object to the revision of their scale of charges, they may have the option of selling the railway to government for a sum equal to twenty-five years' purchase. But the option of revision or purchase cannot in any case be exercised by the government, until an Act has been passed authorising the guarantee above mentioned, or the levy of the purchase money (as the case may be), and determining the manner in which the options shall be exercised. Three months' notice of an intention to apply for such an Act must be given to the company affected by it, and the giving of the notice must be recited in the preamble of the bill. (a)

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SEC. II.—*Tolls and Charges payable to a Railway Company as Owners and Proprietors of the Line.*

BEFORE a railway company are entitled to demand or take any tolls for the use of a railway, a list of all such tolls authorised by their Special Act to be taken, and which shall be exacted by the company, must be published by the same being painted upon one toll board or more in distinct black letters on a white ground, or white letters on a black ground; or by being printed in legible characters on paper affixed to such board. The board must be exhibited in some conspicuous place at the stations, where the tolls are made payable, and such tolls can be taken only during the time that this provision is observed (b).

(a) Pre-requisites to right to take tolls.

Publication of list.

The company are also bound to have the length of the railway measured, and at the distance of a quarter of a mile from each other, to have milestones, posts, or other conspicuous objects set up and maintained along the whole

Milestones.

(a) 7 & 8 Vic. c. 85, s. 4.

(b) 8 Vic. c. 20, ss. 93, 95.

line, with numbers or marks inscribed thereon, denoting the distances, and no tolls can be demanded until this has been done (a).

(b) Payment  
and recovery  
of tolls.

Amount of.  
Generally.

It is not lawful for a company at any time to demand or take a greater amount of toll than they are by the Railways' Clauses Act and their Special Act, authorised to demand. We have already seen that the maximum tolls are fixed by the statute incorporating the company, and that no variation of the scale can be made so as to exceed in any case that maximum. Generally, therefore, the amount of tolls demandable will follow the rates as settled by the company under their powers, and exhibited on toll boards at the stations.

In case of  
contracts be-  
tween com-  
panies.

So although a company may enter into a contract with any other company for the passage of trains and the carriage of goods and passengers over their line, or for the passage of their own trains and the conveyance of their own passengers and goods along the line of another railway, and may thereupon make such arrangements as to them may seem expedient for the apportionment of the tolls, yet no such arrangement can avail in any degree to alter or affect the amount of the tolls which the respective companies are for the time being authorised to charge other persons and companies, but the latter will still be entitled to use the railways on the same terms and conditions, and upon payment of the same rate of tolls as before (b).

On amalga-  
mated railway.

Again, in many Railway Acts it is provided that the company may charge for the conveyance of passengers and goods over the fraction of a mile, the same toll which they are entitled to demand for a mile; in cases, therefore, in which any railway shall be amalgamated with any adjoining railway or railways, the tolls must be calculated and imposed at such rates as if such amalgamated lines had originally formed one line of railway (c).

Payment of  
tolls.

The tolls are to be paid to such persons, and at such

(a) 8 Vic. c. 20, ss. 94, 95.

(b) Id. ss. 87, 88.

(c) Id. s. 91.

places near to the railway as the company may appoint. Notice of the regulations as to the mode and places of payment must be affixed to the lists of tolls (a). They must also be paid before the parties will be entitled to use the railway (b), if demanded by the proper officer.

If on demand any person refuse or neglect to pay the tolls due for any carriage or goods, the company may detain and sell them, or if they have been removed from the premises of the company, then they may detain and sell any other carriages or goods remaining on their premises belonging to the parties in default, and out of the monies arising from the sale may reimburse themselves for the costs of the detention and sale, and also retain thereout the amount of tolls due, paying over the balance to the parties entitled to it. Or the company may, if they prefer it, recover the tolls by action at law (c).

Recovery of  
tolls.

An important question may arise under the above provision, as to the nature and extent of the lien therein conferred on railway companies; whether it extends to a general balance, or is limited to the tolls due, in respect of any particular carriage train or goods. The words of the section seem to be sufficiently comprehensive to empower a company to seize, detain, and sell any carriages or goods on their premises belonging to their debtor for arrears of tolls generally. This question is of considerable importance where common carriers use the railway with their own engines and carriages; and the goods of their customers may become liable to be seized to pay a balance due from them to the company. The fact of the goods belonging to third parties makes no difference in such a case, the carrier being deemed, so far as the company are concerned, the sole owner of them.

So where the owners of minerals are in the habit of sending them by railway, disputes as to the extent of the company's lien may frequently occur. And in cases of

(a) 8 Vic. c. 20, s. 96.

(b) Id. s. 92.

(c) Id. s. 97.

bankruptcy, it will often be material to examine the question, with a reference to the interest of the creditors, whether the right claimed extends farther than for the tolls of that particular day or train, leaving the company to bring an action at law, for any arrears which may be due. On the whole it would seem to have been the intention of the legislature to grant to a railway company a lien on property in their hands for a general balance due from their debtor ; and as the language of the section on this subject in the Railways' Clauses Act, is large enough to give it, we conclude that the company would be held entitled not only to seize and sell one carriage and its lading for the tolls due for the whole train, but to sell the whole or any part of such train to liquidate the amount of any balance due from the owner to the company for arrears of toll.

The collector of tolls on the railway is entitled to demand, and the owner or person having charge of any carriage or goods passing or being on the railway, is bound to render a true and exact account in writing, signed by him, of the number or quantity of goods, conveyed by such carriage, with the distance which they are to travel ; and specify the amount of the different classes of goods which may be liable to different tolls.

Penalty for fraud.

Any person refusing or neglecting to make these returns or rendering a false account, or refusing to produce his way bill or bill of lading, or unloading any portion of his goods at a place other than that mentioned in his account, with intent to defraud the company of tolls, is liable for every such offence to a penalty not exceeding ten pounds for every ton of goods, or for any parcel not exceeding one hundred weight, and so on in proportion for any less quantity of goods than one ton, or for any parcel exceeding one hundred weight which may be upon the carriage. This penalty is in addition to the amount of tolls to which the goods may be liable.

Disputes as to tolls how settled.

In cases of dispute respecting the amount of the tolls

due to the company or concerning the charges occasioned by any detention or sale of goods as above mentioned, the matter is to be referred to a justice, whose decision shall be final. Pending his decision, the company may detain the goods or the proceeds of the sale, as the case may be.

If any difference arise between any toll collector and any owner or person having the charge of goods on the railway, as to the weight, quantity, quality, or nature of such goods, the former may detain the goods, and examine, weigh, gauge, or otherwise measure the same; and if on examination it shall turn out that there has been any misrepresentation in respect of the goods, the owner shall pay the costs of the examination, but if they are found correct, or of less quantity than mentioned in the account, the company shall bear the charges incident to the examination, and shall also pay to the owner of the carriage or goods such damages for detention as shall appear to a justice, on a summary application for that purpose, to be sufficient.

Disputes as to quantity of goods.

If on complaint by the company before a justice, it shall at any time appear that a toll collector has detained, examined, or measured any carriage or goods vexatiously, and without reasonable grounds, the latter will be liable instead of the company, to all the costs and damages of such detention, which (if he fail to pay them immediately) may be recovered by distress on a warrant issued by the justice.

Toll-collector liable in certain cases.

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### SEC. III.—*Rates and Charges payable to a Railway Company as Carriers of Goods and Passengers.*

THERE is a material distinction between the monies paid to a railway company as owners of the line in the shape of tolls for the use of it, and the monies paid to them as

carriers of goods and passengers on their own account. The right to the former arises exclusively under the statutes general and special relating to the company; but in regard to the latter, whilst the company acquire powers under the Act to use the line with their own engines and carriages, and carry persons and goods, yet their claim for remuneration for these services arises at common-law, although the amount to be demanded and received is limited in their Special Act.

(a) Charges  
for goods.

We have already seen (a) that when a railway company undertake the conveyance of goods, wares, and merchandise, for hire, over their own or other lines of railway, they make themselves common carriers, and all the legal incidents of the position of that class at once attach to them, varied however, by special Statutory provisions in certain cases. Hence the common law rules relating to charges for conveyance of goods, apply (except so far as they are qualified as above) as well to railway companies as to individual and ordinary carriers. Therefore the former are entitled in all cases to demand the price or hire of carriage before they receive the goods, and if it is not paid they may refuse to take charge of them. If, however, they take charge of them without the hire being paid, they may afterwards recover it (b). So they will be entitled to a lien on the goods for their hire, and may detain them until it is paid, unless they have entered into some special contract by which it is waived. A delivery of the goods will defeat the lien; and if once waived it cannot afterwards be resumed (c).

The rates and charges for conveyance of goods must not exceed the maximum fixed by the company's Special Act; nor must they be unreasonable or unequal. Subject to these restrictions the scale is fixed by the directors, and

(a) *Supra*. p. 341.

(b) *Story on Bailments*, s. 566; *Wright v. Snell*, 5 B. & Ald. 353; *Jackson v. Rogers*, 2 Show. 327; *Batson v. Donovan*, 4 B. & Ald. 32.

(c) *Story*, s. 588.



varied from time to time so as to suit the circumstances of the traffic and the purposes of the company. These restrictions apply to the company in their capacity as common carriers, and are [of force only so long as they carry goods in the ordinary course of their trade as such; nor will they apply to cases in which special contracts are entered into. Although, therefore, a maximum rate of charge is fixed by the Special Act, yet that section is usually accompanied with a proviso to the effect, that it shall not apply to any case in which the company are required to carry the goods at a greater than the ordinary rate of speed, or with a less load than the full load of the engine employed, or by a passenger train: and that it shall not prevent the company from taking any increased charges for the conveyance of goods by agreement with the owners for any special service in relation thereto.

In certain cases, moreover, these rates are by statute required to be made, the subject of agreement or arbitration between the officers of government, or certain public departments, and the company; as in the conveyance of mails, for which the Postmaster-General will contract; (a) or of gunpowder, and other combustible matters, for which the secretary-at-war will contract; (b) or they are absolutely fixed by the legislature, as in case of military and public baggage, stores, arms, and ammunition, for which twopence per ton per mile only can be charged (c).

The rate of charges allowed to be taken for the conveyance of military, marines, and police, is fixed at one penny per mile for an adult; their children under three years of age being taken free; and those between the ages of three and twelve years at half-price. Officers are to be charged not exceeding twopence a mile (d).

In cheap trains, to be provided in compliance with the Act of Parliament, the passengers are to be charged

(b) Charges  
for passengers.

(a) See 1 & 2 Vic. c. 98, and 7 & 8 Vic. c. 85, s. 11.

(b) 7 & 8 Vic. c. 85, s. 12.

(c) Ibid.

(d) Ibid.

at a rate not exceeding one penny per mile (c). As to all other passengers the scale of charges may be arranged, and altered as in the case of goods, subject only to the restrictions and limitations of the Special Act, and the general Railway Acts. But whilst the Act of Incorporation always fixes the maximum rate for passengers, it is usually provided that the restriction shall not apply in the case of any special or extra train which may be required, but only to the ordinary trains appointed to run for the conveyance of passengers and goods. For such special trains, therefore, an agreement must be made with the company in each individual case, nor does it appear that they are bound to charge all parties alike for a similar amount of accommodation, but are at liberty to make the best bargain they can under the circumstances. In practice there is, however, on most lines of railway, a fixed rate of charge for a special train, determined with reference to the number of travellers and the distance to be travelled, modified in some cases by the time of day or night at which the accommodation is afforded.

Penalty on  
passenger for  
fraud.

Any passenger practising a fraud on the company by travelling without paying the fare, or going a greater distance than that for which he has paid, will be liable to a penalty of forty shillings, and may be detained by any officer of the company, or any peace officer, until he can be conveniently taken before a justice, or otherwise discharged in the due course of law.

No provision seems to be made in the above sections (103, 104), for inflicting a penalty on any person travelling in a carriage of a superior class to that for which he has paid, unless such a case may be considered as included in the words, "If any person travel or attempt to travel in any carriage of the company, or of any other company or party using the railway, without having previously paid his fare," &c. In all probability, the case we have mentioned

(a) 7 & 8 Vic. c. 85. s. 6.

would be deemed to fall within the scope of the enactment, and the party offending would be held liable to the penalty imposed by the section.

For the convenience and security of the company in Tickets. the management of their business, many regulations are made as to the payment of fares, and the exhibition and production of the tickets to the proper officer; for breach of which penalties are exacted under the bye-laws of the company. All these, unless repugnant to the law of the land, may be enforced. One rule, however, frequently embodied in a company's code, is fairly open to question.

It is provided by many companies that, if a passenger fail to produce his ticket at the proper time and place, he shall be liable to pay the fare for the whole distance which the train in which he is seated has travelled, without reference to the place at which he may have entered it. This point has been recently raised, and decided in the Court of Exchequer (*a*), and it was held that such a bye-law was unreasonable, and repugnant to the common law, and therefore void.

(*a*) *Chilton v. The London and Croydon Rail. Com.* 16 L. J., N. S. 89, Ex.

## CHAPTER VI.

## BYE-LAWS.

## Bye-laws.

(a) Regulat-  
ing servants  
of the com-  
pany.

RAILWAY companies are empowered to make bye-laws of two classes—those which regulate the conduct of their own servants, and those which regulate the user of the railway by the public. We shall first treat of those relating to their own servants, then of those relating to the public. The perfect regularity and good order of a railway establishment is so essential to the safety and comfort of the public, that power to make bye-laws for the management and control of the officers and servants of the company is always conferred on the directors. This authority is now given by the 124th and following sections of the Companies' Clauses Act (a). The bye-laws so made must not be repugnant to the general law of the land, nor to the provisions of the Special or General Railway Acts. Reasonable penalties, not exceeding £5 for any one offence, may be imposed upon any officer or servant of the company for the breach of them; but they must be so framed as to allow the justice before whom the penalty is sought to be recovered to order a part only of such penalty to be paid, if he shall think fit (b). These bye-laws will be of no effect until they have been reduced into writing, and had the common seal of the company affixed to them. A copy of them must be given to every officer and servant of the company affected thereby (c). The production of a written or printed copy of the bye-laws of the company, having the common seal of the company affixed thereto, will be

(a) 8 Vic. c. 16.

(b) Id. ss. 125, 126.

(c) Id. s. 124.

sufficient evidence of the same in all cases of prosecution under them (a).

The directors of a company have power to appoint every member of the staff established for working the line, as superintendents, conductors, toll collectors, engine drivers, guards, porters, and other servants. They have power also to dismiss them or any of them for any neglect of duty, breach of orders, incapacity, or negligence, and to make such bye-laws for regulating their conduct as may be deemed expedient.

But inasmuch as the consequences of any negligence or breach of duty on the part of the persons employed by a railway company are frequently of the most serious kind, the company, in addition to the power of dismissal and the right of enforcing penalties before a justice of the peace for the misconduct of their servants, are authorized to apprehend and detain any of their officers and servants so offending. Hence any railway servant guilty of misconduct, may be seized, and detained by any officer or agent of the company, or by any special constable. Therefore if any engine driver, waggon driver, guard, porter, servant, or other persons employed by the railway company, or by any other company, or person, in conducting traffic upon the railway, or in repairing the works, be found drunk while so employed, or shall commit any offence against any of the bye-laws of the company, or shall wilfully or maliciously do or omit to do any act whereby the life or limb of any person upon the railway might be injured or endangered, or whereby the passage of any engines, carriages or trains might be obstructed; he may be taken with all convenient speed before a magistrate without any warrant, and upon conviction of the offence may be imprisoned with or without hard labour for any term not exceeding two calendar months, or may be fined £10, on non-payment

(a) 8 Vic. c. 16, s. 127.

of which he may be imprisoned for two months, if the penalty be not sooner paid (a).

If the magistrate think it right, he may, instead of summarily convicting the party charged, commit him for trial at the Quarter Sessions, and either send him to prison, or admit him to bail at his discretion. On being convicted at the sessions, the offender may be imprisoned with or without hard labour for any period not exceeding two years. It does not appear that the Court of Quarter Sessions have any discretion to impose a fine in such case, and therefore a person tried at the sessions for an offence under the above provisions must be punished by imprisonment as the Court may direct (b).

No appeal is given to the Court of Quarter Sessions from the decision of a single magistrate, in respect of any penalty or punishment inflicted summarily under the sections of the statutes above cited; but where a penalty is imposed by any bye-law under the 8 Vic. c. 16, it would appear that any party aggrieved by the adjudication of a justice may enter such appeal at any time within four calendar months after the adjudication of which he complains (c).

The distinction would seem to be, that where the offence charged involves public convenience or public safety no appeal is allowed, but where it consists only of a breach of some bye-law made for the internal management of the company the conviction may be reviewed.

(b) Bye-laws regulating user of railway.

Formerly it was usual in every Special Railway Act to empower the company to make bye-laws for the regulation of the user of the railway, subject to certain specified restrictions, and subject also to the provisions of the Public General Acts, relating to railways. Instead, however, of introducing a clause giving this power into the Special Act, the authority is now conferred on the company by the

(a) 3 & 4 Vic. c. 97, s. 13, extended by 5 & 6 Vic. c. 55, s. 17.

(b) 3 & 4 Vic. c. 97, s. 14.

(c) 8 Vic. c. 16, s. 159.

Railways' Clauses Consolidation Act, which provides (a) with respect to the regulating of the user of the Railway that, "It shall be lawful for the company from time to time, subject to the provisions and restrictions in this and the Special Act contained, to make regulations for the following purpose (that is to say)—

For regulating the mode by which and the speed at which carriages using the railway are to be moved or propelled.

For regulating the time of the arrival and departure of any such carriages.

For regulating the loading or unloading of such carriages, and the weights which they are respectively to carry.

For regulating the receipt and delivery of goods and other things which are to be conveyed upon such carriages.

For preventing the smoking of tobacco, and the commission of any other nuisance, in or upon such carriages, or in any of the stations or premises occupied by the company.

And, generally, for regulating the travelling upon, or using, or working the railway.

But no such regulation shall authorise the closing of the railway, or prevent the passage of engines or carriages on the railway at reasonable times, except at any time when in consequence of any of the works being out of repair, or from any other sufficient cause, it shall be necessary to close the railway or any part thereof."

The next section of the same statute empowers the company to secure the observance of the above regulations, by making bye-laws under the common seal of the company, inflicting a penalty not exceeding £5 on any offender, which may be altered and repealed as circumstances may require. In the exercise of this power to make bye-laws,

(a) 8 Vic. c. 20, s. 108.

it must be observed that such bye-laws must none of them be repugnant to the enactments of the Stat. 1 & 2 Vic. c. 98, whether they were made before or after the time when the railway shall have come under the operation of that Act. So it is provided by the 3 & 4 Vic. c. 97, ss. 7 to 9, that all bye-laws made before the passing thereof, are to be submitted to the Commissioners of Railways for their approval, without which they are to be deemed nugatory and void; and with respect to bye-laws and regulations made after the passing of the Act, they are to be of no effect until approved of by the said commissioners, who may at any time, by giving notice to the company, annul and disallow any rule at that time in force. Moreover, all bye-laws regulating the use of the railway must be painted on boards or printed on paper, and pasted on boards, and affixed on the front of every wharf and station belonging to the company, according to the subject matter of the bye-laws respectively, and so as to give public notice of them to the parties interested therein and affected thereby; and no penalty can be enforced under them unless such publication has been made and maintained (*a*). And, lastly, these bye-laws must be reasonable, and not in any way repugnant to the general law of the land.

Effect of.

The bye-laws so made, confirmed, published, and affixed, will be binding upon all parties, and will justify any person acting under them. This is essential to secure the public safety which might oftentimes be greatly endangered by any breach of the regulations made in respect of the use of the railway. In any proceeding to enforce the bye-laws now under consideration, it will be deemed sufficient evidence of them to show that a printed paper or painted board containing a copy of them was affixed and continued as directed by the Act, or that if displaced or damaged, it was repaired or restored as soon as conveniently might be (*b*).

Proof of.

(*a*) 8 Vic. c. 20. s. 110.

(*b*) *Idem*, s. 111.



If any breach of these bye-laws is committed, the company may proceed to enforce the penalty in the manner directed, by summoning the offender before a magistrate; and in cases where the infraction or non-observance of the rule is attended with damage or annoyance to the public, or hindrance to the company in the lawful use of the railway, the latter may interfere summarily to abate or remove the danger, annoyance, or hindrance, without prejudice to the penalty incurred by the breach of it (a).

Enforcement  
of.

It is submitted, however, that unless the breach of any such bye-law be such as is likely to cause public inconvenience or injury, the company cannot arrest or detain a party in order to carry him before a magistrate. Therefore, where the regulation which is broken was made for the protection of the company only, it was held that the company were liable to an action for false imprisonment where they detained a passenger who had failed to produce his ticket on demand, and who refused to comply with one of their bye-laws which provided that in any such case the passenger should pay the fare for the whole distance which the train had travelled (b). And it would appear that "the right of apprehension is limited to those cases where an offence is committed against the Act of Parliament, and where the Act itself has imposed a penalty; and that it never could have been intended to give any railway company a *legislative power*" (c).

(a) 8 Vic. c. 20, s. 109.

(b) Chilton v. London and Croydon Rail. Com. 16 L. J., N. S. 89 Ex.

(c) Ibid. Judgment of Platt, B.

## CHAPTER VII.

## PUBLIC AND PRIVATE BURDENS.

RAILWAY COMPANIES are liable in respect of their profits as owners and proprietors of the line, and of their occupation of the land upon which it is constructed, to certain rates, taxes, and assessments, parliamentary and parochial. Such are, first, the Duties imposed upon them, in respect of passengers conveyed for hire along the railway, by the 5 & 6 Vic. c. 79; secondly, the contributions to which they are liable under rates for the relief of the poor; and, thirdly, the rent-charge fixed upon the lands of the railway and stations under the Tithe Commutation Act.

(a) Duties payable in respect of passengers.

By the statute 5 & 6 Vic. c. 79, (repealing certain duties granted by 2 & 3 W. 4, c. 120, in respect of passengers conveyed for hire along any railway in Great Britain), it is enacted (a) that there shall be levied throughout Great Britain in respect of the passengers conveyed upon any railway, the duties specified in the schedule to that Act, which shall be taken to be part of the Act; and that such duties shall be under the management of the Commissioners of Stamps and Taxes, and shall be deemed to be stamp duties. The schedule to the Act states, that the duties in respect of passengers conveyed for hire by carriages travelling upon railways shall be as follows: viz. for and in respect of all passengers conveyed for hire upon or along any railway, a duty at and after the rate of five pounds for every one hundred pounds upon all sums received or charged for the hire, fare, or conveyance of all such passengers. An exception, however, is made in the case of passengers car-

(a) Ss. 1, 2.

ried in those trains provided for the conveyance of the poorer classes of people; no tax being levied on the receipts of any railway company for the conveyance of passengers at fares not exceeding one penny for each mile (*a*). Nor is there any tax payable on the receipts of a railway company for the conveyance of goods.

For the purpose of a correct assessment of these duties, every railway company is bound under the above Act to keep account of all monies received daily by them, for the conveyance of passengers over their own and other lines, and of all monies paid by them to the proprietors of other railways on account of fares received, or for the use of the railway. Within five days after the first Monday in every calendar month, (that is on or before the succeeding Saturday) copies of these accounts for the preceding four or five weeks, as the case may be, are to be delivered to the Commissioners of Stamps and Taxes, and annexed to the accounts an affidavit made before any justice of the peace verifying their accuracy; and at the time of so delivering the account the duties then due must be paid (*b*).

Every railway company may deduct and retain out of the monies to be paid over by them to any other company the amount of the duties chargeable thereon, and which they have paid, or are liable to pay (*c*).

All the books of a company containing accounts of the monies received by them, which are subject to duty, are to be open for the inspection and examination of any officer of the stamp duties, authorised by the commissioners in that behalf, who shall also be at liberty to take copies of and make extracts from them or any of them. Any refusal to permit this inspection will expose the party to a penalty of fifty pounds for each offence. (*d*).

To secure the due performance of all the above provisions, the company is required to give, and renew as often as occasion shall arise, a bond to her Majesty, her heirs,

(*a*) 7 & 8 Vic. c. 85, s. 9.

(*c*) Id. s. 5.

(*b*) 5 & 6 Vic. c. 79, s. 4.

(*d*) Id. s. 6.

and successors, conditioned for the due fulfilment of their obligations, under a penalty of £100 for refusal, and of the further sum of £100 for every day during which the neglect or refusal shall continue, or during which passengers shall be carried without such security having been given (a).

(b) Poor's-  
rate.  
During con-  
struction of  
the line.

Whilst a railway is in course of construction the company are liable to contribute towards the poor's rate in the various parishes through which it passes; for by the 133rd section of the 8 Vic. c. 18, it is enacted that if the promoters of the undertaking become possessed by virtue of this or the Special Act, or any Act incorporated therewith, of any lands liable to be assessed to the poor's rate, they shall from time to time, until the works shall be completed and assessed to such poor's rate, be liable to make good the deficiency in the several assessments for poor's rate, by reason of such lands having been taken or used for the purposes of the works; and such deficiency shall be computed according to the rental at which such lands, with any building thereon, were rated at the time of the passing of the Special Act; and on demand of such deficiency, the promoters of the undertaking, or their treasurer, shall pay it to the collector.

When line is  
completed.

But when all their works are completed, railway companies are liable to be assessed to the rates made for the relief of the poor in the several parishes through which the line or any of its branches are made to pass. They are liable to these rates on precisely the same principles as the occupants of other property; that is as the owners and occupiers of the lands, stations, and buildings, belonging to the railroad, and for the value of such occupation. In treating of this subject we shall notice, first, the property in respect of which the company is liable to be rated, and the mode in which it is to be estimated generally; secondly, its apportionment among the different parishes through which the line is constructed; and lastly, the deductions allowed

(a) 5 & 6 Vic. c. 79, s. 7.

to railway companies when thus assessed to the poor rate. The whole law on this subject has been elaborately argued, and deliberately considered by the Court of Queen's Bench in three recent cases (*a*); and from the arguments and judgments in those cases, we shall gather nearly everything to be said on the subject of this section, using, as far as possible, (although without denoting it in the usual way, which would lead to multiplied references) the language employed by the counsel and the Court.

The profits of the trade carried on by the company, whether as owners and proprietors of the line, or as common carriers, are not directly the subject of the rate, which is assessed only in respect of the occupation; but in estimating the value of such occupation, which alone is the subject of the rate, all those things must be included which at the time form part of it, whether permanently or not, and from whatever source derived. If, therefore, the occupation of the lands and buildings by the company acquire an increased value by reason of the traffic they carry on upon the line, the profits arising from this source form a chief element in the calculation, when the land and stations come to be assessed to the poor's-rate. By the value of the occupation is to be understood the sum which, after all due deductions made, a tenant might be found to give by way of rent from year to year, in order to be placed, as occupier, in the same position as the party rated. In calculating the amount of this rent, we must not consider that alone to which the demise would convey a legal title, but that which it would give the lessee the means of doing or enjoying, and which would perhaps induce him to give a higher rent for it. The very complicated nature of the accounts in the case

Property to be rated.

(*a*) Reg. v. London and South Western Rail. Com. 1 Q. B. 558; Reg. v. Grand Junction Rail. Com. 4 Q. B. 18; 13 L. J., N. S. 94, M. C. 4 Rail. Ca. 1; Reg. v. Great Western Rail. Com. 15 L. J., N. S. 80, M. C. ; 4 Rail. Ca. 28.

of railway companies makes it difficult to arrive at a correct and satisfactory result in any attempt to estimate the value of their occupation, but the principle on which they are to be rated is now settled beyond dispute.

It seems to be now decided that the gross receipts of the company are to be taken as the basis of the rate; not as in themselves rateable, but as a test of the value of the occupation of the property which is rateable. These receipts will include not only the tolls which, as owners of the line, the company are entitled to demand, and have, from persons running their own engines and carriages upon it, but also all fares and remuneration received by them, as carriers upon the line, upon their own account. Not that these sources of income are rateable, considered as referable to the trade alone, but as indicative of that increase of value which the carrying on of the trade upon the land gives to the occupation of it. The only question is, Do the fares received increase actually the value of the buildings and lands on which the rate is to be made? If they do, and to whatever extent they do, to that extent, due allowances always being supposed, they must directly or indirectly be included. On this principle it is clear that the remuneration received by the company as carriers, no less than the tolls paid to them, as owners of the line, must be taken into account, in assessing the rate. For it is by reason of the occupation of the lands and buildings rated that the company are enabled to carry on a lucrative trade, and the facilities thus given for making large profits are to be taken into consideration when estimating the rent which a tenant would give for the property, with similar advantages for turning it to gainful purposes. Moreover, the parish officers, in ascertaining how much net rent such an occupation may be expected to command, are to consider not drily and only what would legally pass by the demise of it, but all the existing circumstances, whether permanent or temporary, wherever situate, however arising, or secured, which would reasonably influence the parties

to the negotiation for a tenancy, as to the amount of the rent. The case is therefore similar to that of a house whose annual value is increased by some fixture therein, as a steel-yard, (a) or a billiard table (b); the nature of the source of profit is not looked at, nor its purpose; but if, in point of fact, an increased rent is obtained or obtainable, on that account, the rateable value is increased in proportion. To this it is no answer to urge that the company may give up the trade of carriers, and may take tolls only for the use of the line; or that the monopoly which most railway companies practically enjoy on their own line may cease at any time, and the railroad be used as a public highway. These considerations, so far as they lessen the value of the rateable property, are to have their weight in determining the assessment, but they do not affect the principle. In so far as the facilities given to the occupant of a railway and the stations for the carrying on of a profitable trade increase the value of the occupation, so far must those facilities be taken into account in estimating their rateable value. The company are rated for the property they have, and the amount of the rate will vary with the value of the thing rated. The original principle of rating remains as it always was, and it must be applied to the case of railway companies, as to any other case. The criterion of rateable value is also the same (and above alluded to), namely, what would a tenant give, from year to year, for the privilege of using the property rated as the company use it? Whatever that may be, it is the amount (due deductions allowed for) on which the rate is to be made. If the company retain and work the line themselves, practically as monopolists, they will be rated on this amount as for a *supposed* rent; if they lease the whole line with all their rights, privileges, and facilities, the lessee will pay on the *real* rent; or if they demise the line and stations, and become mere carriers upon it, or give up

(a) *Rex v. St. Nicholas*, Gloucester, Cald. 262.

(b) *Ibid*, Judgment of Willes, J.

the trade of carriers, and become occupiers only, in either of these cases the rate would become apportionable between two classes of occupiers, instead of being chargeable on one. The assessment will vary both in its amount, and in respect of the parties liable to it, according to circumstances, but the principle of the law which makes railway property liable to rates for the relief of the poor, remains unaltered, the reason remaining the same; namely, that additional value is given to the occupation both of the lands and stations, by reason of the purposes for which they are used, and the extraordinary profits made by the occupier.

In estimating the rent which a tenant would give for the portion of the line in any particular parish, the calculation must not be made on the supposition that the railroad is broken up into parochial portions, and then, in imagination, severing each from the buildings which the occupiers occupy together with it, *de facto*, exclusively, and under the authority of the same statutes, passed in furtherance of one great scheme, and then again, in imagination, severing both from the traffic which the occupiers carry on, in, by, and throughout the whole, *de facto*, exclusively, and for the sake of which they have made, built, and occupy the whole; for the great object in rating is to procure equality, and to bring everything into contribution which ought to share the public burthen, and the substance, and not the form, must therefore be regarded. The line must be considered as an entirety, and the rent as an entire rent, though artificially divided into several payments (*a*). Any other principle would be manifestly absurd, and an evasion rather than an application of the law. And although the subject-matter of the rate in any particular parish is the beneficial occupation of the land there, so that the value of the occupation of buildings elsewhere cannot be included, yet as the rate is to be made

(*a*) Judgment of Lord Ellenborough, C. J. in *Rex v. Bradford*, 4 M. & S. 317.



on the value in the parish, however occasioned, no portion can be struck off, because it would not have existed but for the occupation of buildings in another parish, still it exists, and in the parish, and therefore cannot escape the rate there. If the land occupied by a railway company in any given parish, be, in fact, more valuable to them, by reason of their occupation of other portions of the line, stations, and buildings elsewhere, this actual increase of value, be it more or less, is not to be excluded from the assessment because it arises indirectly from property situated in other parishes. The whole of the line, with all the buildings, are directly necessary to the traffic which produces the profits which enhance the value of the occupation in each locality, through which the railway is made to pass.

A railway company is rateable in each parish in proportion to the amount of profit derived on that part of the railway within it, and not merely in the ratio of the length of the way within the parish to the whole length of the railway; and this, although the additional value of that part of the line might arise in some manner from the station houses and other works not within the parish. By arrangement, however, among respondent parishes, the mode adopted for measuring the rate may be according to the proportion which the mileage of the railway in the respondent parish bears to the whole length of the way, assuming the profits to arise equally through the whole. Whichever of these principles be adopted, the company will be rateable, although the portion of railway rated in any given parish may be worked by the company at a loss, for if the first principle be adopted, and the expenditure exceed the receipts within the parish, but the company still find it worth their while to maintain and work it for the sake of the traffic which it brings over other portions of the line, it is a profitable or beneficial occupation within the meaning of the Parochial Assessment Act, and the company are rateable accordingly; and if the second principle be

Apportionment  
of rate.

adopted, the proportion of the whole profits according to the length of railroad in the parish will determine the amount of the rate.

Deductions  
allowed in  
assessment.

Having treated of the property in a railway which is the subject of a rate, and the principle of apportionment among the parishes through which the line passes, it now only remains to notice the deductions which have been allowed in ascertaining the net annual value of the company's occupation. In assessing a railroad, the first point is to ascertain the gross receipts of the occupiers of it, and then to deduct therefrom all such items as are properly referable to the trade carried on upon it, as distinguished from the increased value which that trade gives to the land. The residue will represent the value of the occupation, exclusive of the profits of the trade. In the case of the *Queen v. the Grand Junction Railway Company* (a), the parish officers adopted, and the sessions approved the following mode of calculating the net annual value of the company's rateable property in their parish.

They ascertained the gross receipts of the company for one year £440,366, and made therefrom the following deductions :—

1. £5 per cent. for interest on £255,000, the capital employed in engines, carriages, and other moveable stock, in their business as carriers.
2. £20 per cent. on the same capital, for tenants' profits and profits of trade.
3. £12 10s. per cent. on the same, for the depreciation of such stock, beyond usual repairs and expenses.
4. £198,962 for the annual cost of conducting the business.
5. £9,150 for the land occupied by stations and other buildings, separately rated in the parishes in which they are situate.
6. £30 per mile for the reproduction of rails, chairs,

(a) 4 Q. B. 18; 4 Rail. Ca. 1.

sleepers, &c. On the company appealing against the rate, a case was stated for the opinion of the Court of Queen's Bench; and on the argument the Court held, that with regard to the reasonableness of the amount of these several deductions, that was for the Sessions to decide; and, having decided it, the Court could not review their decision. With respect to the principle on which the deductions were made, the Court confirmed the order of Sessions, Lord Denman, C. J., saying, "These deductions, taken together, seem to us to include whatever is properly referable to the trade, and distinguishable from the increased value which that trade gives to the land."

In addition to the above items, the company claimed to be allowed something for goodwill, on the ground that a person bargaining with them to become the yearly tenant of their railway, in the expectation of succeeding to their trade as a probable consequence of succeeding to their occupation, would properly be called upon to pay them something for the goodwill of that trade; and that this would be in the nature of an outgoing and deduction from the profit. The Court, however, disallowed the claim, saying, "This objection appears capable of two answers: the first and decisive one is, that the purchase of goodwill implies that a trade is sold, that the company are to be bound to surrender their trade to the lessee, and no longer to be carriers on the line; but the calculation of the Sessions proceeds on no such supposition; all those special advantages, indeed, for carrying it on, which the occupation gives them, whatever they may be, they must necessarily surrender; but the moment they have leased the railway they become part of the public, and would have the right of carrying on their trade, retaining all the goodwill, with all those advantages which were carefully reserved to the public. Secondly, although the supposition of a tenancy is to be made, yet what the incidents of the tenancy must be as to the actual terms and allowances must be determined, for the purpose of fixing the amount

of the rate, by the actual state of things ; for this supposition of a tenancy is only a mode of ascertaining the existing value of the occupation to the existing occupier. Now here there is no tenancy in fact ; no goodwill is in fact paid for, and therefore no deduction ought, in fact, to be made on account of its price" (a).

In another case (b), the mode adopted by the parish officers in rating the railway was as follows :—They took the gross receipts per mile in the respondent parish. From this they deducted a mileage proportion of the expenses, and of the interest and tenants' profits on the plant of the whole line of railway, and rated the company on the residue. In addition, however, to the deductions thus made, the company claimed to be allowed for the stations and other erections on the line for which they were rated separately, and no part of which was within the parish ; and the Court held that they were entitled to this deduction.

The company also claimed a deduction of the income tax paid by them, amounting to £10,000 ; and the Court held that they were entitled, on ordinary principles, to so much of it as was a charge on the occupation, and payable by the tenant.

The company also claimed an allowance for the wear and tear of rails and sleepers, the solid timber and iron work of their own principal line ; and this, although they had theretofore paid such expenses out of their capital, and not charged it against their income. With regard to this item, the Court seemed to consider that such repairs could not be distinguished in principle from "maintenance of way," included in the company's annual expenses ; so that although they might not be called for in any particular year, yet if, knowing that the charge would in a given time accrue, a proportional sum were actually de-

(a) 4 Rail. Ca. 25. Judgment of Lord Denman, C. J.

(b) Reg. v. The Great Western Rail. Com. 4 Rail. Ca. 28 ; 15 L. J., N. S. 80, M. C. ; 6 Q. B. 179.

ducted from the annual revenue, with the view of meeting it, it ought to be allowed just as though repairs to that amount were actually done in the course of the year. But if no such deduction from annual revenue for this purpose were made, then they could not be allowed for it, inasmuch as, in ordinary cases, the mere fact of repairs being needed would not entitle to a deduction, unless they were done and the charge incurred. So, if the costs of such reparations be defrayed out of the capital of the company, no allowance can be made for them as annual expenses; for by this mode of meeting the charge, the company give to the works done the character of landlords' improvements, rather than that of tenants' repairs, and the money so expended goes therefore to swell the rateable value of the land, but will not be allowed in the rate. Such charges, however, would be met by the deduction made for interest upon capital, if the effect of them be to increase the aggregate value of the plant and machinery; for the allowance under this head must be made with a reference to the actual and then present value of the capital of the company so invested, and will vary in amount, therefore, with the increase or diminution in that value; nor is it correct to allow upon the original amount of capital embarked, if the value of the moveable stock have been since diminished.

Although interest on the capital of a company is allowed in assessing them to the poors' rate, yet in estimating the amount of such capital the costs and expenses of obtaining an Act of Parliament will not be allowed to form part of it; nor any of the original and preliminary expenses incurred in the formation, establishment, and incorporation of the company. For these expenses have no connexion with the rateable value of the railway, and the owners and occupiers of it have no more right to be allowed for them, than the purchaser of an estate who, after an expensive litigation as to the title, had borrowed money to meet the costs of it, would be entitled to deduct his

interest and expenses from poor rate on the land in his occupation.

Recovery of.

It only remains to add on this subject, a word as to the mode of recovering arrears of poors' rate due from a railway company. It would seem that there is the same remedy against them as against an ordinary rate-payer; namely, by proper demand of the exact sum; and, on refusal, by summons for them to appear before two justices, to shew cause why they should not pay the rate. If they do not appear, or appearing, shew no sufficient cause, then, upon oath of the demand and refusal, and of the due service of the summons, the justices may grant a distress warrant. This warrant may be executed upon the goods of the company, not only in the place where they were assessed for the rate in arrear, but in any other place within the same county or precinct; or, if sufficient distress cannot be found there, then, on oath made thereof before some justice of any other county (this oath to be certified under the hand of the justice upon the warrant), the goods of the party neglecting or refusing to pay may be levied in such other county by virtue of the warrant and certificate (a).

It would seem doubtful whether a writ of mandamus would lie to compel a railway company to pay arrears of poor rate; but, at all events, it could not be obtained until the remedy by distress had been tried and had failed for want of sufficient goods of the company whereon it might be levied: and any omission to recite this fact in the writ would furnish the defendant with a fatal objection, which he might avail himself of after a return, or at any time before a peremptory mandamus issued (b).

That the parties whose duty it is in the several parishes through which the railway passes to assess it for the purposes of the poors' rate, may be able to obtain the requi-

(a) See 43 Eliz. c. 2, s. 4; 17 Geo. 2, c. 38, s. 7; 54 Geo. 3, c. 170, s. 12. And see also Archbold's Poor Law, pp. 194—199, 4th edition.

(b) *Rex v. Margate Pier Com.* 3 B & A. 220; 2 Chit. 256.

site information for making a correct assessment, the company are required (a) to prepare an annual account (made up to the 31st of December in each year) of their receipts and payments, with a statement of the balance of such account, duly audited and certified; and, if required, must transmit a copy of it, free of charge, to the overseers of the poor of the several parishes through which the railway passes, and also to the clerks of the peace of the several counties traversed by the line, on or before the 31st day of January then next; and for any omission to prepare or transmit such account, if required so to do by any such clerk of the peace or overseers of the poor, the company will forfeit the sum of £20. The copy of this account thus required to be deposited with the clerks of the peace, will be open for the inspection of the public at all seasonable hours, on payment of the sum of one shilling for every such inspection.

When a railway company take possession of lands under the powers of their Act, which are subject to a rent-charge under the Tithe Commutation Act, the property will remain subject, as before, to the payment of it, such fresh apportionment being made as the severance of the land taken from the other lands may render necessary. The ordinary remedies for the recovery of such rent-charges (b) being found insufficient in the case of railway companies refusing to pay their apportionment (c), special provisions have been made to meet such cases by the 7 & 8 Vict. c. 85, which enacts (d), that "whenever any apportionment of tithe commutation rent-charges shall have been duly made upon lands taken or purchased by any railway company for the purposes of such company, or upon any part of such lands, it shall be lawful for

(c) Tithe rent-charge.

(a) See 8 Vic. c. 20, s. 107.

(b) See 6 & 7 W. 4, c. 71, ss. 81, 82, 83, 84; 5 & 6 Vic. c. 54, s. 17; and Shelford on Tithes, 3rd ed. pp. 298—303, 388.

(c) See Report of Tithe Commissioners, 2nd April, 1844.

(d) Sec. 22.

every person entitled to the said rent-charge, or parts of such rent-charge, in case the same has been or shall be in arrear and unpaid for the space of twenty-one days next after any half-yearly day fixed for the payment thereof, to distrain for all arrears of the said rent-charge upon the goods, chattels, and effects of the said company, whether on the lands charged therewith or on any other lands, premises, or hereditaments of such company, whether situated in the same parish or elsewhere, and to dispose of the distress when taken; and otherwise to demean himself in relation thereto as any landlord may for arrears of rent reserved on a lease for years: provided always, that nothing herein contained shall give, or be construed to give, a legal right to such rent-charge, when but for this Act such rent-charge was not or could not be duly apportioned."



## CHAPTER VIII.

## GOVERNMENT NOTICES AND RETURNS.

It now only remains to notice under the head "Working the Line," those returns of accidents, of traffic, and of tolls, which the company are required, under the provisions of the General or Special Railway Acts, to prepare and transmit, periodically or otherwise, to certain public offices and departments.

(1) *Notices and Returns of Accidents.*—By the statute 5 & 6 Vict. c. 55, section 7, it is enacted, that every railway company shall, within forty-eight hours after the occurrence upon the railway belonging to the company, of any accident attended with serious personal injury to any of the public using the same, give notice thereof to the Commissioners of Railways, under a penalty of £5 for every day of their wilful neglect or refusal. It would seem from the terms of this enactment, that the required notice need not be given unless some passenger or person using the railway has been seriously injured upon it; and that no penalty would be incurred for omitting to give it, where the injury was inflicted on a person trespassing upon the line, or crossing it for lawful purposes, but who was not a passenger travelling along it, and was not therefore "using" it in the sense intended by the Act. So if the accident occurred, not to any of the public, but to some servant of the company, whether he were travelling by a train, as an engine-driver or conductor, or were injured whilst in the discharge of his duties or otherwise, at any station, the notice would not be necessary. In all these cases, if death resulted, an inquest would be held for the purpose of ascertaining its cause; but the sta-

Accidents.  
Notices of.

tutory notice to the Commissioners of Railways is not required.

Returns of.

The Commissioners are also empowered to order any railway company to make a return of all serious accidents occurring in the course of the public traffic upon their line, whether attended with personal injury or not, in such form and manner as they may deem necessary, and require for their information with a view to the public safety. This return must be made within fourteen days after it has been demanded, under a penalty of £5 for every day's delay. The document so prepared and transmitted will be deemed a privileged communication, and will not be evidence in any court whatsoever (a). This clause is more general in its terms than the one previously cited, and would seem to embrace all cases of accidents, whether to passengers or to parties not passengers, and whether the individual sustaining an injury were a servant of the company or one of the public. So, although no personal injury of any kind is sustained, yet, if the occurrence may be fairly considered as a serious accident, it must be included in the return which the Commissioners are authorised to require, and the company are bound to render under the above provision.

Traffic and  
tolls.  
Returns of.

(2) *Returns of Traffic and of Tolls.*—By statute 3 & 4 Vict. c. 97, section 3, it is provided, that the Commissioners of Railways may order every railway company to make up and deliver to them returns, according to a form to be given, of the aggregate traffic in passengers, according to the several classes, and of the aggregate traffic in cattle and goods respectively on their railway; and also a table of all tolls, rates, and charges from time to time levied on each class of passengers, and on cattle and goods, conveyed on the said railway. These returns must be made within thirty days of their being ordered, under a penalty of £20 for every day's wilful neglect. These re-

(a) 5 & 6 Vic. c. 55, s. 8.

turns are to be required in the same form and at the same time of all railway companies, except such as shall be specially exempted for reasons entered on the minutes of their proceedings by the Commissioners of Railways. Any officer of a company wilfully making a false return, will be deemed guilty of a misdemeanor (a).

The provisions above enumerated respecting notices and returns of accidents, and returns of traffic and of tolls, in direct terms apply only to the railway belonging to the company; but it seems reasonable to conclude that all lines leased and worked by the company, must be considered as not less within the scope of the enactments than their own: and that the same duties will be cast upon the company whether they be lessees or proprietors of the railroad. This inference is strengthened by a reference to the Railways' Clauses Act, which provides (b) that the lessees of a railway shall not only be invested with the powers, and entitled to the rights and privileges of the company letting it, but shall also be subject to all the same restrictions and obligations.

Lessees of  
railways.

(a) 3 & 4 Vic. c. 97, s. 4.

(b) 8 Vic. c. 20. s. 113.



# BOOK V.—CONSTITUTION, FUNCTIONS, AND GOVERNMENT OF THE COMPANY.

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A RAILWAY company being a creature of the statute, is controlled by the Acts under which it exists. General powers for the incorporation and government of the company and the raising of capital, whether by shares or by loan, are given by the Special Act, but the mode in which and the restrictions under which these powers are to be exercised, are determined by the Companies' Clauses Act, which contains various and minute regulations on these subjects. All the movements of the company are to be regulated in obedience to these general and special enactments; and we propose, in this book, to classify the numerous rules thus laid down by the legislature in reference to the internal government and external relations of incorporated railway companies. This extensive branch of our general subject may, perhaps, be conveniently considered under the following heads; treating, first of the law relating to the government, constitution, and functions of a company in relation to the general management of its affairs; secondly, of the regulations as to the raising, distributing, appropriating, and transferring the capital; and thirdly, of the enactments and general principles of law which prescribe the conditions of contracts by and with the company, and modify its external relations in those respects.

## CHAPTER I.

## AS TO GOVERNMENT.

THE law which prescribes the mode in which a railway company is to be governed, relates either to the qualification, election, powers, duties, liabilities, protection, and remuneration of the members of the governing body ; or to the mode in which, the times at which, and the purposes for which, meetings of the whole body, or of the board of directors, are to be held, and the manner in which the business is to be disposed of ; or to the appointment, duties, and responsibilities of the officers and servants of the company. We shall treat of them in their order.

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SEC. I.—*Directors.*

Directors.  
(a) Number of.

The Act by which a railway company is incorporated uniformly prescribes the number of directors, names those who shall constitute the first board, and usually gives a power to increase or decrease the number within certain limits.

Full number  
not essential.

The clauses in a Special Act which prescribe the number of directors, the number of a quorum, and the mode of supplying vacancies, have been held to be directory only ; and the business of the company might therefore be managed by a less than the prescribed number, provided the shareholders did not interfere to require the completion of the number : and that, at all events, as these provisions were intended for the internal management of the company only, they could not affect its ex-

ternal affairs, or the power of the directors to enforce the payment of calls, nor be taken advantage of by a shareholder in answer to an action for calls (a).

The 81st section of the Companies' Clauses Act, which enacts that "the number of directors shall be the prescribed number," although peremptory in its form, would probably be construed in conformity with the above decision; especially as another section of the same statute (b) provides that the acts of directors shall be valid notwithstanding any defect in their appointment. Any party who is dissatisfied with a company on the ground that there is not a full number of directors, may apply for a mandamus to have the number completed (c).

Mandamus to complete.

In any case in which a railway company shall be authorised to vary the number of their directors, they may do so at a general meeting, after due notice for that purpose (d).

Right to vary the number.

No person is capable of becoming or acting as a director in any railway company unless he be a shareholder; and if the Special Act prescribe, as it generally does, the number of shares which a director must possess, he cannot be elected unless he be the proprietor of that number (e). Hence, on ceasing in any way (whether by sale or otherwise) to be the owner of the required number of shares, a director vacates his office, having lost the necessary qualification. So, on becoming bankrupt, a director ceases to be such, as he is no longer a holder of shares, the interest in them having passed from him to his assignees (f). The property in the shares must, however, be effectually and absolutely transferred; and a mere incumbrance or pledging of them will not suffice to disqualify the holder. Thus,

(b) Qualification of.

Bankruptcy a disqualification.

But not mortgage of the shares.

(a) *Thames Haven Dock and Rail. Com. v. Rose*, 2 Dowl. N. S. 104; 4 M. & Gr. 559; 3 Rail. Ca. 177.

(b) Sec. 99.

(c) *Thames Haven Dock Company v. Rose*, ubi supra. See also, *Same v. Hall*, 3 Rail. Ca. 441; 5 M. & Gr. 287.

(d) 8 Vic. c. 16, s. 82.

(e) *Ibid.* ss. 85, 86.

(f) *Phelps v. Lyle*, 10 Ad. & E. 116; 2 Per. & D. 314; *Wilson v. Wilson*, 6 Sc. 540.

where a party's qualification to act as a director of a company consisted in his being the proprietor of a certain number of shares, it was held that he did not lose his qualification by mortgaging them (*a*); for mortgaged shares, although subject to the lien of the mortgagee, are still, as between the company and himself, the property of the mortgagor.

Disqualifying  
interest.

Nor is a person holding any office or place of trust and profit under the company, or interested in any contract with the company, capable of becoming or acting as a director; nor may any director accept any other office or place of trust and profit under the company, or become interested in any contract with it during the time he remains a director; or, on doing so, his office will become vacant, and he must thenceforth cease from voting or acting as a director (*b*).

Nature of.

The nature of the interest in a contract with the company which will disqualify a director, came under the consideration of the Court in the following case (*c*):—

Certain directors of a railway company were members of a banking company, who were the bankers and treasurers of the railway company, and as such received and gave receipts for calls, and paid cheques drawn by the directors, &c. A clause of the Act incorporating the company enacted, that no person concerned or interested in any contract with the company, should be capable of being chosen a director; and that, if any director should, directly or indirectly, be concerned in any contract with the company, he should thereupon be immediately, and was thereby, discharged from the direction. It was held that this clause applied only to contracts made with the company in prosecution of its enterprise, and did not disqualify the directors above mentioned.

Contract with  
other incorpo-  
rated company  
of which di-  
rector is a  
member.

However, by the Companies' Clauses Act (*d*), it is expressly provided, that "no person being a shareholder or member of *any incorporated joint stock company*, shall be

(*a*) *Cumming v. Prescott*, 2 Y. & C. 488. (*b*) 8 Vic. c. 16, ss. 85, 86.

(*c*) *Sheffield, &c. and Manch. Rail. Com. v. Woodcock*, 7 M. & W. 574.

(*d*) Sec. 8.



disqualified or prevented from acting as a director by reason of any contract entered into between such joint stock company and the company incorporated by the Special Act; but no such director, being a shareholder or member of such joint stock company, shall vote on any question as to any contract with such joint stock company."

It is submitted that the exception thus made in favour of directors who may be shareholders or members of any other incorporated joint stock company, would apply only to such companies as have been incorporated by Special Acts, and not to joint stock companies incorporated by complete registration under the 7 & 8 Vic. c. 110; and hence a member of one of the latter, being a director of a railway company contracting with it, would be thereby disqualified. The existence of an unlimited liability in the case of shareholders in registered companies making the interest of each in every contract made by them so direct as to come within the mischief provided for by the 86th section. The fact of a disqualifying interest attaching to any director, will not, however, have the effect of avoiding a contract made by the board (a).

Before dismissing this subject, we may remark, that in contracts of lease or amalgamation between railway companies, it is frequently made a condition of the contract that certain directors of the one should become members of the board of the other, for the purpose of exercising a control over its affairs, and securing an equitable compliance with the terms of the contract. In such cases, the provision under consideration effectually defeats the object in view, inasmuch as the directors of one company thus made directors of the other, are disqualified from voting upon any question affecting the interests of the company on whose behalf they were appointed.

A director may not only cease to be such by parting

Other disqualifications.

(a) S. 99. See also, *Thames Haven Dock Com. v. Hall*, 3 Rail. Ca. 441; 5 M. & Gr. 287.

with his shares, and thereby losing his qualification, or by accepting some place of trust or profit under the company, or becoming interested in some contract made with it, and thus acquiring a disqualifying interest; but he may become incompetent to act on other grounds, as lunacy, protracted absence from the country, or other causes. What may be deemed under the words of the statute a becoming "incompetent to act," may perhaps be inferred from a decision under a similar clause in a deed where the words used were "incapable to act." The party in question absconded to America under circumstances strongly evidencing no intention to return; and it was held that by so doing he had become "incapable to act" (a).

(c) Election  
of directors.

The directors appointed by the Special Act (unless it be thereby otherwise provided) continue in office "until the first ordinary meeting of the company in the year next after that in which the Special Act shall have passed" (b). At that meeting the shareholders, personally or by proxy, may either continue the whole or any number of the existing directors, or may elect a new body of directors in their place; and at the first ordinary meeting in every successive year, the shareholders present are to elect persons to supply the places of the retiring directors, or, if a quorum of electors be not present within one hour of the time appointed for the meeting, or within one hour of the time appointed for the meeting on the following day, the existing directors will continue in office until the first ordinary meeting in the next year (c).

Mode of.

At the meeting held for the purpose of electing directors, the names of the parties proposed must be put up separately, and the show of hands taken in respect of each individual. If a list of names be proposed, on which the

(a) *Wilson v. Wilson*, 6 Sc. 340; S. C. Nom. *Wilson v. Butler*, 4 Bing. N. C. 748.

(b) 8 Vic. c. 16. s. 83. See on this point *Mosley v. Alston*, before the Vice-Chancellor of England, E. T. 1847.

(c) 8. Vic. c. 16, s. 84.

votes are taken collectively and not individually, it is open to objection on the ground that such a mode of electing is calculated to produce not a real but an apparent unanimity only (*a*).

If the prescribed number of shareholders be present at the meeting, and a majority dissent from an election, or protest against the candidate, but vote for nobody else, it would seem that the election by the minority is good (*b*). Where, however, there are two or more directors to be elected, and the names of the candidates are put up in succession, and some one of them has not the show of hands in his favour, and a poll is demanded; the poll must be opened for all the candidates, as well for those in whose favour there had been a show of hands, as for those who had demanded the poll.

Election by minority.

The directors are to "retire from office at the times and in the proportions following; the individuals to retire being in each instance determined by ballot among the directors, unless they shall otherwise agree, (that is to say) :—

(*d*) Rotation of directors.

At the end of the first year after the first election of directors, the prescribed number, and if no number be prescribed, one-third of such directors, to be determined by ballot among themselves unless they shall otherwise agree, shall go out of office.

At the end of the second year, the prescribed number, and if no number be prescribed, one-half of the remaining number of such directors, to be determined in like manner, shall go out of office.

At the end of the third year, the prescribed number, and if no number be prescribed, the remainder of such directors shall go out of office.

And in each instance the places of the retiring directors shall be supplied by an equal number of qualified shareholders; and at the first ordinary meeting in every subse-

(*a*) *Rex v. Player*, 2 B. & Ald. 707. See also, *Rex v. Monday*, Cowp. 530.

(*b*) *Oldknow v. Wainwright*, or *Rex v. Foxcroft*, 2 Burr. 1017; 1 W. Bl. 229.

quent year, the prescribed number, and if no number be prescribed, one-third of the directors, being those who have been longest in office, shall go out of office, and their places shall be supplied in like manner."

Retiring directors are eligible for immediate re-election, and if re-elected will, in respect of going out by rotation, be deemed new directors. If the number of directors be not divisible by three, nor the number to retire be prescribed, the directors are in each case to arrange it so that the whole number may go out of office in three years, in divisions as nearly equal as may be (a).

These provisions require no comment, except that, on comparison of the 84th and 88th sections of the Act, some doubt may arise as to the position of retiring directors continuing in office because no valid meeting of shareholders took place to elect their successors. It would seem, however, from the words of the former section, that the directors so retaining office are to be deemed not re-elected, but as the retiring officers of the next year; the clause providing only that they shall "continue to act and retain their powers until new directors be appointed at the first ordinary meeting of the following year."

(e) Powers of the directors. Powers to be exercised by the board.

It is provided by the 90th section of the Companies' Clauses Act, that "the directors shall have the management and superintendence of the affairs of the company, and they may lawfully exercise all the powers of the company, except as to such matters as are directed by this or the Special Act to be transacted by a general meeting of the company; but all the powers so to be exercised shall be exercised in accordance with and subject to the provisions of this and the Special Act; and the exercise of all such powers shall be subject also to the control and regulation of any special meeting specially convened for the purpose, but not so as to render invalid any act done by the directors prior to any resolution passed by such general meeting."

(a) 8 Vic. c. 16, s. 88.

The powers thus entrusted to the directors are, therefore, with certain specified exceptions hereafter enumerated, the general powers of the company. What the whole body is empowered to do, that, for convenience sake, the governing body is authorised to do on their behalf. The board of directors is, in fact, the company in action. All the powers of the incorporation are entrusted to, and its functions are discharged by, the directors, who are thus the representatives of the whole. What they do is done by the company. And as their power (with the exceptions to be specified) is co-extensive with that of the body corporate, so it is limited and restricted in the same manner. Some things indeed, as we shall see, the whole aggregate of members in public meeting assembled may do, which the board of directors may not; things of so much importance that the powers of the company to do them are not delegated to any representatives; but the board cannot do anything which the company itself might not do.

Are delegated to them by the company.

Their extent.

Moreover, the delegated authority which the directors possess, is to be exercised under the control of the members, who, at an extraordinary meeting called for the purpose, may review what has been done. They cannot, however, invalidate anything already done by the board, provided what was done was within the scope of their authority, and was untainted by fraud. For although the authority be delegated, yet such delegation is not a mere voluntary act of the shareholders which can be rescinded at pleasure, but is enjoined upon them by the statute, and hence the company can only act (except where otherwise provided) through its board of directors.

Their control.

The powers possessed by the directors of a railway company, to be exercised by themselves without any meeting of the shareholders, may be divided into such as relate more directly to their own board, and the discharge of their own immediate duties as the committee of management; and such as relate to the general business and

affairs of the company. Under the first head, we may mention the power of the directors to elect their chairman and vice-chairman, to appoint the times and places of their meeting, to fill up certain vacancies occurring in their own body, and to appoint committees of their members. Under the second division, we may notice that, as regards the financial affairs of the company, the directors are empowered to make calls, and enforce payment of them by actions against defaulters; to charge interest on calls in arrear, and to allow interest on such as are paid in advance; to declare dividends, to employ the capital of the company in the promotion of its general objects and purposes at their discretion, subject to the statutory restrictions imposed upon them; to set apart certain sums for contingencies; and to pay and receive (through any officers they may appoint for that purpose) all moneys due to or from the company. So the directors have power to enact, alter, and repeal, as they may think right, bye-laws regulating the conduct of their own servants, and the user of the line by the public; to impose fines for the breach of them, subject, in certain cases, to the approval of such bye-laws by the Commissioners of Railways. They may also appoint and dismiss, at their pleasure, all the officers and servants of the company. And further, in relation to all contracts entered into by the company, and to the registers, books, and accounts to be kept, they are empowered to make all proper arrangements for the correct entry and balancing of such accounts, and for the inspection of them and of the registers, and may order the transfer books to be closed for a certain period previous to each ordinary meeting; and, lastly, may contract with private individuals or with other companies for the purchase of land, compensation for the execution of the works, for engines and carriages, for fuel or for any other goods; or for the performance of any labour, or for any services, professional or otherwise, required for the general purposes of the company.

It is not necessary for the due exercise of the powers above enumerated, that the directors should meet and act as a board, for, as we have seen, they may appoint one or more committees, consisting of the prescribed number (if any), or of such number as they think fit, and may entrust them with the same power as they themselves possess, to act on behalf of the company in the management of its affairs; and all the acts and contracts of any committee duly constituted, will be as valid as if they had been done and entered into by the whole body (a).

Power to delegate their authority to committees.

The powers of the company which can only be exercised at a general meeting, are those relating to the choice and removal of directors (except the supplying of occasional vacancies); the increasing or reducing of their number when authorised by the Special Act; the selection of auditors; the determination as to the remuneration of the directors, auditors, treasurer, and secretary; the determination as to the amount of money to be borrowed on mortgage; the determination as to the reduction or augmentation of capital, and the declaration of dividends; and agreements for the lease, sale, or amalgamation of the line. Powers, however, for the purposes last-mentioned must be given expressly by the legislature, as they do not attach to a railway company, as such, on the passing of the Act of Incorporation.

Powers to be exercised at a public meeting.

In addition to these matters thus excepted out of the general authority of the directors, the Special Act may impose further limitations and restraints upon the power of the board. But if it do not, the directors will be the legal and duly authorised organs of the company in relation to all objects and for all purposes not expressly excluded from their control; or, in the words of the statute, they will have "the management and superintendence of the affairs of the company, and they may lawfully exercise all the powers of the company."

The extensive powers wherewith the board of directors is thus entrusted, involve corresponding obligations.

(f) Duties of the directors.

(a) 8 Vic. c. 16, s. 95.

They are not only *empowered* to "manage and superintend," but they are *appointed* to do it. Hence their duties are, generally, to exercise their large powers for the benefit of the company, in the promotion of its objects, the discharge of its business, and the advancement of its interests, in the innumerable ways in which it may be done.

All the principal duties of the directors either have already or will subsequently come minutely under our consideration, under the various sections of this work. Wherever the company's business is to be done, or its rights are to be protected or vindicated; wherever it would contract with other parties, or enforce its claims against them; wherever it would arrange its internal affairs, or promote its public objects, there duties devolve upon the governing body. Hence they change with the changing condition of the company, with the various stages of its existence, and with the different aspects which it bears towards the public, whether viewed as the purchaser of land for the line, or as contracting for work, labour, and materials for the purpose of forming it; or regarded as working a line already formed, whether as the proprietors of it, or as common carriers. So these duties vary in relation to the members of the company no less than in relation to third parties; at one time imposing the obligation of making and enforcing the payment of calls; at another regulating the number and amount of dividends, suggesting variations of the scheme and objects of the company, and making provision for promoting its interests, as new circumstances arise which may render desirable a change of policy or of purpose.

These manifold duties of the directors of a railway company divide themselves into three general branches; those which relate more especially to the company itself, and to the general body of the shareholders, including all matters of internal regulation and management; those which have a more direct reference to third parties, whether as users of the line or vendors of land, or as



parties contracting with the company; and those which devolve upon them in relation to Government, and to public officers and bodies. Of the first class the following are the principal:—

The directors are bound to apply all moneys, whether raised by loan or otherwise, first, in paying the costs and expenses incurred in obtaining the Special Act, or incidental thereto; and then in the purchase of land, the formation of the line, and in the furtherance of the general purposes and objects of the company (*a*). They may not, however, expend any of their capital in a manner not authorised by their Act of Incorporation, although the ultimate advantage of the company might be secured by such an application of the funds (*b*). Thus, they would not be entitled to lend or advance money to other companies to enable them to make their deposits under the Standing Orders of Parliament, although the interests of the company might be materially promoted by the success of those applying for legislative sanction. So they will not be allowed to pledge the funds of the shareholders in the way of guarantee or otherwise, to the subscribers to any other company, except under the powers conferred in the Special or General Railway Acts. Therefore, where a board of directors of a railway company undertook to guarantee to the subscribers of a steam-packet company a certain amount of dividends upon the capital to be expended, the Court of Chancery granted an injunction restraining them from so pledging the capital of the company (*c*).

(1) Duties to shareholders. In respect of capital.

It is the duty of the directors to invest the funds in their hands in government securities, and to sell out as the works proceed and as cash may be required. So they are bound to make calls upon the shareholders at such times, and of such amounts (authorised by their Act), as the

To make calls.

(*a*) 8 Vic. c. 16, s. 65.

(*b*) *Ware v. Grand Junction Water Works Com.* 2 Russ. & M. 470.

(*c*) See *Coleman v. Eastern Counties Rail. Com.* 16 L. J., N. S. 73, ch.

progress of the works and the exigencies of the company may render necessary : and although, in one case, where an action had been brought and judgment entered up against the company, and there were no assets, the Court of Queen's Bench refused to issue a mandamus at the instance of a creditor, commanding the directors to make a call (*a*) ; yet it is submitted, that where a shareholder has been compelled under an execution issued at the suit of a creditor of the company to pay moneys beyond the amount of calls then due in respect of the shares held by him, the Court would grant a mandamus commanding the board of directors to make a call in order to reimburse him. The directors are not only to make calls when the company is in want of funds, but they are bound also to enforce the payment thereof, with interest, by action against the party in default, or, after the expiration of the proper period, to declare the shares forfeited.

To keep books  
and registers.

It is the duty of the directors also to keep a register of the shareholders, containing, in alphabetical order, correct entries made from time to time of the names and additions of all parties entitled to any shares in the company (*b*) ; and also a book containing, in alphabetical order, the names and descriptions, and places of business and abode of the several shareholders, to be called the " Shareholders' Address Book," which is to be open to the inspection of every member of the company, and to any judgment creditor, free of charge, and extracts from which may be demanded on payment of the proper fee (*c*). So they are bound to keep a register of all transfers of shares from time to time made, entering therein a memorial of the deed of transfer, and endorsing that entry upon the deed, on payment of the prescribed fee (*d*).

To give and  
renew certi-  
ficates.

It is their duty also, on demand of the holder of any share in the company, and on payment of the fee, to give him a certificate of the proprietorship thereof, under the

(*a*) Reg. v. Victoria Park Com. 4 P. & D. 639.

(*b*) 8 Vic. c. 16, s. 9.

(*c*) Id. s. 10.

(*d*) Id. s. 15.

common seal of the company, and to renew such certificate as often as sufficient proof is given that it is lost or destroyed, or, if worn out or damaged, on its being delivered up to be cancelled (a).

So the directors are bound, in the creation of new shares, where the old are at a premium, to apportion them equally among the original proprietors, according to the number of shares possessed by each; and with respect to those which are not taken up by the persons to whom they have been offered, they must dispose of them in the manner which in their discretion appears to be most for the interest of the company (b).

To apportion new shares.

They must also cause full and true accounts to be kept of all money received and expended, and have the accounts properly balanced at the times fixed for that purpose, and a correct balance sheet prepared, examined, and signed by the chairman, and submitted to the inspection of the shareholders. They must also permit inspection of the company's accounts, free of charge, at all seasonable times, to all bond, mortgage, or judgment creditors (c). They must also appoint all proper book-keepers and accountants, and provide suitable and sufficient books for the various entries (d). The accounts and balance sheet thus made out, the directors are bound to deliver to the auditors fourteen days before each half-yearly meeting (e).

To keep accounts.

Moreover, notes, minutes, or copies, must be kept by the directors, of all appointments made or contracts entered into by them on behalf of the company, and of all the proceedings at the meetings of the company, or of the directors, or of their committees; and the chairman must sign all such entries (f).

They are also bound to require securities from all officers of the company, whether treasurers, collectors, or others who may be in any way entrusted with the custody

To take securities.

(a) 8 Vic. c. 16, ss. 11, 12.

(c) Id. s. 55.

(e) Id. s. 106.

(b) Id. ss. 56—60.

(d) Id. ss. 115—119.

(f) Id. s. 98.

and control of moneys belonging to the company, for the faithful execution of their respective duties (*a*).

To convene meetings.

It devolves upon the directors also to convene all the ordinary meetings of the company, giving the requisite notices by advertisement or otherwise, and also to call such extraordinary meetings as may be requested by the prescribed number of shareholders (*b*). So they must meet as a board of directors for the transaction of business as often as the affairs of the company may require; and the several committees of directors as frequently as

To fill vacancy.

may be necessary for the discharge of their duties (*c*). Any vacancy occurring in their body by the death, resignation, or supervening disqualification of any director, they ought to fill up (*d*).

(2) Duties to third parties.

The second class of duties devolving on the directors of a railway company, is that relating to third parties, and respects the position of the company chiefly, first, as engaged in constructing the line, and then in working it. During the formation of the railroad and the execution of the works, the directors are bound to give all proper notices to land-owners and others whose property will be required or damaged by the company; to take all the prescribed steps for ascertaining the amount of compensation, to pay or deposit it at the proper times, and before entering on the lands; to acquire a good title to, and secure a valid conveyance of, the property purchased. So they must make all proper communications between severed lands, permitting the parties interested to cross the line until they are made; and must provide suitable and sufficient accommodation works to replace such as have been removed or destroyed by the construction of the railway. So they must carefully fence off the line from all adjoining lands, make all proper gates at crossings, and screens, and other necessary works. They must also, with all convenient expedition, complete the line throughout, according to the

*a*) 8 Vic. c. 16, s. 109.

*b*) Id. ss. 66—80.

*c*) Id. ss. 92—96.

*d*) Id. s. 89.

plans; and maintain and repair it thereafter in a good and serviceable state. They must, moreover, permit the owners of adjoining lands to make branches, under the conditions prescribed.

In working the line, the directors will be bound to carry on equal terms for all parties; to graduate their scale of tolls, rates, and fares, so that they may be reasonable, equal, and impartial; and to publish them as required by their Act. They must also enact and publish, when sanctioned by the Commissioners of Railways, such bye-laws as may be necessary for regulating the user of the railway by the public; and in relation to their trains both for conveyance of passengers and goods, must make such arrangements as to their numbers, and times of starting and arrival, shall meet the convenience of the public; nor may they alter these arrangements capriciously, or without due notice (*a*).

Besides their obligations to the members of the company, and to the public, there is a third class of duties devolving upon the directors in relation to Government, to the committee of the privy council appointed to superintend railways, to county and parochial officers, and others, which deserve a brief notice. And first, they must give due notice of the opening of the line, and permit inspection thereof by the proper officer (*b*); they must provide duly for the conveyance of the mails, under the direction of the Postmaster-general (*c*), and for the conveyance of military and police, public stores, and the like, at the command of the Secretary-at-war (*d*). So they must permit the government to lay down and use electrical telegraphs upon the line, and, under certain restrictions, permit their user by the public (*e*). So they must keep full and true accounts

(3) Duties to government and public officers and bodies.

(*a*) See 8 Vic. cc. 18 & 20, *passim*.

(*b*) 5 & 6 Vic. c. 55, ss. 3—6.

(*c*) 1 & 2 Vic. c. 93; 7 & 8 Vic. c. 85, s. 11.

(*d*) 5 & 6 Vic. c. 55, s. 20; 7 & 8 Vic. c. 85, s. 12.

(*e*) 7 & 8 Vic. c. 85, ss. 13, 14.

of all moneys received and paid by the company, and send a copy of the balance-sheet, duly audited, to the Lords of the Treasury, at the times prescribed (*a*). So they must prepare an annual statement of all such accounts; and, if required, transmit a copy of the same, free of charge, to the overseers of the poor of the several parishes, and the clerks of the peace of the several counties through which the railway passes.

It will be their duty also to give notices to the Commissioners of Railways of all serious accidents occurring on the line (*b*), and to make an annual return thereof, as prescribed; and also a return of traffic and of tolls (*c*); and to submit, from time to time, to the Commissioners of Railways all such bye-laws as may be enacted by them in relation to any persons other than their own servants (*d*).

(*g*) Liabilities  
and protection  
of directors.

The directors incur no personal liability, as such, on any contract entered into by them on the part of the company, nor can they be sued or prosecuted individually or collectively for any lawful exercise of their powers; nor will their bodies, goods, or lands, be liable to execution of any legal process in respect of any contract made on behalf of the company (*e*). Moreover, the directors, their heirs, executors, and administrators, are entitled to be indemnified out of the capital of the company for all payments made, or liabilities incurred, in respect of any acts done by them, and for all losses, costs, and damages which they may incur in the execution of the powers granted to them; and for this object they may appropriate the funds of the company (if any) in their hands, or make calls of the capital remaining unpaid (*f*).

The protection thus given to directors is given only in cases in which there has been a lawful exercise of their powers. If the act done was within the scope of their authority, they are protected by the above provisions from

(*a*) 7 & 8 Vic. c. 85, s. 5.

(*c*) 3 & 4 Vic. c. 97, s. 3.

(*e*) 8 Vic. c. 16, s. 100.

(*b*) 5 & 6 Vic. c. 55, s. 7.

(*d*) *Id.* s. 7.

(*f*) *Ibid.*

the consequences of it; but if they have exceeded the limits of that authority, by entering into contracts, or executing instruments, which they were not authorised to make, they will be liable individually; for then the thing done could not be said to be done on behalf of the company, or to be a lawful act done in the execution of their powers; it being an act beyond their powers, and therefore unlawful. Hence, in such cases, third parties may have a personal remedy against the directors, and none against the company.

So if directors invest the funds of the company in any other than government securities, having no express authority to that effect, and any loss arise in consequence, they will be liable individually to make it good. So in case of any other improper employment of the company's capital, they will be responsible to make good the loss if any should occur, or to account for the profits if any should be made; or as in other cases where trustees make use of the money belonging to their *cestuis qui trusts*.

Nor does it seem necessary that there should have been any fraud in the matter thus involving personal responsibility. A mistake as to the scope of their authority may lead directors into contracts and engagements which will not bind the company, and upon which they will be individually liable. So where a director involves himself in obligations as regards the company, though in the capacity of trustee for the general body of the shareholders, he will be personally liable for these engagements, if they were beyond the scope of his official authority. Therefore where certain members of a board of directors for the purpose of completing the subscription in compliance with the standing-orders of Parliament, signed the subscription-contract for a large number of shares, and at the same time executed a deed of trust of them; it was held on a bill filed by some of the shareholders, complaining of the non-payment of the calls upon those shares, that the parties were bound to

pay them, notwithstanding the deed of trust had been subsequently annulled at a general meeting of the company, and a resolution passed that the shares should be transferred to the secretary (a).

If, however, the transaction in question were one which it was competent for the directors to engage in, however indiscreetly and improperly (no fraud being imputed) it may have been managed, still it will bind the company, whose agents for that purpose the directors were. Even a fraudulent and corrupt management of business which they were competent to transact, would not render them liable to third parties, however they might expose themselves to proceedings in Equity, at the suit of the shareholders. The directors of a railway company would seem to be the general agents of the company, and to have the same rights, liabilities, and immunities, as attach to that class of persons, in ordinary cases (b).

Directors are also liable to the shareholders for fraud, misconduct, or gross mismanagement in transacting the affairs of the company. For further information on this subject, see post, Book on Remedies.

A concurrence of the majority of shareholders will frequently be deemed such a ratification of proceedings not strictly justifiable on the part of the directors, as to preclude the minority from objecting, provided such proceedings were voidable only, and not void (c).

The Board of Directors may hold their meetings when and where they choose to appoint, and may adjourn from time to time as they think proper. Any two of the directors may also at any time require the secretary to call a meeting of the whole Board (d).

(h) Proceedings of directors. Time, &c. of meeting.

(a) *Preston v. The Grand Collier Dock Com.* 2 Rail. Ca. 335; *Mangles v. The Same*, 2 Rail. Ca. 359.

(b) For the law on this subject see Story on Agency, pp. 99—108.

(c) *Foss v. Harbottle*, 2 Hare, 461; and remarks of the Vice-Chancellor in *Preston v. the Grand Collier Dock Com.* 2 Rail. Ca. 335. See also, Collier on Railways, pp. 165, 166.

(d) 8 Vic. c. 16, s. 92.



To constitute a meeting, the prescribed quorum, or, if Quorum.  
none be prescribed, at least one-third of the directors  
must be present (*a*).

At these meetings, all questions are to be determined by Voting.  
the majority of votes of the directors present; or if the  
division be equal, the chairman may give a casting vote in  
addition to his vote as one of the directors.

At the first meeting held after the passing of the Special  
Act, and at the first meeting after each annual election of  
directors, the board are to choose one of their number for  
their chairman, during the year ensuing; and may also, if  
they think right, elect another director to officiate as  
deputy chairman. If either of these officers die, resign,  
or become disqualified or incapable to act during the year,  
the directors at the meeting held next after the occurrence  
of the vacancy may elect another of their number to fill it,  
and the person so elected will continue in office so long as  
the individual whose place he supplies would have been  
entitled to remain (*b*). In the absence both of the chair-  
man and deputy-chairman, the directors must elect an  
occasional chairman to preside (*c*).

The directors may appoint committees of their number, Committees.  
consisting of so many members as are prescribed, or if no  
number be prescribed, so many as they shall think fit, to  
do any business on behalf of the company which the Their powers.  
board are empowered to do and may think proper to en-  
trust to them. The same rules prevail as to meetings, Their proceed-  
adjournments, quorum, and voting, in respect of these ings.  
committees as in respect of the board of directors (*d*).

By the 98th section of the Companies' Clauses Act it is Record of  
provided that "the directors shall cause notes, minutes, or proceedings.  
or copies, as the case may require, of all appointments made,  
or contracts entered into by the directors, and of the  
orders and proceedings of all meetings of the company,  
and of the directors and committees of directors, to be

(*a*) 8. Vic. c. 16, s. 92.

(*c*) Id. s. 94.

(*b*) Id. s. 93.

(*d*) Id. ss. 95, 96.

duly entered in books—and every such entry shall be signed by *the chairman of such meeting*; and such entry so signed, shall be received in evidence in all courts, and before all judges, justices, and others, without proof of such respective meetings having been duly convened or held, or of the persons making or entering such orders or proceedings, being shareholders, or directors, or members of committee, respectively; or of the signature of the chairman, or of the fact of his having been chairman; all of which last-mentioned matters shall be presumed until the contrary be proved.”

Signature to.

Under similar clauses in Railway Acts it has been held, in repeated instances, that the signature of the chairman at a subsequent meeting (he having also presided at the former) at which the minutes of the former were read over and confirmed, was a sufficient compliance with the Act (a). And where a Railway Act directed that the orders and proceedings of every meeting of the company should be entered in a book kept for that purpose, and should be signed by *the chairman at such meetings*; and when so entered and signed, as also the minutes and entries thereafter provided to be kept, should be deemed original orders and proceedings, and should be allowed to be read in evidence in all Courts, etc., without proof of such meeting having been duly convened, etc., and that the directors should keep a regular minute and entry of the orders and proceedings at every meeting of directors, *which should be signed by the chairman at each respective meeting*; it was held that the signature of the minutes by the chairman when presiding at a subsequent meeting, was sufficient (b).

(a) *Lond. and Brighton Rail. Com. v. Fairclough*, 3 Sc. N. R. 68; 2 M. & Gr. 674; 2 Rail. Ca. 544. *West Lond. Rail. Com. v. Bernard*, 3 Q. B. 873; 3 Rail. Ca. 649. See also, *Miles v. Bough*, 3 G. & D. 119; 3 Rail. Ca. 668.

(b) *Southampton Dock Com. v. Richards. The Same v. Arnott*, 2 Rail. Ca. 215; 1 Sc. N. R. 219; 1 M. & G. 448. See also, *Sheffield, Ashton-under-Lyue, and Manchester Rail. Com. v. Woodcock*, 7 M. & W. 574; 2 Rail. Ca. 522.

By the 99th section of the Companies' Clauses Act it is provided, that all acts done by the directors, or committees of directors, shall be valid, notwithstanding any defect which may be afterwards discovered in the appointment of any one or more of them; or although it should turn out that any of them were disqualified from acting in that character. Nor will the Court listen with indulgence to objections of this nature, but will see that they be taken in proper time, and in such form, as the rules of pleading require (*a*). Nor will they, in general, inquire into the validity of the appointment of directors on summary application (*b*).

The directors of a railway company are entitled to receive remuneration for their services, the amount of which is to be determined by the shareholders at a general meeting (*c*).

(i) Remuneration of directors.

## SEC. II.—*Meetings.*

THE provisions of the Companies' Clauses Act in respect of general meetings of a railway company, are contained in clauses 66 to 80, both inclusive. These meetings are either ordinary, or extraordinary. We shall briefly examine the enactments in respect of each.

General meetings.

The first general meeting of the company (if no time be prescribed) must be held within one month of the time of the passing of the Special Act; and the future general meetings (if no periods be prescribed) in the months of February and August in each year; or at such other stated periods as shall be fixed by an order of a general

(a) Ordinary meetings. Times of.

(a) *Thames Haven Dock and Rail. Com. v. Rose*, 2 Dowl. N. S. 104.

(b) *Same v. Hall*, 5 Man. & Gr. 274.

(c) 8 Vic. c. 16, s. 91.

**Place of.** meeting. The place of such meetings if not prescribed may be determined by the board of directors (a).

**Notice of.** Fourteen days' public notice, at the least, of all meetings, whether ordinary or extraordinary, must be given by advertisement, specifying the place, day, and hour of meeting; and if it be an extraordinary meeting, or an ordinary meeting, at which it is proposed to bring forward some business other than that which by the Special Act, or the Companies' Clauses Act, is appointed to be transacted thereat, the notice must specify the purpose for which the meeting is called.

**Business at.** In order that the proceedings and measures of the company may be the result of sufficient deliberation, and that a general meeting may not be surprised or betrayed into taking any steps of importance without having the opportunity both for consideration and discussion; it is provided, that no business, other than that appointed by the Companies' Clauses Act, or by the Special Act, to be done at an ordinary meeting can be brought forward, unless special notice of such business shall have been given in the advertisement convening the meeting (c).

**Quorum.** In order to prevent measures being passed without the consent of a sufficient meeting of shareholders fairly to represent, both in numbers and interest, the general body; it is provided, that (if no particular quorum be prescribed by the Special Act,) then there must be present, personally, or by proxy, in order to constitute a general meeting (ordinary or extraordinary), shareholders holding in the aggregate not less than one twentieth of the capital of the company, and being in number not less than one for every five hundred pounds of such required proportion of capital, unless such number would be more than twenty, in which case twenty shareholders, holding not less than one twentieth of the capital of the company,

(a) 8 Vic. c. 16, s. 66.

(b) Id. s. 71.

(c) Id. s. 67.

shall be the quorum. Hence no general meeting of a railway company (ordinary or extraordinary) is properly constituted unless there be present at least twenty shareholders, who shall represent at least one twentieth of the capital. Proxies, however, are included in the enumeration.

If within one hour from the time appointed for the meeting, a quorum be not present, no business can be transacted, except declaring a dividend (if that be one of the objects of the meeting), but the meeting shall be deemed to be adjourned *sine die*; except in the case of a meeting for the election of directors, when the meeting will stand adjourned to the following day, at the same place and hour, for that purpose; and if a quorum be not then present within the hour, that meeting will also be deemed adjourned *sine die* (a).

The chairman of the board of directors, or, in his absence, the deputy-chairman, or, in the absence of both, some one of the directors to be elected by the meeting; or, if no director be present, then one of the shareholders to be chosen by a majority of those present, is to preside as chairman of the meeting (b). Chairman.

The shareholders present at a general meeting are to proceed in execution of the powers of the company, in respect of those matters for which the meeting was convened, and for those only; and every such meeting may be adjourned from time to time, and from place to place, but no business can be transacted at any such adjourned meeting, other than that left unfinished at the meeting from which such adjournment took place (c). Proceedings.

All questions properly brought before a general meeting of the company are to be decided either by an actual majority of votes, or by the particular majority required in relation to any special matter. But in order to protect Voting.

(a) 8 Vic. c. 16, s. 72.

(b) Id. s. 73.

(c) Id. s. 74.

Scale of.

a company from the overwhelming influence of large capitalists, who may hold a very great number of the shares, and thus represent a considerable proportion of the capital, a graduated scale of voting is prescribed by the Companies' Clauses Act, which diminishes the influence of the holder of shares, in respect of those beyond a certain number, according to a fixed rate: and the same object is aimed at, in requiring at a valid meeting of the company, not only the representatives of a certain proportion of the capital, but also a certain definite number of individual shareholders, either in person, or by their proxies. On this subject it is provided, that if no scale of voting at general meetings be prescribed by the Special Act, the 8 Vic. c. 16 enacts, that every shareholder shall have one vote for every share up to ten, and an additional vote for every five shares beyond the first ten held by him up to one hundred, and an additional vote for every ten shares beyond the first hundred: provided always, that no shareholder be entitled to vote at any meeting, unless he shall have paid up all the calls then due upon *all* the shares held by him (a).

Joint-shareholders.

Where several persons are jointly entitled to a share, the person whose name stands first in the register, as the holder of the share, will be entitled to vote as the sole proprietor, either personally, or by proxy, and his vote will be allowed as the vote in respect of that share, without proof of the concurrence of the other holders (b).

Lunatics and minors.

Any shareholder being a lunatic, idiot, or minor, may vote by his committee or guardian, either in person, or by proxy (c).

Proxies.  
How appointed.

Annexed to the Companies' Clauses Act, is a form to be adopted in the appointment of a proxy. This must be in writing, and under the hand of the shareholder making the appointment, or if such shareholder be a corporation,

(a) 8 Vic. c. 16, s. 75.

(b) Id. s. 78.

(c) Id. s. 79.

under the common seal of the corporation (*a*). Guardians, and committees of lunatics and minors, may also execute such an instrument (*b*). This document, in order to entitle the appointee to vote under it, must, if no other time be prescribed, be transmitted to the secretary of the company not less than forty-eight hours before the time appointed for holding the meeting at which such proxy is to be used (*c*). By the schedule to the statute 7 and 8 Vict. c. 21, a duty of two shillings and sixpence is imposed for and in respect of every letter or power of attorney, or other instrument made for the sole purpose of appointing or nominating a proxy, to vote at any meeting of the proprietors of any joint stock company whose capital is divided into shares, and transferable. It is also provided in the body of the Act (sec. 6) that the instrument so subject to duty shall specify the time of holding the meeting at which it authorises the proxy to vote; and that it shall avail for that purpose at such meeting, and at any adjournment thereof, but not further, or otherwise. Other sections of the Act impose penalties on persons making or signing such an instrument, or voting or attempting to vote under it, if it be not properly stamped; and make all votes, or other acts done in pursuance of it, absolutely null and void, to all intents and purposes. None but shareholders of the company can be proxies; as none others are entitled to be present at the meeting (*d*).

Transmi-  
sion  
of form to se-  
cretary.

Stamp.

Who may be a  
proxy.

All questions are to be decided by a majority of the votes of the parties present, including proxies; and in case of an equality of votes, the chairman will be entitled, in addition to his vote as principal, or proxy, to give a casting vote (*e*).

Manner of  
voting.

In cases where, by the Companies' Clauses Act, or the Special Act, a particular majority of votes is required to authorise any proceeding, it will not be necessary to prove

Ascertainment  
of majority.

(*a*) 8 Vic. c. 16, s. 76.

(*b*) Id. s. 79.

(*c*) Id. s. 77.

(*d*) Id. s. 76.

(*e*) Id.

that particular majority, unless a poll be demanded; and if a poll be not demanded, the declaration of the chairman that the resolution has been carried, and an entry to that effect in the book of proceedings, will be deemed sufficient evidence of the fact, without proof of the number or proportion of votes recorded in favour of or against the proposition in question (a).

Extraordinary  
meetings.

The directors may be required by twenty or more shareholders, holding not less than one-tenth of the capital of the company (unless some other number be prescribed by the Special Act), on receiving a written request to that effect, to call an extraordinary meeting of the company. The requisition must fully set forth the object of the proposed meeting, and must be left at the office of the company, or served upon at least three directors; and on the receipt of it, the directors must forthwith convene a general meeting. If, for twenty-one days after receiving the notice, the directors neglect to call the meeting, the shareholders who have signed the requisition may do so, on giving fourteen days' public notice thereof, as mentioned above. Care must be taken that the notice specify precisely the purpose for which the meeting is called, and the business proposed to be transacted (b).

Before dismissing the subject of meetings, it may be right to mention that the powers of the company in general meeting assembled being very large, and, in relation to its general business and affairs, supreme; all differences as to the mode of conducting those affairs should be discussed at either an ordinary or extraordinary meeting of the shareholders. This is the tribunal to which the board of directors should be brought for alleged misconduct or mismanagement; nor can dissentient members of the company appeal to a court of justice in relation to mere irregularities or indiscretions on the part of the governing

(a) 8 Vic. c. 16, s. 80.

(b) Id. s. 70.



body, nor ask the court to review or arrange their pecuniary matters and accounts. But where the hostile and irregular proceedings of directors have brought the company into such a state of confusion as virtually amounts to a disorganisation, and the members generally are unable, by any course to be adopted among themselves, to restore a good understanding, or where the directors act directly in defiance of the general wishes of the shareholders, lawfully expressed, or in opposition to the provisions of the Act, the Courts of Law and Equity would interfere, to restrain or enforce by injunction or mandamus, as the circumstances of the case might require (a).

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### SEC. III.—*Officers.*

It will not be necessary in this section to enumerate all the various officers of a railway company, or to attempt any accurate and specific account of the duties of those of whom we shall treat. It is obviously impracticable to describe the many obligations devolving upon such persons. We propose only to allude briefly to the secretary, the treasurer, and the auditors, for the purpose of indicating generally the nature and extent of their respective duties.

(a) See Judgment of Tindal, C. J. in *London and Brighton Rail. Com. v. Wilson*, 6 Bing, N. C. 139; 1 Rail. Ca. 533, 534; and of Denman, C. J. in *Reg. v. Eastern Counties Rail. Com.* 10 A. & E. 549; Judgment of Vice-Chancellor in *Foss v. Harbottle*, 2 Hare, 461. See also, Walford on Railways, p. 195; and *Mosley v. Alston*, E. T. 1847. *Cottenham, C.*

(1) *The Secretary.*

Secretary.  
Appointment  
of.

This officer is appointed, and may be dismissed, by the board of directors. He is the principal agent of the company, and the one through whom nearly all their business is transacted. Although the appointment of the secretary is vested in the managing body, yet the amount of remuneration to be paid to him is to be determined by the company in general meeting assembled (a).

Salary.

Duties.

The duties of the secretary and of those appointed to assist him in his office, include all the correspondence of the company with individuals and other companies, the keeping of the register of shareholders, of memorials of transfers, of certificates and substituted certificates, of the declarations required in certain cases of transfer of shares by act and operation of law, of loan notes, mortgages, and bonds, and generally of the accounts of the company, both receipts and expenditure. The secretary also calls the meetings of the directors, and signs all notices and advertisements convening the general meetings, ordinary and extraordinary, of the company, and all documents requiring their authentication.

Although we have said that the secretary is the agent of the company, yet he is only so ministerially, or as the servant of the directors, and for the purpose of executing their orders, and, except in certain specified instances, he does not fill (as does the board of directors) a representative capacity, wielding the authority of others in their names. No power is delegated to him, but he is appointed simply for the purpose of obeying the orders given to him. Hence he cannot bind either the directors or the company by any contract which he may make, except in relation to such matters as are of too trivial a character and too frequent occurrence to require the express sanction of the board (b). But he would be personally liable to the

(a) 8 Vic. c. 16, s. 19.

(b) See post, Ch. on Contracts.

other contracting party upon any such unauthorised contract.

The secretary, if he be entrusted to any extent with the custody and control of monies, may be required, before entering on his office, to give security to the company (*a*). He must also be prepared to render up his accounts at the request of the directors, together with all necessary vouchers and receipts, and to pay any balance which may be due from him to the company (*b*).

Security to be given by.

If, for three days after a request by the directors, the secretary refuse to pay any balance due to the company, the latter may have a summary remedy before two justices by warrant of distress, or imprisonment not exceeding three months (*c*); and if he refuse to give up the papers and documents in his possession relating to the business and affairs of the company, two justices may commit him to prison until he does so (*d*). Any intention to abscond may be defeated by a warrant, and, on appearance, he may, in default of bail, be committed to gaol (*e*). Such summary proceedings, however, will not deprive the directors of any remedy which they may otherwise have against such officer or his sureties (*f*).

Proceedings against.

## (2) *The Treasurer.*

With regard to the obligation to appoint a party to act as treasurer, and the mode in which that appointment should be made, the Companies' Clauses Act is silent. It would appear, therefore, as if the appointment were entirely optional on the part of the managing body. But the frequent mention of such an officer in the various Railway Acts, leads necessarily to the inference that such an appointment was contemplated. Thus we find that the treasurer must give, and the directors are bound to require, sufficient security for the due performance of his

Provisions of General Railway Acts.

(*a*) 8 Vic. c. 20, s. 109.

(*b*) Id. s. 110.

(*c*) Id. s. 111.

(*d*) Id. s. 112.

(*e*) Id. s. 113.

(*f*) Id. s. 114.

duties (a). That the amount of his remuneration must be settled by a general meeting of the shareholders (b). That in the case of a sale by the company of shares forfeited for non-payment of calls, the receipt of the purchase-money by the *treasurer* shall be evidence of title in the purchaser (c). That in case of the insolvency or bankruptcy of any person against whom the company have any claim, the *treasurer* or secretary may represent the company, and may act in all respects as if such claim had been the claim of the *treasurer* or secretary, and not of the company (d). That summonses, notices, and other documents requiring authentication, may be signed by the directors, *treasurer*, or secretary, and need not be under the common seal of the company (e); and that whenever any damages, costs, or expenses are directed, either by the Special or General Railway Acts, to be paid by the company, and sufficient goods of the company cannot be found whereon to levy such damages, costs, and expenses, the same may, if the amount do not exceed £20, be recovered by distress of the goods of the *treasurer*; but no such distress may issue against his goods unless seven days' notice, stating the amount due, and demanding payment thereof, have been given to him or left at his residence; and that the *treasurer* paying any money under such distress may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any moneys belonging to the company coming into his custody or control; or he may sue the company for the same (f).

Appointment  
of.

From reference to the above-mentioned clauses, it is clear that the office of a *treasurer* is contemplated; but as the mode of appointing him is not prescribed, we may conclude that the power of appointment and dismissal is vested in the board of directors, although the amount

(a) 8 Vic. c. 16, s. 109.

(b) *Id.* s. 91.

(c) *Id.* s. 33.

(d) *Id.* s. 140.

(e) *Id.* s. 139.

(f) *Id.* ss. 142, 143. 8 Vic. c. 18, ss. 140, 141.

of remuneration is to be settled by the shareholders in public meeting assembled (a). Remuneration of.

It is the duty of the treasurer to take care of all moneys committed to his charge, or received by him on account of the company, and, when required by the directors to make out and deliver to them, or to any person appointed by them, a true and correct account in writing under his hand, of all moneys received by him on behalf of the company, showing how and for what purposes the moneys shall have been disposed of; and, together with such account, he must, if requested, give up all vouchers and receipts for payments made by him, and pay over all moneys which may be owing to the company upon the balance of account (b). Duties of.

Should he neglect or refuse to deliver such accounts, he will be liable to the same proceedings, either summary, before two justices, or by action against him and his sureties, as are prescribed in the case of the secretary making similar default (c). Penalties.

### (3) *The Auditors.*

In order to secure an accurate keeping of the accounts, and an honest and faithful disposal of the funds of a company, certain officers, called auditors, must be appointed by the shareholders, at the first general meeting after the passing of the Act, in the same manner as is provided for the election of directors. The number of auditors, if not otherwise prescribed in the Special Act, is fixed in the Companies' Clauses Consolidation Act (d). Auditors. Appointment of.

The qualification of a party to become an auditor is (unless otherwise determined in the Special Act), the possession of at least one share in the undertaking; and he must neither hold any office in the company, nor be in any way interested in its concerns, except as a share- Number of.

(a) 8 Vic. c. 16, s. 91.

(b) Id. s. 110.

(c) See *supra*, p. 449.

(d) Id. s. 101.

holder (a). The remarks hereinbefore made with regard to the disqualification of directors, apply in the case of auditors, and it is therefore unnecessary to repeat them in this place (b).

**Rotation of.**

One of the auditors (to be determined in the first instance by ballot amongst themselves, unless they shall otherwise agree,—and afterwards by seniority) is to go out of office at the first ordinary meeting in each year, and the retiring auditor will be immediately eligible for re-election ; and, after any such re-election, he will, with respect to the going out of office by rotation, be deemed a new auditor. The failure of any meeting at which an auditor should have been elected, is provided for as in the case of directors (c).

**Supply of occasional vacancies.**

The appointment of a new auditor in case of death, resignation, or disqualification, is vested in the shareholders, who, in any general meeting, may, if they think fit, elect one of their body to fill up the vacancy (d).

**Duties of.**

It is the duty of the auditors to receive from the directors, and the directors are required to give to them, at least fourteen days before each ordinary meeting, the half yearly or other periodical accounts, and balance sheet, required to be presented to the shareholders ; and to examine the same, and ascertain the correctness thereof (e) ; and for the purpose of verifying the accuracy of such balance sheet, they are empowered, if they think fit, at the expense of the company, to employ accountants and such other persons as may be necessary (f).

The auditors may either make a special report on the accounts delivered to them, or simply confirm the same. Such report or confirmation must be read, together with the report of the directors, at the ensuing ordinary meeting (g).

(a) 8 Vic. c. 16, s. 102.

(b) See *Supra*, pp. 421—424.

(c) *Id.* s. 105. See *Supra*, pp. 425, 426.

(d) *Id.* s. 104.

(e) *Id.* s. 107.

(f) *Id.* s. 108.

(g) *Id.* s. 109.

## CHAPTER II.

## AS TO CAPITAL.

WE propose in this chapter to treat first of shares, then of calls, then of dividends, and lastly of loans, or the borrowed capital of a railway company.

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 SEC. I.—*Shares.*
(1) *Nature of.*

THE interest in the fixed and floating property of a rail- Shares.  
 way company, that is to say, in the capital expended in  
 the formation of the line, and in the purchase of the plant  
 necessary for working it, is divided into a certain number  
 of shares of a given amount; the amount of the capital,  
 the number of shares, and the value of the shares re-  
 spectively are fixed by the Special Act (*a*). For the Number of.  
 purpose of distinguishing every share, and ascertaining  
 both the rights and liabilities of any person in respect of  
 the ownership thereof, the shares must be numbered in Designation of.  
 arithmetical progression, beginning with number one, and  
 every share must be distinguished by its appropriate  
 number (*b*). For this purpose the company are required  
 to keep a book to be called the register of shareholders,  
 in which are to be entered from time to time in alpha-  
 betical order the names of the shareholders with the  
 number of shares belonging to each, the distinguishing  
 number of each share, and the amount of subscription  
 paid thereon. This registry must be authenticated by the  
 seal of the company, at the first ordinary meeting after

(a) See also, 8 Vic. c. 16, s. 6.

(b) *Ibid.*

the passing of the Special Act, and so from time to time at each successive ordinary meeting (*a*).

In addition to the registry of shareholders, a book, to be called the shareholders address book, must be kept, in which the names, descriptions, and addresses of every shareholder must be entered in alphabetical order, and which book may be perused free of charge at all reasonable times by any shareholder of the company, who may have a copy of the same or any part thereof at a charge not exceeding sixpence for every one hundred words (*b*).

Railway shares  
are person-  
alty.

It is expressly provided in the Companies' Clauses Act, that shares in a railway company shall be deemed personal property, and shall be transmissible as such, and shall not be deemed to be of the nature of real estate (*c*). This enactment entirely settles the dispute as to whether property in a railway company is realty or personalty; and puts an end to all the difficulties which attach to that question. Generally, where money is expended in the improvement of real property, it is converted into and becomes of the same nature as the property upon which it has been laid out; consequently, in the absence of any enactment to the effect of the above, shares or interests in a railway or canal company would be considered real estate (*d*).

And pass to  
assignees of  
bankrupt.

As shares in a railway company are personal property, all the legal incidents of that class of property attach to them. Therefore, where the proprietor becomes bankrupt, they will pass as personalty to his assignees (*e*); and they will also be considered "goods and chattels" within the meaning of that section of the Bankrupt Act (*f*) relating to reputed ownership (*g*). So, where certain formalities are prescribed for the transfer of shares, although they may have been sold by the bankrupt previous to an Act of Bankruptcy, it has been held that they are to be considered as

(*a*) 8 Vic. c. 16, s. 9.

(*b*) Id. s. 10.

(*c*) Id. sec. 7.

(*d*) *Buckeridge v. Ingram*, 2 Ves. Jun. 652; *Drybutter v. Bartholomew*, 2 P. Wms. 127; *Howse v. Chapman*, 4 Ves. 543.

(*e*) *Re Dilworth*, 1 Dea. and Ch. 411.

(*f*) 6 Geo. 4, c. 16, s. 72.

(*g*) *Esparle Lancaster Canal Com.* 1 Dea. & Ch. 411.



remaining in his order and disposition, unless the transfer shall have been made and registered in the manner pointed out by the Act. Nor will a transfer by the delivery of certificates, or in any other than the prescribed manner, avail to pass any property in the shares, or be held to constitute an equitable mortgage, as against the assignees of a bankrupt proprietor (*a*). Although, in one case, where a shareholder borrowed money on the deposit of the certificates of his shares, with assignments executed by him, but with the name of the transferee left in blank, and the blanks were not filled up before the shareholder became bankrupt; it was held that the equitable mortgagee had a lien on the shares, and that the lien extended to sums paid by him in respect of calls (*b*). It is difficult to reconcile the judgment in the case last cited with that in the former, or with the principles laid down in *Hebblewhite v. McMorine* (*c*), and *Humble v. Langston* (*d*), where it was held that no interest passed except under a transfer in compliance with the Act.

Reputed  
ownership.

Although, however, shares in a railway company have been held to fall within the meaning of the words "goods and chattels," in the Bankrupt Act, yet it would seem that they are not comprised under the terms "goods, wares, and merchandise," in the Statute of Frauds, and will not, therefore, come within the operation of the 17th section of that statute. Nevertheless, as they are personal estate, and not an interest in lands, they are exempted also from the provisions of the 4th section; so that any contract for the sale or purchase of them may be by parol, and need not be in writing (*e*). As another consequence of the personal nature of property in a company, we may mention that in the case of the marriage of a female shareholder, the shares belonging to her will be choses in action

Are not within  
operation of  
the statute of  
frauds.

(*a*) *Ex parte Dilworth*, 1 Mont. 166; 1 Dea & Ch. 411.

(*b*) *Ex parte Dobson*, 2 Mont. D. & De Gex, 685.

(*c*) 6 M. & W. 215.

(*d*) 7 M. & W. 517; 2 Rail. Ca. 533.

(*e*) *Bradley v. Holdsworth*, 3 M. & W. 422. *Humble v. Mitchell*, 2 Rail. Ca. 70; 11 Ad. & E. 205. *Bligh v. Brent*, 2 Y. & C. 268.

which will belong and survive to her, unless the husband reduce them into possession in his lifetime; and if he survive her, he could not acquire a right to them unless he took out letters of administration to his wife for that purpose. To effect a reduction of them into possession during the life-time of the wife, it is necessary for the husband to comply with the provisions of the Companies' Clauses Act made in that behalf (*a*), which require that a declaration in writing should be made before a justice, or master, or master extraordinary in Chancery, stating the manner in which, and the party to whom the shares shall have been transmitted, and containing a copy of the register of the marriage, or other particulars of the celebration thereof, and a declaration of the identity of the wife with the holder of the shares.

Probate, &c.  
must be taken  
out for.

Again, shares in a company will devolve to his personal representative on the death of the owner, and probate or letters of administration must be taken out in respect of them, and they will be liable to probate and legacy duty, as other personal property. So they may be made the subject of specific bequest; in which case if the whole amount due upon the shares be not paid up at the time of the testator's decease, the legatee will be entitled to have the remaining calls, as they come due, paid out of his estate (*b*). So any contingent advantages in the shape of new shares, or otherwise, would fall to the legatee of the original shares; but the calls in respect of such new shares would not be payable out of the estate of the testator (*c*).

So they will be deemed *bona notabilia* in the province or diocese through which the line of the railway passes; and it has been held that mandamus will lie against the company, compelling them to make an entry of the probate or letters of administration of a deceased proprietor, and to register the executor or administrator as proprietor of the shares in the company belonging to the de-

(*a*) 8 Vic. c. 16, ss. 18, 19.

(*b*) *Jacques v. Chambers*, 4 Rail. Ca. 209.

(*c*) *Ibid*.

ceased (a). Where the railway passes through the two provinces or through several dioceses probate or letters of administration must be taken out where the principal office of the company is situate (b); if the company have offices in two dioceses, it would appear that probate or letters of administration granted in either, would be sufficient (c).

Shares in a railway company belonging to any party, or standing in the name of some other person in trust for any such party, against whom judgment shall have been entered up in any of the superior Courts at Westminster, may, by order of a judge of one of such Courts, be charged with the payment of the amount of the judgment debt and interest; and such order, after the expiration of six calendar months from the date thereof, will entitle the judgment creditor to the same remedies as he would have been entitled to if the charge had been made in his favour by the judgment debtor (d). The order so made by a judge, will operate as a distringas after notice to the company (e); and if after such notice, the company permit the debtor to transfer the shares, they will be liable to the judgment creditor in an action for damages to the amount of their value, or to attachment for contempt of the Court whose order they have disobeyed; the creditor, however, will have the advantage of his distringas, if, without having realised the security for his debt, he issue execution against the person of his debtor (f).

May be charged with judgment debt.

## (2) *Ownership of Shares.*

Every person who shall have subscribed the prescribed sum, or upwards, to the capital of the company, or shall otherwise have become entitled to a share, and whose name shall have been entered on the register of share-

(a) How acquired.

(a) *Rex v. Worcester Canal Com.* 1 M. & R. 529.

(b) *Smith v. Stafford*, 2 Wils. Chan. Rep. 166.

(c) *Ex parte Horne*, 7 B. & Cr. 632.

(d) 1 & 2 Vic. c. 110, s. 14.

(e) *Id.* s. 15.

(f) *Id.* s. 16.

holders, shall be deemed a shareholder of the company (a).

By subscrip-  
tion.

This section contemplates the existence of a right in any party to a share in a railway company, as arising in one of two ways; first, from the fact of his having originally subscribed for a certain portion of the capital proposed to be raised, and either never having parted with the interest so acquired; or having parted with it before the Act was obtained, the company have not adopted his assignee as a shareholder in his stead, but have registered him for the number of shares for which he subscribed: secondly, from the fact of the party having purchased scrip of an original subscriber, before the passing of the Act, and after it was obtained, having procured himself to be registered for the shares represented by it in the place of the original subscriber; or from the fact of his being the assignee or transferee of a registered shareholder, the transfer of the shares having been effected in the form prescribed by law in that behalf, and a memorial thereof having been duly registered in the books of the company. It is right, perhaps, to mention that in addition to the above, there is another mode of becoming a shareholder in a company, namely, by purchase from the company of shares forfeited for non-payment of calls, which, under the provisions of the Companies' Clauses Act (b), they are empowered to sell, either by public auction or private contract.

By purchase of  
forfeited  
shares.

As to the mode of acquiring shares by marriage, death, bankruptcy, etc., the reader is referred to those subjects under the section "Transfer of Shares." (c)

Shares in  
trust.

As shares in a railway company are frequently registered in the names of parties who hold them in trust for others, it may be well to observe here, that the company are not bound to notice any trusts, either express, implied, or constructive, to which such shares may be subject whether they have had notice of such trusts or not; the receipt of

(a) 8 Vic. c. 16, s. 8.

(b) Id. s. 32.

(c) See post, pp. 474—485.

the party in whose name the shares stand is a sufficient discharge to them for any dividend or sum payable, nor are they bound to see to the application of the money paid upon such receipt (a). Yet although as between the company and the party on the register notice of a trust is inoperative, and will not oblige the company to recognise its existence; still it may be important in order to protect the interest of the objects of the trust in certain cases, and defeat the claims of third parties, to give notice to the secretary. Thus, where shares are registered in the name of one person in trust for some other, and no notice of the trust has been given, on the bankruptcy of the party in whose name they stand they will pass to his assignees (b). So where the owner of shares by a voluntary settlement assigned them to a trustee for the life of the settlor, and then over to another party, but neglected to have such transmission of interest authenticated in proper manner, and notice thereof given to the company; it was held that the trusts were inoperative, and that on the death of the settlor no interest having passed by the settlement, the shares in question went to the personal representative, and not to the party named in remainder (c).

It would appear from the eighth section of the Companies' Clauses Act (quoted above), that a party to be entitled to any share or profit in the company must have been entered on the register of shareholders; although it has been decided on the construction of Special Acts containing clauses similar to the one under consideration, that the entry of the name of a party on the register of shareholders is not necessary to render him liable to pay calls as a shareholder, provided that if by sending in scrip, and claiming to be registered in respect thereof, or by doing any other act acknowledging that he is a shareholder, he had precluded himself from taking advantage

Entry on  
register.

(a) 8 Vic. c. 16, s. 20.

(b) *Ex parte Orde*, Deacon 166.

(c) *Searle v. Law*, L. J. 15, N. S. Chancery 186.

of the objection that his name was not entered on the register (c).

Hence we may perhaps infer by parity of reasoning, that if the liability of a shareholder may attach in certain cases to a party whose name is not on the register, the rights of that character would also belong to him.

Who may  
claim to be  
registered.  
Original sub-  
scribers.

Inasmuch, however, as it is generally necessary, and always desirable that owners of shares should be entered as such on the register of shareholders, we shall proceed to inquire, what parties can claim to have their names inserted in such register. And, first, there can be no doubt that those who originally subscribed for certain shares in the undertaking have such a right, provided they make their claim to be registered within such time after the Act of Incorporation has been obtained, as has been fixed for the registration of the scrip. This time is determined either by the terms of the subscribers' agreement, or by a resolution of the Board of Directors after incorporation, of which due notice must be given.

So also an original subscriber who has parted with his scrip, but whose assignee has not been registered in respect of such scrip, and who has been compelled by the company to pay calls on the shares for which he subscribed, will be entitled to be registered as a shareholder in respect thereof, although the scrip certificates be not produced. For these certificates are only evidence of title to the shares, and the company by electing to enforce his liability upon them is precluded from disputing the ownership, which is the ground and reason of that liability. Any question as to the right of the scrip-holder, in such case the parties must settle among themselves; nor can the company set up any outstanding right of ownership of the scrip-holder against the original subscriber who has been compelled to pay calls.

(c) *London Grand Junction Rail. Com. v. Graham*, 1 Ad. & E. N. S. 271, 2 Rail. Ca. 870. See also, *Cheltenham and Great Western Union Rail. Coms. v. Daniell*, 2 Rail. Ca. 728, 2 Ad. & E. 281, N. S.

The transferee, or representative of any party duly registered, has also a right to be registered as a shareholder, provided that where the transmission of interest takes place by death, marriage, or bankruptcy, the mode in which such interest has been transmitted be evidenced in the manner prescribed by the Companies' Clauses Act; and that in case of the purchase of a share the deed of transfer be duly executed and lodged with the secretary in conformity with its provisions, and all calls then due upon the shares standing in the name of the vendor had been paid at the time when the transfer was effected; a shareholder not being entitled to transfer any share until the calls for the time being due on all his shares shall have been paid.

Transferees of  
original sub-  
scribers.

It must be observed, that the right to a share and to the benefits arising therefrom, either in the shape of new shares or other contingent advantages, does not accrue from the time that the party has his name entered in the registry of shareholders, but from the time when, having complied with the formula prescribed by the Companies' Clauses Act, he becomes *entitled* to have his name entered thereon. This is of importance, as in practice it frequently happens that owing to the omission of the secretary or other servant of the company, the name of a party is not entered in the registry until some time after the deed of transfer has been lodged at the office of the company, in which case the party who has transferred his interest, and received the consideration for it, still remaining on the registry, would appear *prima facie* to be entitled to all the benefits, as well as exposed to the liabilities of a shareholder. Where the statute directed that a deed of transfer should be kept by the company, and a memorial of it entered in a book, and such entry was made with a memorial dated 7th April; it was held in an action for calls, that this was sufficient evidence of the time of the transfer so as to make the defendant a proprietor from that date, without evidence to show when the entry was in fact made (*a*).

(*a*) Birmingham and Aylesbury Rail. Com. v. Thomson, 2 Rail. Ca. 668.

Parties becoming the owners of shares in any of the modes above-mentioned will be entitled as a matter of course to be registered and admitted to the privileges of shareholders in the company, and it would seem that no discretion is left with the company to reject them; and that if they refuse to enter the name of a person so entitled on the register, or to admit him to the rights and privileges incidental to the position of a shareholder, we are of opinion, that the party prejudiced by such refusal, may have a remedy by writ of mandamus against the company, to compel them to register him (a).

Scripholders.

There is, however, another class of persons, namely, those who have purchased scrip certificates, whose right against the company to be admitted as shareholders seems questionable, although from the judgment of Mr. Baron Parke in *Daly v. Thompson* (b), it would appear, that on deducing his title correctly from an original subscriber, an action at the suit of the holder of scrip certificates would lie against the company for refusing to register him. Still it would impose a great hardship on companies formed of subscribers of substance, to be compelled to register parties incompetent to pay the calls on their shares, and between whom and the company there is no privity of contract. For, inasmuch as the registration of the scripholder as owner of certain shares, releases the subscriber for those shares from his covenant in respect of them, to admit the right of scripholders to registration as such, with no power on the part of the company to reject their claims, is to encourage original subscribers to evade the responsibilities consequent on their subscription, by substituting persons unable to meet the liabilities incidental to the proprietorship of shares.

The company may, however, elect to adopt a scripholder as the owner of the shares represented by his scrip cer-

(a) *Ex parte Horne*, 7 B. & C. 632; 1 M. & R. 529. See post, Book on Remedies, chap. Mandamus.

(b) 10 M. & W. 309.



tificates; and, if they do so, and enforce his liability upon them, he will be clearly entitled to registration as a shareholder; as the company will be estopped, by their own acts and conduct, from disputing the rights of that relation which they have compelled the scripholder to assume, on the same principle which fixes the latter with liability when he has chosen to send in his certificates claiming to be registered (a).

Before dismissing this subject it may be observed, that if an original subscriber tender his scrip shares for registration, and it be refused on the ground that the register is full, he will be entitled to a remedy against the company; unless the register has been properly filled. Thus, if there has been a fraudulent issue of scrip certificates, the holders of which have been admitted to registration to the exclusion of the original subscribers, or if the amount of capital having been reduced in Parliament, the directors do not fairly apportion the smaller amount among the members; or if an amalgamation with another company has been effected in such a way as to have made a re-distribution of shares necessary, and this has not been done equitably, and thereby an original subscriber is precluded from registering, on the ground that the number of shares authorised by the Act are already on the register; he might sue the directors for mismanagement (b).

Where a party in possession of scrip certificates holds back, and neglects to send them in for registration within the time limited for that purpose, it may, perhaps, be a question, whether the directors will be justified in completing the registry of shareholders so long as such scrip remains

Though they do not come in with their scrip.

(a) *London Grand Junction Rail. Com. v. Freeman*, 2 M. & G. 606; 2 Rail. Ca. 468. *Same v. Graham*, 1 Q. B. 271. *Sheffield, Ashton-under-Lyne, and Manchester Rail. Com. v. Woodcock*, 2 Rail. Ca. 522. *Cheltenham and Great Western Union Rail. Com. v. Daniel*; *The Same v. Medina*, 2 Rail. Ca. 728.

(b) *Daly v. Thompson*, 10 M. & W. 309; *Walford on Railways*, 204.

outstanding, without inserting the name of the subscriber to whom it was originally allotted. It is clear that the company have a right to register the latter for the number of shares for which he has subscribed; and, perhaps, the directors may lawfully decline (with the sanction of the shareholders) to exercise that right; but whether they can treat the shares belonging to such party as forfeited, before default has been made in the payment of calls, may be matter of question. The 9th section of the Companies' Clauses Act makes it the duty of the company to insert in the register of shareholders the names of the parties *entitled to shares*, and, clearly, subscribers are *entitled* to the shares for which they have subscribed, provided no other persons producing the scrip have been accepted by the company in their stead. It would seem, therefore, that until default in the payment of calls, the subscriber, although not coming in with his scrip, is entitled to be considered a shareholder of the company, and, as such, to have his name entered in the register of shareholders; at all events unless there was a covenant in the subscriber's agreement to return the scrip for registration on or before a given day.

Consequences  
of registration.  
Evidence of  
title.

But not con-  
clusive.

Registration of a person as owner of shares is evidence of his title, and in respect of the shares for which he is registered, he will be held liable to the company for the payment of calls, and will be entitled to dividends and profits. But the fact, that the name of a person is entered on the registry of shareholders, although *primâ facie* evidence of his title to be considered a proprietor of the shares attached to his name, is, nevertheless, not conclusive evidence of that fact, but it may be rebutted by proof that the shares have been legally transferred. So, also, a person, whose name does not appear in the register, may prove his title to have it entered thereon, by showing a delivery to the secretary of the company of the deed of transfer of the shares to which he claims to be entitled. The right of the party as against the company to be

deemed the owner of the shares in question, accrues from the time when the deed of transfer is so delivered to the secretary (a).

The provision under consideration, that the register of shareholders is to be deemed *prima facie* evidence of proprietorship, is not defeated, by some irregularity in the mode of keeping the book, or of the entry of other shareholders; nor will such irregularities vitiate the document as evidence against a shareholder (b). The enactments as to entries in this book are directory only, and not essential; that is, if such entries are made *bond fide*, and the book is substantially such as was by the Act "directed to be kept," it cannot be rejected as evidence because there are errors in it.

The owner of a share in a railway company is entitled to a certificate of proprietorship, authenticated by the common seal of the company, and specifying the share to which he is entitled. This certificate is to be received in all Courts of Justice as *prima facie* evidence of the title of the shareholder, his executors, administrators, successors, or assigns, to the share therein specified. This certificate (for which two shillings and sixpence may be charged,) may be cancelled when worn out or damaged, and a new one given; or if lost or destroyed, on proof of that fact to the satisfaction of the directors, a new one will be granted. All substituted certificates are to be entered on the register (c).

Certificate.

The interest of a party in shares in the undertaking may be lost either by a transfer to another, or by forfeiture for the non-payment of calls, or by the bankruptcy

Ownership of shares.  
(c) How lost.

(a) See *supra*, p. 461.

(b) See the *Southampton Dock Com. v. Richards*, 1 M. & G. 448. Same *v. Arnett*, 2 Rail. Ca. 215. *West London Rail. Com. v. Bernard*, 3 Q. B. 873. *Birmingham, Bristol, and Thames Junction Rail. Com. v. White*, 1 Q. B. 282. Same *v. Locke*, 1 Q. B. 250. *London Grand Junction Rail. Com. v. Freeman*, 2 Rail. Ca. 468. Same *v. Graham*, 1 Q. B. 271. *Cheltenham Rail. Com. v. Price*, 9 C. & P. 58. *London and Brighton, v. Fairclough*, 2 M. and G. 671.

(c) 8 Vic. c. 16, ss. 11—13.

or insolvency of the owner, or, in case of a *feme sole*, by her marriage, and reduction of them into possession by her husband during the coverture.

These subjects will be treated more fully in a subsequent part of this chapter (a).

(d) General consequences of ownership.

Having shown how a party may become, and how he may be proved to be, a shareholder in a railway company, we shall now treat briefly, and generally, of the legal incidents of his relation both to the company and to third parties. The principal rights and liabilities of shareholders will fall under consideration in detail under the sections on dividends, calls, creation of new shares, &c.; and all we propose here, therefore, is a general view of their position and claims.

Shareholders not partners.

A shareholder in a railway company, after the Act of Incorporation has been obtained, is no longer in the situation of an ordinary partner in the undertaking, but is rather a tenant in common of the corporate property, and as such has merely an interest in the concern to the extent of the shares he represents. On the one hand, he cannot, as in cases of ordinary partnership, bind the other shareholders by an individual act of his own, the direction and management of the affairs of the company being, by the Act of Incorporation, vested in the parties appointed directors; whilst, on the other hand, he cannot be made liable to the debts of the company to an extent greater than the amount of his shares.

Right to attend and vote at meetings.

The shareholders of a company, who have paid up *all the calls* then due upon their several shares, are at liberty to attend and vote at all meetings of the company, ordinary and extraordinary, either personally, or by proxy. So they may take part in the discussion of any business brought forward; and may, after due notice given, originate any motion which they may deem material for the interests of the company.

a) See post, pp. 474—490.

A shareholder (or, in case of death, his personal representative,) having paid up all calls due at the time, is entitled to his proportion of dividends and profits declared payable in respect of such shares. But no dividend is payable in respect of any share, until *all the calls* due in respect of that and every other share, owned by such shareholder shall have been paid (a).

Right to share in profits.

The shareholders are also entitled to claim, although not bound to take, their rateable proportion of any contingent advantage arising from the conversion of mortgage and bond debts into stock; or by the creation of new capital, which must, for that purpose, be divided into shares of such amount as will conveniently allow the same to be apportioned; and each person entitled to any such apportionment, must, however, make his election to take the same within a month after notice has been given to him by the secretary (b).

To new shares.

A shareholder is also entitled, at such times as are prescribed in the Special Act, to inspect all books containing accounts of the receipt and expenditure of monies by the company; and if no times are prescribed, he is at liberty to inspect them for fourteen days previous to, or for one month subsequent to, every ordinary meeting. For this purpose the company are bound to appoint a book-keeper, who, for any refusal to permit inspection at the appointed times, is liable to forfeit to the party refused a sum not exceeding five pounds for every offence (c).

To inspect books.

But where a shareholder has neglected to avail himself of the right thus secured to him, the Court will not assist him in an effort to defeat an action brought against him by the company. Therefore, where a defendant against whom an action for calls had been commenced, applied to the Court to order an inspection of the minute-book of

(a) 8 Vic. c. 16, s. 123.

(b) d. s. 59.

(c) Id. s. 119.

the directors, to enable him to ascertain whether there were a competent body present to make the call in question; the Court refused, saying, "The object of giving an inspection of documents, is not to enable a defendant to fish out a defence from some defect in the proceedings, but, if he have a defence, to assist him to ascertain how he may be able properly to plead it" (a).

Nor will the Court grant a mandamus where liberty to inspect has been refused, (although the Act of Incorporation required that the books should be open at all reasonable times to the inspection of the proprietors,) unless at the time the demand was made, the proprietor stated the object for which he wanted the inspection (b).

To transfer  
shares.

A shareholder is also entitled to sell and transfer to a third party, all or any of his shares in the undertaking, together with all the rights and liabilities incident thereto, provided that all calls then due upon the whole of the shares standing in the name of such shareholder shall have been paid, and that the deed of transfer be executed in conformity with the regulations made in that behalf, both by the Special Act, and by the Companies' Clauses Consolidation Act (c).

To sue for  
work and  
labour.

Although a party being a shareholder in a company would be unable, previous to their incorporation, to sue any of the directors in respect of any personal claim on the company, as for work, labour, and services, on the ground that he was a partner (d), yet on the passing of the Act he would be entitled to maintain such an action; as all money raised by the company, whether by subscription of shareholders, or otherwise, must be applied first in payment of the costs and expenses incurred in obtaining the

(a) *The Birmingham, Bristol, and Thames Junction Rail. Com. v. White*, 2 Rail. Ca. 866; 1 Q. B. 282.

(b) *Rex v. Wilts and Berks Canal Com.* 3 A. & E. 477.

(c) See post "Transfer of Shares." See also, *Huddersfield Canal Com. v. Buckley*, 7 T. R. 36.

(d) *Holmes v. Higgins*, 1 B. & C. 74.

Special Act, and then in carrying into execution the general purposes of the company (a).

So a shareholder may enter into any contract with the company after Act obtained, or serve them in the capacity of secretary, manager, engineer, or other officer, and he will have the same rights and remedies against the company as any other party not a shareholder; a member of a corporation contracting with it being regarded in respect of any such contract in the light of a stranger, and as distinct from the corporate body to which he belongs as any third person (b). An exception, however, from this general rule must be made in the case of the directors of the company, who are disqualified by special enactment (c), from entering into, or being concerned with, or interested in, any contract with the company.

To contract with company.

Exceptions.

Among the general rights of shareholders, we may mention, lastly, their right to be reimbursed out of the funds of the company any amount which they may have been compelled to pay under an execution issued by a creditor of the company, beyond the sum then due from them in respect of calls (d).

A party from the time that he becomes, and during the period he continues, a shareholder in a company; that is to say, from the time that all the formalities prescribed by the Special and General Railway Acts have been complied with, or from the time that, by any act of his own, he is precluded from disputing the fact of his proprietorship (as where, although not registered in the manner strictly prescribed by statute, he had, nevertheless, sent in his claim to be registered in respect of scrip-shares purchased

Liability of shareholders. Extent of generally.

(a) 8 Vic. c. 16, s. 65. See also, *Carden v. General Cemetery Com.* 5 Bing. N. C. 523; *Tilson v. the Warwick Gas Light Com.* 4 B. & C. 962.

(b) *Dunston and others v. The Imperial Gas Com.* 3 B. & Ad. 125.; *Hill v. The Manchester and Salford Waterworks Com.* 5 B. & Ad. 866. See also Judgment of V.C.E. in *Ranger v. Great Western Rail. Comp.* 3 Rail. Ca. 298.

(c) 8 Vic. c. 16, s. 85.

(d) *Id.* s. 37.

by him), (a) and until he has legally transferred his shares, and the transfer has been deposited with the secretary of the company, is liable to certain obligations which attach upon him (or his personal representatives), (b) in that capacity.

Liability to  
company.  
To pay calls.

This liability is twofold : first, to the company ; secondly, to third parties. The liability to the company consists chiefly in the obligation of every shareholder to the payment of calls (c), on pain of being sued for the amount of arrears, or of having his shares forfeited, if he neglect or refuse to pay them (d).

Liability to  
third parties.

The liability of individual shareholders in incorporated companies to creditors of such companies is exceedingly limited, and in no case direct. Parties contracting with a company are not presumed to contract upon the individual responsibility of each shareholder, but upon that of the company. Consequently, although the legislature has given to creditors in such cases certain remedies against the shareholders, it never allows legal proceedings to be taken in the first instance against them, but requires that after the company has been sued, execution should be issued to satisfy the judgment against the property and effects of the company ; and if the corporate funds be insufficient, such execution may be issued against any of the shareholders, by order of the Court, and after notice to the party ; but then only to the extent of the unpaid proportion of capital represented by the shares actually possessed by any such shareholder.

In many companies incorporated by Act of Parliament

(a) *London Grand Junction Rail. Com. v. Freeman*, 2 Rail. Ca. 468 ; 2 M. & Gr. 606. *Ibid. v. Freeman*. *Ibid. v. Gunston*, 2 Rail. Ca. 870 ; 1 Ad. & E., N. S. 271. *Sheffield and Manchester Rail. Com. v. Woodcock*, 2 Rail. Ca. 522 ; 7 M. & W. 574. *Cheltenham v. Great Western Rail. Com. Daniell*, 2 Rail. Ca. 728.

(b) 8 Vic. c. 16, s. 21. *Tyler v. Tyler*, 2 Rail. Ca. 873 ; 3 Beav. 550.

(c) See post, "Calls."

(d) See post, "Forfeiture of shares."



previous to the passing of the 8 Vic. c. 16, there was no individual responsibility thrown upon shareholders; and the consequence was that where the funds of the company had been entirely dissipated a creditor was left without any remedy; but that Act, whilst, on the one hand, it compels a creditor of any company falling within its provisions to resort to the funds of the corporation in the first instance; on the other hand, if such funds be found insufficient, it gives him a remedy against individual shareholders, to the extent of the capital remaining unpaid upon their shares, leaving them to their remedies against the company. Hence the creditor, having exhausted the corporate property without full satisfaction of his claim, is not obliged to proceed for the recovery of the remainder by application to the Court for a mandamus to be issued to the directors, compelling them to make a call sufficient to meet his demand; but he may issue execution himself against the shareholders whose shares are not fully paid up.

Certain formalities, however, are prescribed, and certain preliminaries must be observed, when a shareholder is to be made liable to a creditor of the company. Thus, if any execution, either at Law or in Equity, shall have been issued against the effects of any company, and there is not sufficient whereon to levy execution, then an order of the Court in which the action, suit, or other proceeding shall have been brought, may be obtained to levy execution upon the property of the shareholder; but only upon motion in open Court, and after *sufficient* notice in writing to the person sought to be charged. Upon such order being made, execution may issue accordingly (a).

Execution  
against share-  
holders.

For the purpose of ascertaining who are the shareholders in a company, a creditor, after such order obtained, is entitled, at all reasonable times, to inspect the register of shareholders without the payment of any fee (b). If, by means of such execution, the shareholder shall have been

(a) 8 Vic. c. 16, s. 36.

(b) Ibid.

compelled to pay more than the amount of calls then due from him, he will be entitled to be reimbursed such additional sum by the directors out of the funds of the company (a).

Determination  
of liability.

The liability of a party, whether an original subscriber or the transferee of a registered proprietor, is determined, as well in respect to third parties (as judgment creditors of the company), as in respect of the company itself, by his ceasing to be a shareholder. He may cease to be a shareholder either by a transfer of his interest to a third party, in the mode prescribed, or by his shares being declared forfeited in the manner provided by the Act. The Companies' Clauses Consolidation Act (b), which prescribes the mode in which shares in a company shall be transferred, evidently contemplates a determination of the liability of the shareholder on his parting with his shares, whether the transferee were an original subscriber, or a party who became a shareholder by purchase from a registered proprietor. It is therein provided, that every shareholder may sell or transfer all or any of his shares in the undertaking, and that the transfer shall be by deed duly stamped, in which the consideration shall be truly stated, and that the deed of transfer shall be delivered to the secretary, who shall enter a memorial thereof in a book called "The Register of Transfers," and indorse such entry on the deed of transfer; and that, until such transfer has been so delivered to the secretary as aforesaid, the vendor of the share shall continue liable to the company for calls upon it, and the purchaser shall not be entitled to receive any share of the profits of the undertaking, or to vote in respect of such share.

By transfer of  
shares.

Some of the writers on this subject have considered it as a doubtful point whether an original subscriber who has executed the deed can be discharged from his liability to the payment of calls, until the full amount subscribed for has

(a) 8 Vic. c. 16, s. 37.

(b) Id. ss. 14, 15.

been paid up ; and whether, even although another party has been entered in the shareholders' register as owner of the particular shares, the original subscriber would not still remain liable on the default of the party so registered ; on the ground, that the covenant in the subscriber's agreement is absolute ; and also, that if such a power of assignment were permitted, the scheme might be destroyed by assigning to insolvent parties. Such a position, however, would seem not to be tenable ; the point was raised on a Special Act for constructing a canal, in which clauses almost similar to those of the Companies' Clauses Consolidation Act in respect of the mode of transfer were inserted. In that case (*a*), it was held that the statute evidently contemplated a transfer of interest, and that no distinction could be drawn between a transfer from an original proprietor and one by any other proprietor ; that there was no restriction on alienation other than that the owners should not assign until all the money due at the time of assigning was paid ; and that it would be strange to say that after disposing of their shares they should still continue liable to payment of calls.

The liability of a shareholder also ceases on the forfeiture of his shares, that is to say, from the time the forfeiture is absolute. A forfeiture is absolute after the due notices have been given and the forfeiture has been confirmed at the general meeting of shareholders. A mere notice or declaration that the directors intend to forfeit the shares, is not sufficient to absolve the owner from his obligations in respect of them (*b*).

By forfeiture  
of shares.

(*a*) *Huddersfield Canal Com. v. Buckley*, 7 T. R. 36.

(*b*) *Birmingham, Bristol, and Thames Junction Rail. Com. v. Locke*, 2 Rail. Ca. 867. *Edinburgh, Leith, and Newhaven Rail. Com. v. Hebblewhite*, 2 Rail. Ca. 237 ; 6 M. & W. 707 ; 8. Dowl. 802. *London and Brighton Rail. Com. v. Fairclough*, 2 Rail. Ca. 544 ; 2 Man. & Gr. 674.

(3). *Transfer of Shares.*

We have before shown that shares in a railway company are transferable, and that on any transfer being complete, the rights and liabilities of the former holder pass to his transferee.

A transfer of the interest in shares may be effected either by the act of the party as by sale, pledge, or mortgage; or by the act of the company as by forfeiture; or may take place by operation of law, as in case of bankruptcy, or marriage; or may occur through the act of God, as by death. We shall treat of the law relating to each of them.

(a) Transfer  
by sale.

The transfer of a share in a railway company must be by deed (duly stamped) drawn up in the form given in schedule B, annexed to the Companies' Clauses Act (or to the like effect), in which the consideration must be truly stated (a). This document must be executed by both the parties to the contract. After its execution, the deed should be delivered to the secretary to be kept by him, and until it has been so delivered, neither will the vendor be exonerated from his liability to pay future calls, nor will the purchaser be entitled to accruing dividends, or other contingent advantages (b).

Contract to  
sell or purchase.

Although the transfer of shares must be by deed, yet it is not necessary that the contract or agreement for the sale or purchase of them should be in writing; as shares in a railway company are neither an "interest in or concerning lands" within the fourth section (c), nor "goods, wares, and merchandise," within the seventeenth section, of the Statute of Frauds (d); although they have been held to be

(a) 8 Vic. c. 16, s. 14.

(b) Ibid. s. 15.

(c) *Bradley v. Holdsworth*, 3 M. & W. 422; *Bligh v. Brent* 2 Yo. & Coll. 268.

(d) *Humble v. Langston*, 2 Rail. Ca. 70; 29 Car. 2 c. 3.

*goods and chattels* within the operation of the bankrupt laws, and, as such, to pass to the assignees of a party in case of bankruptcy. Although not legally necessary, however, yet convenience requires that, in practice, written evidence of such contracts should be preserved; hence, bought and sold notes, containing the terms of the agreement and the names (*a*) of the parties, are usually exchanged between the brokers through whose agency the transfer is effected.

The name of the purchaser and of the seller should be inserted in these bought and sold notes, not merely for the security of the broker, who may otherwise become responsible to the other principal contractor, but also for the security of the respective principals; as the purchaser generally buys the shares on the implied covenant of the vendor, that he either has, or will have, at the time appointed for delivery (*b*), a good title; and the vendor sells them on the faith that the party whose name is to be inserted in the deed of transfer will execute the same, and discharge him from further liability in respect of them.

How entered  
into.

The party contracting to sell need not, at the time of contract entered into, be possessed of the shares, or registered as a shareholder, nor even have any reasonable prospect at the time of obtaining them, provided he puts himself into a condition to complete the contract by making himself a shareholder previous to the day appointed for its completion (*c*). Nor will it invalidate any agreement for the sale of railway shares, that some future time has been appointed for their delivery, as contracts relating to them are not within the operation of the Stock Jobbing Acts (*d*).

The remedy for a breach of contract for the sale or purchase of shares, may be either at Common Law or in Equity. In a Court of Common Law, the action would be brought in

Remedy for  
the breach of.

(*a*) These notes require a stamp. See *supra*, p. 74.

(*b*) *Hebblewhite v. M'Morine*, 2 Rail. Ca. 51; 6 M. & W. 200.

(*c*) *Ibid.*

(*d*) *Price v. Hewit*, 4 Man. & Gr. 355.

a form claiming damages for the non-delivery or non-acceptance of the shares at the time appointed; whilst, in Equity, the plaintiff would ask the Court to decree specific performance of the contract (*a*). It is seldom, however, that a party has recourse to a Court of Equity to decree a specific performance; the option of buying in or selling out against a defaulter being an easier mode of remedying the consequences of the breach of contract. Nevertheless, it may happen, in cases where many calls are yet to be made, and the shares with the calls already paid up are of no value, that it will be difficult to find a purchaser; so that the vendor, in order to avoid future liability upon the shares, may find it his only effectual remedy to pray a Court of Equity for specific performance of the contract.

Remedy for  
non-delivery of  
shares.

Should the vendor fail to deliver the shares according to contract, either at the time appointed, or, in case no time has been appointed, within a reasonable time (and evidence will be received as to what is a reasonable time, according to the usage of the place of contract); it is usual for the purchaser to buy in the shares against his vendor, and charge him with the difference between the price actually paid and that agreed upon. Seven days was, in one case, held not to be an unreasonable time (*b*). But previous to the purchaser being entitled to maintain an action against the vendor for the non-performance of the agreement, or to buy in against him, it is incumbent on him to observe the same rules as are laid down in case of the purchase of real property. Thus, he must not only be ready and willing to pay the amount agreed on, and accept the shares, but he must prepare a conveyance in the proper form, and tender the same to the vendor for execution, and, if required by the latter, must execute the deed as transferee, and take it to the office of the railway company, for the purpose of being duly entered in the Register of Transfers. A mere

Conditions  
precedent to  
the right to  
sue.

(*a*) *Duncuft v. Albrecht*, 12 Sim. 189.

(*b*) *Stewart v. Cauty*, 2 Rail. Ca. 616. See *Hare v. Waring*, 3 M. & W. 362; *Barnard v. Hamilton*, 2 Rail. Ca. 624.

request on the part of the purchaser to the vendor to transfer the shares, after a reasonable time had elapsed, is insufficient to give the purchaser such a right. (a)

It is important for share brokers, in order to protect themselves from liability, before buying in against a vendor who has failed to deliver the shares contracted for, to remember the necessity of actually tendering a proper form of conveyance, either to the contracting party, or (in case of an undisclosed principal) to the broker employed; and of requesting him to name his principal; as, although by the custom of the several Stock Exchanges, the brokers look to each other as individually liable to fulfil contracts made through their agency, still, where shares have been bought in against a vendor who has neglected to deliver them, and payment has been made by the broker of the latter to the broker of the purchaser, of the difference between the price agreed on and the price actually paid for the shares; such payment will not be binding on the vendor, unless a proper conveyance has been tendered to him for execution, before the shares were bought in against him. Hence, under such circumstances, the broker of the vendor would be unable to recover from his own principal the amount paid to the broker of the other contracting party, notwithstanding the regulations of the Exchange on which he carries on business. In such case, no legal right can accrue to the purchaser to buy in against the vendor; and therefore no legal claim could be preferred against the broker of the latter; and hence any payment which he might make would be made in his own wrong, and would not be recoverable from his employer, as money paid for the use of the latter; the custom of a Stock Exchange having no authority as against the common law of the land (b).

The vendor is bound to put himself in such a position that he has it in his power to transfer the shares agreed to be sold; consequently, it would be no answer to a bill

(a) *Stevens v. De Medina*, 3 Rail. Ca. 454; 4 Q. B. 422.

(b) *Bowlby v. Bell*, 10 Jurist. 669, C. P.

for a specific performance, or to an action to recover damages for the non-performance of the contract, that he had tendered shares belonging to a third party who was willing to convey; as the purchaser bargains for a conveyance of shares from the vendor himself, and, consequently, for the implied covenant of the vendor for title, and the implied covenant of another party is not the same thing (*a*).

Should the vendor fail to make out his title, it is conceived that such default would preclude the necessity of a tender of conveyance by the purchaser (*b*). But the vendor is not bound on the request of the purchaser to execute a conveyance to any party other than the one he contracted with; nor to execute a conveyance in blank. A conveyance executed with the name of the purchaser in blank is void, for as the statute requires the transfer of shares to be by deed (*c*), a transfer would be wholly inoperative if the name of the vendor was left out; "and to allow it to be afterwards filled up by an agent appointed by parol, and then delivered in the absence of the principal as a deed, would be a violation of the principle, that an attorney to execute and deliver a deed for another, must himself be appointed by deed" (*d*). Hence, after the execution of such an instrument, the vendor would be still liable to pay all future calls upon the shares, nor would there be any implied covenant on the part of the purchaser to indemnify the vendor against them (*e*).

Remedy for  
non-accept-  
ance of shares.

If the purchaser of shares refuse or neglect to complete his contract on the appointed day, the vendor is entitled within reasonable time after such neglect or refusal to sell out the shares, and debit the purchaser with the difference

(*a*) Per Parke B. in *Hebblewhite v. M'Morine*, 2 Rail. Ca. 67; 6 M. & W. 200.

(*b*) *Duke of St. Albans v. Shore*, 1 H. Bl. 270. See also *Walford on Railways*, p. 215.

(*c*) 8 Vic. c. 16, s. 14.

(*d*) *Hebblewhite v. M'Morine*, *Ubi Supra*. Per Parke B.

(*e*) *Humble v. Langston*, 7 M. & W. 517, 2 Rail. Ca. 533; *Jackson v. Cocker*, 4 Beav. 59, 2 Rail. Ca. 368.



between the price obtained and that agreed to be given for them; such difference being the amount of damages to which the vendor is entitled. But the vendor to be authorised to take such a step must be prepared to show, not only that he was ready and willing, but also that he had it in his power to deliver the shares and to execute a proper conveyance, and for this purpose must produce satisfactory evidence of his title. The usual evidences of title are the certificates issued by the company, but such certificates should on the face of them, or by endorsements or supplemental certificate identifying the particular shares, show a title in the vendor; a mere tender of certificates not bearing the name of the holder, nor being endorsed to him by the secretary of the company, is not sufficient (a); and the production of the register of transfers showing that the share certificates tendered were registered in the name of the plaintiff would not be sufficient proof of the proprietorship of those shares. It would be no more proof of the right to the shares in question, than the memorial of a deed of conveyance in a registered county, without production of the deed itself, would be of a right to the estate thereby transferred. Yet, although the tender and production of share certificates showing title in the vendor may be sufficient evidence of ownership, it is submitted that it is not the only mode of proving ownership; but that it would be competent for a party to prove his title in any other way, as by the production of the deed of transfer under which he claims; if he be not the proprietor originally registered for the shares in question. Or, perhaps, it would be sufficient for the vendor, in order to support the averment in his declaration of a readiness and willingness to transfer, to prove a tender of an instrument of transfer in the form prescribed by the Act (b).

Conditions  
precedent to  
right to sue.

We have alluded above to the practice adopted when

(a) *Hare v. Waring*, 3 M. & W. 362. See also, *Latham v. Barber*, 6 T. R. 76.

(b) *Humble v. Langston*, 2 Rail. Ca. 540; 7 M. & W. 517.

one of the parties to a contract for the purchase and sale of shares has failed to complete his part of the contract, namely, to buy in or sell out against such defaulting party. It should, however, be observed, that it is not at all necessary to take such a course, inasmuch as an action may be maintained against the defaulter, and damages recovered to the amount of the difference between the price agreed on, and the value of the shares on some day (to be determined by the jury) within a reasonable time after the breach of the contract.

Form and  
requisites of  
transfer deed.

The instrument of transfer, as it has been before remarked, must be by deed duly stamped under the hands and seals of the parties, with the consideration truly stated, and in the form prescribed by the Act (*a*), or to the like effect. If the consideration be not truly stated, that is to say, if the amount of the purchase money were more than that alleged in the deed, the document would be void, as a fraud on the stamp laws.

Consideration  
to be stated.

Name of trans-  
ferree to be  
stated.

So, if the name of the transferee was left in blank, in order to give him the opportunity of transferring to several parties without incurring the cost of a fresh stamp, or if the name of any other than the original purchaser was inserted, the deed would be void, unless it were re-stamped, as the stamp would be exhausted by the operation of the deed at Common Law, although never executed by the original purchaser (*b*).

Importance of  
to vendor.

It is of importance to the vendor, that the deed should not be executed in blank ; more especially when the transfer is of shares in companies where but a small amount of the capital has been paid, as the vendor will still remain liable to all future calls ; nor is there any implied undertaking on the part of the purchaser to reimburse the vendor the amount of such calls (*c*). The vendor, therefore, should insist upon

(*a*) 8 Vic. c. 16, s. 14.

(*b*) *London & Brighton Rail. Com. v. Fairclough*, 2 M. & Gr. 674 ; 2 Rail. Ca. 550.

(*c*) *Humble v. Langston*, 2 Rail. Ca. 511, 512 ; 7 M. & W. 517. *Burnett v. Lynch* 5 B. & C. 589.

the transferee's name being inserted, and should, after showing a good title to the purchaser, require him to complete the purchase in a reasonable time, by preparing a deed in the statutory form, and tendering it for execution.

It is likewise the interest of a purchaser to have his name inserted in the deed, for the transferee of a share, where the transfer is executed in blank, incurs considerable risk; as in case of the bankruptcy of the vendor, should the deed of transfer, duly executed, not have been delivered at the office of the company, the shares might be held to be still in the possession of the bankrupt, as reputed owner, and as such to pass to his assignees (a).

Importance of  
to purchaser.

When the vendor has executed a deed of transfer, he should then require the *purchaser* to execute it, and deliver it, or attend with him on delivering it, to the company, that it may be duly entered in the Register of Transfers.

Execution of  
deed and deliv-  
ery to the  
secretary.

Should the vendor comply with the forms prescribed above, he will be no longer liable to any future calls; and should the purchaser refuse to perform his part of the contract, he will subject himself to an action, in which he will be liable to refund to the seller any sum that the latter may have paid for calls, and reimburse him for any other damage he may have sustained by the defendant's breach of his agreement.

Effect of  
transfer.

It is competent for the owner of shares to mortgage or pledge them; but as shares are goods and chattels within the operation of the Bankrupt Law, and as the certificates are only evidence of title, the mere deposit of the share certificates with the mortgagee or pledgee is insufficient, in case of bankruptcy, to vest the shares in him as against the assignees (b), or against a subsequent purchaser, for a valuable consideration without notice (c).

(b) Mortgage  
of shares.

(a) See *Supra* pp. 454, 455, and cases there cited.

(b) *Ex parte* Waithman, 1 Mont. & Ayr, 364; *Duncan v. Chamberlayne*, 11 Sim. 123; *Re Dilworth*, 1 Deacon & Chitty, 411; *Ex parte* Watkins, 2 Mont. & Ayr, 348; *Ex parte* Vallance *re. Lachman*, 2 Mont. & Ayr, 224.

(c) *Cumming v. Prescott*, 2 G. & Coll. 488.

Notice of to  
company.

The mortgagee, to secure his lien on the shares, must give notice of his incumbrance to the secretary of the company; and this transmission of interest by the mortgage must be authenticated by a declaration in writing, stating the manner in which, and the party to whom, such interest shall have been transmitted, and must be made and signed by some credible person before a justice, or before a master or master extraordinary of the High Court of Chancery, and left with the secretary of the company, who will thereupon enter the name of the party so entitled (*a*).

Right, &c. of  
mortgagor.

The mortgagor of shares does not part with his interest in them, nor avoid his liability in respect thereof. The shares subject to the mortgage are still his, and, as the owner, he is still liable to pay all calls made upon them. The mortgagor is, in fact, a trustee for the mortgagee; and although he may receive the dividends and profits arising from such shares, still it is presumed that he would be bound to account to the mortgagee for all receipts of profits exceeding the out-goings (*b*).

Where the qualification of a party to act as a director consists in his being a proprietor of a certain number of shares, the qualification will not be lost by a mortgage of those shares (*c*).

Of mortgagee.

The mortgagee of shares, where notice of his incumbrance has been given to the company, does not thereby make himself liable to the payment of calls. Should he, however, for his own security, and to prevent the shares mortgaged to him from being forfeited for non-payment of calls, have been compelled to pay them, he will be entitled to retain the shares as a security not only for the original debt, but also for any such payments (*d*).

(c) Transfer  
by death.

Where a transmission of the interest in the shares of a

(*a*) 8 Vic. c. 16 s. 18.

(*b*) See Walford on Railways, p. 220; *ex parte Dobson re Boulton*, 20 L. J. 49; *Bankruptcy*; 2 M. D. & D. 685.

(*c*) *Cumming v. Prescott*, 2 Y. & C., 448.

(*d*) *Ex parte Dobson re Boulton*, Ubi Supra.

company takes place through the death of the owner of them, as they are personal property, they will devolve to the executors or administrators of the deceased.

Notice of this transmission must be given to the company by the party entitled in the mode required by the directors, and must be authenticated by a declaration in writing, in the form prescribed by the 8 Vic. c. 16, s. 18, stating the manner in which, and the party to whom, the share shall have been transmitted, and must be made and signed before a Justice, or a Master Extraordinary in Chancery; and together with such declaration, the probate of the will, or letters of administration, or an official extract thereof, must be produced to the secretary of the company, who shall thereupon enter the name of the person entitled in the register of shareholders; and until such transmission has been authenticated in the manner above prescribed, the party claiming through the deceased owner will not be entitled to receive any share of the profits, or to vote in respect of the shares. If the prescribed formalities have been duly observed, the company cannot refuse to register the parties entitled; for it has been held, that a mandamus would lie against a company of proprietors of a canal navigation and their clerk, to compel them to make an entry of the probate of a deceased proprietor, and to register the name (and place of abode) of his executor, as the proprietor of one share in the profits of the navigation belonging to the deceased at the time of his death (*a*).

Declaration.

Entry in register.

The right of a shareholder in a railway company to a share of the profits where the railway runs into different provinces, or through several dioceses, may be said, for the purpose of the probate, to be locally situated in that province or diocese in which the principal office is situated, where the accounts are kept and the dividends paid; and probate granted out of the Court of that province or diocese will be deemed valid (*b*).

Probate of will.

(*a*) *Rex v. Worcester Canal Com.* 1 M. & R. 529.

(*b*) *Ex parte Horne*, 7 B. & C. 632, S. C. Nom. *Rex v. Worcester Canal Com.* 1 M. & R. 529; *Smith v. Stafford*, 2 Will. Ch. R. 166.

Liability of  
executor.

The estate of a deceased holder of shares is liable to payment of calls, whether made before or after the time of his decease (*a*), unless the transmission of the shares by death has been authenticated in the manner prescribed, and the shares duly transferred to a third party by the executors. So it is conceived, that an executor or administrator may make himself personally responsible for the payment of future calls, should he have the shares registered in his own name, although he retain the shares as trustee for the benefit of the legatees under the testator's will, or of those entitled under the Statute of Distributions, on the analogy to the personal liability of an executor carrying on trade for the benefit of the children of the testator (*b*).

(*d*) Transfer  
by marriage.

On the marriage of any female shareholder, her husband acquires a right to her interest in the shares of the company, although, as in the case of other choses in action belonging to the wife before coverture, he does not become absolutely entitled until they are reduced into possession; and should he die before they are so reduced into possession, leaving his wife him surviving, they will pass to her, and not to his executors; should she die before the husband, they will not survive to him except as her administrator, and letters of administration in respect thereof must be taken out. After they have been reduced into possession they become his property absolutely, and in case of bankruptcy will pass to his assignees. It has been held, that even where the husband had not reduced shares into possession, and where they still stood in the wife's maiden name in the books of the company, they passed to the husband's assignees (*c*). If, however, they shall not have been reduced into possession by the assignee during the husband's life-time, they will survive to the wife.

Declaration.

The husband, to reduce his wife's shares into possession, must make a declaration in the manner prescribed (*d*), authenticating a notice of the transmission of

(*a*) *Fyler v. Fyler*, 2 Rail. Ca. 873; 3 Beav. 550.

(*b*) *Viner v. Cadell*, 3 Esp. 88. *Childs v. Thomas*, 3 B. & B. 460.

(*c*) *Ex parte Spencer*, 3 Mont. & Ayr. 697. (*d*) 8 Vic. c. 16, s. 18.

the shares by the marriage; and to it there must be appended a copy of the register of the marriage, or other celebration thereof, with a declaration of the identity of the wife with the holder of the shares; and upon such particulars being lodged with the secretary of the company, he will enter the husband's name in the register of shareholders, and the latter will then become the absolute proprietor of the shares, and be entitled to all the dividends and profits.

Another mode in which the interest in shares in a railway company may become transmitted, is by the bankruptcy or insolvency of the owner, in either of which events the shares standing in his name in the books of the company, pass by act and operation of law into the hands of the assignees for the benefit of the creditors, in the same manner as other personal property to which he was entitled at the time of such bankruptcy or insolvency (*a*). The assignees under such circumstances, however, in order to complete their title to the shares, must make a declaration of the particulars of the transmission of interest to them as required by the Companies' Clauses Act (*b*). So they will take the shares subject to any incumbrances affecting them, such as mortgage or lien, provided that due notice of those incumbrances shall have been given to the company previous to the Act of Bankruptcy.

It is optional in all cases with assignees whether they will avail themselves of their right to the shares, or leave them in the name of the bankrupt. If they decline to take the shares, the bankrupt will remain liable to the payment of all calls afterwards made upon them.

#### (4).—*Forfeiture of Shares.*

The capital of a railway company being payable by instalments, the proprietors of the several shares (or their

(*e*) Transfer by  
bankruptcy or  
insolvency.

Forfeiture of  
shares.  
Power to  
forfeit.

(*a*) *Ex parte* Lancaster Canal Com. *r*: Dilworth, &c. 1 Dea. & Ch. 411.

(*b*) 8 Vic. c. 16, s. 18.

personal representatives) are under an obligation to pay such instalments upon the shares held by them respectively, as the directors may from time to time think fit to call for. Any default in making these payments, exposes the defaulter not only to an action by the company for the recovery of arrears and interest, but also to the forfeiture of his shares. For by the Companies' Clauses Act it is provided (a), that "if any shareholder fail to pay any call payable by him, together with the interest, if any, that shall have accrued thereon, the directors at any time after the expiration of two months from the day appointed for payment of such call, may declare the share in respect of which such call was payable forfeited, and that whether the company have sued for the amount of such call or not." The remedy of forfeiture thus given to the company is in addition to that of an action at law, and like the latter, can only be available where the call, the non-payment of which is complained of, has been duly made. Hence all the prescribed formalities must have been observed in making it, due notice of it must have been given, it must be made equally, and former calls must have been paid, or means taken to enforce the payment of them against other defaulters, before a right to forfeit the shares can be legally exercised (b).

Mode of  
proceeding.

Notices.

When a proprietor has by non-payment of a call within the time limited rendered his shares liable to forfeiture, the company in exercising the right must proceed as by law directed. Hence the directors before declaring any share forfeited, must cause notice of their intention to be left at, or transmitted by post to, the usual or last place of abode of the registered proprietor; or if he be abroad, or his place of abode unknown, or the interest in the share has become transmitted otherwise than by transfer, and no declaration of such transmission has been registered,

(a) 8 Vic. c. 16, s. 29.

(b) See on this subject, post, sec., "Calls;" and Preston v. The Grand Collier Dock Com.; 2 Rail. Ca. 335; 11 Sim. 327.



and the parties entitled cannot be found, then public notice must be given in the "London" or "Dublin Gazette," according as the company's principal place of business shall be in England or Ireland, and also in the newspaper prescribed by the Special Act, or, if none be prescribed, or the prescribed newspaper have ceased to be published, then in a newspaper circulating in the district in which the company's principal place of business shall be situated. These notices are to be given twenty-one days, at least, before the directors can make the declaration of forfeiture (a).

Having given these notices, the directors may, if the call remain unpaid, proceed after the expiration of the twenty-one days to declare the shares forfeited. This, however, is only an inchoate act, and will not take effect so as to authorise the sale, or other disposition of any share, until it has been confirmed at some general meeting of the company, to be held after the expiration of two months, at least, from the day on which the above-mentioned notice of intention was given. At such meeting the company may confirm the declaration, and either at the same, or any subsequent general meeting, may order the shares so forfeited to be sold, or otherwise disposed of (b).

Declaration of forfeiture.

Any notice of declaration of forfeiture being inoperative until thus ratified by the company, it will not absolve the proprietor from the obligation to pay calls, nor be any answer to an action brought against him by the company for their recovery (c.) Having been duly confirmed, however, and the confirmation accompanied by an order as to the disposal of the shares, the directors may proceed to sell them either by public auction or private contract, and either separately or together, as they may think fit; and any shareholder may become the purchaser (d). Being sold,

Sale of shares.

(a) 8 Vic. c. 16, ss. 30 and 138.

(b) *Idem*, s. 31.

(c) *London and Brighton Rail. Com. v. Fairclough*, 3 Scott's N. R. 68; 2 M. & Gr. 674; 2 Rail. Ca. 544. *Birmingham, Bristol, and Thames Junc. Rail. Com. v. Locke*, 2 Rail. Ca. 867; 2 Q. B. 256.

(d) 8 Vic. c. 16, s. 32.

the title to a share purchased under such circumstances will be complete on a declaration being made before a Justice, or Master, or Master Extraordinary in Chancery, that the call was made, and notice thereof given; that default in payment was made; and that the forfeiture of the share was declared and confirmed as above-mentioned; and upon a receipt being given to the purchaser by the treasurer of the company for the price of the share; and on production of this declaration and receipt the purchaser will be entitled to a certificate of proprietorship, and will hold the share discharged from all calls due prior to the purchase. Nor will any irregularity in the proceedings in reference to the sale, at all affect the validity of his title to the share of which he has so become possessed (a).

The power to sell shares after a declaration of forfeiture would not seem, however, to be co-extensive with the power to forfeit, for the latter extends to every share in respect of which default has been made in the payment of a call; but the company may sell only so many of the shares belonging to the defaulter as will be sufficient, as nearly as they can ascertain at the time of the sale, to pay the arrears of calls and interest, and the expenses attending the forfeiture and sale. If there remain any surplus the defaulter will be entitled to it on demand (b).

Nor can the power to sell be exercised at all, if at any time before the sale actually takes place, the proprietor of the shares shall pay all arrears, interest, and expenses; but the shares shall then revert to him in such manner as if the calls had been duly paid (c).

It would seem, also, that where a portion only of the forfeited shares are sold, and the proceeds are applied in payment of the calls, interest, and expenses, in respect of the remainder, that the latter would, under the last-cited clause, revert to the owner, as if no forfeiture had ever taken place.

(a) 8 Vic. c. 16, s. 33.

(b) *Idem*, s. 34.

(c) *Idem*, s. 35.

A forfeiture of shares, once incurred, cannot be relieved against by a Court of Equity, although the making of the call were accidentally unknown to the proprietor, and he was absent from town when the notice of forfeiture was sent. A holder of shares must take due pains to inform himself of the orders and rules of the company, and any want of precaution in this respect will make the party guilty of it liable to the consequences (*b*).

Relief in  
Equity.

But, although a Court of Equity will not interfere to relieve from forfeiture, where the proceedings have been regular and valid, yet they will scrutinize them rigidly, and will set them aside if it shall appear that they were not strictly in accordance with the powers given to the company. Thus, where a company had authority, in certain cases, to cancel, extinguish, and declare forfeited, or to sell and dispose of the shares of any proprietor; and, after due notice the directors, by a resolution, declared the shares to be forfeited and cancelled; and it appearing to them that the value of the shares on that day was £10,000 it was resolved that credit should be given to the proprietor for that amount; and a bill was afterwards filed to set aside the cancellation; and from the evidence it appeared, that the market price of the shares on the day of cancellation slightly exceeded the price allowed by the directors; but it was proved that if the number of shares cancelled (a thousand) had been carried into the market, the price would have been reduced greatly below the amount allowed by the directors: it was, nevertheless, held, that the directors, having placed themselves by the cancellation in the situation both of vendors and purchasers, were bound to allow the highest market price which could be obtained for the shares, without speculating on what might be the effect of throwing them into the market, and the cancellation was therefore declared void and was set aside (*b*).

(a) *Sparks v. Liverpool Water Works Com.* 13 Ves. 428. See also, *Pearson v. The London and Croydon Rail. Com.* 4 Rail. Ca. 62.

(b) *Stubbs v. Lister*, 1 Y. & C. N. C. 81.

(5) *Creation of New Shares.*

New shares.  
Power to  
create.

The Act of Incorporation of a railway company usually gives power to borrow money to a certain amount, and under certain restrictions; and the Companies' Clauses Act (a) authorises the raising of that amount, or any part thereof, by the creation of new shares, either in order to obviate the necessity of borrowing, or to pay off a loan. This authority can only be exercised at a general meeting. The money so to be raised is to be considered part of the general capital, and is subject to all the same provisions in relation to calls, forfeiture, and the like, as the original capital; except as to the periods of making the calls, and their amount, which the company may fix from time to time as they may think fit (b).

Apportion-  
ment of.

The new shares so created are, in case the original shares shall then be at a premium, to be offered to the then shareholders in proportion to the existing shares held by them respectively; for which purpose the new capital is to be divided into shares of such an amount as will admit of its being conveniently apportioned among the proprietors of the original shares. The offer must be made to them by letter under the hand of the secretary, left at, or sent by post to, the last place of abode of each shareholder, as shown by the shareholder's address book (c).

Election to  
accept.

These new shares will vest in and belong to the shareholders who shall accept the same, and pay the value thereof at the time, and by the instalments to be fixed by the company; and in default of acceptance by any shareholder within a month after the offer made, and payment of the instalments called for, the right of the shareholder ceases, and the company may dispose of

(a) 8 Vic. c. 16, s. 56.

(b) *Idem*, s. 57.

(c) *Idem*, s. 58.

the shares as they deem most advisable (a). The period thus limited, within which a proprietor must elect to accept the new shares, or forfeit his claim altogether, will not be extended in favour of persons who may be out of the country, and at such a distance that it would be impossible to transmit the company's offer and receive an answer before the expiration of the appointed time; nor will there, in such case, be any equitable ground for relief (b).

The power to determine at what time the new capital shall be raised, and the instalments thereof paid, being entrusted to the company in general meeting assembled; it is usual in the resolution for augmenting the capital to ascertain the parties to be entitled to claim a share of it, by specifying those who on a day therein named shall be on the register of the shareholders of the company; and such parties, and those only, will be entitled accordingly.

If, at the period the augmentation of capital takes place, the existing shares are not at a premium, the new shares may be of such amount, and issued in such manner, and on such terms, as the company shall think fit (c).

#### (6) *Consolidation of Shares into Stock.*

The only remaining subject necessary to be mentioned under the head of shares, is the power given by the Companies' Clauses Act to convert the shares in a railway company, or any proportion of them, into a general capital stock. This power applies only to those shares, however, upon which the whole of the instalments have been paid up; nor can it be exercised except with the consent of three-fifths of the votes of the shareholders present, in

Consolidated  
stock.  
Power to con-  
solidate shares.

(a) 8 Vic. c. 16, s. 59.

(b) *Pearson v. London and Croydon Rail. Com.* 4. Rail. Ca. 62; *Prendergast v. Turton*, 1 Y. & C., N. C. 98.

(c) 8 Vic. c. 16, s. 60.

person or by proxy, at a general meeting of the company, and after due notice given for that purpose (a).

Effect of.

On such consolidation taking place, all the provisions of the General and Special Railway Acts, which require or imply that the capital of the company shall be divided into shares of a given amount, and distinguished by numbers, will, as to the consolidated capital, cease and be of no effect; and the holders of the consolidated stock may thenceforth transfer their interests therein according to the regulations made for the transfer of shares; a register of the transfers being kept, and each entry made at a charge not exceeding two shillings and sixpence (b).

A register of the names of the holders of stock is to be kept, and it is to be open at all reasonable times for the inspection of the several holders of shares and stock in the undertaking (c).

Rights of holders of stock.

All the rights of participation in the dividends and profits of the company belonging to the holders of shares, will attach to the proprietors of stock, according to their respective interests; and such interests will, in proportion to their amount, confer the same privileges and advantages for the purpose of voting at meetings, qualification for the office of directors, and other purposes, as would have been conferred by shares of equal amount in the capital of the company. But none of these privileges, except the participation in dividends and profits, will be conferred by any aliquot part of such amount of consolidated stock as would not, if existing in shares, have conferred such privileges (d).

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## SEC. II.—*Calls.*

Calls.

THE amount of capital which a railway company is authorised by the Special Act to raise, is not raised at once

(a) 8 Vic. c. 16, s. 61.

(b) *Idem*, s. 62.

(c) *Idem*, s. 63.

(d) *Idem*, s. 64.

by the shareholders immediately after incorporation, but is usually paid by instalments of such an amount and at such intervals as are therein prescribed. Subject to such provisions, a discretion is entrusted to the board of directors to call in the capital as the exigencies of the company may require; but the several calls must be made with a due observance of all the preliminaries and conditions set forth in the General and Special Railway Acts. In treating of this subject, we shall include a notice of all particulars regarding the making of calls, the parties liable to pay them, and the consequences of default.

The Companies' Clauses Act provides (a), that it shall be lawful for the company, from time to time, to make such calls of money upon the respective shareholders, in respect of the amount of capital respectively subscribed, or owing by them, as they shall think fit. This power is delegated to the directors, who have the same discretion in the exercise of it as belongs to them in relation to other matters entrusted to their superintendence. The Special Act usually contains a provision regulating the intervals between the several calls, and no successive calls can be made at less than such prescribed intervals. So the amount of the calls severally, and the aggregate amount of calls in a year, must not exceed that fixed by the Act of Incorporation. It is no valid objection to a call, that the resolution making it was prospective, there being nothing in the Companies' Clauses Act expressly requiring the directors to make the calls *immediately*. They may make calls from time to time as they think fit, when the exigencies of the company require it; and the nature of the debts and engagements of the company may well be such that the amount of calls would as certainly be wanting at a *future* day as on the very day when the resolution is made (b).

Making of.

Number and amount of.

(a) 8 Vic. c. 16, s. 22.

(b) Sheffield, Ashton under-Lyne, and Manchester Rail. Com. r. Woodcock, 2 Rail. Ca. 522; 7 M. & W. 574. Judgment of Mr. Baron Parke. See also, 8 Vic. c. 16, s. 22.

Preliminaries.  
Notice.

would be illegal, after allowing an interval of time to pass, during which several calls might have been made, for the directors to attempt at once to call in such an amount of capital as they would have been authorised to call for, if it had been properly distributed over the period which has been suffered to elapse (*a*).

Form of.

Not less than twenty-one days' notice must be given of each call. It is usual, in practice, to send a notice to each individual shareholder; but this does not appear to be necessary to ensure the validity of the call, provided such notices shall have been advertised in the newspaper prescribed in the Special Act; or, if none be prescribed, or the one prescribed have ceased to be published, then in a newspaper circulating in the district in which the principal office of the company is situated. The notice should specify the amount of the call in respect of each share, the day on or before which the call is to be paid, and the places where and the persons to whom it is payable. If these particulars be duly set forth in the notice, it will not invalidate the call, that the original resolution of the directors, as entered in the minute-book of their proceedings, did not specify such particulars; inasmuch as it has been held, that the directors might fix the time, place, and manner of payment, after the original resolution had been made, and by a distinct act. Nor need it be shown that the minute-book containing the resolution was signed by the chairman at the meeting at which it was passed, as the attaching of his signature when presiding at a subsequent meeting is sufficient (*b*).

There is no express provision requiring the whole of the capital to be subscribed before the directors are author-

(*a*) *Stratford and Moreton Rail. Com. v. Stratton*, 2 B. & Ad. 519.

(*b*) *The Sheffield, Ashton-under-Lyne, & Manchester Rail. Com. v. Woodcock*, 2 Rail. Ca. 522; 7 M. & W. 574. *Great North of England Rail. Com. v. Biddulph*, 2 Rail. Ca. 401; 7 M. & W. 243. *London and Brighton Rail. Com. v. Fairclough*, 2 Rail. Ca. 544; 2 M. & Gr. 674. *Southampton Dock Com. v. Richards*, 2 Rail. Ca. 215; 1 M. & Gr. 448; *London and Brighton Rail. Com. v. Wilson*, 1 Rail. Ca. 530; 6 Bing. N. C. 135.



ized to make calls upon the shareholders, similar to that in the Lands Clauses Act relating to the exercise of compulsory powers by the company in the taking of lands (a); but as it is obvious that no calls can become necessary until the purchase of lands or the execution of the work is commenced, practically, it will be found that the subscription must be complete before the calls are made.

A mere informality or defect in the appointment of a director, or the fact of one or more of them being disqualified from acting, will not invalidate a call made by the board (b). So a call will be good, though at the time at which it was made there was not the number of directors upon the Board prescribed by the Special Act (c). So where the directors of a company, in order to comply with the Standing Order of the House of Lords, subscribed for a large additional number of shares in the undertaking, and signed a declaration that they held them in trust for the company, which trust was afterwards annulled at a general meeting; a call made upon the shareholders generally, although not made in respect of the above shares, was held valid; and it was decided that a registered shareholder could not be relieved from his legal liability to pay calls on his shares, on the ground that the additional subscriptions were fictitious and fraudulent, for the colourable purpose of complying with the order of the House of Lords, and that the capital of the undertaking *bond fide* subscribed for, was inadequate to carry out the project (d). In this case, however, the directors were held liable to pay the calls upon those

Validity of  
calls.

(a) 8 Vic. c. 18, s. 16. And see *Proprietors of Norwich and Lowestoff Navigation Com. v. Theobald*, 1 M. & M. 151. *Stratford and Moreton Rail. Com. v. Stratton*, 2 B. & Ad. 525.

(b) 8 Vic. c. 16, s. 99.

(c) *Thames Haven Dock and Rail. Com. v. Rose*, 3 Rail. Ca. 177; 4 M. & Gr. 552. *The Same v. Hall*, 3 Rail. Ca. 441; 5 M. & Gr. 274.

(d) *Mangles v. The Grand Collier Dock Com.* 2 Rail. Ca. 359; 10 Sim. 519.

shares in respect of which their trust had been annulled ; and hence we may conclude, that they could not have enforced a subsequent call upon the shareholders, so long as the former due from them upon the shares in question remained unpaid.

Nor can the liability of a shareholder in an action brought against him to recover the amount of a call, be evaded by a plea that the company have deviated from the plans sanctioned by Parliament : as that is a matter which, although proper to be discussed at a meeting of the company, yet can furnish no legal answer to the action (*a*).

Who liable to.  
Registered  
owners.

The register of shareholders is *prima facie* evidence of the liability of a party to the payment of calls in respect of the shares standing in his name (*b*). It is not, however, conclusive proof thereof ; for, on the one hand, a person who has never been registered as a shareholder may be liable to the payment of calls ; and on the other, an individual whose name remains on the register as the owner of certain shares may not be liable. Thus, it has been held, on the first branch of the alternative, that a party who subscribed the parliamentary contract, but who never brought in his scrip certificates, or was registered as a shareholder, was nevertheless liable for the payment of calls upon the shares for which he had subscribed (*c*). So, where the purchaser of scrip certificates sent them in, claiming to be registered, and received a receipt for his scrip, with a notice that they would be exchanged for sealed certificates on demand ; he was held liable to the payment of calls upon the shares, although he had never applied for or obtained certificates of shares, nor otherwise complied with the provisions of the Act ; as he had, by

Parties not on  
the register.

(*a*) *London and Brighton Rail. Com. v. Fairclough*, 1 Rail. Ca. 530 ; 2 M. & Gr. 674. Same *v. Willson*, *ibid.*, and 6 Bing. N. C. 135.

(*b*) 8 Vic. c. 16, s. 28. But see *Cheltenham and Great Western Union Rail. Com. v. Price*, 9 C. & P. 55.

(*c*) *West. London Rail. Com. v. Bernard*, 3 Rail. Ca. 649 ; 13 L. J., N. S. 68 Q. B.

his own representations and claim to be registered, precluded himself from taking the objection that the formal requirements of the Act had not been complied with (a).

As to the second branch of the alternative, namely, an exemption from liability, even where the name of the party remains upon the register; although no cases have been decided expressly on the point, yet we may remark, that if a shareholder has transferred his shares in the manner prescribed by law, and has delivered the deed of transfer to the secretary, he is thereby relieved from his liability upon the shares; notwithstanding that, through the neglect of that officer, a memorial of the transfer has never been entered in the books of the company, nor the name of the transferee erased from the register; the vendor of a share continuing liable upon it only until he has delivered to the secretary the deed of transfer, and the right of the transferee in respect of it arising at the same moment (b). In this case, the neglect of an officer of the company is not allowed to prejudice another; and hence, as soon as the document is duly deposited in the secretary's hands, it is valid for all purposes as between the depositor and the company. But the party transferring must have complied strictly with the provisions of the General and Special Railway Acts, in order to ensure an exemption from liability upon the shares transferred (c). Where, however, there are certain irregularities in the mode of transfer, but a memorial of the transfer deed has been entered at the request of the transferee, and he is registered as a shareholder, he will be held liable as such. Thus, where a purchaser of shares received a transfer with a blank for the name of the purchaser, and stating the consideration untruly, which, however, he forwarded to the secretary, with a claim to be registered as a proprietor, and he was registered accordingly; it was held that, having made such

Parties other  
than the re-  
gistered  
owners.

(a) *The Cheltenham and Great Western Union Rail. Com. v. Daniel*, 2 Q. B. 281; *The Same v. De Medina*, 2 Rail. Ca. 728.

(b) 8 Vic. c. 16, s. 15.

(c) *Humble v. Langston*, 7 M. & W. 517.

representations to the company as induced them to register him, he was precluded by his representation from objecting to the transfer; and was, therefore, liable to the payment of the calls (*a*).

In cases of  
transfer after  
call made.

It may become a question as to who is liable for the payment of calls where shares in a company have been transferred, and the deed of transfer delivered to the secretary, in the interval between the day on which a call is made, and that on which it becomes payable. From the terms used in the Companies' Clauses Consolidation Act it would appear that the liability for a call attaches upon the party who is the owner of the share *at the time when the call is made*. Thus it enacts (*b*), that "No shareholder shall be entitled to transfer any share after any call shall have been made in respect thereof, until he shall have paid such call, and all other calls then due upon all the shares held by him." And in a subsequent section (*c*) it is provided, that on the trial of an action for calls, "It shall be sufficient to prove (*inter alia*) that the defendant, at the time of making such call, was the holder of one share or more in the undertaking." From the language of these two sections, it may be safely inferred, that the day on which a call is made payable is immaterial in considering the question as to the party liable to pay it; the time of making it being that at which the obligation attached upon the then holder of any share in the company. This view is to some effect confirmed by the following case. An action was brought by a railway company against a defendant for a call, notice of which was given on the 6th of March, payable on the 9th of April. A deed of transfer of the shares from the original holder to the defendant was produced, and the transfer-book of the company, containing a memorial, both of which bore date the 7th of April. It was held that the defendant, not having become a proprietor until after the day on which the call was

(*a*) *Sheffield, Ashton-under Lyne, and Manchester Rail. Com. v. Woodcock*, 2 Rail. Ca. 522; 7 M. & W. 574.

(*b*) 8 Vic. c. 16. s. 16.

(*c*) Sec. 27.

made, was not liable to pay it (*a*). Having been defeated in their claim against the purchaser, the company sought to recover the call from the vendor of the shares, and brought their action accordingly. It was held by the Court of Common Pleas, that no right of action for a call is given by the Act, or exists independently of it, against a party (not appearing to be an original subscriber), who had held a share at the time a call was made, but who had transferred and entered a memorial of his transfer before the call was payable; and that the duty to pay a call in such case does not arise until the day appointed by the directors for payment. And it was intimated that there are only three cases in which an action for calls can be maintained under the Act. 1. Against a subscriber. 2. Against an owner for the time being. 3. Against a party who, having transferred his shares, is no longer a shareholder, but whose liability is continued because no memorial of the transfer has been entered (*b*). This decision, and the principles on which it proceeded, were afterwards reviewed in a Court of Error; and it was held that the declaration disclosed a good cause of action against the defendant, and that the plea of a transfer of the shares and entry of the memorial thereof by the company, previous to the day on which the call was payable, was bad as an argumentative denial that the defendant was ever indebted to the company (*c*).

It thus appearing, both from the language of the Companies' Clauses Act upon the subject, and from the decisions which have taken place, that the liability to the payment of a call attaches upon the owner of the share at the time it is made, and not upon the owner at the time it becomes payable; it only remains to inquire when a call is considered to be made, so as to fix the liability of the then proprietor of a share; whether it is to be dated from the day on which the original resolution of the directors to

When call is  
to be considered  
as made.

(*a*) Aylesbury Rail. Com. v. Thompson, 2 Rail. Ca. 668.

(*b*) Aylesbury Rail. Com. v. Mornt, 2 Rail. Ca. 679; 2 Dowl. N. S. 143.

(*c*) Same v. Same, 3 Rail. Ca. 468; 12 L. J., N. S. 474 Exc.

make the call is passed, or from the day of fixing the mode of payment, or from that on which notice was given of the time and place at which the call would be payable. No judicial decision has been given upon these points, but to follow the words of Mr. Baron Parke (in a case which ultimately went off on another ground), on this subject :—  
“ It may be that the resolution of the directors is only an inchoate act, and that the call is not complete until the mode of payment is appointed, and notice thereof given. So that no one is liable, unless he be a proprietor, when the whole of these circumstances have occurred ; and until all these have occurred, a proprietor is not deprived of a right of free transfer. It may be that both the liability to pay the instalment and the impediment to the transfer attach from the date of the resolution itself, though the mode of payment be not fixed nor notice given till afterwards. Or, lastly, it may happen that the term ‘ *call* ’ may for one purpose date from the resolution, and for another from a different time (*a*).” The importance of the questions here raised may be very much diminished by the resolution making the call being so framed as to fix the amount, time, and manner of payment, and by the immediate issuing of the notice required by the Act. In the meanwhile, we may observe, that the provisions of the Companies’ Clauses Act in relation to the matter, to be proved in an action for calls, would lead to the conclusion, that the call is to be considered as made from the date of the resolution rather than of the notice ; for it is enacted (*b*), that on the trial of such action it shall (*inter alia*) be sufficient to prove that the call was in fact made, and such notice thereof given, as is directed by this or the Special Act ; thus drawing a distinction between the making of the call and the notice of it ; treating them as two distinct facts, both of which must be proved.

(*a*) *Sheffield, Ashton-under-Line, and Manchester Rail. Com. v. Woodcock*, 7 M. & W. 574.

(*b*) 8 Vic. c. 16. s. 27.

Having thus ascertained the parties liable to the payment of a call, it only remains to be observed, that the liability in question having once attached upon them will devolve to their representatives. Thus, in case of death, the estate of the deceased shareholder will be liable (*a*) to the payment of calls; and it is immaterial whether they were made before or after his decease. So, in the event of bankruptcy or insolvency, the company will be entitled to prove for the calls due; or, if the declaration of bankruptcy or insolvency required by law shall not have been duly lodged with the secretary of the company, the bankrupt or insolvent himself may again become liable in respect of calls accruing due after the act of bankruptcy, or subsequent to the filing of the petition; as it seems doubtful whether the bankrupt's certificate and the discharge under the Insolvent Act would operate as a bar to the recovery of future calls (*b*).

Personal representatives.

Assignees of a bankrupt, &c.

From the considerations above suggested as to the parties responsible to a company for the payment of calls, we may draw these general conclusions:—first, where no party has been entered on the register of shareholders in respect of certain shares, nor any claim to that effect been sent in, the company must resort to the original subscriber; secondly, where a holder of scrip, not being an original subscriber, has sent in the certificates with a claim to be registered, the company may elect either to adopt him and enter his name on the register accordingly, or may revert to the original subscriber; thirdly, where the name of a party is on the register at the time of the making of the call he will be liable to pay it, provided no deed of transfer shall have been lodged with the secretary prior to the date of that call; fourthly, where a transfer is effected in the interval between the day of the making of the call and the day on which it becomes payable, the transferror will be the party liable to the company.

General conclusions as to liability for calls.

(*a*) *Fyler v. Fyler*, 2 Rail. Ca. 873; 3 Beav. 550.

(*b*) See *Toppin v. Field*, 7 Jurist, 257.

Consequences  
of default.

Must pay  
interest.

If a shareholder neglect to pay a call on the day fixed, he will be liable to pay interest for the same, at the rate allowed by law, until actual payment thereof. This may be recovered in an action for the call, although no count for interest be inserted in the declaration, as that may be added by the jury, on the ground that where a statute gives an action of debt, it gives that which is auxiliary to it, and the consequence of such an action, which is damages for the detention of the debt (*a*).

Cannot vote  
at meetings.

So long as a call remains due and unpaid upon any of his shares, the owner thereof will be disabled from exercising certain privileges attached to the ownership of shares. Thus, he cannot vote at any meeting of the company until he has paid all the calls then due upon all the shares held by him (*b*). So he is precluded, under like circumstances, from transferring his interest in the shares, or any of them. Nor can any dividends be claimed by the owner in respect of any of the shares possessed by him, until he has paid up the calls due upon every share standing in his name (*c*).

Or transfer  
shares.

Or claim  
dividends.

May be sued  
by the com-  
pany.

We have already (impliedly) intimated, that any default in paying calls when due will subject the defaulter to an action at the suit of the company for their recovery; and the Companies' Clauses Act has provided a form of declaration in such cases, and prescribed the nature and amount of the evidence which shall be necessary to support it (*d*). This action may be maintained, although the directors shall have given notice to the owner of a declaration of the forfeiture of his shares for the non-payment of the calls; inasmuch as the forfeiture is not complete until the declaration has been confirmed at a general meeting of the company, ordinary or extraordinary (*e*). The only re-

(*a*) *Southampton Dock Com. v. Richards*, 2 Rail. Ca. 231; 1 M. & Gr. 448: per Tindal, C. J.

(*b*) 8 Vic. c. 16, s. 75.

(*c*) Id. s. 123.

(*d*) Id. ss. 25—27.

(*e*) *Birmingham, Bristol, and Thames Junction Rail. Com. v. Locke*, 2 Rail. Ca. 867; *Edinburgh, Leith, and New Haven Rail. Com. v. Hebblewhite*, 2 Rail. Ca. 237.



maining consequence of the non-payment of calls, to which we need allude, is the liability of the owner to have his shares forfeited for such default. This remedy is given to the directors by the Companies' Clauses Act (*a*), and is available in any case, whether the company have sued for the amount of the calls or not. In exercising the power of forfeiture, due notices must be given, and the other formalities prescribed by law must be diligently observed; but for the particulars we refer the reader to a former portion of this work, where they are treated at large (*b*).

### SEC. III.—*Dividends*.

#### Dividends.

THE power to declare dividends in a railway company is entrusted to a general meeting. For all other purposes, a certain prescribed quorum must be present in order to constitute the meeting, but for the purpose of declaring a dividend this is not necessary; and it would appear that, provided due notice had been given of the meeting, an attendance of proprietors, however limited, would be sufficient to enable them to transact this portion of the business of the day (*c*). Whilst, however, the authority to declare a dividend is vested in the proprietors in general meeting assembled, yet that authority is limited and controlled in its exercise by the Board of Directors. For previously to every ordinary meeting at which a dividend is intended to be declared, the directors must cause a scheme to be prepared, showing the profits since the last dividend, and apportioning them, or such portion of them as they may consider applicable for the purposes of dividend, among the shareholders, according to the number and amount of their shares. Before making this apportionment, the di-

Power to declare.

(*a*) 8 Vic. c. 16, s. 29.

(*b*) See *supra*, pp. 485—489.

(*c*) 8 Vic. c. 16, s. 72.

Scheme of  
directors.

rectors may, if they think fit, set aside a certain sum for contingencies—such as enlarging, repairing, or improving the works—and may divide the balance only among the shareholders (*a*). This scheme is to be exhibited at the meeting, and the meeting is then empowered to declare a dividend *according to such scheme* (*b*). Hence it would appear that not only the amount of the dividend is determined by this statement of the directors, but that the declaring of a dividend at all is made to depend upon the preparation and exhibition of the scheme, and upon the character of it when so drawn up and submitted to the proprietors. There seems to be no power in the general meeting to alter or modify the document prepared by the Board, their authority being restricted exclusively to the adoption of the balance sheet presented, exactly in the form in which it is presented, and the passing of certain resolutions in accordance therewith; or, if the scheme be not such as secures the sanction of the meeting, no step can be taken in declaring a dividend based on any other calculation than the one before them. Substantially, therefore, the power to declare dividends is in the directors, although nominally it is vested in the proprietors, for the former take the initiative by the preparation of such a statement of the accounts as shall either accelerate or postpone the dividend; or, if any be declared, shall determine its amount and apportionment. These are steps which the board alone can take, nor does there appear to be any mode by which the shareholders can enforce their being taken; or, if not taken, can dispense with them in the declaration of a dividend. They can adopt the scheme prepared by the board, and declare a dividend in accordance with it; but they cannot either submit a scheme of their own, or declare a dividend founded on any other statement of the accounts than that made by the directors. They resolve on a dividend suggested by such statement;

(*a*) 8 Vic. c. 16, s. 122.

(*b*) *Idem*, s. 20.

or, if they decline to do so, they must dispense with a dividend altogether.

In preparing a financial statement to be submitted to a general meeting with a view to the declaration of a dividend, the directors must first allow for the payment of all claims against the company. Hence, the interest of all borrowed capital must be paid to the mortgagees, bondholders, and other creditors of the undertaking, out of the income. So the interest or dividend guaranteed to any other company must also be deducted. When all actual claims are satisfied, the balance still remaining will not, however, be wholly applicable to dividend. For, before apportioning the profits among the shareholders, the directors may (as we have seen), if they think fit, set aside thereout such sum as they may think sufficient to meet contingencies, or for the purpose of enlarging, repairing, or improving the works connected with the undertaking, and may afterwards divide the balance among the shareholders (a). After all payments made, and contingencies and other claims allowed for, the balance remaining in hand is applicable for the purposes of a dividend. And the dividend must not be of greater amount than can be paid out of the fund so appropriated, for the company are expressly forbidden (b) to make any dividend whereby their capital stock will be in any degree reduced. Nevertheless, with the consent of all the mortgagees and bond creditors, a certain portion of the capital may be returned, in obedience to a resolution of an extraordinary meeting of the company convened for that purpose. Although the payment of dividends out of capital is thus explicitly forbidden, it is common, in practice, during the progress of the works, to pay interest on such portions of the capital as have been raised from time to time, out of the capital stock, provided a power for that purpose be given in the Special Act.

Fund applicable to a dividend.

When a dividend has been declared, it is usual to give a notice to the shareholders of the time and place at which

Dividend not payable where calls in arrear.

(a) 8 Vic. c. 16, s. 122.

(b) *Idem.* s. 121.

it will be payable. But no dividend will be paid in respect of any share, until all calls then due in respect of that and every other share held by the person to whom such dividend may be payable, shall have been paid (a).

It has not been decided whether, under these circumstances, the accruing dividends may be appropriated to the payment of the instalments in arrear, as far as they will go; or whether they are to remain impounded in the hands of the treasurer until those arrears are discharged. It is not, perhaps, clear, whether a defaulting proprietor may give directions for such an appropriation; thereby exercising control over a fund which cannot be paid to him, but to which he would seem, nevertheless, to have an inchoate or imperfect right. The dividend is declared in respect of his shares, no less than in respect of the others; and hence it would appear to be due, although payment of it is arrested until the calls are paid up. Or, if no such directions may be given by the proprietor, it may be a question whether, in Equity, the dividend is not to be looked upon as a fund which the company are bound to appropriate in the liquidation of arrears of calls upon the shares in respect of which it has accrued due.

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#### SEC. IV.—*Loans.*

(a) Power to raise borrowed capital.

A RAILWAY company being the creature of the statute, is restricted in its operations by the provisions of the several Acts of Parliament under which it exists. Hence, the power of raising borrowed capital, no less than that of raising the original capital, must be expressly given by the Special Act. Accordingly, we find that the Acts of Incorporation of railway companies usually contain a clause empowering them to borrow a defined proportion of their

(a) 8 Vic. c. 16, s. 123.

capital under certain prescribed conditions. The Companies' Clauses Act regulates the mode in which such power may be exercised. In treating of loans, therefore, it must be remembered that the General and Special Acts are to be taken together; the power being given under the latter, and the manner of carrying it into execution being prescribed by the former.

In giving the authority to raise borrowed capital, the Special Act is framed in accordance with certain standing orders of the Houses of Parliament, which provide that no company may "raise by loan or mortgage a larger sum than one-third of their capital; and that, until fifty per cent. on the whole of the capital shall have been paid up; it shall not be in the power of the company to raise any money by loan or mortgage" (*a*). The power given under these restrictions is not vested in the Board of Directors, but must be exercised by the proprietors in general meeting assembled; and such sums of money be borrowed (not exceeding in the whole the prescribed sum) as may from time to time be ordered by such meeting (*b*). If any of the borrowed money be paid off, it may be reborrowed, but not without the authority of a general meeting, unless the money so reborrowed be for the purpose of paying off an existing mortgage or debt (*c*).

Where the company is restricted from borrowing money until a certain proportion of its capital is paid up, or the authority of a general meeting is required for that purpose, the certificate of a justice that the requisite amount of capital is paid, and a copy of the order of a general meeting, certified by a director, or by the secretary, to be a true copy, will be sufficient evidence of those facts respectively. The justice will grant the above certificate on production of the company's books, and such other evidence of the fact, the truth of which he is required to certify, as he shall deem sufficient (*d*).

(*a*) H. C. 96. H. L. 233, sec. 4, part i.

(*b*) 8 Vic. c. 16, s. 38.

(*c*) Id. s. 39.

(*d*) Id. s. 40.

The authority to borrow not arising until the above conditions are complied with, it is important for those, who propose to advance money to a company, to ascertain, for their own security, that the prescribed proportion of the capital is paid, and the order of a general meeting regularly obtained. For although, where the seal of the company is attached to a bond, it will be presumed as against them that all the requisite forms have been observed, still it is open to them, on an action on the bond, if the pleadings are so drawn as to admit of it, to dispute the validity of the document so given as a security; and to prove that the requisite formalities having been neglected, the company are not responsible to the creditor (*a*). Moreover, it is important for the lender to ascertain, by an inspection of the register of mortgages and bonds, that the authority of the company to borrow is not exhausted, by their having already borrowed such a proportion of capital as amounts to the sum which they are authorised by their Act thus to raise.

(*b*) Nature and form of securities.

Money can only be borrowed by a railway company either on the security of a mortgage of the undertaking, and of the future calls on the shareholders, or of a bond in the form prescribed by the Companies' Clauses Act. The practice of borrowing money in a manner unauthorised by the Special Act, as upon the security of loan notes, or other instruments, purporting to be securities for the payment of the monies borrowed, is not only illegal, but the adoption of it renders a company liable, under a recent statute, to forfeit to the crown for every such offence, a sum of money equal to that for which any loan note, or other such document, purports to be the security (*b*). Indeed, independently of the above statute, it would appear to be doubtful whether a corporate body could enter into

(*a*) *Hill v. the Salford and Manchester Waterworks Com.*, 5 B. & Ad. 874. See also *Same v. Same*, 2 B. & Ad. 545; *Clarke v. the Imperial Gas Com.*, 4 B. & Ad. 315.

(*b*) 7 & 8 Vic. c. 85, s. 19.

any contract for the payment of money except under seal (a).

Where a company propose to raise money by mortgage, Mortgages. they prepare a mortgage-deed, whereby they assign over the undertaking, and all the tolls and sums of money arising by virtue of the Special Act, and all the estate, right, title, and interest of the company in the same, to the mortgagee and his personal representatives, as a security for the repayment of the money advanced and interest, on the day named in the deed; or, if no time be fixed, then at the expiration of twelve months after the date of the deed, or at any time subsequently, on six months' notice by either party for that purpose. If the loan be made in anticipation of the capital authorised to be raised, all future calls on the shareholders are included in the assignment. This instrument must be under the seal of the company, and must be duly stamped.

A register of all mortgages and bonds is to be kept by Register of. the company, and a memorial of each, specifying their number and date, the sums secured, and the names of the parties, must be inserted therein within fourteen days after execution. This register is to be open to the inspection, at all reasonable times, of the shareholders, and mortgage and bond creditors of the company, without payment of any fee (b).

The effect of a mortgage in the above form is to transfer Effect of. to the mortgagee an absolute right to the profits of the undertaking, rateably with the other mortgage creditors of the company; and to enable him, if so authorised by the Special Act, to require the appointment of a receiver, for the purpose of enforcing payment of arrears of principal and interest due on his mortgage; but it does not pass any interest in the company's lands (c). Nor (although it

(a) *Ludlow (Mayor) v. Charlton*, 6 M. & W. 815.

(b) 8 Vic. c. 16, s. 45.

(c) *Doe dem Myatt v. the St. Helens and Runcorn Gap Rail. Com.*, 1 G. & D. 663.

should comprise future calls on the shareholders) will it, unless expressly so provided, preclude the company from receiving and applying to the purposes of the company any such calls (*a*).

Some doubt has arisen with respect to the right of a mortgage creditor, under a deed assigning over the undertaking to him and his personal representatives until the payment of the principal money and interest, whether under the terms of such an instrument he could enter on the property of the company. Thus, in one case (*b*), where the company were empowered to borrow and take up money upon the credit of the undertaking, and the rates and duties made payable by the Act, and by writing under their common seal, to mortgage or assign over the undertaking, and the rates and duties, to the persons advancing the money as a security therefor; and a form of mortgage was given whereby the company engaged to pay the interest half yearly: it was held that the property of the company, and the rates or duties alone, were pledged for the payment of the monies advanced, and that the proprietors were not liable to be sued in covenant for the arrears of interest. And the terms of the covenant were thought to be satisfied by giving the lenders of the money a security on the undertaking, without allowing them to sue the corporation. And it was intimated, that the proper remedy was by action of ejectment to recover possession of the property of the company. But in a subsequent case (*c*), the same point came again under the consideration of the Court. The form of the mortgage was similar to the above, and by it the company assigned the undertaking, and all and singular the rates, &c., unto the mortgagee. In an action of ejectment brought by the mortgagee, it was held that the land of the company did not pass under the word "under-

(*a*) 8 Vic. c. 16, s. 45.

(*b*) *Pontet v. Basingstoke Canal Com.*, 4 Scott, 182; 3 Bing, N. C. 433.

(*c*) *Doe dem. Myatt, v. St. Helens and Runcorn Gap Rail. Com.*, 2 Rail. Ca. 756; 2 Q. B. 264.



taking;" and Lord Denman, C.J., said, "there was nothing in that expression to justify the construction that the deed contained a demise of the land, or of any portion of the real estate of the defendants; that such a demise would not only be exceedingly improbable, but very inconvenient to the public, as it would perchance prevent the carrying on the undertaking by means of which the defendants were to be enabled to satisfy the demands of their creditors, and to promote the convenience of the public."

If the company give security for borrowed capital by a bond, they thereby bind themselves and their successors to the creditor and his personal representatives in a penal sum for the payment of the money advanced with interest, the bond being conditioned in the usual form. This instrument passes no interest in the undertaking to the creditor, nor does it give a claim upon future calls, and, in these respects, is less eligible as a security than a mortgage. It is, indeed, nothing more than the personal security of the company in their corporate character. It should be observed, that neither a bond nor a mortgage give to a creditor any remedy against the directors individually.

All the mortgagees and bond creditors of a railway company stand on the same footing, there being no priority in respect of their claims, arising from the order in which the securities were executed; a subsequent mortgagee or bond creditor being entitled in all cases to his rateable proportion of the tolls, or other property of the company, with all other creditors having the like security, although they had advanced their money previously. So both classes of creditors are entitled to be paid the interest upon their monies at the times appointed; or, if no times be appointed, then half-yearly; and before any dividends can be payable to the proprietors of the company. A question of some importance may arise as to whether the dividend or interest due to a company whose line is leased, or to whom a certain annual sum has been guaranteed, is payable before the interest to mortgage and bond creditors. Any doubt on

Bond.

(c) Rights of creditors.

this subject may be precluded by an express provision in the statute authorising the lease or amalgamation, securing to such creditors a priority over the proprietors of the leased or amalgamated line. This is of the more importance because the General Railway Acts, while they secure to the creditors of a company priority over the shareholders, do not provide for the cases above mentioned.

To recover arrears.

If either the interest, or the principal and interest, due on a mortgage remain in arrear, the mortgagee may (if power is given to that effect in the Special Act), without prejudice to his right to sue for such interest, require the appointment of a receiver with the view of enforcing payment thereof. For this purpose, and where interest is due and unpaid, a demand must first be made for payment of the money; and, after thirty days from the day on which it was due, application may be made for the appointment of a receiver. So, if any portion of the principal money be owing for six months after it has become payable, and after demand thereof in writing the same be not paid, the mortgagee, without prejudice to his right to sue for such principal money and all arrears of interest, may, if his debt amount to the sum prescribed for that purpose in the Special Act, apply for the appointment of a receiver. If the debt does not amount to the prescribed sum, then such application may be made in conjunction with other mortgagees similarly situated, whose debts, together with his own, amount to the required sum (a). Every application for a receiver is to be made to two justices, who, after hearing the parties, may, by order in writing, appoint some person to receive the whole or any part of the tolls; and the tolls must accordingly be paid to the person so appointed, until the debts and costs are liquidated, when the power of the receiver ceases (b). No right of this kind, in relation to the tolls, is, however, secured to the bond creditors of the company; but the latter are entitled, as well as the

(a) 8 Vic. c. 16, s. 53.

(b) Id. s. 54.

mortgagees, to enforce payment of interest and principal monies due to them, by action in any of the superior Courts; and if the effects of the company be not sufficient to satisfy their judgment, may, if the whole amount of capital subscribed for be not paid up, issue execution against the individual shareholders, in the manner prescribed by the Act (a).

It is important here to notice a distinction between a mortgage and a bond, as regards the effect of the Statute of Limitations upon the amount of arrears recoverable in an action. Where the mortgage-deed (as in the form given in the schedule to the Companies' Clauses Act), contains no covenant to pay, it is simply the case of a sum of money charged upon land, and falls under the provision of the forty-second section of the statute 3 & 4 W. 4, c. 27; which provides that only six years' arrears of interest, in respect of any sum of money charged upon or payable out of land, can be recovered by action or suit. The principal money is, however, recoverable at any time within twenty years, under the provisions of the statute 3 & 4 W. 4, c. 42, s. 3; and if any covenant or engagement to pay principal and interest be inserted in the instrument whereby the mortgage is created, interest may be recovered for the same period. In this case, the statute does not begin to run until default is made in payment, either of the interest or of some portion of the principal. The above doctrines do not apply in the case of a bond, which being a specialty on which an action of debt will lie at the suit of the creditor, such action may be brought at any time within twenty years next after the cause of action arose; and interest for that period is recoverable, together with the principal, provided that the amount of such principal money and interest do not exceed the penal sum specified in the bond.

What arrears  
recoverable.

(a) 8 Vic. c. 16, s. 36.

To transfer  
their interests.

The mortgagees and bond creditors of a railway company, unlike other parties entitled to choses in action, are authorised to transfer their interests, so as to clothe their assignees with the same rights and powers, and give them the same remedies, as they themselves possessed. Such transfers, however, in order that they may have the effect of substituting the transferee in the place of the original creditor, must be by deed duly stamped, stating the consideration; and must, within thirty days after the date of their execution, be produced to the secretary of the company, that a memorial of them may be entered in the register (*a*). Until such entry has been made, the company are not liable for payment of the money thereby secured to the party claiming under the transfer; nor is the property of the transferor therein so divested as to defeat the claim of the assignees in case of his bankruptcy; for, until such registration is complete, the mortgage or bond debt would be deemed to be in his order and disposition within the meaning of the seventy-second section of the statute 6 Geo. 4, c. 16. This entry or memorial operates as a notice to the debtor of the transfer of the debt, which is necessary in all such cases to perfect the assignment, by giving what is equivalent to possession in other things (*b*).

After the registration of the assignment of a mortgage or bond, the assignor has no power to make void, release, or discharge the same, or any money thereby secured. For the entry of a memorial of transfer, the secretary of the company is entitled (if no other sum be prescribed by the Special Act) to a fee of 2s. 6d (*c*).

To inspect  
books.

All the mortgage and bond creditors of a railway company are entitled, at all reasonable times, to inspect the

(*a*) 8 Vic. c. 16, ss. 46, 47.

(*b*) See Flather's Arch. Bank., p. 245, tenth edition.

(*c*) 8 Vic. c. 16, s. 47.

books and accounts of the company, and to take extracts therefrom, without fee or reward (a).

Money borrowed by a railway company is payable either at a time fixed for that purpose in the instrument by which the amount is secured to the lender, or, if no such time be therein appointed, then it may be repaid at any time after the expiration of twelve calendar months from the date of the mortgage or bond, on six months' notice in writing by either party for that purpose (b). Where a period is limited for the payment of the money, the company must, on the day appointed, make a tender to the creditor of the amount of the principal and interest due to him, as, in the event of their default, interest will continue to accrue until the actual liquidation of the debt; as in the case of a mortgage, where, although the money is made payable on a certain day, yet, if the principal be not paid by that day, the interest goes on (c).

(d) Repayment of money borrowed.

Where no day is fixed for repayment of the money, it is manifest, from the language of the clauses above cited, that the loan to the company is for, at least, twelve months certain; at the expiration of which period a demand of repayment can be made, provided that six months' previous notice shall have been given for that purpose. These notices may be given either by the company or the creditor, and must be served (as the case may be) personally on the latter, or be delivered to the secretary of the company. After the expiration of a notice of repayment, duly served on the creditor by the company, interest will cease to accrue, unless on demand of payment pursuant to the notice default is made (d). There is this distinction between the cases in which money is payable on a fixed day, or under a notice to that effect from the creditor, and that in which it is payable pursuant to a

(a) 8 Vic. c. 16, s. 55.

(b) *Id.* ss. 50, 51.

(c) *Price v. Great Western Railway Com.*, 16 L. J., N. S., 87 Ex.

(d) 8 Vic. c. 16, s. 52.

notice given by the company ; that, in the latter, interest ceases on the expiration of the notice, unless there has been a demand by the creditor, and a neglect or refusal to pay by the company ; whereas, in the former, no such demand is necessary, in order that interest should go on until the actual payment ; or, if necessary, the notice by the creditor to pay off is a sufficient demand for that purpose.

## CHAPTER III.

## CONTRACTS.

BEFORE concluding that division of our general subject which treats of the constitution, functions, and government of a railway company, it seems necessary to take some notice of the contracts which may be made by and with such a body. In doing so, we shall first advert to the rules which govern them in relation to the mode of contracting, and the nature of the contracts they may make; and then enumerate the principal classes into which such contracts may be divided; briefly alluding to such principles of law as are applicable generally to the making and enforcement of them, and to those doctrines and decisions which relate more immediately to each particular form of contract, as it comes under consideration (a).

Corporations have, like individuals, the power to contract; but their agreements were required, by the ancient rule of law on the subject, to be under the corporate seal. Upon this rule were engrafted certain exceptions, either introduced for purposes of convenience—as where the contract related to “matters of frequent requirement and of small amount” (b); or where the acts done were of daily necessity, but of too trivial and insignificant a character to be worth the trouble of affixing the common seal (c); or demanded by the exigency of the case—as where the acts to be done must be done immediately, and it would be impossible to wait for the formality of the corporation

Mode of contracting.

(a) See on this subject Chitty on Contracts, pp. 276—278, third edition.

(b) Per Tindal, C.J. in *Gibson v. East India Com.* 5 Bing. N.C. 262—270.

(c) Bro. Ab. *Corporation*, 56; *Horne v. Ivy*, 1 Vent. 47.

seal; as where cattle are to be distrained damage feasant, which might escape before the seal could be affixed (a). So certain parol contracts with a corporation, whether executed or executory, may be enforced by or against them. Thus, they may sue or be sued for use or occupation of lands, either in the form of debt or assumpsit (b). So a corporation aggregate may bring an action of assumpsit for the use and occupation of tolls, although they did not grant them to the occupiers by an instrument under their common seal (c); and a trading corporation may recover on a parol contract for the supply of goods, for the manufacturing and supplying of which the company was incorporated (d).

All questions, however, regarding the power of an incorporated railway company to contract by parol are now settled by the express provisions of the Companies' Clauses Act, which enacts (e), that "the power to be granted to a committee of directors to make contracts, as well as the power of the directors themselves to make contracts on the behalf of the company, may be lawfully exercised as follows (that is to say); with respect to any contract which, if made between private persons, would be by law required to be in writing, and under seal, such committee or directors may make such contract on behalf of the company, in writing, under the common seal of the company, and in the same manner may vary or discharge the same:

"With respect to any contract which, if made between private persons, would be by law required to be in writing, and signed by the parties to be charged therewith, then such committee or the directors may make such contract

(a) *Manby v. Long*, 3 Lev. 107; *Roe v. Pierce*, 2 Camp. 96.

(b) *The Dean and Chapter of Rochester v. Pierce*, 1 Camp. 466; *the Mayor of Stafford v. Till*, 4 Bing. 75; *Beverley v. Lincoln Gas Light and Coke Com.*, 5 A. & E. 829, 841, 845.

(c) *The Mayor of Carmarthen v. Lewis*, 6 Car. & P. 608, Parke.

(d) *Church v. Imperial Gas Light and Coke Com.*, 3 Nev. & P. 35; 6 Ad. & E. 846.

(e) 8 Vic. c. 16, s. 97.



on behalf of the company, in writing, signed by such committee, or any two of them, or any two of the directors, and in the same manner may vary or discharge the same :

“With respect to any contract which, if made between private persons, would by law be valid, although made by parol only, and not reduced into writing, such committee or the directors may make such contract on behalf of the company by parol only, without writing, and in the same manner may vary and discharge the same.”

The above provisions as to what formalities are essential to a valid contract by an incorporated railway company, are too clear to require any comment. We may proceed, therefore, to observe, that a corporation, like a private individual, has power to contract through the instrumentality of an agent, or by means of certain persons acting on behalf of the body. Indeed, in the case of the companies under consideration, it is expressly provided, that “the directors shall have the management and superintendence of the affairs of the company, and that they may lawfully exercise all the powers of the company,” except in relation to certain matters which can be transacted only at a general meeting of the shareholders. Hence, a railway company ordinarily contracts through its board of directors, who are for that purpose invested with all the powers of the body ; and, except where otherwise provided, it is doubtful if the corporation can contract in any other manner than through the intervention of this council of management. Even a board of directors, however, may in some cases be unnecessarily cumbersome ; and hence they have authority to appoint a committee of their members to discharge certain of their duties, and to whom they may delegate their powers for that purpose. Or the acts to be done may be so numerous and minute as to be of necessity entrusted to some subordinate officer, constantly at his post, and competent efficiently to perform them ; as the secretary, engineer, solicitor, or other agent of the company, through whom,

therefore, in cases of the kind mentioned, the company may contract.

Where any contracts are entered into by the directors or committee of directors on behalf of the company, notes, minutes, or copies of the same, must be entered into books kept under their superintendence; and every such entry must be signed by the chairman of the meeting at which the contract was concluded (a).

Although we have remarked above that a corporation, like a private individual, has power to contract; yet that power is not absolute and unlimited, but is controlled by the general objects of the incorporation; so that no trading or other company, incorporated for certain specified purposes, can make contracts or agreements, except with the view of promoting the specific objects intended to be secured under the Act. Hence, railway companies are restricted, in respect of their power to contract, to such classes of contracts as fall within the scope of their authority; or, in other words, to such as are essential for the purpose of securing their objects, and are directly connected with the main purpose of the association. It follows, therefore, that the contracts of railway companies may be comprehended under a few general divisions, which will include all that in ordinary circumstances they are either empowered or called upon to make. Of these, the following are the principal:—

I. The class of agreements to which attention should be first directed, are those which are concluded earliest in the existence of the company; namely, those for the purchase of land, and withdrawal of opposition in Parliament, to which allusion has been made in a former portion of this work (b). Strictly speaking, these contracts are not made by the incorporated company, but by the agents of a body of persons who are seeking incorporation. Nevertheless, if they have been entered into by parties duly authorised

(a) 8 Vic. c. 16, s. 98. See also *Supra* pp. 439—441.

(b) See *Supra*, pp. 176—179.

in that behalf, they are considered as embodied in the Act of Incorporation, so as to bind the company, who are precluded, therefore, from exercising their parliamentary powers either in defiance of, or in any manner inconsistent with, the stipulations of any such contracts. For these agreements are legal, and may be enforced in Courts both of Law and Equity; the withdrawal of opposition being a good and sufficient consideration, even though the contracting party be a peer or a member of the House of Commons (*a*); and the promoters or members of the managing committee of a railway company, provisionally registered, being competent to enter into these agreements, in the name and on the behalf of the whole body of subscribers (*b*).

II. Immediately after the passing of the Special Act, another class of contracts engages the attention of the Board of Directors; namely, contracts for the purchase of lands for the purposes of the line. So far as regards the subject matter of these contracts, the company are controlled by the Lands Clauses Act, taken in connection with their Act of Incorporation. Hence they cannot enter into any agreement for the purchase of land which they are not authorised under those Acts to purchase and take; but are limited strictly to the quantities therein specified, both for the construction of the line, stations, and works, and for such extraordinary purposes as are therein alluded to (*c*). Nor are they controlled only in relation to the subject matter of these agreements for the purchase of land, but also in respect of the parties thereto; for the Special and General Railway Acts contain provisions limiting the authority of certain persons with whom the company may contract. Thus, whilst individuals not absolutely entitled to the property to be purchased are enabled to agree for a sale thereof to the company, they are not empowered to

Contracts for  
purchase of  
land.

(*a*) Lord Howden *v.* Simpson. 1 Rail. Ca. 347; 10 A. & E. 793; Lord Petre *v.* Eastern Counties Railway Company, 1 Rail. Ca. 462. See also *Supra*, pp. 176—179.

(*b*) See *Supra*, p. 29. (*c*) 8 Vic. c. 18, ss. 6, 12, 13.

determine the amount of the purchase-money, but this must be ascertained in the manner prescribed (*a*).

Although a railway company are precluded from purchasing land indefinitely, yet they are not limited to the exact quantity absolutely required for the formation of the line; but so much as is specified by the Special Act may be obtained for extraordinary purposes, as for the erection of engine-houses, workshops, warehouses, and the like. Lands purchased under this authority may be sold, under certain restrictions, and others purchased; and hence the company may enter into contracts with third parties for these purposes (*b*). So, when the whole line of railway, the stations, and the works, are completed, the company are empowered and required, within a limited period, to contract for the absolute sale of all their superfluous land (*c*). The power to purchase and hold land in no case extends beyond the limits above prescribed; and hence any contracts for such purchase by a railway company, exceeding those limits, are illegal and nugatory. Nor even within such limits may a railway company contract for lands for any other than the purposes of the railway (*d*). Therefore, although they are empowered to agree for the purchase of land necessary for the purpose of procuring and working certain materials to be used in the construction or repair of the railway and works (*e*), such as lime, brick, or stone; yet they may not get or manufacture any of such materials for sale, as they would thereby be constituting themselves a trading company, and be acting beyond the scope of their powers.

Although it is no longer necessary that contracts by a railway company should be under the corporate seal, yet contracts for the purchase of any interest in land must, under the Statute Frauds (*f*), be in writing, and be signed by the members of any committee of the directors that may have

(*a*) See *Supra*, p. 198; and 8 Vic. c. 18, s. 9.

(*b*) *Id.* ss. 13, 14.

(*c*) *Id.* ss. 127—132.

(*d*) *Penney v. Great Western Railway Com.*, 1 H. & H. 254 — per Abinger, C. B.

(*e*) 8 Vic. c. 20, s. 32.

(*f*) 29 Car. 2, c. 3.

been appointed, or by two of them, or by any two of the directors; in the manner prescribed in the Companies' Clauses Act (*a*).

III. Another important class of contracts entered into by railway companies consists of those for the construction of the line and the execution of the works, and for the manufacture and supply of engines, carriages, trucks, and other plant, necessary for working the same; and for the services of all persons to be employed in and about the business and affairs of the company. Into any such agreements, a company, like a private individual, may introduce such conditions precedent, provisos, and qualifications (not inconsistent with law), as may appear desirable or essential for the protection of their interests; and the construction to be put upon the instrument will not be varied by reason of one of the contracting parties being an incorporated company, but the ordinary rules in relation to such matters will prevail as in the case of a contract between private persons. Therefore, in contracts for the execution of railway works, stipulations as to the mode of construction, the time and manner of payment, the supervision and approval of the works, and the penalties to be inflicted on breach of the agreement, may be inserted, as in ordinary cases. So, where it is stipulated, as is common in such cases, that payment is not to be made to the contractor without the production of a certificate from the engineer of the company approving of what has been done; such payment cannot be enforced in the absence of the required certificate (*b*), nor will it invalidate the condition that the engineer is also a shareholder in the company (*c*). So it may be provided that, in the event of the bankruptcy or insolvency of the contractor, and a consequent inability to

Contracts for  
works and  
services.

(*a*) 8 Vic., c. 16, s. 97.

(*b*) *Parke v. Great Western Rail. Com.*, 3 Rail. Ca. 17.

(*c*) *Ranger v. Great Western Railway Com.*, 3 R. C. 298. The reader is referred to the arguments and judgment in this case, as containing much valuable information on the subject under consideration.

complete his contract, the plant and material on the works shall vest in and become the property of the company, who shall then be at liberty to take such steps as to them may seem desirable for the completion of the works.

Upon provisions of this latter kind, however, questions may arise as to how far they may be found to militate against, and be inconsistent with, the policy of the laws of bankruptcy and insolvency. Thus where, in the case of a contract with a railway company, the following clause was introduced, "That if the contractor shall become bankrupt, or delay proceeding with the works, after *seven days' notice* to him to proceed, it shall be lawful for the company to proceed to employ others to do the work; and that the advances made to the contractor before default shall be taken as full payment; and that all materials upon the works shall become the property of the railway company;" and the contractor, between the time of the notice being given and its expiration, committed an act of bankruptcy, it was held, that the plant and materials belonging to such contractor did not vest in the company, because they had vested in his assignees by relation before the expiration of the notice (a). Hence it would appear, that wherever there is a notice required previous to taking possession of the plant and material, it is always in the power of the contractor to defeat such stipulation by committing an act of bankruptcy between the time of giving the notice and its expiration. And even should the stipulation in such case make no mention of notice to be given previous to taking possession, it may be questionable whether or not the neglect to proceed may not amount to an act of bankruptcy, and thus have the effect of immediately vesting the property in the assignees of such defaulting party.

But there can be no question as to the validity of a stipulation that, in case of the contractor failing to proceed, the company may have the right of taking possession of, and using for the completion of the contract, all the plant,

(a) *Roach v. Great Western Railway Com.*, 2 Rail. Ca. 505, 1 Q. B. 51.

machines, implements, and materials, belonging to the contractor, that may be on the works; and also that they should have a lien upon all such plant and materials as should, for the time being, be in and upon the land, as a security for the completion of the works. Should a contractor, under a contract containing the above stipulations, become bankrupt or insolvent, the plant and materials will vest in the assignees; subject, however, to the lien of the company as a security for the due completion of the contract; in which case, the lien will be held to extend to all the materials lying on the actual line of railway; and also upon land (although not belonging to the company), enclosed and taken possession of by them, under the provisions and for the purposes of the Act; but not to materials deposited on land adjoining the railway, and not belonging to the company, although the material was deposited for the purpose of the contract (*a*). For the company's lien only attaches on materials in their actual or constructive possession, and will be lost as to any part of them removed elsewhere (not wrongfully) (*b*), subsequently to the default of the contractor.

It would be impossible, in a work of this nature, to enter fully into the consideration of questions which may from time to time arise on the construction of contracts made between railway directors and third parties with regard to work, labour, goods, materials, and other things; nor is it needful to do so, because (as we have before remarked) the ordinary rules of construction apply to contracts with and by railway companies as well as to others. A few judicial decisions, however, on the construction of certain of such contracts, may be briefly cited. Thus, in a contract for the supply of locomotive engines, there was a stipulation that each engine should be subject to the performance of a certain distance with a specified load; that the trial should be made within a certain time after de-

(*a*) *Heathorn v. Newcastle-upon-Tyne and North Shields Railway. Com.*,  
Rail. Ca. 288.

(*b*) *Ibid.*

livery of the engine; and that the maker should be liable for any breakage which might occur, if arising from defective material or workmanship; but that, if the company did not avail themselves of the option of trial, or if the trial should be made, and should prove satisfactory, the maker should be released from all further responsibility in respect of the engine; and it was also agreed that the fire-boxes should be made of copper of 7-16th of an inch thick, and that the best materials and workmanship should be used. In an action by the company against the contractor for breach of contract, it was held, that the intention of the parties was, by the trial, to put an end to all questions as to the quality of the work and materials; and that, consequently, after the trial was over, and had proved satisfactory, the company could not, in the absence of fraud, take an objection on that score; though, nine months afterwards, one of the fire-boxes burst, when it was discovered that the copper was reduced to 3-16th of an inch (*a*).

Again, where a party covenanted with a railway company to complete the line of railway for a certain sum of money, within a limited time, under a penalty of a certain sum for every day's default; and the company covenanted to supply to the contractor the necessary rails and chairs, it was held that they were independent covenants, and that the supply of the rails and chairs was not a condition precedent to the right of the company to recover penalties for the non-completion of the contract within the specified time, although the delay was occasioned by the breach of covenant on the part of the company (*b*). So on the same principle, if a company have covenanted to pay money to the contractor by instalments, a breach of such covenant will not exonerate the latter from the obligation of proceeding with and completing the works, according to the stipulations of his contract.

(*a*) *Sharpe v. Great Western Railway Company*, 9, M. & W. 7.; 2 Rail. Ca. 722.

(*b*) *Mackintosh v. Midland Counties Rail. Com.*, 3 Rail. Ca. 780; 14 M. & W. 548.



With regard to the form of the contracts in cases like the above, it is only necessary to state that, since railway companies can contract by parol where a parol contract would be valid between private individuals, the form of the instrument will be entirely regulated by the seventeenth section of the Statute of Frauds, which declares, "that no contract for the sale of any goods, wares, and merchandise, for the price of £10 or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part payment; or some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents, thereunto lawfully authorised." As to what may be such a part acceptance as to be a sufficient compliance with the above section, it has been held that, where a railway company contracted for goods of more than £10 value, some of which were ready made at the time of the contract, and the rest were to be made according to order, and the goods which were ready made were afterwards delivered and paid for, that the acceptance of them was such a part acceptance of the whole as was sufficient to satisfy the provisions of the Statute of Frauds (a).

Form of contract.

IV. We have already seen (b) that railway companies may also contract for the borrowing of money, within the limits prescribed by their Act of Incorporation; and subject, in the exercise of the power given them for that purpose, to the restrictions and regulations of the Companies' Clauses Act (c). So they may make contracts for payment of rent, or for guarantee of certain amounts of dividends to other railway companies, whose lines they may propose to lease or purchase, subject, however, to the sanction of such contracts, by the Legislature. But the company can-

Contracts in relation to money.

(a) *Scott v. Eastern Counties Railway Com.*, 12 M. & W. 33.

(b) See Section on Loans, *supra*, pp. 508—518.

(c) 8 Vic. c. 16, ss. 38—55.

not make any contract for guarantee or indemnity, in relation to any undertaking, the objects of which are foreign to the purposes of their incorporation. Hence an attempt, on the part of a railway company, to give security to the shareholders of a steam-packet company for a certain annual dividend, was defeated by an application to the Court of Chancery (*a*). And, in general, as regards money dealings and engagements with third parties (whether they be other companies or private individuals), the powers of the company are exceedingly limited, and the exercise of them will be watched with great jealousy.

Contracts with  
carriers.

A railway company, moreover, may contract with carriers and others for the delivering and collecting of merchandise to and from the various stations of the railway; or for the carriage of goods, minerals, and merchandise, not merely on their own line, but also on any other line of railway (for which purpose they may enter into agreements with the owners or lessees of such railway for the passage over their line of engines, trucks, waggons, and other carriages) (*b*); provided that, in any such contracts, they do not directly or indirectly favour one party more than another, but make their charges reasonable, equal, and impartial (*c*).

With regard to the general powers of contracting vested in a railway company, it may be as well to state, in conclusion, that they have, incidentally, authority to do all acts that may be necessary for carrying out the undertaking; and may, therefore, make all such contracts, and enter into all such agreements, in relation to works, services, and labours, and for purchase of land and material for the construction of the line, and for the employment of suitable servants, and the purchase of engines, plant, and machinery, for working the same, when constructed; and for the keeping it in a proper state of repair, and serviceable and efficient for the objects for which it was formed, as may be necessary for these several purposes.

(*a*) *Coleman v. Eastern Counties Railway Com.*, 16 L. J., N. S. 73, ch.

(*b*) 8 Vic. c. 20, s. 87.

(*c*) See on this subject *Supra*, pp. 379—383.

## BOOK VI.—REMEDIES.

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HAVING, in the former portions of this work, pointed out the various rights, powers, and liabilities, both of the promoters of the undertaking and of those with whom they become associated as members of the company, or with whom they may contract in its behalf, as shareholders, landowners, or other parties, it becomes necessary to consider how their respective rights may be enforced, and the remedies available in case of the infringement of them.

These remedies may be divided into prohibitive or preventive, mandatory or imperative, compensatory, and corrective.

Prohibitive, or preventive remedies, are those whereby parties are restrained from doing an act that may be attended with injury to the property of others, and where the damages recoverable in an action at law would be an inadequate compensation for the loss incurred. Of this class, the most usual is a writ of injunction, issuing by the order and under the seal of a Court of Equity, restraining the parties from doing the act complained of.

*Mandatory*, or *imperative* remedies, are those whereby the performance of a particular act is required, and the party either *has a legal right and no legal remedy*, or, having a legal right and a legal remedy for the infraction of such right, requires the thing in specie, and not compensation in the form of damages. In the former case, the particular remedy will be by mandamus, issuing out of the Court of Queen's Bench ; in the latter, by a decree in Equity for a specific performance.

Compensatory remedies are those by which redress is obtained for injuries already sustained, and for which the party aggrieved receives satisfaction in the shape of pecuniary damages. This class includes all forms of action at Common Law, both *ex contractu* and *ex delicto*.

Corrective remedies embrace all criminal proceedings, whether at Common Law or under Special or General Statutes; including indictments at quarter sessions, and before higher tribunals; and also the various summary methods for the enforcing of penalties and the recovery of damages which are pointed out by the Special and General Railway Acts.

Previously, however, to any notice of the particular form of remedy to be adopted in each individual case, it is necessary to remark, that all actions, either by or against railway companies after their incorporation, must be brought by or against them in their corporate capacity, and not by or against the directors, as directors of a particular company, which would be bad (*a*). We may also remark, that it is immaterial that the contract, out of which the cause of action arose, was made previously to the obtaining the Act of Incorporation, as all such agreements made by the promoters are considered as embodied therein (*b*); or that, in actions by or against a company, the party suing or being sued is a member thereof; the members of incorporated companies being regarded, in all cases of contracts between them and the company, in the light of strangers (*c*).

Where, however, an action is brought by or against a company on an agreement under seal entered into by cer-

(*a*) *Reg. v. West*, 2 Rail. Ca. 613; 1 G. & D. 481; *Reg. v. Great Western Rail. Com.*, 3 Rail. Ca. 708; *Rex v. Patrick*, 2 East, P. C. 1059. See also *Evans v. Dublin and Drogheda Rail Com.*, 3 Rail. Ca. 760; 14 M. & W. 142.

(*b*) *Edwards v. Grand Junction Railway Com.*, 1 Rail Ca. 173; 1 My. & Cr. 650; 7 Sim. 342; *Stanley v. Chester and Birkenhead Railway Com.*, 3 My. & Cr. 773; 1 Rail Ca. 58.

(*c*) *Hill v. Waterworks Com. Manchester*, 5 B. & Ad. 866; *Carden v. General Cemetery Com.*, 5 Bing. 253.

tain persons on their behalf, before incorporation, the parties to the contract are the parties to sue and be sued thereon (a).

We may also remark, in this place, that no provision is made in any of the General Railway Acts as to the service of notice of action previous to any proceeding against a company, either in Law or Equity; and, therefore, railway companies in that respect stand in the same situation as other parties, unless the Acts of Incorporation contain a clause entitling them to such notice; which provision, however, will itself be controlled by the 5 & 6 Vic. c. 97, framed for the purpose of securing uniformity in the practice regarding such notices. But even in any case in which, under a provision to that effect in their Special Act, a railway company are entitled to such notice (limited as the above statute prescribes), the company can only claim it where the thing complained of is done or omitted in pursuance of their Act, or under a fair and a *bonâ fide* intention of acting in conformity therewith. Thus, a company would not be entitled to notice where an action was brought against them for misfeasance as carriers of goods (b), or as carriers of passengers; though it be proved on the trial that the rails were defective at the place where the accident occurred, or that the rate at which the train was travelling was hazardous (c). But if such an accident had happened through some defect in the construction or state of the line, and an action had been brought against them as owners thereof, they would have been entitled to notice.

As to notice  
of action.

(a) Lord Howden v. Simpson, 10 A. & E. 793.

(b) Palmer v. Grand Junction Rail. Com., 4 M. & W. 749; 7 Dowl. 232.

(c) Carpue v. London and Brighton Railway Com., 3 Rail. Ca. 692; 5 Q. B. 747.

## CHAPTER I.

## REMEDIES AGAINST A RAILWAY COMPANY.—IN EQUITY.

SEC. I.—*Injunction.*

AN injunction is a prohibitory writ, issuing out of the Court of Chancery, restraining a person from committing or doing an act which appears to be against equity and conscience. An injunction, in fact, is the means by which a Court of Equity interferes to prevent a meditated wrong, instead of leaving the complainant to seek his remedy at law after the injury has been committed. An injunction, however, may have a mandatory as well as a prohibitive effect. Thus, it may not only compel a party to refrain from doing a particular act, but may also enforce the restoration of property to the state it was in previous to the infliction of the injury complained of (*a*).

A Court of Equity will grant an injunction either at the suit of a third party, as a landowner, or other person affected by the operations of the company; or on the application of a member of the company aggrieved by the mode adopted by the directors of conducting the business of the company *inter se*, and which may not be warranted by their Act of Incorporation; or, in cases where the public interests are concerned (as for a nuisance done or committed), at the suit of her Majesty's Attorney-General.

In what cases  
issued.

There are three classes of cases in which the authority of a Court of Equity will be exercised to restrain a company

(*a*) *Lane v. Newdigate*, 10 Vesey, 192; *Robinson v. Lord Byron*, 1 Br. C. C. 588; *Great North of England Railway Com. &c. v. Clarence Railway Com.*, 1 Coll. C. C. 521; *Spencer v. London and Birmingham Railway Com.*, 1 Rail. Ca. 170 per Shadwell, V. C. E.; *Blakemore v. Glamorganshire Can. Navig.*, 1 Myl. & K. 154.

by injunction. *First*, where the company are proceeding in excess of the powers conferred by their Special Act. *Secondly*, where, although the thing done is within the scope of their powers yet, by their manner of doing it, they are virtually exceeding their authority; as where they so conduct works authorised to be executed as that unnecessary injury is inflicted, and damage done which might be avoided by the carrying out of their plans in a different manner; or where they are proceeding in execution of their Parliamentary powers, in breach of some special agreement made either before or after their Act of Incorporation. And *thirdly*, and lastly, when it is doubtful whether they are conducting their operations in conformity with the provisions of their Act, or the terms of an agreement and the construction of the particular clause or agreement is awaiting the decision of a Court of Common Law. We shall consider these several classes of cases in their order, only premising that when application is made for a writ of injunction, it will not, in general, be granted *ex parte*, unless there is some real mischief either likely to arise or requiring to be immediately remedied (*a*); but that, nevertheless, if circumstances justify such a course, it may be granted *ex parte*, even although the defendants have appeared in Court (*b*).

Wherever it is clearly shown that a railway company are exceeding the powers conferred by their Act, a Court of Equity cannot refuse to interfere by injunction (*c*). (1) Acting in excess of powers.

Thus, it is submitted that the Court will interfere to restrain a company from issuing their warrant to the sheriff to assess the value of land which they are not under their Act entitled to take. In one case, however, where the company, Injunction at suit of land-owners and others.

(*a*) Per Lord Cottenham in *Lord Petre v. Eastern Counties Railway Com.*, 1 Rail. Ca. 475; *Acraman v. Bristol Dock Com.*, 1 Russ. & M. 321.

(*b*) *Petley v. East. Co. Railway Com.*, 8 Sim. 483.

(*c*) *River Dun Navigation Com. v. North Midland Railway Com.*; 1 Rail. Ca. 135; *Agar v. Regent's Canal Com.*, Coop. Rep. 77; *Blakemore v. Glamorganshire Canal Com.*, 1 Myl. & K. 154.

having purchased a subsisting lease of premises, had issued their warrant to the sheriff to assess the value of the reversion in fee of a certain portion of land which the reversioner insisted they were not entitled by their Act to take, the Vice-Chancellor refused an injunction to restrain them from assessing the value of such lands, on the ground, that the contemplated proceedings would, if the company were not authorised by their Act to take the lands in question, be a nullity; and that, whilst the entry and possession of the company as derivative lessees was lawful, no case was made out of any sudden grievous injury done to the inheritance (*a*). The propriety of this decision may be doubted, as it seems in direct opposition to the principles laid down by Lord Eldon in the case of *Agar v. The Regent's Canal Company* (*b*); and of Lord Cottenham in the case of *The River Dun Navigation Company v. The North Midland Railway Company* (*c*). The fact that the company required the assessment of the value of the inheritance, plainly showed that, although they were in lawful possession as derivative lessees of lands over which the Act of Parliament gave them no compulsory powers, yet they contemplated the acquisition of a larger estate than they had thus lawfully acquired by agreement.

So an injunction will be granted to restrain the company from issuing their warrant to the sheriff for the assessment of the value of land as to which they have given no previous requisition to treat, or as to any part of the land not specified in the notice (*d*). So it will be granted, prohibiting them from taking materials from property adjoining one portion of the line for the purpose of constructing embankments on another and a different portion (*e*); or staying their proceedings where they have wrongfully

(*a*) *Mouchet v. Great Western Railway Com.*, 1 Rail. Ca. 567.

(*b*) *Cooper*, 77; 1 Swan, 250.

(*c*) 1 Rail. Ca. 135.

(*d*) *Stone v. Commercial Railway Com.*, 1 Rail Ca. 375; 9 Sim. 621.

(*e*) *Webb v. Manchester and Leeds Railway Com.*, 1 Rail. Ca. 577; 4 Myl. & Cr. 116.



placed a quantity of soil near to the entrance of a person's wharf; although the wrongful act was done by a contractor without the company's knowledge, such contractor being deemed their agent (*a*).

So an injunction will be issued restraining the company from taking possession of the lands authorised to be taken, if they have neglected to have the subscription contract fully executed before proceeding to put in force the powers conferred by their Act (*b*); and in one case it was granted, where it appeared that the company had not the means of carrying into effect the whole of the projected work (*c*). The Court will not, however, interfere to restrain a company from taking land on the ground of an alleged insufficiency of capital for the completion of the works, as that would be tantamount to requiring the Court to enter upon an inquiry the result of which might be to repeal an Act of Parliament, by leading it to adjudge that amount of capital to be inadequate which the legislature had declared sufficient for the purpose (*d*). So, it would seem, an injunction would issue against the company if the termini of the proposed line were changed; so that, instead of proceeding to some great town or city, as set forth in the Preamble of the Act, the railway were made to terminate in some obscure village (*e*). But a Court of Equity will not interfere by injunction when the terms of the Act have been exactly complied with as far as regards the lands of the complainant; although some deviation has been made at a distant point with the consent of the landowner there, and when such deviation produces no real injury to the party complaining (*f*).

(*a*) *Semple v. London and Birmingham Railway Com.*, 1 Rail. Ca. 480.

(*b*) See 8 Vic. c. 18, sec. 16.

(*c*) *Agar v. the Regent's Canal Com.*, Coop. 77; see 1 *Swanston*, 250; *Blakemore v. Glamorganshire Canal Com.*, 1 Myl. & K. 164.

(*d*) *Salmon v. Randal*, 3 Myl. & Cr. 439.

(*e*) Per Alderson, B. in *Lee v. Milner*, 2 Y. & C. 619 & 620.

(*f*) *Ibid.*; but see Judgment of Alderson, B. in *Doe dem. Payne v. Bristol and Exeter Railway Com.*, 2 Rail. Ca. 98; 6 M. & W. 320.

So an injunction may be obtained by a landowner whose property is entered upon by the company before the provisions of their Act, as to the assessment of purchase money and compensation, have been complied with. Therefore, where a certain quantity of land had been taken by a railway company under the terms of an agreement which contained certain stipulations as to the price to be paid for any additional land which might be required, but said nothing of compensation for damage by severance, and the company proceeded to take possession of some additional portions of land without taking steps under their Act to have the amount of compensation assessed; and the landowner, in consequence, applied for an injunction to restrain them from proceeding; the injunction was only withheld on the company undertaking to adopt all proper steps for that purpose forthwith; and consenting that, on default, the injunction should be considered as issued from the day on which the undertaking was given (*a*). In cases where the company are exceeding their powers, it will be no answer to an application for an injunction against them that the act complained of amounts to a public nuisance; nor will the Court, in such cases, refuse to restrain them at the instance of a private person, on the ground that the Attorney-General should have been made a party to the suit, provided the party applying sustains any special damage by reason of the act complained of. Thus, although a public street be rendered impassable by the railway works, yet a private individual inconvenienced thereby may obtain an injunction against the company (*b*).

At suit of  
shareholders.

The cases above cited are those in which injunctions have been granted at the suit of landowners and other parties affected by the operations of the company. A similar remedy, however, is available at the suit of any of the shareholders where the internal affairs of the company

(*a*) *Jones v. Great Western Railway Com.*, 1 Rail. Ca. 694.

(*b*) *Spencer v. London and Birmingham Railway Com.*, 1 Rail. Ca. 159.

are not conducted in accordance with the provisions of their Act. Nor will it make any difference that the course of proceeding in question has been sanctioned by a large majority of the members of the company. Thus, where, at a special meeting of shareholders, it was resolved that the company should advance a sum of money in aid of a steam-boat company acting in connexion with them, an injunction was granted at the suit of a dissentient shareholder, restraining the company from making the proposed advance. Nor was the suggestion that the plaintiff might be suing at the instigation of a rival company, held sufficient to prevent him from obtaining a special injunction on the merits of his case (*a*). So where, in order to make up a subscription contract in compliance with the standing orders of the House of Lords, the directors of a company had subscribed for a thousand additional shares, which, on obtaining the Act, they never registered, nor ever paid any instalments thereupon; and they afterwards proceeded to forfeit the shares of a party for non-payment of the third call, no calls having been paid upon the thousand unregistered shares; an injunction was granted, restraining the company from forfeiting the shares of the plaintiff until they had taken steps to compel payment of the first two calls on such shares (*b*). It is also submitted, that a Court of Equity would in like manner interfere in such cases (if application be made at a proper time before the trial (*c*)), to restrain the company from suing for the calls at common law (*d*). So an injunction will be granted to restrain a company, existing under a certain constitution, from doing any act in its corporate capacity with a view to obtain a new modelling or total change of that constitution, or even an

(*a*) *Coleman v. Eastern Counties Railway Com.*, V. C., Bruce. Same case, 11 R. 16, L. J., N. S. 73 (Chan).

(*b*) *Preston v. Grand Collier Dock Company*, 2 Rail. Ca. 335; 11 Sim. 328.

(*c*) *Thorpe v. Hughes*, 3 Myl. & Cr. 742; *Richardson v. Larpent*, 2 Y. & C. N. C. 507.

(*d*) But see *Mangles v. the Grand Collier Dock Com.*, 2 Rail. Ca. 359.

In cases of  
unnecessary  
injury.

extension or variation of it, as by attempting to procure a fresh Act of Parliament, new charter, or other powers (a).

We must now allude to cases in which the company, although acting apparently within the scope of their powers, are virtually exceeding them, either by conducting their operations in such a manner as to do more injury than is absolutely necessary, or by acting in contravention of the terms of some special agreement made either before or after the Act of Incorporation, although not expressly mentioned therein.

In order to obtain an injunction, it is not necessary to show that the company are proceeding in the execution of works beyond the scope of the powers conferred by their Special Act; as, if it appear that they are executing the works so authorised in such a manner as to produce more damage than would be the necessary consequence of the execution of them in a different manner, they may be restrained from proceeding. For a railway company are bound, by the very terms of their Parliamentary authority, to execute the works, *doing as little damage as possible*; and nothing but extreme necessity can justify the company in carrying them on in such a manner as to cause serious damage to the owner of the land. "Where damage is done in the execution of their works, if it be land, the railway company are bound to buy it; if it be not land, but some interest which is affected by the works, they are bound to compensate the party in money; but if the damage to be done be not a necessary consequence of the works they are authorised to construct, a Court of Equity, being apprised of what is in progress, will interpose to prevent it." (b) Therefore, where a company were proceeding to erect an arch over a mill race for the

(a) *Ware v. Grand Junction Waterworks Com.*, 2 Russ. & M. 470; *Cunliffe v. Manchester and Bolton Canal Com.*, ib. 480; *Ward v. Society of Attorneys*, 1 Coll. 370; *Adley v. Whitstable Com.*, 17 Vesey, 315; *Sed. vide Attorney General v. Manchester and Leeds Railway Com.*, 1 Rail. Ca. 436.

(b) Per Lord Cottenham in *Manser v. Eastern Counties Railway Com.*, 2 Rail. Ca. 391.

purpose of sustaining an embankment on which the railway was to be constructed, and it appeared that injury would be done to the mill if the arches were of the proposed proportions, but that the injury would be avoided if the arches were larger; an injunction was granted to restrain the company from constructing over the mill race an arch of less than certain specific dimensions (a). Nor will the fact that the party seeking the aid of the Court would be entitled to claim compensation for the injury complained of, preclude interference by injunction (b).

So, if a railway company, although empowered by their Act to take the particular land in question, have made a special agreement with the owner in respect of the compensation to be paid for it, and proceed, in defiance thereof, to issue their precept to the sheriff to summon a jury to assess the value of such land; a Court of Equity will grant an injunction, restraining them from issuing a precept for that purpose. Thus, where the committee of subscribers, applying for a Railway Act, entered into an agreement with the plaintiff, a peer of Parliament, through whose estates the line was intended to pass, to the effect, that, in consideration of his withholding his opposition to the bill, the incorporated company, in the event of the railway being made to pass through his land, should, previously to entering thereon, pay him £120,000 for the value of the land and for compensation; and, in consideration thereof, the plaintiff withheld his opposition to the bill, and it passed into an Act; and the company afterwards refused to ratify the agreement, and proceeded to take steps for assessing the value of the land, under their compulsory powers; an injunction was granted *ex parte* restraining them from further proceedings; and this injunction was afterwards continued, notwithstanding the tender of an undertaking on the part of the company not to enter on the land until the further order of the Court; and notwithstanding that the time, during which the company were

In cases of  
breach of  
agreement.

(a) *Coates v. Clarence Railway Com.*, 1 Russ. & Myl 181. (b) *Ibid.*

authorised to take the lands for the railway, would have expired before the hearing of the cause (a). An injunction will be granted under such circumstances, although a bill has been filed, praying for the specific performance of the agreement; and the company will be restrained from entering on the land until the agreement has been exactly complied with. Nor is it necessary, in such case, that the tenant in possession of the land should be made a party to the suit (b). Where an undertaking, on the part of a company, either to do or omit a particular act, has been adopted by a Court of Equity, it will be equivalent to and have the effect of an injunction; so that a party would be enabled to make any violation or infringement of it the subject of an application to the Court (c).

Wherever an injunction is prayed for against a company on the ground of non-performance of an agreement, the Court will not consider the question of convenience to the public or the company as an excuse for the breach thereof, but will treat the company as private individuals. Thus, where a railway company, on consideration that the plaintiffs would build certain refreshment rooms at a station upon their line, consented that all their trains should stop there for refreshment of passengers for the period of ten minutes; and, after the rooms were built, the company ran certain express trains which passed the station without stopping a sufficient time to allow the passengers to get refreshment, and the company excused themselves for breach of their covenant on the ground of their own convenience and that of the public being thereby promoted; the Court held such an answer insufficient, and interfered by injunction to protect the plaintiff's right (d).

Where the construction of powers doubtful.

Wherever the construction of an Act of Parliament or

(a) *Petre, Lord, v. Eastern Counties Railway Com.*, 1 Rail. Ca. 462.

(b) *Robertson v. Great Western Railway Com.* 1 Rail. Ca. 459.

(c) *London and Birmingham Railway Com. v. Grand Junction Canal Com.*, 1 Rail. Ca. 225.

(d) *Rigby v. Great Western Railway Com.*, 4 Rail. Ca. 175.

of an agreement is doubtful, or the fact of compliance with the terms of any such act or agreement is disputed, a Court of Equity will send the question to a Court of Law for decision; in the meantime granting, continuing, or dissolving an injunction, as the case may be, in favour of the party who will sustain the greater injury (*a*). Thus, where a company, in the execution of their works, proceeded to make a new road in the place of one they had taken possession of, and the plaintiff insisted that the intended road was not a proper compliance with the terms of their Act, the Court of Chancery sent the case for the decision of a Court of Law as to whether the road proposed to be substituted by the company was, within the meaning of the Act, a proper substitution for the road proposed to be taken; in the meantime granting an injunction restraining the company from interfering with the old road until that decision was known (*b*).

So, also, where the defendants were authorised under a particular Act to execute works for the better drainage of lands, and one of the sections contained this proviso, "That nothing should extend to affect any works already made, or then existing, or provided for the drainage of the land then vested in the plaintiffs," and several of the clauses in the Act were inconsistent with the proviso, and the defendants proceeded to widen one of the drains so vested in the plaintiffs; the Lord Chancellor sent the case down for the opinion of a Court of Law as to the construction of the Act of Parliament; in the meantime granting an injunction, restraining the defendants from proceeding further in their works (*c*).

Or construction of Act.

So, also, wherever there is any doubt as to the construction of an Act, the Court of Equity will send the question to a Court of Law for decision.

(*a*) *The Clarence Railway Com. v. Great North of England Clarence and Hartlepool Junction*, 2 Rail. Ca. 763; 6 Jur. 269. For the proceedings at law see 4 Q. B. 46; 3 G. & D. 389.

(*b*) *Kemp v. London and Brighton Railway Com.*, 1 Rail. Ca. 509. See also *Bell v. Hull and Selby Railway Com.*, 1 Rail. Ca. 617.

(*c*) *Casswell v. Bell*, 2 Rail. Ca. 782.

Or construction of instrument.

tion to be put on any private instrument, a Court of Equity will grant an injunction, the same as in cases of doubt concerning the construction of or compliance with an Act of Parliament. Thus, where, in a lease to the plaintiff, there were certain reservations as to entry by the lessors on the demised lands for the purpose of getting minerals, with free ingress and egress and way leave, and for the construction of waggon ways ; upon a question arising as to the right of the lessors, under this clause, to grant to a public company a license to make a railway for the purpose of conveying passengers and general merchandise, the construction of the instrument was referred to the decision of a Court of Law ; and in the meantime an injunction was granted, staying the proposed interference with the property (a). Although, where a case on the construction of a particular statute or agreement has been sent down to a Court of Common Law, it is usual, in the meantime, to restrain a company from doing the act complained of ; yet it is not by any means a matter of course that a Court of Equity should grant an injunction under such circumstances (b). The terms to be imposed upon the parties are entirely within the discretion of the Court, and will be determined by the circumstances of each individual case. Thus, in one case, pending the decision of a Court of Law, as to whether certain erections made by a company were a violation of the terms, and in excess of the powers conferred by their Act, an injunction was granted, restraining them from making further erections, but with liberty meanwhile to use those already made (c). In another case, which furnishes an excellent illustration of the principles by which the Court will be guided in imposing terms upon the parties pending the decision of a Court of Law, it appeared that the plaintiff, the owner of a ferry, had filed a bill in Equity

(a) *Farren v. Vansittart and others*, 1 Rail. Ca. 603.

(b) *Trustees of Northam Bridge Road v. Southampton Railway Company*, 1 Rail. Ca. 653.

(c) *Gordon v. Cheltenham and Great Western Rail. Com.*, 2 Rail. Ca. 800.



to restrain a railway company from carrying passengers in a steamboat to or from certain places within the limits of his ferry, whereby payment was evaded of the toll which would otherwise have been paid to the plaintiff; the Court, having some doubt as to the plaintiff's legal right, sent the case to a Court of Common Law for decision; and pending that decision, a motion was made for an injunction restraining the company from proceeding in the manner complained of; on which it was held (*a*), that where the injury is small, and the means of approximating very nearly to the amount of probable damage are given, and where there is no reasonable ground for apprehending an infringement of right by others, the Court will not prejudice the legal question by granting an injunction, but will put the parties on certain terms until the decision of the legal right: that where the Court entertains any doubt with respect to the legal right, it will be guided by the balance of inconvenience: that irreparable mischief, or extreme damage, which cannot afterwards be compensated, or the impossibility of ascertaining the proximate amount of damage, will afford sufficient reasons for the interference of the Court: that where the whole of the facts are fully disclosed on affidavits, so that the points in dispute are sufficiently and distinctly raised, the Court will direct an issue upon an interlocutory application: and that, where the only remedy given by an Act is the recovery of penalties *de die in diem*, in a summary way, the Court has the power of protecting by injunction the right of the person in whose favour such remedy is given.

But the jurisdiction of the Court of Chancery is not an original jurisdiction; it exists not for the purpose of trying a question of right, but for the purpose of giving effect to a legal right after that legal right has been established (*b*). Therefore, a Court of Equity will not interfere to restrain

Where legal  
right not ascer-  
tained.

(*a*) *Cory v. Yarmouth and Norwich Railway Com.*, 3 Rail. Ca. 525.

(*b*) Per Lord Cottenham in *Semple v. London and Birmingham Railway Com.*, 1 Rail. Ca. 133.

an alleged nuisance until the fact that a nuisance exists has been established by a Court of Law. But should the act complained of be persevered in after it has been decided in a Court of Law to be a nuisance, Equity will interfere to prevent its continuance (a).

For the same reason, the Court will not interfere by injunction to restrain a railway company from making charges as carriers, which the plaintiffs allege to be illegal, until the fact of the illegality of such charges is proved. Thus, where an option was given to a party sending packages containing small parcels to pay according to an average, or to pay for the parcels separately; if the principle of an average be legal, and the amount of it reasonable, although the alternative requiring the party to pay for the separate parcels may be *per se* illegal, that will not render the demand to pay according to average illegal; and the Court will not grant an injunction until the alleged illegality be established at law (b).

In order to obtain the aid of a Court of Equity, the act complained of must be wrongful at the time of filing the bill; it is not sufficient to show that it was wrongful at the time of its perpetration. Thus, an injunction was refused to restrain a company from taking lands for purposes warranted by their Act, on the ground that, previously to filing their bill, and before the necessity of taking it for such purposes was made known to the plaintiffs, the company had endeavoured to take the lands for other purposes not so warranted (c).

Acquiescence.

Nor will an injunction be granted where a party, having originally an Equity with regard to the enforcement of a contract, and, being aware of it, lies by and leads the company by his conduct to believe that he has no intention of enforcing such equitable right (d). Thus, where,

(a) Attorney Gen. v. Forbes, 2. Myl. and Cr. 129, 130.

(b) Pickford v. Grand Junction Rail. Com. 3 Rail. Ca. 538.

(c) Webb v. Manchester and Leeds Rail. Com. 1 Rail. Ca. 576.

(d) Greenhalgh v. Manchester and Birmingham Rail. Com. 1 Rail. Ca. 69.

on an application for an injunction to restrain the company from proceeding with their works in a particular manner, it appeared that the plaintiffs had notice of the intended works of the company, and had kept back for eighteen months, and permitted the company to expend a large sum of money thereon, the application was refused (*a*).

So, where a canal company applied for an injunction to restrain a party from draining, preparatory to the opening of a coal-pit, having permitted an expenditure for two years without interference; the Court left the complainants to their remedy at Common Law (*b*). And where a company have taken proceedings not authorised by their Act, but there has been a subsequent disposition on the part of the plaintiffs to treat, such subsequent treating will be considered by the Court as a waiver of objections in respect of the matters which are the subject of the treaty (*c*).

Acquiescence, however, will not be presumed unless it is quite clear that the party, being aware of his right, neglected to enforce it, or to take any preparatory steps for the purpose of intimating to the company that they were proceeding wrongfully. And the delay of a month before applying to the Court was held not to be such an acquiescence as to debar the plaintiff from his relief by injunction, where he had protested against the interference of the company with his property (*d*). Nor, where a party acquiesced in what he considered to be a violation of his right, merely temporary, and not likely to be permanent (*e*).

In order to obtain the interference of a Court of Equity by injunction, on the ground of an alleged equity arising out of an agreement with a company which is not embodied in the terms of their Act, it must appear that such agreement was distinct and absolute. Thus, where the trustees of a turn-

In cases of agreement.

(*a*) *Illingworth v. Leeds and Manchester Rail. Com.* 2 Rail. Ca. 187.

(*b*) *Birmingham Canal Com. v. Lloyd*, 18 Vesey, 515.

(*c*) *Tower v. Eastern Counties Rail. Com.* 3 Rail. Ca. 374.

(*d*) *Innocent v. North Midland Rail. Com.* 1 Rail. Ca. 68.

(*e*) *Gordon v. Cheltenham Rail. Com.* 2 Rail. Ca. 800.

pike road agreed to assent to a bill in Parliament for the formation of a railway on condition that the railway should pass over the road at a sufficient elevation, and the road be not lowered or otherwise prejudiced; it was held that such modified assent of the road trustees, the terms of which were neither embodied in any agreement between the trustees and the company, nor adopted by the Legislature, afforded no equitable ground for restraining the company from enforcing, with regard to the road in question, all the powers conferred by the Act (*a*).

Nor will an injunction be granted to stop the works where, before payment of the purchase money for the lands required, the company entered thereon under a verbal consent, which was alleged by the one party to be qualified but by the other to be general, if perfect justice can be done by compelling the company to pay for the land. But the Court will, in such case, order the proximate value to be deposited until the precise amount can be determined (*b*).

Nor will an injunction be granted to restrain the company from carrying on their works, unless it appear that the injury complained of is immediate, and the direct consequence of the mode of proceeding adopted by them (*c*). And although, as a general rule, in cases of trespass under the colour of title, where the mischief apprehended is irreparable, a Court of Equity will exercise its jurisdiction; and, whether the mischief be irreparable or not, will, by decree, if not by order upon motion, extend the jurisdiction of preventive justice to all cases of trespass in which damages would be an inadequate and uncertain remedy; and the protection of the right in specie is the only mode

(*a*) *Hargreaves v. Lancaster and Preston Rail. Com.* 1 Rail. Ca. 416; *Aldred v. North Midland Rail. Com.* 1 Rail. Ca. 404; *Greenhalgh v. Manchester and Birmingham Rail. Com.* 1 Rail. Ca. 68; *Eton College v. Great Western Rail. Com.* 1 Rail. Ca. 200.

(*b*) *Langford v. Brighton, Lewes, and Hastings Rail. Com.* 4 Rail. Ca. 871.

(*c*) *Warburton v. London and Blackwall Rail. Com.* 1 Rail. Ca. 558.

of doing complete justice, still it will not so interfere by injunction, but will leave the parties to their legal remedies, where they fail to show that any mischief, strictly irreparable or not to be compensated by damages, will result (a).

The Court will not, upon an alleged equity, interfere with an admitted legal right, unless there be a manifest certainty that, at the hearing of the case, the plaintiff will be entitled to relief. Thus, where the plaintiff, the registered owner of shares in a company, offered to the company to relinquish his shares, which offer was accepted, and a deed of lease prepared by the solicitor of the company, and executed by the plaintiff, but none of the formalities required by the Act in case of sale or forfeiture were complied with, and subsequently calls were made by the company, and the plaintiff was required to pay the whole of the calls on his shares, and on his default the company commenced an action against him for the amount of such calls; the Court refused to interfere by injunction, except upon the terms of the plaintiffs giving judgment in the action, and paying the amount sued for into Court (b). Nor, where the illegality of an instrument (if it be illegal) appears upon the face of the instrument itself, and is a question cognizable at law, is there any jurisdiction in a Court of Equity to order the instrument to be delivered up and cancelled, and to grant an injunction restraining proceedings at law (c). Nor will it interfere to prevent a company from soliciting a bill in Parliament to enable them to accomplish what was otherwise beyond their powers, though the conduct of the company in soliciting such a bill is in violation of an undertaking entered into by them with the Court (d).

To restrain actions at law.

(a) *North Union Rail. Com. v. Bolton and Preston Rail. Com.* 3 Rail. Ca. 345.

(b) *Playfair v. Birmingham, Bristol, and Thames Haven Junction Rail. Com.* 1 Rail. Ca. 640.

(c) *Simpson and others v. Lord Howden*, 1 Rail. Ca. 326.

(d) *Attorney Gen. v. Manchester and Leeds Rail. Com.* 1 Rail. Ca. 436.

Nor will a Court of Equity interfere by injunction to restrain a company from purchasing the lands which they are authorised to take, on the ground that the capital of the company is insufficient to carry out the project; it not being competent for private individuals to assert that the estimate as sanctioned by Parliament is insufficient, or to ask the Court of Chancery to assume a power the exercise of which would be neither more nor less than the repealing an Act of Parliament (*a*); nor will they so interfere where the railway, as far as regards the property of the complaining landowner, is constructed in strict conformity with the Parliamentary plans, but a variation has been made at a distant point, and with the consent of the landowner there, such variation producing no real injury to the complaining party (*b*).

General observations.

As a general rule, a Court of Equity, in granting or refusing an injunction, will put a liberal construction on the powers conferred by Railway Acts, and will exercise its own discretion, according to circumstances; and, although there may have been an infraction of the law, it will endeavour to do substantial justice to one party without imposing unnecessary hardship on the other, especially in a case where the parties have a remedy at law (*c*). And, although the mode of proceeding adopted by the company is not a literal compliance with the terms of their Act, still an injunction that would have the effect of staying their works will not be granted, unless it be shown that the proceedings of the company are attended with inconvenience or damage to the parties complaining (*d*). But the Court will impose such terms as, in its discretion, may appear to meet the justice of the particular case.

In no instance, however, will a Court of Equity grant an

(*a*) *Salmon v. Randall*, 3 Myl. & Cr. 444.

(*b*) *Lee v. Milner*, 2 Y. & C. 619.

(*c*) *Attorney Gen. v. Eastern Counties Rail. Com.* 3 Rail. Ca. 307.

(*d*) *Priestley v. Manchester and Leeds Railway*, 2 Rail. Ca. 156; *Jones v. Great Western Rail. Com.* 1 Rail. Ca. 684.

injunction where the legislature has provided a competent tribunal, and has given to it a certain jurisdiction, and made its decision final; as no equity can be founded on an allegation that such tribunal is incompetent to decide questions properly within its jurisdiction. Should any inconvenience arise from the legal exercise of that jurisdiction, the legislature alone can apply a remedy (a).

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## SEC. II.—*Specific Performance.*

WHERE a party to an agreement has a right to its enforcement, he will not always be compelled for that purpose to resort to his remedy at law, but a Court of Equity will, except in cases in which it is impossible or improper, grant a decree for the specific performance thereof. This is the most efficient remedy for breaches of agreement for the purchase of land, made before the Act is obtained, between the promoters of a railway company (or their agents) and a party whose property is to be affected by the contemplated undertaking; as the company, after incorporation, being armed with compulsory powers for taking possession of the land in question, might avoid the performance of their special contract altogether; or, by driving the party to his remedy at Common Law, and in the meantime proceeding with their works, do him irreparable injury. Where a Court of Equity decrees specific performance of an agreement, it will also, at the same time, if it think fit, grant an injunction, restraining the entry on the lands until the decree is complied with. The Court will decree specific performance of contracts with railway companies, whether they relate to the sum of money to be paid as compensation for land, and as the consideration for the withdrawal of opposition, or whether they are designed

Specific performance.

(a) *Barnsley Canal Com. v. Twibill*, 3 Rail. Ca. 471.

to limit the exercise of the legislative powers of the company in regard to the lands to be taken, or the particular mode of constructing the works.

Thus, where a company, having contracted to pay a certain sum for land, entered upon such land previous to payment of the amount, the Court of Chancery decreed a specific performance of the contract, and in the meantime restrained the company from intermeddling with the property in question. Nor is it necessary, in such a case, that the tenant in possession should be made a party to the suit (*a*).

A Court of Equity will not refuse to decree the specific performance of an agreement for the purchase of lands made by an agent of the company, on the ground that it did not appear that the agent was appointed under the corporate seal of the company, and therefore that there was no mutuality, where the company had, before the bill was filed, not only acted on the contract by entering into possession of the land, but actually made a railway over it (*b*). It seems doubtful whether the fact of the contract being made by an agent of the corporation, not appointed under seal, would in any case (whether the company had entered or not) be a ground for refusing a decree for specific performance (*c*).

So, specific performance of an agreement may be decreed, although the agreement was not originally made between the plaintiff and the parties against whom it is sought to be enforced; as, where a railway company had entered into an agreement with a landowner to pay a certain price for the lands, and for withdrawing opposition, and a rival company, who also proposed to pass through his land, had petitioned Parliament for a bill, and the merits of the two schemes, under the sanction of a committee of the

(*a*) *Robertson v. Great Western Rail. Com.* 1 Rail. Ca. 469; *Lord Petre v. Eastern Counties Rail. Com.* 1 Rail. Ca. 462.

(*b*) *London and Birmingham Railway Com. v. Winter*, 1 Cr. & Ph. 57.

(*c*) *Fishmonger's Company v. Robertson*, 5 M. & Gr. 131, and cases there cited; *Marshall v. Mayor of Queenborough*, 1 Sim. & Stu. 520. See *Yarborough v. Bank of England*, 16 East 6.



House of Commons, were referred to arbitration, and it was agreed that the successful company should adopt the engagements of the rejected one, and to this arrangement the landowner assented; it was held, that the plaintiff, having offered no opposition to the passing of the bill, the second company, as the condition of entering upon the plaintiff's land, were bound by the terms of the agreement made with the first company; and so specific performance thereof was decreed (*a*).

So, where the promoters of a company, previous to obtaining their Act of Incorporation, entered into an agreement with the trustees of a turnpike road, that, in consideration of their withdrawing their opposition in Parliament, they would, where the line crossed any of the roads of their trust, construct it in a particular manner; and the parties withdrew their opposition, and the Act was obtained; but no special clauses were embodied, adopting the agreement: it was held by the Vice Chancellor, and also by the Lord Chancellor affirming the decision, that the incorporated company could not, as against the trustees, exercise a power conferred by the Act in violation of the terms of their special agreement (*b*). Although a Court of Equity will not, in general, decree the specific performance of an agreement to build, but will leave the party to his remedy by action at law (*c*), still it will interfere for the purpose of directing the specific performance of a contract by parties to do defined work on their own property, in the performance of which the plaintiff, with whom they have covenanted, has an interest so material that the non-performance cannot be adequately compensated by damages at law. Thus, where, in consideration of the plaintiff withdrawing his opposition to a bill before Parliament, the directors of a company covenanted that they would construct, and for ever thereafter maintain, one neat archway,

(*a*) *Stanley v. Chester and Birkinhead Rail. Com.* 1 Rail. Ca. 58.

(*b*) *Edwards and others v. Grand Junction Rail. Com.* 1 Rail. Ca. 173.

(*c*) *Booth v. Pollard.* 1 Y. & C. 61; *Lord Henley on Injunctions*, p. 12.

sufficient to permit a loaded carriage of hay to pass under the railway, at such place in his grounds as the plaintiff, his heirs and assigns, should think most convenient; and should form and complete the approaches to such archway; and the bill passed; but the railway company neglected to comply with their covenants; the Court decreed their specific performance (*a*).

It has been decided by Courts of Equity, that the notice served by a railway company upon a landowner, under the provisions of the Special or General Railway Acts, as to the purchase of certain property, constitutes an agreement between the company and such party in respect of the land comprised in the notice, and establishes to that extent the relative situation of vendor and purchaser, and that specific performance thereof will be decreed, although the price or value of the property, the subject of the agreement, is not determined by such notice, but remains to be ascertained either by valuation, arbitration, or assessment by a jury (*b*).

General conclusions.

From the above cases we may infer, that wherever any agreement is made either before or after the Act of Incorporation, between the owners of land and others affected by the construction of a railway, and the directors or their agents, a Court of Equity will decree the specific performance thereof; and that all such agreements, made by the promoters previously to incorporation, will be considered as binding on the company, and as embodied in the Special Act. It may be observed, however, that parties seeking the specific performance of an agreement between themselves and the company, the consideration for which was the withdrawal of opposition, must show that they have performed their part of the agreement by refraining from or discontinuing their opposition; therefore, if a party

(*a*) *Storer v. Great Western Rail. Com.* 3 Rail. Ca. 107; *Duke of Hamilton v. The South Western Rail. Com.* Feb. 1847.

(*b*) *Stone v. Commercial Rail. Com.* 1 Rail. Ca. 401; *Doo v. London and Croydon Rail. Com.* 1 Rail. Ca. 257.

appear as a dissentient landowner, and continue his opposition until the passing of the bill (*a*); or if, having once dissented, he does not formally withdraw that dissent, nor do any other act whereby he precludes himself from opposing the bill, he will not be entitled to the specific performance of any agreement by the company, they having received no consideration (*b*). So, in order to obtain a decree for a specific performance, it must appear that the terms of the contract were embodied in a special agreement; a mere modified assent to withdraw opposition, on condition that the railway should be constructed in a particular manner at certain places, which was neither made the subject of special agreement, nor adopted by the Legislature, will afford no equitable ground for restraining the company from exercising the powers of their Act, or for decreeing an observance of the terms of the agreement (*c*).

So the person attempting to enforce against the company specific performance of an agreement, must not lie by, and by his conduct induce the company to believe that he has no intention of claiming such performance (*d*).

It is also doubtful whether a Court of Equity will grant a decree for a specific performance of a contract by a railway company to purchase land, if the company should afterwards so exercise their powers as to disable themselves from taking it; and whether, in any such case, the party so contracting would have any and what remedy against the company (*e*).

(*a*) *The Provost and Eton College v. Great Western Rail. Com.* 1 Rail. Ca. 200.

(*b*) *Hargreaves v. The Lancaster and Preston Junction Rail. Com.* 1 Rail. Ca. 416.

(*c*) *Aldred v. North Midland Rail. Com.* 1 Rail. Ca. 405.

(*d*) *Greenhalgh v. Manchester and Birmingham Rail. Com.* 1 Rail. Ca. 69.

(*e*) *Tomlinson v. Manchester and Birmingham Rail. Com.* 2 Rail. Ca. 125.

## CHAPTER II.

## REMEDIES AGAINST A RAILWAY COMPANY AT COMMON LAW.

Nature of the writ.

SEC. I.—*Mandamus*.

THE writ of mandamus is a high prerogative writ, issuing in the Queen's name out of the Court of Queen's Bench, and directed to any persons, corporations, or inferior courts of judicature, within the Queen's dominions, requiring them to do some particular thing therein specified which appertains to their office and duty (*a*).

It is not, however, a writ grantable of right, but by prerogative. It was introduced for the purpose of preventing a failure of justice, and therefore will be granted in all cases where the law has prescribed no specific remedy (*b*); consequently, if the party making the application has a legal right, and no specific legal remedy, a writ of mandamus will be issued to enforce that right; nor will it be an objection to the granting the writ that the party has his remedy in Equity (*c*); or that an indictment will lie for the omission to do the particular act the performance of which is sought to be enforced; for an indictment does not compel the doing of the act, and therefore is not equally efficient with a mandamus (*d*). Hence, this is a remedy frequently adopted to compel railway companies to do that which by their Act they are required to perform, where the statute, although giving a legal right to the party interested in the performance of the particular act enjoined, provides no remedy for the enforcement of such right. These companies being protected from the ordinary process of law for anything done in pursuance of the powers conferred in their Acts of Incorporation, except

(*a*) Bacon's Ab. Tit. Mandamus.

(*b*) *Rex v. Windham*, Cowper 378, and per Lord Ellenborough in *Rex v. Arch. of Canterbury*, 8 East 219.

(*c*) Per Buller J. in *Rex v. Marquis of Stafford*, 3 T. R. 651.

(*d*) *Rex v. Severn and Wye Rail. Com.* 2 B. & Ald. 641; *Rex v. Commissioners of Dean Inclosure Act*, 2 M. and S. 80; *Reg. v. Bristol Dock Com.* 2 Q. B. 64.; 1 Rail. Ca. 548.

where they are guilty of malice or negligence, the only mode of securing compensation to parties injured by the exercise of such powers, where the company refuse or neglect to adopt the steps prescribed for ascertaining the amount thereof, is by application to the Queen's Bench for a writ of mandamus, commanding them to comply with the provisions of the clauses of the Special and General Railway Acts in that behalf. The passing of the General Railway Acts, however, in which many specific remedies are provided which were theretofore unknown in the case of incorporated companies, has limited to a much narrower range than formerly the necessity for mandamus; and whole classes of cases, in which previously it had been granted to enforce the rights of the applicant, or to redress his wrongs, are now adequately met by the more ordinary remedy of actions at law.

A mandamus will be granted in the case of a railway company, either on the application of a party a member thereof, or of one interested in the company, as a mortgagee or judgment creditor; or of a third party, as a landowner; or, where the public rights and interests are affected, on the application of the Attorney General.

On whose application granted.

And, first, we shall notice the cases in which it will issue at the instance of a member of the company. There is some difficulty in laying down any precise rules as to when the Court of Queen's Bench will grant a mandamus at the instance of a party holding, or entitled to hold, shares in a railway company. The sections of the Companies' Clauses Acts (a) regulating the distribution of the capital, require the company to register, in books to be provided for that purpose, the names of the parties entitled to shares; and hence it might be concluded, that mandamus would be the proper remedy to enforce compliance with these provisions. It has, however, been held that an action on the case will lie against the secretary of a company, incor-

Member of the Company.

(a) 8 Vic. c. 16, ss. 6 to 13.

porated by Act of Parliament, at the suit of a holder of scrip, for refusing to register him as a shareholder in the company (*a*). If such an action, therefore, may be maintained against a company, it would seem that the remedy by mandamus is taken away. Yet the Court granted a mandamus at the instance of an executor, commanding a company of proprietors of a canal navigation to make an entry of the probate of a deceased proprietor, and to register the name and place of abode of his executrix, as a proprietor of a share in the profits of the navigation belonging to the deceased at the time of his death (*b*). From this we may safely infer, that a mandamus would be granted to compel a railway company to register a shareholder (*c*); to give him, when registered, certificates of his shares (*c*); from time to time renew them when lost or destroyed (*d*); or to assign to him the proportion of any issue of new shares, or of debt converted into capital, to which he might be entitled under the Companies' Clauses Act (*e*).

So, it is submitted that a writ of mandamus would be granted to compel the company to register a transfer of shares, whether the interest therein shall have been transmitted by the act of God, as by death; by the operation of law, as by bankruptcy, insolvency, or the marriage of a feme shareholder (*f*); or by the act of the party, as by sale or purchase (*g*). So, also, of the transfer of any mortgage or bond debt of the company (*h*).

So, also, the provisions made in the General and Special Railway Acts as to the internal regulations and manage-

(*a*) *Daly v. Thompson*, 10 M. & W. 309.

(*b*) *Ex parte Horne*, 7 B & C. 632; S. C. nom. *Rex v. Worcester Canal Com.* 1 M. & R. 529.

(*c*) 8 Vic. c. 16, s. 11. The issue of certificates is of importance where original shareholders, having parted with their scrip, have been compelled to register and pay instalments, and the company have refused to issue sealed certificates.

(*d*) 8 Vic. c. 16, s. 13.

(*e*) *Id.* ss. 56—60.

(*f*) *Id.* ss. 18, 19. But see *Rex v. London Assurance Com.* 5 B. & A. 899.

(*g*) *Id.* ss. 14—16.

(*h*) *Id.* ss. 46, 47.

ment of the company, can in general only be enforced by mandamus. Thus, this would be the proper course for compelling the company to conduct their affairs and discharge their duties properly; and the writ would issue to enforce the taking of the prescribed security from the servants employed (*a*); the convening and holding of meetings, ordinary and extraordinary (*b*); the taking and recording of votes (*c*); the preparing of a scheme, showing the expenditure and receipts of the company, and keeping proper accounts (*d*); the providing of all suitable books, registers, &c.; and the making of the necessary arrangements for inspecting the same by the public officers duly authorised in that behalf (*e*), or by shareholders (*f*), mortgage, bond, or judgment creditors of the company (*g*), or by the public (*h*).

So it would seem that mandamus would be issued on the application of a shareholder, commanding the company to complete the numbers of the governing body in compliance with the provisions of their Act of Incorporation; and to appoint all proper officers, and fill up all vacancies as they occur, so that the business of the company may be efficiently conducted (*i*).

It seems doubtful whether the making of calls could be enforced by writ of mandamus at the instance of a judgment creditor, for the purpose of satisfying his judgment, since the Companies Clauses' Act provides (*k*) another remedy, whereby he is enabled, if the effects of the company be insufficient for the liquidation of his claim, on

(*a*) 8 Vic. c. 16, s. 109.

(*b*) *Id.* ss. 66—74.

(*c*) *Id.* ss. 75—80.

(*d*) *Id.* ss. 115—120.

(*e*) 7 & 8 Vic. c. 85, s. 5.

(*f*) 8 Vic. c. 16, ss. 115—119. *Rex v. Wiltshire Canal Com.* 5 N. & M. 344, and *Rex v. Wilts and Berks Canal Com.* 3 A. & E. 477.

(*g*) 8 Vic. c. 16, s. 55. *Poulet v. Basingstoke Canal Com.* 2 Scott, 543.

(*h*) 8 Vic. c. 20, s. 107.

(*i*) Per Tindal, C. J., in the *Thames Haven Dock and Rail. Com. v. Rose*. 3 Rail. Ca. 183; 4 M. & Gr. 552. See also, *Judgment of Lord Chan. Cottonham in Moseley v. Alston*, 16 L. J. N. S. 217, Ch.

(*k*) 8 Vic. c. 16, s. 36.

obtaining the order of the Court for that purpose, to issue execution against any of the shareholders to the extent of the unpaid balance of their shares in the capital of the company. And in one case the writ was refused where it appeared that calls to an adequate amount had been made, although not paid (*a*).

It is, however, submitted, that a mandamus would be granted at the instance of a shareholder who had been compelled by such execution to pay any sum of money beyond the amount due from him in respect of calls then made, commanding the company to make such further calls as might be necessary for the purpose of reimbursing him all sums of money so paid (*b*); it not appearing that the party has any other remedy, unless it should be held, that section 142 of the 8 Vic. c. 16, applies to shareholders thus circumstanced, and who have been compelled to pay such judgment debts; in which case they will be entitled to the remedy therein prescribed, and have no right to a mandamus.

It does not appear that a mandamus will lie commanding the company to declare a dividend, for the determination as to the number and amount of dividends is left entirely to the discretion of the directors; the Act enabling them to set apart such sums as they may deem sufficient for the purpose of meeting contingencies, or for enlarging, repairing, and maintaining the works, and requiring them to divide the balance only (*c*). Moreover, the effect of granting a mandamus in such case would be to turn the Court of Queen's Bench into auditors of the accounts of such companies respectively (*d*). For any fraud or mismanagement of the directors in relation to the funds of the company, the proper remedy would be by application to a Court of Equity.

At instance of  
landowners and  
others.

As a general rule, no action will lie against a railway

(*a*) Reg. v. Victoria Park Com. 1 Q. B. 288; 4 P. & D. 639.

(*b*) 8 Vic. c. 16, s. 37.

(*c*) Id. s. 122.

(*d*) Rex v. Bank of England, 2 B. & A. 620.



company, conducting their works within the scope and powers of their Act, for damage which may be sustained thereby by landowners and others, unless the damage be occasioned by the malice or negligence of the company. For all damage which is the necessary result of the exercise of the powers of the Act, a mode of ascertaining and recovering the amount of compensation is provided by the Act itself, and the injured party is restricted to the remedies therein given (*a*).

In ascertaining the amount of compensation in such cases, the company are in general bound to take the initiative; and any refusal or neglect on the part of a railway company to adopt the steps prescribed for the assessing or paying of such amount to the person entitled is a wrong, therefore, for which, previous to the passing of the Lands' Clauses Consolidation Act, no specific remedy was provided; and hence a writ of mandamus might be procured, compelling the company to adopt the prescribed course for compensating an injured party for damage done.

Thus, it has been granted to compel them to issue their warrant to the sheriff, requiring him to summon a jury to assess compensation for damage done, although the land belonging to the party complaining was not actually taken or touched by the company (*b*). So, also, where the damage was done partly under the Act and partly not (*c*). Where, however, a party suffers any damage which is not inflicted in the execution of the powers of the Act, the remedy is not by mandamus, but by an action on the case (*d*). The writ, however, will not be granted where the effect of it would be to evade the provisions of an Act of Parliament, by giving the Court a jurisdiction over matters which the Legislature had expressly exempted from

To issue precept.

(*a*) *Lord Kensington v. Kensington Canal Com.* 5 B. & Ad. 138.

(*b*) *Reg. v. Eastern Counties Rail. Com.* 2 Rail. Ca. 736; 2 Q. B. 347.

(*c*) *Reg. v. North Midland Rail. Com.* 2 Rail. Ca. 1; 11 A. & E. 955 (note).

(*d*) *Turner v. Sheffield and Rotherham Rail. Com.* 10 M. & W. 425; *Rex v. The Commissioners of the Hungerford Market Com.* 1 A. & E. 668.

their control, and virtually to review proceedings with which they were not authorised to interfere. Hence, a mandamus to enforce the issuing of a second precept for summoning a jury to assess compensation for damages sustained by an occupier of land by the carrying into execution of a Railway Act, where another inquisition had already been taken, the verdict and judgment on which were rendered conclusive, and where the *certiorari* was taken away, was refused; even though it was sworn that evidence had been improperly rejected, and that the amount of compensation assessed under the first inquisition was greatly inadequate; on the ground that, to grant a mandamus in such case (the *certiorari* being taken away), would in fact be to do indirectly what the Court could not do directly (a).

Where a particular tribunal is appointed to ascertain the compensation to be paid in respect of damage not exceeding a certain amount (as where the compensation claimed does not exceed £50, in which case the amount must be settled by justices), a mandamus would issue to the jurisdiction or tribunal appointed, commanding them to hear and adjudicate the matters submitted to them (b).

Since the passing of the Lands' Clauses Act (c), however, it is extremely doubtful whether a writ of mandamus could be obtained commanding the company to issue their precept to the sheriff to summon a jury to assess compensation, another remedy being therein provided; for, in section 68, it is enacted, that a party entitled to any compensation (the claim for which exceeds £50), in respect of any lands (or any interest therein), *taken or injuriously affected* by the execution of the works, and for which the promoters of the undertaking shall not have made satisfaction, on giving notice in writing to the promoters of the undertaking, stating his desire to have the amount of compensation set-

(a) *Reg. v. Eastern Counties Rail. Com.* 3 Rail. Ca. 466; 2 Dowl. N. S. 945.

(b) *Reg. v. Bingham*, 3 Rail. Ca. 390; 4 Q. B. 877. (c) 8 Vic. c. 18.

tled either by a jury or by arbitration, and specifying his interest in the lands and the amount of compensation which he claims, may require the company either to pay the amount claimed, and to enter into a written agreement for that purpose, within twenty-one days after the receipt of the notice, or to have the same settled by arbitration, or by a jury, as he may think fit; and should the company, within twenty-one days after the receipt of such notice, neglect either to issue their warrant to the sheriff to summon a jury, or to refer the same to arbitration, at the option of the claimant, they shall be liable to pay the amount of compensation which is claimed; and the same may be recovered by action in any of the superior Courts (a).

The above section appears to relate only to compensation in respect of lands *actually taken or injuriously affected*, and would not seem to apply to the compensation to be paid in respect of lands which the company had given notice to purchase, but afterwards refuse to take. In such case, therefore, the Court of Queen's Bench would grant a mandamus as heretofore, compelling the company to issue their warrant to the sheriff for ascertaining the value of all the land comprised in the notice (b). So, where matters in dispute are referred, under the provisions of an Act of Parliament, to arbitrators, and the Act requires them, before entering upon the inquiry, to appoint an umpire, a mandamus will lie compelling them to make such appointment (c). Now, however, as the Commissioners of Railways are empowered, in the event of the neglect or refusal of the arbitrators, to appoint an umpire, a mandamus would perhaps be refused; at all events, unless it were shown that an unsuccessful application had been made to the commissioners (d).

Formerly, a refusal on the part of a company to pay to the party entitled the amount of compensation assessed or

To pay compensation.

(a) 8 Vic. c. 18, s. 68.

(b) *Rex v. Hungerford Market Company*, 4 B. and Ad. 327.

(c) 8 Vic. c. 16, s. 130; *Rex v. Goodrich*, 2 Smith 348. (d) *Id.* s. 131.

awarded, made them liable to a mandamus. Thus, it has been issued, commanding a company to pay the sum assessed by a jury (*a*); and also to pay the amount awarded by an arbitrator (*b*). It would seem, however, that a mandamus could not now be obtained for this purpose, as another remedy is available in such cases. Thus, where damages are assessed by a jury, under the provisions of a Railway Act, the amount may now be recovered in an action of debt on the inquisition, which, on being signed by the sheriff, is made a record of quarter sessions (*c*); and upon which it has been held that an action of debt may be brought (*d*). Such an action, therefore, and not the writ of mandamus, will be the proper remedy for the recovery of the damages assessed. So, where a Special Railway Act enacted that the company should, in a given event, pay to another party a sum not exceeding a specified amount, by way of compensation for loss of tolls; and the event afterwards happened, but the company refused to pay; it was decided, that the money might be recovered by action of debt on the statutory obligation (*e*).

The same doctrine applies where the amount of compensation has been determined by arbitration. Compliance with the award may in that case be enforced by making the submission to arbitration a rule of Court, and then proceeding by attachment for non-payment of the money, or by action on the award to recover it. In like manner, where the amount due has been fixed by agreement, the proper course to be adopted is to bring an action upon that instrument. But a mandamus would be granted, compelling fulfilment of such an agreement made by a company,

(*a*) *Rex v. Nottingham Water Works Com.* 6 A. & E. 355; *Reg. v. Trustees of Swansea Harbour*, 8 A. & E. 439.

(*b*) *Rex v. St. Katharine's Dock Com.* 4 B. & Ad. 360.

(*c*) 8 Vic. c. 18, s. 50; and see *Supra*, pp. 218—222.

(*d*) *Corrigal v. London and Blackwall Rail. Com.* 5 M. & Gr. 219, 3 Rail. Ca. 411.

(*e*) *Reg. v. Hull and Selby Rail. Com.* 3 Rail. Ca. 705; 6 Q. B. 70.

where the instrument, not being under seal, could not be enforced by action (*a*).

It is doubtful whether, in case of compensation to be paid to parties not absolutely entitled, and who, but for the 8 Vic. c. 18, would not have been authorised to sell, an action of debt can be brought to recover the compensation assessed; and a writ of mandamus, therefore, would be granted, compelling the company to pay the amount into the Court of Chancery. And mandamus would issue for the same purpose where a party could not make out a title to the satisfaction of the company (*b*).

This writ, however, will not be granted to enforce payment of the costs of an inquisition taken under a Railway Act, as the Lands' Clauses Act requires that the amount of such costs should be settled by one of the Masters of the Court of Queen's Bench (*c*); and, on that being done, gives the party entitled to them a remedy by warrant of distress, to be issued by a justice (*d*). But if an attempt to levy them by distress has failed, the Court might perhaps interfere by granting a writ of mandamus (*e*). To pay costs.

Nor will the writ be allowed in order to enforce payment of the costs of a former mandamus, where the latter issued to correct the error of the judge; the general rule being that, where the judge makes a mistake, the parties who come to defend his ruling, which they are bound to suppose right, do not pay costs (*f*).

Before dismissing the question of mandamus, so far as it relates to the purchase of lands by a railway company, it may be observed that, inasmuch as, in repeated in- To take lands comprised in notice.

(*a*) Reg. v. Bristol and Exeter Rail. Com. 3 Rail. Ca. 777; 7 Q. B.

(*b*) Reg. v. Deptford Pier Company, 8 Ad. & E. 910.

(*c*) 8 Vic. c. 18, s. 52.

(*d*) Ibid, s. 53.

(*e*) See Reg. v. London and Blackwall Rail. Com. 4 Rail. Ca. 125; 15 L. J. N. S. 42 Q. B.

(*f*) Walker v. London and Blackwall Rail. Com. 12 L. J., N. S. 88 Q. B.; 3 Q. B. 744. The Queen v. The Sheriff of Middlesex, in re Walker v. The London and Blackwall Rail. Com. 13 L. J., N. S. 14, Q. B.

stances (a), it has been held by the Courts that the giving of a notice by a company to treat for certain property constitutes at once, between the company and the landowner, the relation of vendor and purchaser, so far as regards the property therein comprised; should the company, after giving their notice, proceed to issue a precept to the sheriff to summon a jury for assessing a smaller quantity, the Court would grant a mandamus, compelling them to purchase the whole of the land included in their notice (b).

To complete  
line.

A mandamus will be granted to compel the promoters of a railway company to complete the whole line. Thus, where a company, who had obtained an Act of Parliament to construct a line from London to Norwich, had only purchased lands and commenced their works on a portion of the line between London and Colchester, and it appeared doubtful whether the company intended to proceed farther than Colchester, a mandamus was issued, calling upon them to complete the whole line, pursuant to the provisions of the Act (c); nor would the want of funds be any excuse in such a case (d).

To construct  
works.

So, where the company, in the construction of their works, are not proceeding in compliance with their Act; as if the Act required them, in crossing a turnpike road, to construct a bridge of not less than a certain width, or to make accommodation works in a particular manner (e), a

(a) *Stone v. The Commercial Rail. Com.* 1 Rail. Ca. 400; *Doo v. The London and Croydon Rail. Com.* Id. 257, and *Salmon v. Randall*, 3 Myl. and Cr. 439.

(b) *Rex v. Hungerford Market Company* 1 N. & M. 112; 4 B. & Ad. 327.

(c) *Reg. v. Eastern Counties Rail. Com.* 1 Rail. Ca. 509; 10 A. & E. 531; *Rex v. Inhabitants of Cumberworth*, 3 B. & Ad. 108; 4 Ad. & E. 731. See also case of *The South Level Drainage Commissioners* cited in *Rex v. Eastern Counties Rail. Com.* Supra.

(d) *Rex v. Commissioners for Improving Market Street, Manchester*, 4 B. & Ad. 335.

(e) *Reg. v. London and Birmingham Rail. Com.* 1 Rail. Ca. 317; *Reg. v. Manchester and Leeds Rail. Com.* 1 Rail. Ca. 523; and *Reg. v. Birmingham and Gloucester Rail. Com.* 2 Rail. Ca. 710; 2 Ad. & E., N. S. 47.

mandamus will be granted, requiring them to comply with the Act.

Nor is it an objection to the granting a mandamus in such a case, that the party aggrieved is empowered to construct the works himself, and recover the amount expended by summary proceedings before justices (*a*). The alternative permitting a party to construct the works himself, and recover expenses incurred by an order of justices, not being such a specific *legal remedy* as to deprive him of his right to a mandamus.

The promoters of a railway are not only bound to form the whole line, and construct the works in accordance with their Act, but they are compelled to lay down the rails and keep the line in repair, and open for the use of the public. Thus, where the promoters of a company proceeded to take up the rails in order to close the line, a mandamus was granted, compelling the company to lay them down again and reinstate the railway (*b*).

To keep line in repair and permit use.

Although a mandamus will lie, compelling the company to permit the use of the line by the public, on the payment of tolls which may be demanded under their Act, it will not be granted to compel them to carry goods, even though by carrying the goods of others they have made themselves common carriers; the Special Act not compelling the company to become carriers; and if they do become such, and fail in their obligations, the Court will leave the party injured to his remedy at Common Law (*c*); as a mandamus will not be granted to enforce the general law of the land, if an action will lie.

But not to carry goods.

The application to the Court to grant a mandamus is made upon affidavits, not upon *vivâ voce* evidence; and it is requisite that the affidavits should be strictly correct both in form and in substance, and should accurately state

Application for mandamus.

How made.

(*a*) *Queen v. Norwich and Brandon Rail. Com.* 15 L. J., N. S. 24 Q. B.; 4 Rail. Ca. 112; 3 D. & L. 385.

(*b*) *Reg. v. Severn and Wye Rail. Com.* 2 B. & Ad. 646; 2 M. & S. 80.

(*c*) *Ex parte Robins*, 7 Dowl. 566.

every fact necessary to give the Court jurisdiction to entertain the application. Thus (as regards matters of form), the affidavits must be properly entitled, and the names of the proper parties must be inserted both in the jurat and the body of the affidavits. Thus, where an affidavit was entitled, "*Reg. on the Prosecution of, &c. v. The Directors of the Great Western Railway,*" and the defendants were also described in the same manner in the body of the affidavit, the rule was discharged for an incorrect description of the parties (*a*).

So (in respect to matters of substance), they must show a proper demand, made at the proper time, upon the proper parties, to do the thing required; and also a distinct refusal by them, or such a state of facts as amounts to a refusal, or from which the Court will be justified in inferring such a refusal.

Demand.  
Form of.

As to the nature and requisites of the demand to be made, we may observe that it must be distinct, specific, and exact.

Thus, where a rule for a mandamus is applied for, it is necessary to show by the affidavits that a distinct demand has been made upon those who are required to do the act, and that what they are required to do has been distinctly pointed out to them (*b*). So the demand must be to do the specific act enjoined; as where a bridge is to be constructed in a particular manner, it must prescribe, by dimensions or otherwise, the required form, and not request in general terms that it should be made in conformity with the provisions of the Act (*c*).

So the demand must not be to do more than is enjoined by the Act (*d*). Moreover, the demand must be so made

(*a*) *Reg. v. Great Western Rail. Com.* 13 L. J., N. S. Q. B. 129.

(*b*) Per Lord Denman in *Reg. v. Bristol and Exeter Rail. Com.* 3 Rail. Ca. 438; 4 Q. B. 162.

(*c*) *Reg. v. Eastern Counties Rail. Com.* 3 Rail. Ca. 22; 2 Q. B. 569.

(*d*) *Reg. v. York and North Midland* 15 L. J. N. S. 379. Q. B.; 3 Rail. Ca. 764.



as to show the right of the party making it to have it complied with. Thus, where a party applied for a mandamus to inspect the books of a company, it was intimated that he ought to show that, when he demanded the inspection, he stated the object for which he wanted it (*a*).

It is, however, no objection to the granting a mandamus, that the demand is made in the alternative to do one of three things, if the duty enjoined by the statute require one of them, and there has been a general refusal to comply with such requisition (*b*). Nor does it appear necessary that the compliance on the part of the applicant with conditions imposed previous to his right of having the specific thing done, is a condition precedent to his right to a mandamus; unless it appear that there has been a demand on the part of the company, and a refusal by the party; as where, previous to issuing their warrant, the company could compel a party to enter into a bond to prosecute his claim, and it did not appear that they had either requested him to enter into a bond or that he had refused (*c*).

The demand must not only be correct and explicit in form, but must be made within reasonable time. Thus, the Court will not grant a mandamus to compel the company to issue their warrant to the sheriff to summon a jury to assess the damages where the party had lain by for a considerable time (*d*); nor to enrol a conveyance executed more than sixty years since (*e*). It has, however, been held, that a lapse of three years after the right to make the demand, is not such an unreasonable time as to preclude a party (*f*) from his right to mandamus.

When to be made.

The demand, however, must not be made too soon.

(*a*) *Rex v. Wilts and Berks Canal Com.* 3 Ad. & E. 477.

(*b*) *Rex v. St. Margaret's Leicester* 8 Ad. & E. 889.

(*c*) *Reg. v. North Union Rail. Com.* 1 Rail. Ca. 729; 8 Dowl. 329.

(*d*) *Rex v. Stainforth and Keadby Canal Com.* 1 M. & S. 32.

(*e*) *Reg. v. The Leeds and Liverpool Canal Com.* 11 Ad. & E. 316.

(*f*) *Reg. v. The Deptford Pier and Improvement Com.* 8 A. & E. 910.

Thus, where a railway company took a portion of a person's land, and constructed part of the railway on it, and damaged the remainder of his property which adjoined; and then, two years afterwards, after an apparent delay on the part of the company in giving compensation, or summoning a jury to assess the amount, they stated that they were about to do more works, which would further injure the property; the Court refused to grant a mandamus to compel the company to summon a jury to assess compensation, it appearing that they were acting *bond fide*, and that the additional works were in actual progress (a).

It must also appear that a specific complaint has been made to the company subsequent to the completion of the works, and a distinct demand of what the party moving desires to enforce. Expressions of disapprobation while the works are proceeding, though proper to be made, do not relieve such party from the necessity of specifically demanding a proper compliance with the statute after the works are done, as without it he might be supposed to have waived his objection (b).

Upon whom  
made and re-  
fusal by whom.

The demand must be made by and upon, and there must be also a distinct refusal by, the proper parties. This rule is well illustrated in the following case. The committee of a company, authorised by statute to manage its affairs, were empowered to appoint a clerk for the better carrying into execution the purposes of the Act; and were required to enter in books an account of their disbursements, receipts, and transactions, and the books were to be open at all reasonable times to the inspection of the proprietors. A proprietor applied to the clerk for an inspection of the books which were under his charge; the clerk said he would refer the demand to the committee. The proprietor attended the committee, and there repeated his request;

(a) *Ex parte Parkes* 9 Dowling, 614; 5 Jur. 435.

(b) *Reg. v. Bristol and Exeter Rail. Com.* 3 Rail. Ca. 433; 2 Q. B. 162. *Reg. v. Eastern Counties Rail. Com.* 10 Ad. & E. 531. *Rex v. Brecknock and Abergavenny Canal Com.* 3 Ad. & E. 217; 4 N. & M. 178.

and the chairman said they would take time to consider it. Ten days afterwards, the proprietor applied again to the clerk, who refused the inspection. On motion for a mandamus to the company to allow inspection of the books, the Court held that there had been no sufficient refusal by the committee to warrant the application (*a*).

To a demand properly made, there must be either an explicit refusal on the part of the company, or something equivalent to such a refusal, or (in order to obtain a mandamus) such a state of facts must be shown as will justify the Court in inferring a refusal (*b*). Refusal.

By an Act establishing a canal company, it was provided, that certain landowners might call upon them by notice, as directed in the Act, to execute certain works communicating with the company's canal and railways; and that, if the company should refuse for six months after such request, the applicants might themselves perform the works in the same manner as the company might have done them. An application being made to the company under this clause, they answered that they would do the work themselves; but they delayed proceeding; and, on remonstrance, gave as a reason that the proposed operation would interfere with the property of other parties, who were likely, in being so disturbed, to bring an action. The company offered, nevertheless, to proceed if indemnified. The applicants, in answer, stated that they considered the excuse insufficient, and did not understand how they could be expected to indemnify. Six months had at this time elapsed since the original application. The works not being done, the parties applied for a mandamus, whereupon it was held, that the writ could not issue; it not appearing from the above facts that, after the consent given by the company to execute the works, there had

(*a*) *Rex v. Wilts and Berks Canal Com.* 3 Ad. & E. 477; 5 N. & M. 344.

(*b*) *Rex v. Brecknock and Abergavenny Canal Com.* 3 Ad. & E. 217; 4 N. & M. 178.

been any express demand and refusal of performance, or any conduct on the company's part equivalent to such refusal (*a*).

In the following case, however, the conduct of the parties complained of was deemed by the Court to be equivalent to a refusal, and to justify a mandamus.

By an Inland Navigation Act, 35 G. 3, c. 106, it was provided, that any person aggrieved by the works might complain to the commissioners of the navigation at one of their meetings; and that they should hear such complaints, and report upon them to a subsequent meeting, which should make such order and give such satisfaction as should be thought just and reasonable; with an appeal to quarter sessions by any party dissatisfied with any judgment by the commissioners. A party aggrieved required satisfaction of the commissioners (October 9th), and had several communications with them, but received no definite answer. He then (January 18th), demanded, in the manner prescribed by the Act, that the commissioners should, at their next meeting, hear and report upon his complaint; stating that he would, on that occasion, be prepared with evidence of the alleged injury. His agent attended the meeting (February 8th) with the witnesses, but they were ordered to withdraw; and no adjudication was made on his complaint, the previous question being moved and carried. No explanation was given to the complainant. The commissioners had, on his first application, laid a case before counsel, but had not been able to obtain the opinion by February 8th; for which reason they made no communication to the complainant, fearing that, if made, it might be treated as an adjudication. The opinion was obtained (March 24th) too late, as the commissioners alleged, for notice to be given to the complainant of a hearing at their next meeting (March 30th).

After that meeting, and before the subsequent one, the

(*a*) *Rex v. Brecknock and Abergavenny Canal Com.* 3 Ad. & E. 217; 4 N. & M. 178.

complainant moved for a mandamus to the commissioners to hear and report upon his complaint. It was held under these circumstances, that the conduct of the commissioners was a virtual refusal to hear the complaint, and the rule for a mandamus was made absolute, with costs (*a*).

So, where a company was constructing a bridge, which was not in conformity with the terms of their Act, either as regarded the height above the water, or the width of the water-way; whereupon a landowner gave them a notice, requiring them to construct a bridge, leaving the proper width of water-way, and the proper height, according to the provisions of their Act; and the company replied, that they would do the first, and accept process for the second. They afterwards made the bridge the required height, and, to preserve the same width of water-way, commenced cutting the banks of the river, which they afterwards discontinued. To subsequent applications to proceed with the work they returned no answer. It was held, that the facts above mentioned amounted to a refusal to do what was demanded, and that the applicant was entitled to a mandamus (*b*).

If the objection be made that there is no distinct demand and refusal to be relied upon appearing on the affidavits, it must be taken before the merits of the question are discussed in showing cause against the rule for a mandamus (*c*).

In general, where a rule is discharged on the ground that the affidavit upon which the application was made is defective, we may lay it down, that, if the defect be merely in the title or in the jurat, the Court will allow the affidavit to be re-sworn, and the motion renewed (*d*).

Effect of imperfect affidavits.

(*a*) *Reg. v. Thames and Isis Navigation*, 8 Ad. & E. 901.

(*b*) *Reg. v. Norwich and Brandon Rail. Com.* 4 Rail. Ca. 112; 3 Dowl. & L. 385.

(*c*) *Reg. v. Eastern Counties Rail. Com.* 10 Ad. & E. 531; 1 Rail. Ca. 509.

(*d*) *Rex v. Justices of Warwickshire*, 5 Dowl. 382; *Reg. v. Jones*, 8 Dowl. 307; *Shaw v. Perkins*, 1 Dowl. N. S. 306.

But they will not allow a party, who has applied to the Court in the first instance without being properly prepared, afterwards to make a second application for the same purpose. Consequently, where an amendment is required to be made in the body of the affidavit, a second application will not be allowed, even although the merits may not have been discussed on the first (a).

But although this is the general rule as to renewing applications made originally on defective affidavits, the Court has in one or two instances departed from it in order to prevent justice from being obstructed (b).

After hearing the affidavits and the argument on an application for a mandamus, the Court, if satisfied that the writ should issue, will make a rule absolute accordingly. The point next to be considered is, therefore, the form of the writ; and, without entering minutely into the subject, a few of the principal rules of law and practice connected with it may be briefly enumerated.

Form of the writ.

Considerable care is required in drawing up the writ of mandamus, which should be accurate both as regards the parties to whom it is directed, the suggestions or statements of facts upon which the interference of the Court is asked, and the act or thing required to be done. Any error in either the directory, the suggestive, or the mandatory part of the writ will be fatal.

Direction of.

In the first place, the writ must be directed to the parties who are bound to obey it, in their proper capacity, and under their proper name, style, or designation. Thus, where issued to a railway company, it must be directed to them in their corporate name; and if directed to "A. B., one of the Proprietors of A. and B. Railway Company" (c), or

(a) *Reg. v. Great Western Rail. Com.* 13 L. J. N. S. 129, Q. B.; 3 Rail. Ca. 700; 1 Dowl. & L. 742. *Reg. v. Manchester and Leeds Rail. Com.* 8 Ad. & E. 413. *Reg. v. Pickels*, 2 Q. B. 599 (n).

(b) *Reg. v. Deptford Pier Company*, reported in *Times*, Feb. 2, 1847.

(c) *Rex v. Margate Pier Com.* 3 B. & Ald. 220.

(d) *Reg. v. West*, 2 Rail. Ca. 613; 1 Gal. & Dor. 481.

to the "Directors of the Great Western Railway Company," it would be bad (*a*).

The writ must contain all suggestions necessary to show Suggestions. that the Court has jurisdiction to entertain the case. Thus, where a writ of mandamus to compel a public company to pay a poor's-rate omitted the averment that the company had no effects upon which a distress could be levied, the Court held that it was a fatal objection to the writ, as the ground for an application for mandamus is that there is no other remedy, and that the writ should state that fact distinctly, in order to show the jurisdiction of the Court (*b*). So, a writ of mandamus to compel a company to take steps for making and completing a railway, in which there was no averment that the company had abandoned the design, or were not proceeding with all convenient speed, or that a reasonable time had elapsed without proper preparations, was held bad upon that ground; and the Court said that they "can infer no fault; it must be distinctly charged; and the charge, as it stands, is quite insufficient" (*c*). The suggestions, also, like the affidavits upon which the rule has been founded, should show a sufficient demand and refusal upon and by proper parties.

Again, the mandatory part of the writ must be definite Mandatory part. and precise in requiring the parties to whom it is directed to do what is enjoined by the Act. Thus, in a mandamus requiring a party to do work in the manner prescribed by the Act, it should specify some particular act to be done, and not merely mention in general terms that the work should be made conformably to the Act (*d*). But where an Act of Parliament required a company to make "such alte-

(*a*) Reg. *v.* The Great Western Rail. Com. 3 Rail. Ca. 700; 1 Dowl. & L. 742. See also, on the same point, 2 Salkeld, 433; Lord Raymond, 563; and Bacon's Abridgment, Title, Mandamus.

(*b*) Reg. *v.* Margate Pier Com. 3 B. & Ald. 220.

(*c*) Reg. *v.* Eastern Counties Rail. Com. 2 Rail. Ca. 260; 10 Ad. & E. 550.

(*d*) Reg. *v.* Eastern Counties Rail. Com. 2 Rail. Ca. 20; 10 Ad. & E. 53.

rations and amendment in the sewers of a city as may or shall be necessary in consequence of the floating the said harbour," and the mandatory part of the writ commanded the directors "to make such alterations and amendments in the sewers as were necessary in consequence of floating the harbour;" it was held that it was in the proper form, and that it was neither requisite nor proper to call upon the company to make any specific alteration, the mode of remedying the evil being left to their discretion by Act of Parliament (*a*). So, if the writ enjoin more than the statute authorises, it will be bad. Thus, where a railway company were required by their Act to "make proper watering places for cattle in all places where, by means of the railway, the cattle of any persons occupying lands adjacent thereto should be deprived of access to their ancient watering places, and to supply the same with water;" and the mandamus suggested that the company had made their railway through and intersected eight closes of Sir W. M., in which there were ponds or watering places for cattle, so as to cut off the ponds from one portion of the closes respectively, and the writ commanded the company "to make proper watering places for cattle in such portions respectively of the said several closes;" it was held that the writ was bad, as it ordered the company to do more than the Act required; namely, to make a pond in each of the portions of the closes; there being nothing to show that one watering place would not have been sufficient for all the portions (*b*).

The cases above cited are decisions on the sufficiency and accuracy of the writ of mandamus when issued to railway companies under the circumstances disclosed in the several applications; it would, however, be beyond the scope and object of this work to enter on the general subject of which the above are special instances, or to attempt

(*a*) *Rex v. Bristol Dock Com.* 6 B. & C. 181; 9 D. & R. 309.

(*b*) *Reg. v. York and North Midland Rail. Com.* 3 Rail. Ca. 764, Judgment in the Exchequer Chamber reversing the decision of the Court of Queen's Bench, reported in 14 L. J., N. S., Q. B. 277.



any enumeration of the rules of law and practice in relation to the return to a mandamus and the subsequent proceedings. On these subjects, the reader is referred to the valuable works mentioned in the note (a).

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## SEC. II.—*Certiorari*.

THE writ of certiorari is an original writ issuing from the Crown side of the Court of Queen's Bench, directed to the judges or officers of inferior Courts, commanding them to send the proceedings before them to the Court of Queen's Bench. By means of this writ, the latter Court is enabled to exercise its superintending jurisdiction over inferior Courts (b). The right to issue this writ is inherent in the Court of Queen's Bench, and cannot be taken away by any general, but only by express negative words (c).

Definition of.

With regard to the removal of any proceedings taken in compliance with the General Railway Acts, from the Court in which they were held to a superior Court, it is enacted, "That no proceedings in pursuance of those or the Special Acts, or any Acts incorporated therewith, shall be quashed or vacated for want of form, *nor removed by certiorari or otherwise into any of the superior Courts.*" Although the right to remove proceedings had in an inferior Court to the Court of Queen's Bench is in the case of railway companies expressly taken away by statute, yet cases may arise in which, notwithstanding such enactments,

(a) As to objections to and amendments of a writ of mandamus, the return of the writ, peremptory mandamus, and costs, see Grady and Scotland's Practice of the Crown side of the Queen's Bench, and Corner's Crown Practice.

(b) See Grady and Scotland's Practice of the Crown side of the Queen's Bench.

(c) *Rex v. Reeve*, 1 W. Bl. 231; *Rex v. The Justices of the West Riding of Yorkshire*, 1 Ad. & E. 577.

the Court of Queen's Bench will interfere for that purpose. Thus, application is frequently made for a writ of certiorari to remove an inquisition taken under a Railway Act into the Court of Queen's Bench, notwithstanding that the right to the writ is taken away. These applications have been either, *first*, where there was a total want of jurisdiction; *secondly*, where jurisdiction substantially existed, but had been exceeded; *thirdly*, where a question of jurisdiction defectively exercised has arisen; or, *fourthly*, where, although the jurisdiction may have been perfect, yet there has been malversation on the part of the sheriff, or other judge of the particular tribunal.

Total want of jurisdiction.

Where an application is made to remove proceedings had below to the Court of Queen's Bench on the ground of a total want of jurisdiction, as if the act done were locally and visibly out of the jurisdiction, the Court of Queen's Bench would refuse a certiorari on the ground that the proceedings under such circumstances in the inferior Court could not be considered as the proceedings in any Court; and they would thereupon leave the party to his remedy by action. Thus, if an inquisition (in pursuance of the provisions of a Railway Act), were held in one county to assess the value of land in another county, the whole proceedings would be void; and the inquisition before the sheriff (which is generally made a record), would not avail to justify the company in any action of trespass or ejectment brought against them for an entry and possession under such an inquisition (*a*).

Jurisdiction defectively excluded.

Nor will a certiorari be granted for an irregularity in the proceedings before the sheriff where they were originated correctly under the Act. Thus, where the sheriff summoned a jury to assess damages, and at the inquiry neither the sheriff nor the under-sheriff was present, but a clerk of the latter, assisted by a barrister as an assessor, presided, both of whom had been appointed by the sheriff as his

(a) Per Lord Denman in *Reg. v. Sheffield, Ashton-under-Line, and Manchester Rail. Com.* 1 Rail. Ca. 545; 11 A. & E. 194.

deputies for the particular purpose; and the sheriff returned the verdict and the judgment (purporting to have been taken and delivered by himself), to the clerk of the peace to be deposited among the records of the quarter sessions; it was held that, as the proceedings originated correctly by the warrant to the sheriff, they must be considered as in pursuance of the Act, and were, therefore, not removable by certiorari (*a*). Again, where a company issued their warrant to the sheriff to summon a jury for the purpose of inquiring of, assessing, and giving a verdict for the sum of money, *if any*, to be paid to J. C. by way of compensation, and the jury found that J. C. had not sustained any damage; the Court refused a writ of certiorari, as the warrant, though it ought not to have contained the words "*if any*," nevertheless gave jurisdiction, and made the inquisition a proceeding in pursuance of the Act (*b*).

Nor will a certiorari be granted on the ground that there has been an excess of jurisdiction; as where an application was made to the Court to remove an inquisition held before the sheriff on the grounds that the company had exceeded their power in three instances:—first, by making a railway through a piece of land not included in the plans and books of reference, and not certified to have been omitted by mistake; secondly, by deviating more than one hundred yards from the line delineated on the plans; thirdly, by reason that the requisition related to the damage done to a mansion, and did not purport to have been taken by a special jury in conformity with the Act: it was held that the proper remedy for this excess of jurisdiction was by action of trespass, and the Court refused to grant a certiorari (*c*). It seems difficult to reconcile this decision

Excess of jurisdiction.

(*a*) Per Lord Denman in *Reg. v. Sheffield, Ashton-under Line, and Manchester Rail. Com.* 1 Rail. Ca. 545; 11 A. & E. 194.

(*b*) *Reg. v. Lancaster and Preston Junction Rail. Com.* 14 L. J., N. S., Q. B. 84; 3 Rail. Ca. 725; 6 Q. B. 759.

(*c*) *Reg. v. Bristol and Exeter Rail. Com.* 11 A. & E. 202, 2 Rail. Ca. 99

with the principles laid down by Lord Chief Justice Denman in the case of the *Queen v. Sheffield and Ashton-under-Line and Manchester Railway Company* (cited above); in which his lordship, alluding to the argument of counsel that, if a Court appointed to try questions of 40s. damages under an Act of Parliament containing a clause taking away the certiorari, should choose to try a cause in which £40,000 was in question, the jurisdiction of the Court of Queen's Bench would nevertheless be taken away by the judge making a false return, says, "This Court holds jurisdiction over all inferior Courts, and where certiorari is taken away by an Act of Parliament, it must be in the terms of the Act, and for something done in pursuance of it; as it cannot be contended that the sheriff, whose jurisdiction is given by the particular Act, is acting in pursuance thereof when he proceeds to assess the value of lands not contained in the schedules and books of reference, which alone the company are authorised to take; and the clause taking away the certiorari can only be held to have reference to cases where the provisions of the Act are complied with—more especially where there is a clause making the inquisition a record, and the sheriff's return alone evidence; and, consequently, a wrong-doer would be protected if he could induce the sheriff to make a false return." The argument is of the greater weight when it is remembered that such inquisition may be put in as an answer to an action against the company, although not drawn up with the same strictness as is required in ordinary records of inferior Courts.

In case of  
malversation.

But although the right to the writ of certiorari is expressly taken away by statute, still the Court of Queen's Bench will interfere in cases of malversation, as a statutory clause taking away this right must be understood to assume that the order or judgment in question has been the act of the proper authority lawfully constituted; and that cannot be the proper authority where there is malversation, or where the Court has been improperly constituted; as in

cases in which an interested party has presided or taken part in the proceedings, or where the sheriff has proceeded in the absence of the party claiming compensation; or as if, where there were several claimants, each having a separate interest, the amount of compensation for all has been assessed in one sum. Thus, where, in a Local Act, empowering commissioners to make rates, but giving parties aggrieved the right of appeal to the Court of quarter sessions, whose decision was to be final, and not to be removed by certiorari; it was held, that a question in the cause having been decided by a Court improperly constituted, on account of the interest of three of the magistrates, that the clause taking away the certiorari did not apply, although the affidavit on which the application was made did not satisfy the Court that the interested parties had acted partially (*a*).

From the principles laid down in the above case we may infer, that the Court of Queen's Bench would remove proceedings had before a sheriff who was interested in the company, unless the party claiming damages, having notice of the objection, appeared before such sheriff, and suffered the inquisition to proceed, and judgment to be given thereon, when probably it would be construed as a waiver of the objection (*b*).

So, where there were several parties claimants to certain property required for the purposes of a turnpike-road, and a jury was summoned to find and sworn to assess the sums to be paid to the parties for their respective estates, but found only the gross value of the premises, the Court ordered the inquisition to be brought up by certiorari, although there was a clause in the statute taking away the certiorari (*c*). It has also been held by the Court of Queen's Bench, that the clause in an Act taking away the certiorari does not apply to proceedings which operate

(*a*) *Rex v. The Commissioners of Cheltenham*, 1 Q. B. 467.

(*b*) *Corrigal v. London and Blackwall Rail. Com.* 3 Rail. Ca. 411; 5 Man. & Gr. 219.

(*c*) *Rex v. Trustees of Walton and Norwich Road*, 5 Ad. & E. 563.

upon something not within the Act, though some part may be within it, as parties are not to be allowed to put themselves out of the reach of the Court by inserting something in their proceedings which is within the jurisdiction of their Act (*a*).

Where the right to a removal of the proceedings by *certiorari* is taken away, the Court will not allow that provision to be evaded by means of some interference in another form. Thus, they will not, either on the ground that the verdict of the jury is against evidence, or of misdirection on the part of the sheriff, or of his refusal to hear evidence, or that the verdict is grossly under the amount of the damage proved, by granting a *mandamus* directing a second precept to issue, do indirectly what cannot be done directly. Thus, where an inquisition had been duly held before the sheriff in pursuance of a precept issued by a railway company under their Act, which declared that the verdict should be final, and it appeared on the inquisition that the party claiming compensation had tendered evidence of damage done to the growing crops on his land, and that the sheriff had objected to the evidence on the ground that, by another section of the Act, authority was given to parties upon complaint made to them to award damages in respect of the temporary occupation of land, and withdrew that portion of the case from the consideration of the jury; and also where it appeared that the jury awarded only £49 damages where the company, by their own witnesses, had proved damage to the amount of £152; the Court refused to grant a *mandamus* compelling the company to issue a second precept (*b*). So, where, on an inquisition, the jury found the value of the land £6, present damages £0, future damages £2,800, and the judgment entered up recited that the jury had assessed £6 for purchase money, and no separate distinct sum for damages

(*a*) *Reg. v. Justices of the West Riding of Yorkshire*, 1 Ad. & E. 543.

(*b*) *Reg. v. Eastern Counties Rail. Com.* 3 Rail. Ca. 466; See also *Re London and Greenwich Rail. Com.* 2 Ad. & E. 478.

before then sustained by the execution of the Act, and that they had assessed the distinct sum to be paid for the future, temporary, or recurring damages which should be occasioned by putting the Act in force at £2,800; and it was adjudged that the undertakers should forthwith pay the £6 and the £2,800: on application for a mandamus to amend the judgment by striking out the award of £2,800, on the ground that the verdict could not legally take effect as an award of present damages under the Act, none having been yet ascertained; it was held that, as the statute did not allow a removal of the proceedings by certiorari, the Court could not indirectly bring them under review by a mandamus (*a*). But although the Court will refuse to interfere in all cases in which the interference would have the effect of evading the clause taking away certiorari, yet where the sheriff, or other judge of the particular tribunal, has refused altogether to entertain the question referred to him on the ground of a want of jurisdiction, whereby the claimant has been deprived of the right conferred upon him by law, the Court will by mandamus compel the judge of such tribunal to hear and adjudicate upon the matter submitted to him (*b*).

Where an indictment has been found against a company at quarter sessions, or assizes, it may be removed by certiorari into the Superior Court, in which alone the defendants can appear and plead (*c*).

In order to obtain a writ of certiorari in any case, the same strictness and accuracy is required in the title and body of the affidavits as in an application for a mandamus. On these points, the reader is referred to the various works which treat of the law and practice in relation to this subject.

(*a*) *Rex. v. Justices of West Riding of Yorkshire*, 1 A. & E. 563; 3 N. & M. 802.

(*b*) *Reg. v. Bingham*, 3 Rail. Ca. 390; 4 Q. B. 877.

(*c*) *Reg. v. The Birmingham and Gloucester Rail. Com.* 3 Rail. Ca. 148; and see post, ch. iii. section i.

Having in the two preceding sections noticed such proceedings against a railway company as are originated by motion in the Court of Queen's Bench, and where the remedy for the aggrieved party is by writ issuing out of that Court; we now come to treat of compensatory remedies, or those forms of action at law by which compensation is given to a party sustaining an injury from the breach of any contract made by a railway company, or by the neglect of any duty imposed upon them either by statute or by the common law. These remedies may be divided into those in form *ex contractu*, including the actions of assumpsit, debt, and covenant; and those in form *ex delicto*, comprising the actions of trespass, case, and trover. To these may be added the action of ejectment for the recovery of possession of land wrongfully taken. We shall treat briefly of all of them, in their relation to the general subject of this work, noticing under each head only such rules and principles as seem to have a special bearing upon railway companies.

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### SEC. III.—*Assumpsit*.

THE action of assumpsit is that which the law gives to a party injured by the breach or non-performance of a parol or simple contract. It is also the proper form of action in all cases in which, although there has been no express contract between the parties, yet the law will, from the particular circumstances of the case, imply one.

On express contracts.

It was (as we have already seen(a)), for a long time assumed, that a corporation could not contract except under seal; and that, consequently, no action could be maintained either by or against a corporation, in respect of a

(a) See *supra*, pp. 519—521.



simple contract, either executed or executory, unless the contract was originally made under seal. It has, however, been held, that assumpsit will lie against an incorporated trading company on an executed contract, as in the case of private individuals; and that whether the contract were express or implied; and that the implication of a contract may arise from the object of the incorporation as compared with the subject matter of the contract (*a*). It has also been held, that a corporation aggregate can maintain assumpsit in respect of an executory contract (*b*); and in this case it was suggested that, if the contract had remained executory, the fact of the corporation having put it in suit would have amounted to an admission on the record of their liability under it, so as to preclude them from disputing such liability in a cross action.

Thus, on the general principles of law, an action of assumpsit will lie against a railway company on all executed simple contracts relating to the objects of the company; such as the supply of goods, engines, carriages, and materials; also for work and labour done; and it would appear immaterial whether the cause of action arose before or after the Act of Incorporation was obtained, as all expenses incurred in obtaining the Act, and contracts made relating to the company, are considered as embodied in the Special Act. The question as to the right of bringing an action of assumpsit against a railway company is, however, conclusively settled by the provisions of the 8 Vic. c. 16, s. 97, which enacts, that on any default in the execution of a contract properly entered into, "such actions and suits may be brought either by or against the company, as might be brought had the same contract been made between private persons only." (*c*) Since the passing of this statute, therefore, the only cases in which any doubt can exist as to the

Contracts by  
parol and by  
agent.

(*a*) *Beverley v. Lincoln Gas Company*, 6 Ad. & E. 829.

(*b*) *The Wardens, &c. of the Fishmonger's Company v. Robertson and others*, 5 M. & Gr. 131.

(*c*) See as to Contracts *supra*, pp. 519 and *sqq.*

liability of a railway company to an action of assumpsit, are those in which the contract sued upon has been made by the secretary or some other agent of the company. It may, under such circumstances, be questionable whether an action will lie against the company on a contract so made, whilst it remains executory ; yet even in such case it would appear that the contract could be enforced in all cases where convenience amounting almost to necessity required that the company should contract by parol and by means of an agent ; as in the hiring inferior servants, or making agreements for purchase of goods, or for services, the occasions for which are frequently recurring, or which are too insignificant to be worth the trouble of being made in writing under the corporate seal, or under the signatures of two directors, in the mode prescribed.

Implied contracts.

There is, however, no question as to the right to bring an action of assumpsit against an incorporated trading company, as against an individual, in those cases in which, although there has been no express contract, the law will, from the particular circumstances of the case, imply one. Thus, where a railway company, who acted as common carriers by taking the goods of parties offering them, refused to carry the goods of a person except upon payment of charges higher than were demanded from others, and the higher charges were accordingly paid under protest ; it was held, that the party aggrieved was entitled to recover back the overcharge in an action of assumpsit for money had and received, as the payments could not be considered voluntary, but as made under coercion ; the railway company refusing, until their demands were satisfied, to perform that service for the plaintiff which he was entitled by law to receive from them without compliance with any such terms (*a*). So, where a railway company, as owners of the line (under an Act of Parliament (*b*), the construction of

(*a*) *Parker v. Great Western Railway Com.* 2 Rail. Ca. 563, 7 Scotts N. R. 835.

(*b*) *Barrett v. Stockton and Darlington Rail. Com.* 3 M. & Gr. 956.

which was doubtful), charged a person a rate of toll higher than, upon the interpretation put upon the Act by the Court, they were authorised to charge; the party was held entitled, in an action of assumpsit, to recover back such overcharge; and the same remedy is available against a railway company in all cases in which individuals have been compelled by the company by duress of their goods, or refusal to carry them, to pay a larger sum than they were liable by law to pay. Where the company, as carriers or bailees of goods, have been guilty of any neglect or other breach of duty, whereby the goods are lost or damaged, or inconvenience and loss are inflicted on the owner by reason of delay in the carriage of them, an action of assumpsit upon their common-law liability may be maintained against the company for the recovery of damages by way of compensation for the injury inflicted on the plaintiff.

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#### SEC. IV.—*Debt and Covenant.*

AN action of debt will lie against an incorporated railway company for the recovery of a debt in all those cases in which an action of assumpsit might be maintained against them on an executed contract, and in all those instances in which they contract by specialty to pay money. And even granting that a corporation cannot in general contract except under seal, the Court will assume, on general demurrer to a declaration in debt, that there was a deed, in order to support a count that the corporation was indebted (*a*). So debt lies against a railway company for work and labour done; and if the Special Act declare that the company shall pay the expenses of obtaining the Act

Debt.  
In what Cases  
it lies.

(*a*) *Tilson v. The Warwick Gas Light Company*, 4 B. & C. 96. See also, *Chitty on Pleading*, by Greening, vol. i. p. 123.

out of the first monies received, it is immaterial that the party suing was a partner at the time when the cause of action arose (*a*). So debt will lie against them for goods sold and delivered, but not for goods bargained and sold. Debt is also the proper remedy against a company where they contract by deed to pay money. Thus, it will lie for the recovery of principal and interest in case of loans by way of mortgage or bond, under the powers of the General or Special Railway Acts; nor would the fact that the mortgage or bond creditor has a lien upon the tolls of the undertaking preclude him from his right to sue on his security, though there were other bond and mortgage creditors unsatisfied; the lien under the Act being an additional remedy given to the creditor, and not in any way affecting his common-law right to maintain an action (*b*). In an action of debt on mortgage deeds, however, it would appear that, although the creditor can recover the principal at any time within twenty years after default made, yet his remedy for arrears of interest is limited to six years; there being no covenants or engagements to pay the money in the form of the instruments given by the Act, but simply a conveyance of the undertaking to the creditor (*c*). So debt will lie on agreements made under seal for the purchase of land or withdrawal of opposition (*d*); or on the records of any of the superior Courts, or upon the records of a Court of Quarter Sessions. Thus, when the judgment on an inquisition before the sheriff for the assessment of damages in respect of lands taken or injuriously affected by the line, has been made a record of quarter sessions, the proper mode of proceeding against the company for the payment of compensation is, not by an application for a mandamus, but by action of debt on the

(*a*) *Carden v. The General Cemetery Company*, 5 Bing. N. C. 253.

(*b*) *Hill v. The Manchester and Salford Water Works Com.* 2 B. & Ad. 545.

(*c*) *Hodges v. Croydon Canal Com.* 3 Beav. 86.

(*d*) *Lord Howden v. Simpson*, 1 Rail Ca. 347; 10 A. & E. 793.

inquisition (a); or (where the sum has been determined by arbitration) upon the award of the arbitrators or umpire appointed in the manner prescribed by the 8 Vic. c. 18 (b). Debt also will be the proper remedy against a railway company in all cases where a statute declares that the company shall, in a given event, pay a certain sum of money; or where it prohibits the doing or enjoins the performance of any act under a penalty or forfeiture to be paid to the party aggrieved, and does not prescribe any other particular mode for the recovery thereof; on this principle, that whatever the law orders any one to pay, that instantly becomes a debt which he hath beforehand contracted to discharge (c). Thus, where a statute declared that a railway company should, in a given event, pay the trustees of a bridge a sum not exceeding a certain amount by way of compensation for the loss of tolls by the latter; and the event afterwards happened, and payment was not made; on an application for a mandamus to compel the company to pay the money, the Court of Queen's Bench refused to grant one, on the ground that an action of debt would lie, and would be equally efficacious for the applicant as the remedy by mandamus (d). So debt would be the proper mode of recovering the amount of compensation claimed by a party, where the company, after notice and claim made, in compliance with the provisions of the Act, had failed within twenty-one days after the receipt of such notice to issue their warrant to the sheriff to summon a jury for the purpose of assessing the sum to be paid, or to pay the amount demanded (e); or to recover the rent-charge in lieu of tithes in respect of lands taken by a railway company (f); or the chief rents secured on tolls in lieu of payment of a sum in gross, if at any time such

(a) *Corrigal v. London and Blackwall Rail. Com.* 5 M. & Gr. 219. But see *Rex v. Nottingham Old Water Works Com.* 6 A. & E. 355.

(b) Ss. 25—33.

(c) 3 Bl. Comm. 158.

(d) *Reg. v. Hull and Selby, Rail. Com.*; 3 Rail Ca. 705; 6 Q. B. 70.

(e) 8 Vic. c. 18, s. 68.

(f) 7 and 8 Vic. c. 85, s. 22.

rents be not paid within thirty days after they have become payable, and a demand in writing has been made on the company (*a*).

To recover penalties.

So debt will lie against a railway company to recover penalties imposed by statute, for the recovery of which no other mode is specially prescribed; nor will a clause in the statute under which the penalties are incurred, directing that where their recovery is not otherwise provided for they may be recovered by summary proceeding before two justices, affect the right to sue for them in an action of debt (*b*). Thus, debt will lie to recover penalties imposed upon railway companies for refusing or neglecting to carry the mails (*c*); or to give or renew the bond when required by the Postmaster-General; or for opening the railway for traffic without previous notice given to or contrary to the order of the Commissioners of Railways (*d*); or for neglecting to give notices of accidents attended with personal injury to any of the public (*e*); or to make the like returns in case of accidents, whether attended with personal injury or not, if so required by the Commissioners of Railways (*f*); or for not delivering returns of traffic and of tolls to the said commissioners (*g*); or for disobeying their order for conducting joint traffic of connecting railways (*h*); or for refusing to run cheap trains (*i*); or for using engines not consuming their own smoke (*k*). So it will lie for the recovery of the penalty imposed for issuing loan-notes, or other illegal securities (*l*); or for the neglect to keep copies of the Special Act at the principal office of the company; or for refusing liberty to inspect to parties entitled (*m*);

(*a*) 8 Vic. c. 18, s. 11.

(*b*) *Collinson v. Newcastle and Darlington Rail. Com.* 1 Car. & K. 547. See also, 8 Vic. c. 16, s. 147; 8 Vic. c. 20, s. 145.

(*c*) 1 & 2 Vic. c. 98, ss. 12, 13.

(*d*) 5 & 6 Vic. c. 55, ss. 5, 6.

(*e*) 5 & 6 Vic. c. 55, s. 7.

(*f*) 5 & 6 Vic. c. 55, s. 8.

(*g*) 3 & 4 Vic. c. 97, s. 3.

(*h*) 5 & 6 Vic. c. 55 s. 11.

(*i*) 7 & 8 Vic. c. 85, s. 7.

(*k*) 8 Vic. c. 20, s. 114.

(*l*) 7 & 8 Vic. c. 85, s. 19.

(*m*) 8 Vic. c. 16, ss. 161, 162; c. 18, ss. 150, 151; c. 20, ss. 162, 163.

or for not depositing copies of their annual accounts with overseers and clerks of the peace (*a*); or for obstructing the supply of water and gas during the construction of their works (*b*); or for neglecting to make approaches and fences to highways crossed on the level, or to construct screens when required by the Commissioners of Railways (*c*); or for not repairing bridges, gates, fences, and the like (*d*); or for not restoring the old or substituting new roads within the time and in the manner prescribed; or not properly repairing roads used by them (*e*); or for entering upon and keeping possession of lands previous to payment of compensation or deposit of the purchase-money in the bank in the manner prescribed (*f*). As to the latter point, it has been held that a company, having *bond fide* and without collusion (though without complying strictly with the requirements of the Act), paid the compensation assessed by the jury into the bank, and taken possession of the land, were not liable to the penalties imposed for continuance in possession of the land after notice (*g*).

An action of covenant, which is the remedy provided by Covenant. law for the recovery of damages for the breach of a covenant or contract under seal, will lie against a railway company as in ordinary cases, and whether the covenant be express or implied by law from the terms of the deed. If the covenant on which the action is brought be express, the ordinary rules of law will apply in the construction of it; and it will rarely happen that any question can arise as to implied covenants. With respect to the latter, it may be right to mention that it is provided in the Lands' Clauses Act (*h*) that in the conveyance of superfluous lands sold by the company, the word 'grant' shall operate as an express covenant for title, freedom from incumbrances, quiet enjoyment, and further assurance; and

(*a*) 8 Vic. c. 20, s. 107.

(*c*) Id. ss. 62, 64.

(*e*) Id. ss. 54, 57, 58.

(*g*) Id. s. 89.

(*b*) Id. s. 23.

(*d*) Id. s. 65.

(*f*) 8 Vic. c. 18, ss. 89, 90.

(*h*) Id. s. 132.

that it has been held that on a mortgage of the "undertaking," in the form given in the schedule to the Companies' Clauses Act (*a*), no covenant on the part of the company to pay the money borrowed, will be implied (*b*).

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SEC. V.—*Case and Trespass.*

It was formerly considered doubtful whether the actions of case, trespass, or trover, would lie against an incorporated company, as it was said that a corporation aggregate could not commit tort. In one case, however (in which all the preceding cases were reviewed), it was decided, that trover might be maintained against an incorporated trading company (*c*); and, in a more recent case (*d*), that trespass was also sustainable. Previous, however, to entering into an inquiry as to when actions founded on torts can be maintained against railway companies, it may be necessary to premise that, wherever the injury complained of is inflicted in the execution of the powers conferred in their Acts, no action can be brought against them, unless, in carrying out such powers, the company have been guilty of malice or negligence (*e*). The same rule holds good, although the damage complained of results in part from the execution of the powers of the Act, and in part otherwise. The remedy of the party injured in such case, is either by mandamus to compel the company to take proceedings for ascertaining the amount of damage, or by notice to the company in the mode prescribed by section 68 of the 8 Vic. c. 18. Were not such protection afforded to railway companies, they would be continually exposed to actions by reason of unforeseen consequential damage arising to houses,

(*a*) 8 Vic. c. 16.      (*b*) *Hodges v. Croydon Canal Com.* 3 Bea. 86.

(*c*) *Yarborough v. The Bank of England*, 16 East 6.

(*d*) *Maund v. Monmouthshire Canal Com.* 3 Rail. Ca. 159; 2 Dowl. N. S. 113.

(*e*) Per Lord Denman in *Reg. v. Eastern Counties Rail. Com.* 2 Rail. Ca. 741.; 2 Q. B. 347.



buildings, lands, gardens, &c., not comprised within their schedules and books of reference; as by the stopping of springs communicating with their lands, and the infliction of other unexpected injuries against which it would be impossible to provide (*a*). This principle of protection, as applicable to public companies, has been carried so far, that where, under an Act enabling a company to make a canal, it was provided, that all actions, for anything done in pursuance of the Act, should be commenced within six calendar months after the act should have been committed; and it appeared that the company, wishing to take ground for the purpose of sloping the banks of the canal, told the occupier, a tenant, that they had the consent of the landowner (without which the tenant would not have permitted them to enter), and proceeded to do the act by which damage was done to the land, and the landlord sued the company more than six months after the injury had been inflicted; it was held that the action ought to have been brought within the six months, and that the defendants were within the protection of the limiting clause, inasmuch as the act complained of was really done for the purpose contemplated by the statute, though in prosecution of that purpose the company had been guilty of misrepresentation and bad faith towards the occupier (*b*).

The cases, therefore, in which actions in form *ex delicto* are maintainable against a railway company are considerably diminished by the protection thus afforded them by statute; and the only instances in which the company are liable to an action for any injury committed are, either where the act complained of is in excess of their authority; or, secondly, where the injury done is not the necessary and unavoidable consequence of the execution of their works under the powers conferred on them; or, thirdly, where, in the execution of such powers, they are guilty of malice or negligence; in which several instances they will be

(*a*) *Reg. v. North Midland Rail. Com.* 2 Rail. Ca. 1; 1 Q. B. 955. (*n*.)

(*b*) *Lord Kensington v. The Kensington Canal Com.* 3 B. & Ad. 138.

liable in the same manner and to the same extent as private individuals.

Excess of  
authority.

I. Railway companies are not protected from liability for the consequences of any proceeding not within the scope of their authority, and not justified by their Act. Thus, they will be liable to an action of trespass at the suit of the party in possession, or to an action on the case by the reversioner, for entering on and taking possession of lands not contained in the schedules and books of reference; or for entering upon such lands as they are authorised by their Act to take, previous to payment of the amount of compensation, or deposit thereof according to the provisions of the 8 Vic. c. 18, s. 84; excepting when they enter for the mere purpose of surveying and setting out the line, or making trial, holes, and boring; and so (in addition to the penalties to which a railway company is exposed for neglecting to make a sufficient substituted road previous to interfering with any existing one), they will be liable to an action on the case for any special damage which any party entitled to a right of way may sustain through their default (*a*). So an action of trespass and false imprisonment may be brought against them for the unlawful apprehension and detainer of any person. Thus, when a company has neglected to construct the necessary communications for the owners of lands adjoining and severed by the railway, they are not entitled to put in force against them their powers of apprehending parties for trespassing on the line; nor may they, so long as the required communications are not provided, apprehend and detain as a trespasser any landowner crossing the line within the limits of his own land, either by himself or servants (*b*). Where, however, the owner or occupier of such lands has, by arrangement with the company, received compensation for any such communications instead of their

(*a*) 8 Vic. c. 18, ss. 54, 55. *Boyd v. London and Croydon Railway Com.*  
4 Bing. N. C. 669.

(*b*) *Grand Junction Rail. Com. v. White*, 2 Rail. Ca. 559; 8 M. & W.  
214.

being made, or has been compensated for his land on the principle of an absolute severance, the company may detain him if he trespass upon the railway (*a*). So trespass will lie against them for apprehending a person under a bye-law which provides, that any party not producing his ticket at the end of his journey shall be liable to pay the fare for the whole distance from the place whence the train started to that in which he leaves it, for the class of carriage in which he has travelled. Thus, where, under such circumstances, a party refused to pay for the whole distance which the train had passed over, but tendered the fare for the number of miles he had actually travelled, and he was thereupon taken into custody; it was held that the company could not justify the trespass under such a bye-law, and that the arrest was illegal, and that the bye-law was not properly described as one imposing a penalty or forfeiture. It was also intimated (*b*), that even had it imposed a penalty or forfeiture, still it was bad for unreasonableness; and that under the Act of Incorporation of the company no power was given to them to apprehend a person, except for an offence against the Act of Parliament itself; that they had no such authority to apprehend for an infringement of a bye-law of the company not in any way affecting public safety or convenience (*c*).

II. Where, in the execution of works authorised by a Railway Act, an injury is inflicted which is not the necessary consequence of the works, and which might have been avoided by a different mode of carrying them on, the party injured has his remedy by an action for damages, and the company are not protected from their liability by the provisions of their statute, that only authorising them to

Where damage  
not necessary  
consequence of  
their act.

(*a*) *Manning v. Eastern Counties Rail. Com.* 12 M. & W. 237. It appears doubtful whether a railway company can apprehend a person trespassing on the line, unless the party either refuse to quit the same on request (3 & 4 Vic. c. 97, s. 16), or the name and residence of the party be unknown to the officer of the company (8 Vic. c. 20, s. 154).

(*b*) By Mr. Baron Platt.

(*c*) *Chilton v. The London and Croydon Rail, Com.* 16 L. J., N. S. Ex. 89.

execute their works, "*doing as little damage as possible*;" and leaving them responsible as in ordinary cases for wanton injuries. Thus, where a company were empowered by their Act to pull down certain houses that were scheduled therein, and compensation clauses were added for persons damaged or injured by the taking down of any of the buildings for the purposes or otherwise in the execution of the Act; and the company purchased a house not mentioned in the schedule, and in pulling it down injured the adjoining building; it was held, that the tenant of the adjoining house was not entitled to recover compensation by the process provided by the Act for injuries inflicted in the execution of it, but that the remedy (if any) was by an action on the case. So an action on the case will lie against a railway company at the suit of the reversioner of a house, erected before the passing of the Special Act, and not specified in the schedules and books of reference, for damage done to it by the obstruction of its lights by a railway station erected by the company under the Act, and by the dust drifted from the station and embankment into the house; and it was held that the plaintiff was not bound to come in under the compensation clause (a). It is also submitted that, in all cases in which injury is inflicted on a party by the execution of railway works, which might have been avoided by a different mode of carrying them on, the company will be liable to an action on the case; for it is only where the damage done is the necessary and direct result of the execution of the powers conferred in their Act that the injured party is entitled to come in under the compensation clause; and that for all avoidable mischief, therefore, the company are responsible in the ordinary way like other parties.

Malice or negligence.

III. Although a railway company are protected from liability to actions in respect of all proceedings taken in pursuance of the provisions of the General and Special Acts, still,

(a) *Turner and others v. The Sheffield and Rotherham Rail. Com.* 10 M. & W. 425.

even when acting within the scope of the powers therein conferred, they are not protected from responsibility for the consequences of any injury done to the person or property of a party, resulting from malice or negligence; and their liability in such case attaches, although the mischief were occasioned by some wrongful act or omission on the part of the persons employed by them, for incorporated companies are answerable for the tortious acts of their servants, although they were not appointed under seal, if the act or omission complained of were in the ordinary course of their service and employment (*a*). For these purposes, a contractor is deemed to be a servant of the company, so as to make them responsible for his malice or negligence (*b*).

The company, however, are not liable for felonies, or crimes involving personal violence, when their servants are acting altogether out of the scope of their employment, and not in execution of the duties delegated to them. Nor are the directors of a company individually liable for acts done in their corporate capacity, and from which any detriment arises; at all events, in the absence of proof of malice on the part of the individual director (*c*).

The following are instances of the nature and extent of the liability cast upon public companies for malicious or negligent conduct of their works, whereby injury is done to a third party.

Thus, where, in the construction of their line, a railway company made excavations near to the house of the plaintiff, and proceeded in so careless a manner that, owing to their neglect of proper precaution, the house gave way and fell down, an action on the case was held maintainable against them (*d*).

In constructing  
or repairing  
the line.

(*a*) *Smith v. Birmingham Gas Company*, 1 Ad. & E. 526. *Yarborough v. The Bank of England*, 16 East 6.

(*b*) *Semple v. London and Birmingham Railway Com.* 1 Rail. Ca. 480; 9 Sim. 209.

(*c*) *Harmer v. Tappenden*, 1 East, 555.

(*d*) *Davis v. London and Blackwall Rail. Com.* 2 Rail. Ca. 311; 1 M. & Gr. 799. *Matthews v. West London Water-works Com.* 3 Camp. 403. *Wilde v. The Gas Light Com.* 1 Stark 189. *Drew v. The New River Com.* 6 Car. & P. 754.

In working the line.

So, again, where a company, in making excavations for gas pipes, negligently left the works open and unprotected, whereby the plaintiff fell in, and suffered considerable injury. So, where the stacks of the plaintiff were set on fire and burnt by means of a hot cinder thrown from a locomotive engine belonging to the company, and, an action being brought against them, it appeared that the engines and boilers were such as were usually employed on railways, and were used at the time of the accident in the ordinary manner, and for lawful purposes; whereupon it was contended by the defendants that they were not liable, and that the plaintiff ought to be non-suited, unless he could show negligence on the part of the company; it was, nevertheless, held, that the fact of a fire having been caused by a spark from their steam-engine, was *prima facie* evidence of negligence, and that the company were liable in an action on the case (*a*). Hence, the fact that the mischief is caused in the course of using the railway in the ordinary manner, and in obedience to and for purposes authorised by the provisions of their Act, does not exonerate the company from liability to indemnify a party injured; it being a general principle of law that each person must so use his own property as not to injure that of another. Moreover, the company are bound to adopt all reasonable precautions against the occurrence of accidents; and if, through any want of such precautions (as the fixing of a cap on the funnel of an engine, the providing of a fire-plate, shutting off the steam, or the like), damage is done to the person or property of another, there is positive proof of negligence on their part sufficient to make them liable for the consequences (*b*). It is only in case of accidents strictly inevitable that they are exempted from liability. So, although there be no direct statutory obligation on a

(*a*) Aldridge v. Great Western Rail. Com. 2 Rail. Ca. 852; 3 M. and Gr. 515.

(*b*) Piggot v. Eastern Counties Rail. Com. 15 L. J., N. S. 235, C. P. Hammond v. South Eastern Rail. Com. Kent Summer Assizes, 1845. And see *Supra*, pp. 358—360.

company to do, or omit doing, a particular act, still there may be a common-law duty thrown upon them, which will render them liable to an action on the case for the consequences of omission or commission. Thus, as a railway company make the line for their own profit, and open it to the public on the payment of a toll, the common law casts an obligation upon them to take care that, so long as they keep it open for the use of the public, all who come upon it may do so without damage to their lives or property; and an action on the case will lie against them for any injury sustained by a party arising from an obstruction on the road, or from the rails being improperly laid, or not kept in sufficient repair (*a*). So, as the company are bound to provide and to keep in proper repair the fences adjoining the railway, in order to prevent cattle from trespassing on the line, an action on the case will lie against them at the suit of the owner for an injury caused to cattle straying on to the railroad by reason of defective or insufficient fencing (*b*).

Again, although a railway company are not bound by their Act of Incorporation to become common carriers (*c*) or carriers of passengers, and they may altogether refuse to carry either passengers or goods; still, if they once elect to become such, the common-law liability of carriers attaches to them; and they are not entitled, when sued for negligence or fraud in that character, to any of the privileges conferred upon them by their statute, in respect of notice of action or otherwise; it having been held, on the construction of several special statutes, that incorporated companies can only claim a right to notice of action, and the like, where they are sued for anything done or omitted to be done in pursuance of their Act, and not where they are sued as common carriers (*d*). Thus, an

(*a*) Per Tindal C. J. in the *Company and Proprietors of the Lancaster Canal Com. v. Parnaby*, 11 Ad. & E. 243.

(*b*) *Powell v. Salisbury* 2 Y. & J. 391. *Roult v. Wilson*, 1 B. & A. 59.

(*c*) *Ex parte Robins*, 7 Dowl. P. C. 566.

(*d*) *Carpue v. London and Brighton Rail. Com.* 3 Rail. Ca. 692; 5 Q. B. 747.

action on the case will lie against them for any injury done to the goods and merchandise of parties sending them on the line (*a*); and it would be immaterial that the declaration alleged them to be the owners and proprietors of the railway. So they would be liable for the loss of a passenger's luggage, provided it consisted *bond fide* of articles of dress, or the ordinary baggage of a traveller, and not of merchandise (*b*); and it would be immaterial whether the injury was caused by the improper construction of the carriage in which the goods were placed, or the improper position of the carriage in the train (*c*); or whether they were destroyed by fire in consequence of not being sufficiently protected. So, case will lie against the company for any injury sustained by a passenger arising from their neglect as owners of the line; as in not keeping it in proper repair (*d*), or from the negligence or misfeasance of their servants, as in cases of collision, or of injury sustained in consequence of furious driving; and although the company, as carriers of passengers, are not insurers at all events, yet very slight evidence of negligence will be sufficient to render them liable for the consequences of an accident, either to the party injured, or, if death ensue, to his personal representatives. For it is provided by a recent Act of Parliament (*e*), that, if death ensue in consequence of any such accident, an action for damages will lie against the company at the suit of the personal representatives of the deceased, for the benefit of certain parties specified in the Act. So, in addition to their liability to convey and carry goods entrusted to them, and persons travelling on the line, in safety, they are also bound to receive and carry all goods offered for conveyance, and all passengers desirous of proceeding; and an action on the case will lie against them

(*a*) *Palmer v. Grand Junction Rail.* Com. 4 M. & W. 752; 7 Dowl. 232.

(*b*) *Elwell v. Grand Junction Rail.* Com. 5 M. & W. 669.

(*c*) Per Lord Denman in *Walker v. South Western Rail.* Com. Kingston Spring Assizes, 1843.

(*d*) *Carpue v. London and Brighton Rail.* Com. 3 Rail. Ca. 696; 5 Q. B. 747.

(*e*) 9 & 10 Vic. c. 93.



for any refusal (*a*), unless they have a reasonable and lawful excuse for their refusal ; as that the goods were of a dangerous nature, and improper to be carried on the line ; or that they were offered at an unseasonable time ; or that the money for carriage was refused ; or that the party desirous to proceed was not in a fit state to travel, due consideration being had to the convenience of other passengers ; or that he would not pay the fare ; or that the train was full. As regards the pre-payment of tolls and fares, it is not necessary, in order to have a right of action against a company for refusing to carry either goods or passengers, that a strictly legal tender of the money for their conveyance should have been made, it being sufficient if the parties were ready and willing to pay all proper demands (*b*). As a railway company are only entitled to claim reasonable charges in respect of goods offered to them for conveyance, and as such charges must be made equally on all parties, any refusal by a party to pay charges that are either unreasonable or unequal will not justify a company in refusing to convey (*c*).

Before dismissing this branch of our subject, we must observe, that into each of the three General Railway Acts a clause is introduced authorising a railway company, in certain cases, to tender amends for injuries inflicted in the execution of the powers of their Act ; or to pay money into Court in an action brought to recover damages against them for some irregularity, trespass, or other wrongful proceeding (*d*). The privilege conferred in these several clauses is given in comprehensive terms :—" If any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the Special Act, or any Act incorporated therewith, or by virtue of

Tender of  
amends.

(*a*) *Riley v. Horne*, per Tindal, C. J. 5 Bing. 217 ; *Ilderton v. London and Birmingham Rail. Com.* Sittings after Hil. Term, 1846.

(*b*) *Pickford v. Grand Junction Rail. Com.* 2 Rail. Ca. 592 ; 8 M. & W. 372.

(*c*) *Same v. Same*, 3 Rail. Ca. 193.

(*d*) See 8 Vic. c. 16, s. 141 ; c. 18, s. 135 ; c. 20, s. 139.

any power or authority thereby given ; and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action ; and if no such tender shall have been made, it shall be lawful for the defendant, by leave of the Court where such action shall be pending, at any time before issue joined, to pay into Court such sum of money as he shall think fit ; and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into Court." It is submitted, that these privileges are conferred upon a company (like that of notice of action), only in relation to things done or omitted in the execution of the powers of their Act ; that is, in cases in which some duty imposed upon them has been neglected, or some right conferred on them has been irregularly exercised. Where, therefore, the ground of complaint against them is something closely connected with their powers and obligations as an incorporated company, they are entitled to the protection above mentioned. But that protection does not extend to cases in which wrongs have been committed by them even in relation to matters within the scope of their authority, except where the company, although acting erroneously, have yet acted *bonâ fide* with a view to carry out the powers of the Act. Any malice or *malâ fides* in doing or omitting anything prescribed by their Act, will exclude them from the benefit of the clauses under consideration, and will leave them responsible as private individuals for mischief and injury resulting therefrom. So, where the wrongful act or omission occurred in connection with the company's business as common carriers, they are not entitled to tender amends or to pay money into Court under the sections above cited ; their Act not casting upon them the obligation of becoming carriers, but only giving them liberty to become such ; and the ground of complaint, therefore, not arising from the execution of the powers of the Act (a).

(a) *Carpue v. London and Brighton Rail. Com.* 3 Rail. Ca. 692; 5 Q. B. 747.

SEC. VI.—*Trover*.

TROVER is a special action on the case, which may be maintained by any person who has either an absolute or special property in goods, for the recovery of the value of such goods, against another who, having, or being supposed to have, obtained possession of such goods by lawful means, has wrongfully converted them to his own use (*a*). This action may be maintained against a corporation (*b*), and will lie, therefore, against a railway company, who may be guilty of a conversion by the act of their servant; in which case the value of the goods may be recovered in this form of action after a notice to the company to deliver them. The cases in which trover is most commonly brought against a railway company, are those in which the company, either as carriers or owners of the line, have detained the goods of a party for arrears of tolls or charges; or where, in the course of the construction of the line, they claim a lien on all the tools, materials, and implements brought on to the works by the contractor, under some special contract, to the effect that should the contractor either become bankrupt or insolvent, or fail to proceed in the execution of the works to the satisfaction of the engineer of the company, after due notice, complaining of any irregularity, has been served on such contractor, the company's lien should attach. If such a provision has been inserted in the contract, and, whilst the execution of the contract is yet incomplete, the contractor should become insolvent or bankrupt, the question of title to the goods and implements will be raised between the railway company and the assignees, in an action of trover. So, where goods are seized under a claim of lien for tolls, they are recoverable in this form of action. Thus, where the agent of an incorporated canal company had, under the powers con-

(*a*) *Selwyn, N. P. Tit. Trover.*

(*b*) *Yarborough v. The Bank of England, 16 East, 6.*

ferred by their Act, seized the barges and coal of the plaintiff for toll claimed to be due, it was held that trover was maintainable against the company on their refusal to deliver the goods after notice given to them to that effect (a).

**As carriers.**

So, where a railway company become common carriers, they are liable as such for any wrongful delivery of goods entrusted to them. Thus, they will be liable to an action of trover for delivering goods elsewhere than where they were addressed (b), although such misdelivery has occurred by mistake only (c).

**Lien.**

But where they detain goods upon which they have a lien, they will not be liable to an action of trover until such lien is satisfied. Yet it is not necessary, in such case, in order to entitle the plaintiff to recover, that he should prove an actual tender of the carriage money, if it appear he was ready to pay it (d). Under the head of lien, a question of considerable importance arises as to how far the right of lien claimed by a railway company for tolls extends, in the case of goods which have been entrusted by different persons to a common carrier, who forwards them by their line of railway; whether under such circumstances the company have an indivisible lien on all the goods forwarded by such carrier for the balance due from him, or whether the lien is divisible, so that each individual owner, by tendering a reasonable sum for the carriage of his own goods, would be entitled to maintain trover against the company on their refusal to deliver them. It would appear from the judgment of Mr. Baron Parke (e), that each owner of goods could, in such case, maintain trover against the company, although it was held doubtful whether each owner could maintain an action by the custom

(a) *Duncan v. Surrey Canal Com.* 3 Stark, 59; *Maund v. Monmouthshire Canal Com.*, 3 Rail. Ca. 159; 2 Dowl. N. S. 113.

(b) *Stephenson v. Hart*, 4 Bing. 476.

(c) *Devereux v. Barclay*, 2 B. & A. 702; *Youl v. Harbottle, Peake*, 49. Kenyon.

(d) *Jones v. Tarleton*, 9 M. & W. 675.

(e) *Pickford v. Grand Junction Railway Com.*, 3 Rail. Ca. 220; 10 M. & W. 399.

of England in respect of his own goods, as the relation of employer and carrier could not have subsisted between them and the company, but only between them and the carriers whom they employed. The right of lien can only arise on the footing that some work has been done to the goods on a contract, either express or implied; and it is submitted that, if the contract as between the company and the carrier, is to be considered as one and indivisible in itself, it must be so in the nature of the rights which it confers, and hence must be deemed indivisible in respect of the lien claimed under it; and, therefore, that the company, having a lien upon the whole of the goods, would have a right to detain them all until their claim against the carrier was discharged.

An action of trover will lie against a railway company by the assignees of a contractor who has become bankrupt, where the company, claiming a lien on the tools, implements, and materials belonging to such contractor, have taken possession of them, either after the title of the assignees is completed by an Act of Bankruptcy on the part of the contractor, and before the right of the company in consequence of the bankruptcy has accrued; or where the right is claimed under an agreement which may be construed as a violation of the Bankrupt or Insolvent Laws; or where, having once had a lien on the particular goods, they have lost such lien by parting with the possession of them; or where they have taken and seized the goods before they came into their possession, either actual or constructive.

Thus, in a contract between the company and a builder, there was a clause that, in case the builder should become insolvent or bankrupt, or should, from any cause whatever, other than the Act of the company, be prevented from proceeding with the works, it should be lawful for the company to give him a notice in writing requiring him to proceed with the works; and that, in case he should for seven days after such notice make default, it should be lawful for the company to employ other workmen; and that all

the tools and materials delivered for the purpose of the works thereby contracted for, being upon and about the site thereof, should, upon such default, become and be in all respects as the property of the company. The company gave a notice to proceed with the works on the 11th of April, and the contractor committed an Act of Bankruptcy on the 17th. In an action of trover by the assignees of the bankrupt to recover the tools and materials which had been seized by the company, it was held that the right of the company did not accrue until after the Act of Bankruptcy, and, consequently, the right to the property vesting on that day in the assignees by relation, the company were bound to give it up (a). So the company would be liable to an action of trover if they took possession of goods under the terms of an agreement made in violation of the spirit and policy of the Bankrupt or Insolvent Laws; and it is submitted that the agreement above set out in *Roach v. The Great Western Railway Company* was one under which the defendants could not have been relieved from their liability to an action of trover at the suit of the assignees, even if the title of the latter, by relation back to the time of the commission of the Act of Bankruptcy, had not supervened previous to the right of the company being completed; as Lord Abinger, in *Tripp v. Armytage*, says: "Supposing these to be manufactured goods, and in the possession of the bankrupt at the time of his bankruptcy, the question is, whether the contract that he has made, that such goods shall become in case of his bankruptcy the property of other parties, if they so choose, is a binding contract on his assignees. I think it is not. The bankrupt has no power to make a contract which, after his bankruptcy, shall vest in other persons the property which upon his bankruptcy vested in his assignees. At the moment of the Act of Bankruptcy, the assignees are entitled to all he was then possessed of; and yet it is not till

(a) *Roach v. The Great Western Railway Com.*, 2 Rail. Ca. 521; 1 Q. B. 51; *Tripp v. Armytage*, 4 M. & W. 687.

then that the defendants are to exercise an option whether they will take the property or not."

If, however, the contract was, not that the materials and implements should vest absolutely in the company in case of bankruptcy or insolvency, but merely that the company should have a lien upon them for the due performance of the contract, the assignees would only take the goods subject to such lien, and could not maintain trover against the company; (at all events, as to the implements and materials that were brought upon the premises of the company,) until the lien had been satisfied. Thus, in a contract similar to the above, it was agreed that if, in the opinion of the architect, the contractor should not proceed with sufficient expedition, the company might employ other or additional workmen to complete the works, giving seven days' notice of such intention; and in such cases might use the cranes, machines, implements, and materials, used on or about the said works by the contractors, who were to defray the extra expense so incurred; and that the company should have a lien upon such machines, implements, and materials as should, for the time being, be in and upon the lands, as a security for the completion of the bridge. In an action of trover against the company for the recovery of certain implements, it appeared that the goods for which the action was brought were of four different classes. First, those actually upon the line of railway; secondly, those not upon land actually belonging to the company, although inclosed and temporarily occupied by them; thirdly, goods deposited upon the line of temporary railway made by the bankrupts on lands not belonging to the company for the convenience of conveying materials; fourthly, goods not on the property of the company in any way. It was held that there was nothing unlawful in the stipulations of the agreement as to the lien of the company upon the implements brought upon their lands as a security for the due performance of the works; and that the lien of the company extended to such goods as came upon

the lands required for the line, or temporarily occupied by them; and, consequently, that they had a lien on the first and second classes, but not upon the third and fourth; which, nevertheless, after the expiration of the notice, they had a right to retain and use about the works (a).

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### SEC. VII.—*Ejectment.*

“THIS is an action which lies for the recovery of the possession of real property in which the lessor of the plaintiff has the *legal interest* and a *possessory right* not barred by the Statute of Limitations” (b).

An action of ejectment will lie against a railway company for the recovery of the possession of real property in the same manner and to the same extent as against a private individual. Therefore, if a railway company enter upon and take possession of any lands that they are not authorised by their Act to take—such as lands not included in the plans and books of reference; or if they enter upon and take possession of any lands which they are authorised to take, but in respect of which they have neglected to comply with the preliminaries prescribed by the Special and General Railway Acts—as to the giving of the notice to treat; the paying the amount of compensation to the party entitled, or depositing the same in the bank; the requiring the party to make out his title, and the like; the property may be recovered in an action of ejectment. In a word, this action will lie against a company if they enter upon any lands previous to the perfecting of their title in the mode pointed out by the Legislature, and they will be liable to be ejected by the party who has the legal interest and possessory right.

(a) *Hawthorn v. Newcastle-upon-Tyne and North Shields Railway Com.*, 2 Rail. Ca. 288; 3 Q. B. 734.

(b) 1 Ch. Pl. vol. i. p. 187, sixth edit; see also 7 T. R. 47.



A Railway Act provided that if the owner of any lands, on tender of the purchase-money agreed or awarded to be paid, refuse to accept the same, or fail to make out title to the lands (in respect whereof the money was payable), to the satisfaction of the company; it shall be lawful for the company to deposit the purchase-money in the Bank of England to the credit of the parties interested; and thereupon all interest in such lands should vest absolutely in the company. It appeared that, previous to the inquiry before the sheriff, the owner of the lands, on request being made to him for that purpose, refused to disclose his title; but no such application was made afterward, nor was he again required to make out a title, but the purchase-money was deposited in the Bank of England, and the company proceeded to take possession of the land. It was held that the failure to make out title previous to the inquisition was not such a failure as to entitle the company to pay the money into the bank, and enter upon the lands; but that it was their duty to have called upon the party after the compensation had been ascertained by the verdict of the jury, to make out his title to the land, if he were disposed to accept the amount so settled; and that the company, having neglected to comply strictly with the provisions of their Act of Parliament, had no parliamentary title to the land; and thus, having neither a conveyance from the owner nor a title under the statute, they could not hold the land as against the lessor of the plaintiff, who was entitled, therefore, to recover back possession of the land in an action of ejectment (*a*).

This action can be maintained in all cases in which there is what amounts to an ouster or actual dispossession of the lessor of the plaintiff, and an adverse or illegal possession of the defendant at the time of the demise laid in the declaration. It will lie, therefore, at the suit of one tenant in common against his co-tenants, if the former be pre-

(*a*) *Doe dem. Hutchinson, v. East Lancashire Rail. Com.*, 3 Rail. Ca. 748; 15 M. & W. 687.

vented by the latter from occupying the property in question ; but in general the mere receipt of all the profits by the latter will not amount to an ouster (*a*). On the principles above laid down, an action of ejectment may be maintained against a railway company, although the lessor of the plaintiff be tenant in common with the defendants of the premises in question. In such a case, where three of the defendants defended as landlords, and the others as tenants, and the usual special rule admitting the landlords to defend and to admit ouster in case actual ouster should be proved had been obtained ; and at the trial it appeared that rent had formerly been paid to all the tenants in common for the premises by certain other persons, and there was no evidence that that tenancy had been determined ; it was held that those who defended as tenants were not precluded by the landlords' rule from contending that the lessor of the plaintiff had no legal title to the possession on the day of the demise, as the previous tenancy might still exist. It further appeared that the premises in question had been pulled down, and their site taken possession of by a railway company, *one of the tenants in common*, and a railway constructed thereon ; and the Court intimated an opinion that such a dealing with the property by the company amounted to an actual ouster of *another tenant in common* of the premises sufficient to entitle him to maintain an action of ejectment against them (*b*).

But where a company had power to borrow money on the credit of the undertaking, and to assign and charge the property of the undertaking and the rates and tolls as a security for the money borrowed, and by the mortgage-deed they assigned to the mortgagee, his executors, administrators, and assigns, " the said undertaking, and all and singular the rates, tolls, and other sums arising by virtue of the Act, and all the estate, right, title, and interest of, in, and

(*a*) Ch. Pl. vol. i. p. 191, sixth edit.

(*b*) Doe dem. Wawn v. Horn, 3 M. & W. 333 ; 5 M. & W. 564.

to the same ;” it was held, in ejectment brought by a mortgagee, that the lands of the company were not included in the mortgage under the word *undertaking*, and did not pass by such mortgage, and that ejectment would not lie to recover possession of them under the deed (a).

In moving for judgment against the casual ejector in an action of ejectment against a railway company, service of the declaration on the clerk of the company, at the place of business of the company, will be sufficient for a rule nisi (b). So, in a similar case, service of the declaration on the company’s book-keeper, who was in possession of, and slept on part of the premises, was held sufficient for a rule absolute in the first instance (c).

(a) Doe dem. Myatt v. The St. Helen’s and Runcorn Gap Railway Com., 2 Rail. Ca. 756 ; 2 Q. B. 264.

(b) Doe dem. Fisher v. Roe, 3 Rail. Ca. 145 ; 2 Dowl. N. S. 225.

(c) Doe v. Roe, 1 Dowl. 23 ; Anonym. 2 Chit. 81. See also Doe dem. Ross v. Roe, 5 Dowl. 147.

## CHAPTER III.

## CRIMINAL AND OTHER REMEDIES AGAINST A RAILWAY COMPANY.

SEC. I.—*Indictment.*

**Indictment.**  
**When it lies.**

WE have already seen (*a*) that actions in form *ex delicto* may be maintained against corporate bodies for torts of a personal nature committed by them; and that case, trespass, and trover, are remedies available against them under circumstances which would have made those actions suitable in ordinary cases, and where the wrongs complained of had been committed by a private individual. Nor are corporations liable only in civil actions; they are also answerable criminally; and indictments will lie against them at Common Law for misdemeanors and omissions of the duty cast upon them in their corporate character. A corporation aggregate, however, can only be indicted in their corporate name for non-feasances, and not for misfeasances. In the latter case, where some wrongful act has been done, the individuals (whether servants of the company or not), who have actually taken part in it, are alone responsible in this form (*b*). But for neglect and breach of duty by omission, a corporation may be indicted (*c*).

**Nonfeasances.**

Hence, railway companies may be indicted by their name of incorporation for disobedience to an order of justices. Thus, where a Railway Act, authorising the company to

(*a*) See *Supra*, p. 590.

(*b*) *Thursfield and Jones, Master and Wardens of the Company of Wax Chandlers*, Skinn. 27.

(*c*) *Rex v. Mayor, Aldermen, and Burgesses of Stratford-on-Avon*, 14 East, 348; *Rex v. Company of Proprietors of the Kennet and Avon Canal Navigation*, 3 Ch. Crim. Law, 600.

take lands for the purposes of the line, provided "that, when the company shall take any land for the purposes of the Act, they shall forthwith make and erect, and from time to time maintain, such and so many bridges, &c., over, under, &c., the railway, of such dimensions and in such manner as two or more justices shall, upon application of the owner or occupier of any lands, judge necessary and appoint;" and an order had been made by two justices on the company, requiring them to make an arch under the railway for the convenience of the lands in question; which order was confirmed, upon appeal, by the quarter sessions; and a bill of indictment for disobeying this order was preferred and found against the company by their corporate name; it was held good on demurrer, and judgment passed for the Crown (*a*).

So a railway company may be indicted for any neglect or refusal to perform an act enjoined by their statute, if the omission be such as affects the interests of the public. Thus, indictments will lie against them for the neglect to construct, in compliance with the provisions of the Act, bridges and viaducts on the line, or for neglecting to maintain them in repair, whereby the safety or convenience of the public may be affected (*b*). So, for an omission to keep the line in an efficient state by the renewal of rails, chairs, and sleepers, when required; as the public, who are entitled to the use of it as of a public highway, on payment of the prescribed tolls, are incommoded and endangered by any such want of repair (*c*). So, for a neglect to provide and maintain screens for turnpike roads in places where directed by the Commissioners of Railways (*d*).

But if the ground of complaint be a misfeasance, or the commission of some wrongful act, by the company's ser-

Misfeasances.

(*a*) *Reg. v. Birmingham and Gloucester Railway Com.* 3 Rail. Ca. 148; 2 Gale & D. 236.

(*b*) *Rex v. Regent's Canal Com.* cited in *Reg. v. London and Birmingham Railway Com.*, 1 Rail. Ca. 323.

(*c*) *Rex v. Severn and Wye Rail. Com.*, 2 B. & A. 646.

(*d*) 8 Vic. c. 20, s. 63. But see *Rex v. Pease*, 4 B. & Ad. 30; 1 N. & M. 690.

vants, in obedience to their orders and in execution of the powers conferred in the Special Act, then an indictment can be preferred only against the actual wrong-doer.

Hence, where a company, in constructing their line, had diverted a highway and obstructed the old road by building a wall across it, before they had, as required by their Act, made a substituted road as convenient as the old one, or as near thereto as might be; a bill of indictment, in the common form for obstructing the highway, was preferred and found, not against the company, but against the engineer and the contractors, who were found guilty and fined for the misdemeanor (*a*). The distinction above mentioned, (and recognised in the cases to be found in the books upon this subject,) between misfeasance and nonfeasance, touching the liability of a company to indictment, is one not always easy to be drawn. It may frequently happen that the ground of complaint against the company is one which may be described with equal propriety as the commission of a wrongful act or the omission of a prescribed duty; and in such cases the responsibility may be shifted from the corporation to their servants, and an indictment be preferred against the one or the other as the misdemeanor is regarded in the light of a misfeasance or a nonfeasance. Thus, in the familiar instance of a bridge, to carry a line of railway over a road, not built in accordance with the requirements of the Act; as by not being of adequate height or width, it seems indifferent, in point of legal propriety, whether it be treated as a neglect or omission of the duty cast upon the company by their Act, or as a wrongful obstruction of the road across which the bridge has been thrown. Yet, on the principles above laid down, the one view would render the engineer and contractors liable; the other, the company. A shifting or alternative responsibility seems thus to arise; and indeed a double liability might be contended for, by considering the ground of complaint both negatively as an

(*a*) Reg. v. Scott and others, 3 Rail. Ca. 187; 3 Q. B. 543.

omission of duty, and affirmatively as the commission of a wrong.

Admitting, however, the validity of the distinction thus taken, it is necessary to remark, that the obligation, a breach of which is complained of, must be one that concerns the public, in order to make the company liable to indictment. Therefore, it lies against a corporation for non-repair of a creek (*a*), or the banks of a river (*b*), or sea-walls (*c*); and against a railway company for non-repair of their line, or for non-observance of provisions introduced into the Act for securing the public safety. But for a breach of duty, where the obligation affects only the members of the incorporation, the company are not indictable; although individuals who suffer injury by the default may sue in tort, and recover damages against the company for the omission complained of. And even where the wrong affects more immediately the interests of a private party, so as to give him a right of action against the company, yet, if the public interests are also affected, an indictment may be maintained. Thus, in many instances, a railway company may render themselves responsible both civilly at the suit of an individual for the private damage, and criminally at the suit of the Crown for the public injury. But if the public interests are not at all affected, no indictment can be preferred. Where the injury is not specific, but general, the remedy is by indictment; where it is definite and limited to individuals, an action may be brought; where it is one which both causes special damage to individuals and incommodes or endangers the public, then both action and indictment may be maintained (*d*).

Where a bill of indictment has been preferred and found, either at assizes or quarter sessions, against a railway company, it is necessary to remove it into the Court of Queen's

(*a*) *Lynn (Mayor of) v. Turner*, Cowp. 86.

(*b*) *Anon. Loft*, 556.

(*c*) *Lyme (Mayor, &c.) v. Henley*, 3 B. & A. 77; 5 Bing. 91.

(*d*) *Rex v. Trafford*, 1 B. & Ad. 874.

Bench by certiorari, in order that the company may appear and plead, which they cannot do in the Court below; an appearance in person being necessary to a plea in those Courts, and a corporation being impersonal, and not, therefore, capable of so appearing. But on removal to the superior Court, the company can appear and plead by their attorney; after which, the trial and the subsequent proceedings may be had as in ordinary cases. If, however, no appearance be entered, the company may be compelled to appear by a process called "distress infinite," to be issued against them out of the Court of Queen's Bench (a).

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#### SEC. II.—*Summary Proceedings.*

THE remedies against a railway company heretofore mentioned, are such as consist of actions or suits instituted against them in the superior Courts; or of such as are to be obtained only by application to those Courts on motion; or of prosecution by indictment at the quarter sessions or the assizes. In addition, however, to these more solemn modes of proceeding, which are usually both tedious and expensive, and which cannot be adopted except in cases where the gravity of the wrong inflicted or of the right invaded, and the serious nature of the results flowing from the conduct complained of, abundantly justify the setting in motion these higher processes of the law, the General and Special Railway Acts provide a more prompt and efficacious plan of proceeding in the case of those minor irregularities and offences which may cause much annoyance and damage to the parties against whom they are committed, and for which, nevertheless, relief cannot be prudently sought by the higher forms of legal procedure above noticed; the cost of which is certain and considerable, whilst their issue must always be more or less doubtful.

(a) *Reg. v. Birmingham & Gloucester Rail. Com.* 9 Car. & P. 478; 3 Rail. Ca. 148.



These more summary remedies are provided both for the recovery of debts and demands in certain cases, and of penalties incurred, and for the enforcement of statutory duties and obligations. There are also certain miscellaneous cases in which the actual interference of public officers, or of the parties interested, is authorised either to execute or to abate and remove works connected with the railway. We shall notice the nature and application of these remedies. First, where money is due from a railway company, and they neglect or refuse to pay it; secondly, where breaches of duty are to be proved, and penalties enforced, against them before justices; and, thirdly, where the interference of the parties is allowed without legal process.

I. The General Railway Acts specify certain cases in which a money-demand against a company may be enforced without the formalities, delay, and expense of an action at law. Thus, the statute 7 & 8 Vic. c. 85, s. 22, provides that payment of arrears of tithe commutation rent-charges may be enforced against a railway company at the expiration of twenty-one days after they have accrued due and remained unpaid, by distress against the goods, chattels, and effects of the company, whether on the lands charged with the tithe or on other lands of the company; in the same manner as a landlord might distrain upon his tenant for arrears of rent due on a lease for years.

Distress.

Tithe rent charge.

So, where lands have been purchased for the purposes of the Special Act, not for a sum in gross, but for an annual rent-charge payable out of the tolls and rates to be received by the company, and such rents are in arrear and unpaid for thirty days after they become due, the parties entitled to them may levy the amount by distress of the goods and chattels of the company (a).

Chief rents.

So, in all cases where any damages, costs, or expenses are, by the General or Special Acts, directed to be paid, and the method of ascertaining the amount or enforcing

Damages, costs, and expenses.

(a) 8 Vic. c. 18, s. 11.

the payment thereof is not provided for, such amount, in case of dispute, is to be ascertained and determined by two justices; and if the amount so ascertained be not paid by the company within seven days after demand, it may be recovered by distress of the goods of the company; and the justices by whom the sum shall have been ordered to be paid, or either of them, on application, may issue a warrant for that purpose (a). In the same manner, the taxed costs of an inquiry before the sheriff, payable by the company, are recoverable, if they are unpaid seven days after demand (b).

Distress of  
goods of  
treasurer of  
company.

In all cases in which a party is entitled to this remedy, by distress of the goods, chattels, and effects of the company, for the recovery of any costs, damages, or expenses, ordered to be paid by them, if sufficient goods of the company cannot be found whereon to levy the amount, the same may, if it do not exceed £20, be recovered by distress of the goods of the treasurer of the company (c). Seven days' notice, however, of the amount due, and a demand of payment, must be made previous to the execution of the warrant of distress. Any money paid by the treasurer under such circumstances, together with costs incurred, may be retained by him out of the funds of the company coming into his control or custody, or he may sue the company for the same (d).

Where the amount of any costs, charges, or expenses, to be recovered as above, is directed to be ascertained by one or more justices, any justice, on the application of either party, may summon the other party to appear before one or more justices (as the case may be); and on their appearance, or on proof of the due service of the summons, such justice or justices may proceed to hear and determine the question, and for that purpose may examine the parties and their witnesses upon oath. The costs of this inquiry,

(a) 8 Vic. c. 16, s. 142; and c. 20, s. 140.

(c) Id. c. 16, s. 143; and c. 20, s. 141.

(b) Id. c. 18, s. 53.

(d) Ibid.

both in respect of their amount and the party to pay them, are to be in the discretion of the justices (*a*).

Where a breach of duty, or any irregularity or offence Penalties. against some penal clause of the General or Special Railway Acts has been duly proved against a company, and they have been formally convicted (as mentioned below) on summons or information, and the amount of the penalty has been adjudged, the same may, together with the costs (if not forthwith paid), be levied by distress of the goods of the company, as in the cases before alluded to (*b*), if no other mode for its recovery has been specially provided.

No distress levied by virtue of the provisions of the General or Special Railway Acts is to be deemed unlawful, nor is any party making it to be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto; nor is such party to be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him; but the company, if aggrieved thereby, may recover full satisfaction for the special damage in an action on the case (*c*).

Penalties enforced and exacted as above (if no other Application of. mode of applying them has been specially provided), are to be disposed of by the justices; who may award not more than half to the informer, and the remainder to the overseers of the poor of the parish in which the offence was committed (*d*).

Such penalties, however, as are incurred for offences committed within the metropolitan police district, must be recovered, enforced, accounted for, and (except where the application thereof is otherwise specially provided for), paid to the receiver of the metropolitan police district, to be

(*a*) 8 Vic. c. 16, s. 144; c. 20, s. 142.

(*b*) 8 Vic. c. 16, s. 148; c. 20, s. 146; c. 18, s. 137.

(*c*) 8 Vic. c. 16, s. 151; c. 20, s. 149.

(*d*) 8 Vic. c. 16, s. 152; c. 20, s. 150; c. 18, s. 139.

appropriated in the same manner as all other penalties and fines payable to that officer (a).

By appointment of receiver.

In addition to the remedy by distress thus given to the creditors of a railway company, and to parties interested in the enforcement of penalties, it is provided by the Companies' Clauses Act (b), that wherever the Special Act authorises the mortgagees of the company to enforce payment of the arrears of principal and interest due to them on their mortgages by the appointment of a receiver, then, if within a certain specified time of the interest, or any portion of the principal money accruing due, it be not paid, application may be made to two justices for the appointment of a receiver; to whom accordingly all the tolls due to the company are to be paid until the liquidation of the amount in arrear has been effected, when the power of the receiver will cease (c).

The above are the summary remedies given to parties (frequently in addition to others), for the recovery of debts or of monies due from a railway company, whether in the nature of rents, interest and principal on mortgages, tithe-rent charge, costs, damages, and expenses, or liquidated penalties, when duly adjudged. We proceed now to notice more particularly the mode of proceeding to be adopted for enforcing the penal clauses of the Special and General Railway Acts by summons, or information, and conviction before justices, with the right of appeal given to parties in such cases.

Summary convictions.

II. Compliance with those numerous and minute provisions of the General and Special Railway Acts, which impose a variety of duties and obligations upon the company, is usually enforced by penalties. Once adjudged, these penalties are recoverable, like many other money demands, by distress of the effects of the company. It remains, however, to notice the mode in which such an

(a) 8 Vic. c. 18, s. 148; c. 20, s. 159.

(b) 8 Vic. c. 16, s. 53.

(c) Id. s. 54.

adjudication must be obtained. It is provided by the Companies' Clauses Act (*a*), the Lands' Clauses Act (*b*), and the Railways' Clauses Act (*c*), that every penalty or forfeiture imposed by the General or Special Railway Acts, or any Act incorporated therewith, or by any bye-law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices; and on complaint being made to any justice, he shall issue a summons, requiring the party complained against to appear before two justices at a time and place to be named in the summons; and on the appearance of the party complained against, or, in his absence, on proof of the due service of the summons, the justices may proceed to hear the complaint, although no information in writing or in print shall have been exhibited before them; and on proof of the offence, by confession, or on the oath of one or more witnesses, the justices may convict the party charged, and adjudge the offender to pay the penalty or forfeiture incurred, and such costs attending the conviction as they may think right. This enactment seems to include railway companies as well as private individuals, and will comprehend nearly all the cases in which penalties are imposed upon them for breaches of the provisions of their Acts. Thus, they may be summarily convicted for entering upon lands without the consent of the owners before payment or deposit of the purchase money (*d*); for failing to keep in their principal office, or deposit with the clerks of the peace, copies of the Special Act (*e*); for obstructing the supply of water or gas during the execution of the works (*f*); for interfering with existing roads before providing proper substituted roads (*g*); for neglecting to restore old roads or complete substituted roads within the prescribed period (*h*); for not repairing

(*a*) 8 Vic. c. 16, s. 147.

(*c*) Id. c. 20, s. 145.

(*e*) Id. ss. 150, 151; c. 16, ss. 161, 162.

(*g*) Id. s. 54.

(*b*) Id. c. 18, s. 136.

(*d*) Id. c. 18, s. 89.

(*f*) Id. c. 20, s. 23.

(*h*) Id. s. 57.

roads used by them (*a*); for failing to make approaches and fences where highways are crossed on the level (*b*); for neglecting to construct screens for roads when required by the Commissioners of Railways (*c*); for failing properly to repair bridges, gates, and fences (*d*); for not depositing a copy of their annual account with overseers and clerks of the peace (*e*); for using engines not consuming their own smoke (*f*). For any refusal on the part of a railway company to convey the mails, or to execute or renew, when required by the Postmaster-General, the bond to her Majesty; the company may (at any time within a year next after the offence) be summoned before any justice of the peace having jurisdiction in any county through which the railway passes; and on conviction thereof before such single magistrate, the penalty may be adjudged against them (*g*).

The several penalties imposed by the Companies' Clauses, Lands' Clauses, and Railways' Clauses Acts, for any offence made cognisable before a justice, cannot be enforced against any person or company unless the complaint shall have been made to the justice within six months next after the commission of the offence (*h*).

#### Appeal.

In all cases of summary conviction by justices as above mentioned, the General Railway Acts give a right of appeal to the quarter sessions; and in each of them it is enacted (*i*), "That if any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the Special Act, or any Act incorporated therewith, such party may appeal to the general quarter sessions for the county or place in which the cause of appeal shall

(*a*) 8 Vic. c. 20, s. 58.

(*b*) *Id.* s. 62.

(*c*) *Id.* s. 64.

(*d*) *Id.* s. 65.

(*e*) *Id.* s. 107.

(*f*) *Id.* s. 114.

(*g*) 1 & 2 Vic. c. 98, ss. 12 13; 7 Will. 4 and 1 Vic. c. 36, s. 13.

(*h*) 8 Vic. c. 16, s. 153; c. 18, s. 142; c. 20, s. 151.

(*i*) *Id.* c. 16, ss. 159, 160; c. 18, ss. 146, 147; c. 20, ss. 157, 158.

have arisen ; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication ; nor unless ten days' notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought ; nor unless the appellant forthwith after such notice enter into recognisances, with two sufficient sureties, before a justice, conditioned duly to prosecute such appeal, and to abide the order of the Court thereon." At the quarter sessions, for which such notice shall be given, the Court shall proceed to hear and determine the appeal in a summary way ; or they may, if they think fit, adjourn it to the following sessions ; and upon the hearing of such appeal, the Court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him ; and may also order such further satisfaction to be made to the party injured as they may judge reasonable ; and they may make such order concerning the costs both of the adjudication and the appeal as they may think reasonable." These provisions require no comment, with the exception of a single remark upon the subject of the time within which the appeal must be made. The words used in relation to this subject are, that the appeal shall not be entertained "*unless it be made within four months,*" &c. Usually, therefore, the appeal must be to the quarter sessions next succeeding the adjudication complained of ; but if that adjudication should take place within ten days of the sessions, the appeal must necessarily be to the second sessions thereafter, in order to allow time for the notice and grounds thereof to be delivered to the other party. The appeal having been duly lodged with the clerk of the peace, may be respited from the first to a subsequent session ; and might have been so respited, although the Railway Acts had contained no such provision, inasmuch as the power to adjourn the consideration of an

appeal is necessarily incident to the Court of quarter sessions as a Court of justice, and can only be over-ridden by positive enactment (*a*). When called on to be heard, it would seem that the appellants must first prove service of their notice and grounds of appeal upon the respondents, and the entry into recognizances, as required by the statutes above cited; both of which are essential preliminaries to their right to be heard. The conviction is then read by the clerk of the peace, and the case is heard on technical objections to the form of it; and, if they are over-ruled, then upon the facts in the usual way. The form of the conviction for any offence under the General or Special Railway Acts being prescribed in the schedules thereto, and there being a provision that no proceeding under those Acts shall be quashed or vacated for want of form, or be removable into the superior Courts, an appeal can seldom prove successful on any technical or formal point; and having once been heard and determined, the decision of the sessions thereon will be final and conclusive, the *certiorari* being expressly taken away by the General Railway Acts (*b*). Although if, from some mistake, they refuse to entertain an appeal, a mandamus would be granted commanding them to hear it (*c*); or, if the Court were improperly constituted, or there were malversation, so that justice is not done, a writ of *certiorari* will be issued (*d*).

Right of interference with company.

In addition to the usual legal and equitable remedies given to parties aggrieved by the conduct of a railway company, and to those summary modes of proceeding before justices just alluded to, there are several cases in which the injured parties, or certain public officers, are invested with a right of interference with the proceedings of the

(*a*) *R. v. Kimbolton (inhabitants)* 6 A. & E. 603; *Rex v. Justices of Wiltshire*, 13 East, 352.

(*b*) 8 Vic. c. 16, s. 158; c. 18, s. 145; c. 20, s. 156.

(*c*) *Reg. v. Bingham*, 3 Rail. Ca. 390.

(*d*) *Rex v. Commissioners of Cheltenham*, 1 Q. B. 467. See also, *Supra*, pp. 575—581.



company without the formality of any legal process. Thus, if they proceed to execute any of their works on the shore of the sea below high-water mark, or across any bay, creek, arm of the sea, or navigable river, without the previous consent, or contrary to the instructions, of the Commissioners of Woods and Forests, and the Lords of the Admiralty, the latter may "abate and remove the same, and restore the site thereof to its former condition, at the cost and charge of the company" (*a*). In like manner, the Drainage Commissioners in Ireland are authorised, under certain circumstances, to interfere and construct works connected with the railway (*b*). So, on the refusal of the company to construct them, two justices, having jurisdiction, may order any person to construct the approaches and fences required to be made where the highway is crossed on the level by a railroad (*c*). So, private individuals are sometimes allowed to interfere and execute accommodation works to which they are entitled, as the owners of lands adjoining the railway, where the company have neglected or refused to construct them (*d*).

By public officers, to abate works.

To execute works.

By private persons, to make accommodation works.

Before dismissing the subject of remedies against a railway company, it is right to notice (although not falling strictly under the head of summary proceedings), the power conferred on the Commissioners of Railways by the statute 7 & 8 Vic. c. 85 (*e*), which enacts, that whenever it shall appear to them "that any of the provisions of the several Acts of Parliament regulating any railway company, or the provisions of this Act, or of any General Act relating to railways, have not been complied with on the part of any railway company, or any of its officers, or that any railway company has acted, or is acting, in a manner unauthorised by the provisions of the Act or Acts of Parliament relating to such railway, or in excess of the powers given or objects defined by the said Act or Acts; and it shall also appear to the said commissioners that it would be for the public ad-

Prosecution by Attorney-General.

(*a*) 8 Vic. c. 20, s. 17.

(*c*) Id. s. 62.

(*d*) Id. s. 70.

(*b*) Id. s. 29.

(*e*) Section 17.

vantage that the company should be restrained from so acting, the commissioners shall certify the same to her Majesty's Attorney-General for England or Ireland, or to the Lord Advocate for Scotland, as the case may require; and thereupon the said Attorney-General or Lord Advocate shall, in case such default of the railway company shall consist of non-compliance with the provisions of the Act or Acts relating thereto, or of this Act, or of any General Act relating to railways, proceed by information or by action, bill, plaint, suit at law or in Equity, or other legal proceeding, as the case may require, to recover such penalties and forfeitures, or otherwise to enforce the due performance of the said provisions, by such means as any person aggrieved by such non-compliance, or otherwise authorised to sue for such penalties, might employ under the provisions of the said Acts; and in case the default of the railway company shall consist in the commission of some acts or acts unauthorised by law, then the said Attorney-General or Lord Advocate, upon receiving such certificate as aforesaid, shall proceed by suit in equity, or such other legal proceeding as the nature of the case may require, to obtain an injunction or order (which the judge in equity, or other judge to whom the application is made, shall be authorised and required to grant, if he shall be of opinion that the act or acts of the railway company complained of is or are not authorised by law), to restrain the company from acting in such illegal manner, or to give such other relief as the nature of the case may require."

Before the Commissioners of Railways can furnish the certificate above mentioned, to authorise the instituting of legal proceedings against a company, they must give twenty-one days' notice of their intention to the company to be affected thereby; and no such proceedings can be taken in pursuance of the certificate unless the latter shall have been given within one year after the commission of the offence complained of (a).

(a) 7 & 8 Vic. c. 85, s. 18.

## CHAPTER IV.

## REMEDIES BY A RAILWAY COMPANY.

THE remedies available where the rights of an incorporated railway company are infringed, are generally similar to those which, under the like circumstances, belong to a private individual. In addition to these ordinary remedies, however, many others are expressly given to such companies in the Special and General Railway Acts; and facilities as regards pleading and evidence are afforded them in certain cases where the usual common-law and equitable proceedings are adopted. We propose in this chapter to allude briefly to the legal, equitable, criminal, and statutory remedies of a railway company, as applicable both against members or servants of the company itself, and against strangers; noticing as we proceed only such points of law, pleading, practice, and evidence, as have a special bearing upon the subject of our work. We shall treat first of proceedings in Equity and at Common Law; and then of criminal, summary, and other remedies, including those specially given by the Statute of Incorporation, or otherwise.

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SEC. I.—*Remedies of a Railway Company in Equity  
and at Common Law.*

A CORPORATION may, like an individual, have recourse to a Court of Equity for the protection of their property and the enforcement of their rights, on petition or motion, or

In Equity.

At Common  
Law.

by a suit. Thus, a railway company will be entitled to an injunction under circumstances which would justify the issuing of that writ at the instance of any private person. Thus, where the surveyors of a highway, or any other persons, are interfering in an unwarrantable manner with railway works, either by hindering the prosecution of them, or obstructing them when made; as by removing the rails from a part of the line, or erecting a fence across it, so as to impede the passage of the company's engines and carriages, the Court will restrain them by injunction (*a*). So a decree of specific performance may be obtained to enforce the execution of a contract made with a railway company, or with their agent duly authorised (*b*). Or the company may file a bill to be relieved against any fraudulent, oppressive, or unfair dealing, on the part of a third party. In the same manner, common-law remedies are available in the case of companies not less extensively than in the case of individuals. Hence, a corporation may obtain a writ of mandamus where, having a legal right, they have no legal remedy for its enforcement (*c*). So they may remove proceedings in which they are interested from an inferior tribunal to the Court of Queen's Bench by *certiorari*, in cases where that right is not expressly taken away by statute. The instances in which this writ has most frequently issued on the application of a railway company, are those where coroners' inquests have been held, and the company have been desirous of quashing the inquiries for informality, want of jurisdiction, or other defects. Since the abolition of deodands, however, on the occurrence of fatal accidents on a railroad, this writ will in future

(*a*) London and Brighton Rail. Com. *v.* Blake and others, 2 Rail. Ca. 322; Same *v.* Cooper, 2 Rail. Ca. 312; London and Birm. Rail. Com. *v.* Grand Junction Canal Com. 1 Rail. Ca. 224; The Clarence Rail. Com. *v.* The Great North of England, Clarence, and Hartlepool Junction Rail. Com. 2 Rail. Ca. 763.

(*b*) London and Birmingham Rail. Com. *v.* Winter, 1 Cr. & Ph. 57.

(*c*) Reg. *v.* Bristol Dock Com. 1 Rail. Ca. 548.

seldom be required for the purpose of removing these proceedings; and in nearly all other cases the right to certiorari is taken away by statute (*a*). All the forms of action, both *ex contractu* and *ex delicto*, are maintainable by a railway company, as occasions arise, for the recovery of debts and damages; and they can also bring ejectment against parties who have ousted them from lands in which they have the legal interest, and also a right of possession not barred by the Statute of Limitations. Thus, they may sue in assumpsit or debt upon contracts entered into with them, and which it was within the scope of their authority to make. So they can bring an action of covenant in case such contract should have been made under seal. So, for any injuries to their property, or any wrongful act or omission whereby they are damnified, they may have the like remedies as an individual similarly circumstanced. Thus, they may bring an action of trespass against a person for breaking their fences and crossing their railway (*b*); or an action on the case for consequential damage resulting from the defendants' conduct; or they may maintain trover where the facts are such as would support that action between private persons. In selecting any of these forms of action as their appropriate remedy in any given case, the company will be guided by the ordinary rules of law, which will usually apply both to the pleadings, the practice, and the evidence, in the same manner and to the same extent as if the party suing were an individual. There are, however, some instances in which facilities are given to a railway company by statute as to the construction of their pleadings, and the support of their case by evidence, which demand a brief notice before dismissing this part of our subject. The instance of most frequent recurrence and of chief importance is that of an action of debt brought by the company against one of the

Action for calls.

(*a*) Walford on Railways, pp. 298, 299; and cases there cited.

(*b*) Grand Junc. Rail. Com. v. White, 2 Rail. Ca. 559; 8 M. & W. 214.

proprietors to recover arrears of calls. Here the right and the remedy are both created by the Statutes of Incorporation, which constitute the calls when properly made a debt to the company, recoverable in a particular manner. Hence, the precise remedy pointed out must be adopted for their recovery, and the prescribed course must be exactly followed (*a*). Therefore, if the right to sue be limited to a particular jurisdiction, the action could not be maintained if it were brought out of that jurisdiction (*b*).

**Declaration.**

In an action for calls, the Companies' Clauses Act prescribes a form of declaration, not setting forth the special matter, but simply averring that the defendant is the holder of certain shares in the company, and is indebted to the company in the sum of money to which the calls amount, whereby an action hath accrued to the company by virtue of that and the Special Act (*c*). At Common Law, such a declaration discloses no right of action; but, as interpreted by the enactments of the statute, it must be taken to include a statement of all that is required to be proved in order to give the plaintiffs a right to sue. If, therefore, a company declare for calls under the Act, the form should be strictly pursued; yet where the declaration alleged that the defendant, before the commencement of the suit, had been a proprietor of shares in the company, and was and still is indebted to the company for a call upon those shares, it was held good on general demurrer, though not literally in conformity with the Act (*d*).

The concise form of declaration above given furnishes great facilities to the company, by simplifying and narrowing the statement of their cause of action, and precluding technical objections; but for the purposes of pleading, and

(*a*) *The Dundalk Western Rail. Com. v. Tapster*, 2 Rail. Ca. 586; 1 Q. B. 667. See also, *The Aylesbury Rail. Com. v. Mount*, 2 Rail. Ca. 679; 2 Dowl. N. S. 143.

(*b*) *The Dundalk Western Rail. Com. v. Tapster*, ubi supra.

(*c*) 8 Vic. c. 16, s. 26.

(*d*) *Aylesbury Rail. Com. v. Mount*, 3 Rail. Ca. 469; 4 M. & Gr. 668.

to enable the defendant to frame his answer correctly, the declaration must be referred to the section of the statute under which it is drawn (which must substantially be deemed a part of it), so that it must be considered as impliedly containing those averments which the Act says must be proved (*a*); and therefore (in addition to the statement of the defendants' proprietorship), as virtually alleging the making of the call and the giving of the prescribed notice.

It is specially provided (*b*), that, on the trial of an action Evidence. for a call, it shall be sufficient to prove that the defendant, at the time of making the call, was a holder of one or more shares in the undertaking; that the call was in fact made, and notice thereof given, as required by the Special or General Railway Acts; and that it shall not be necessary to prove the appointment of the directors who made the call, nor any other matter whatsoever. And as these several facts are (as we have seen) to be considered as included in the declaration, pleas in denial of them should conclude to the contrary, and not with a verification (*c*). It would seem, however, that each of these pleas is unnecessary (*d*) and objectionable, as amounting to the plea of *nunquam indebitatus*; inasmuch as the company can only recover on proof of these several facts, which therefore are all virtually denied in the general issue, and need not be specifically traversed (*e*). To enable the company to recover, therefore, the three facts to be proved are the proprietorship of the defendant, the making of the call, and the

(*a*) *Edinburgh, Leith, and Newhaven Rail. Com. v. Hebblewhite*, 2 Rail. Ca. 242, 243; 6 M. & W., 707.

(*b*) 8 Vic. c. 16, s. 27.

(*c*) *Edinburgh, Leith, and Newhaven Rail. Com. v. Hebblewhite*, *ubi supra*.

(*d*) Judgment of Tindal, C. J., in *Lond. and Brighton Rail. Com. v. Wilson*, 1 Rail. Ca. 533, 6 Bing. N. C. 135.

(*e*) *Edinburgh, Leith, and Newhaven Rail. Com. v. Hebblewhite*, *ubi supra*. As to the effect of the new rules of pleading in such case, see judgment of Lord Abinger in the above case.

giving of the notice. The first point is usually established by production of the register of shareholders, which is made, when authenticated by the company's seal (*a*), *prima facie* evidence of the party entitled to shares, and of their number and amount (*b*). Some irregularities in the mode of keeping this document will not render it inadmissible in evidence against a defendant, unless inaccuracies can be shown to exist in the entry regarding himself (*c*). If the corporate seal has not been affixed to the register since the insertion of the defendants' name, or is inadmissible on other grounds, his liability may be shown, if he be an original subscriber, by proof of his having executed the subscription contract; or of his having acted as a proprietor by payment of the deposit and former calls, attending at meetings, and the like; or if he claim under a transfer, the transfer-deed (which is to be lodged with the secretary of the company (*d*)), may be produced; and this will be sufficient to establish the fact of proprietorship, although no memorial thereof shall have been entered in the register of transfers, the latter being rather for the protection of the company (*e*).

The making of the call may be proved by production of the minute-book of the directors, duly signed by the chairman of the meeting at which it was made (*f*). As to what is a sufficient signing of these minutes, the reader is referred to a former part of this work (*g*). If, on production of the book, it purports to be signed by the chairman of the meeting, it will be taken to be so signed; and the due holding of the meeting, the authority of the parties assem-

(*a*) 8 Vic. c. 16, s. 9.

(*b*) *Id.* s. 28.

(*c*) *Southampton Dock Com. v. Richards*, 2 Rail. Ca. 215; 1 M. & Gr. 448. *Same v. Arnett*, *ibid.* *London Grand Junction Rail. Com. v. Freeman*, 2 Rail. Ca. 468; 2 M. & Gr. 606. See *Supra*, p. 465, and other cases there cited.

(*d*) 8 Vic. c. 16, s. 15.

(*e*) See on Liability to Calls, *supra* pp. 496—501.

(*f*) 8 Vic. c. 16, s. 98.

(*g*) *Supra*, p. 440, and cases there cited.



bled, and other points of the like nature, will be presumed until the contrary be proved (a). The notice of the call may be proved, as other notices, in the usual way. Having succeeded in proving the defendants' proprietorship, the making of the call, and the statutory notice, the company will be entitled to recover the amount due for the call, together with interest (for which it is not necessary to declare), unless it shall appear that the call exceeds the prescribed amount, that due notice of it was not given, or that the prescribed interval between two successive calls had not elapsed, or that calls amounting to more than the prescribed sum had been made within a year. Hence, these several defences may be put on the record by the defendant; or, admitting the existence of the facts necessary to support the declaration, he may avoid their effect by something subsequent; as payment, release, or a forfeiture of his shares by the directors, duly confirmed at a general meeting of the company. This latter defence must, however, be correctly set forth in the plea; and must state all the circumstances necessary to show that a forfeiture has actually taken place (b).

A defendant, however, will not be allowed to plead matters which are in contravention both of the terms and spirit of the General Railway Acts. Thus, pleas that the calls were made for other than the purposes of the Act; that deviations from the original line had been made, not warranted by the Act; and that the calls were made for the purpose of those deviations; and that, at the time of the making of the calls, there were not the required number of shares in the company; were severally disallowed, as raising issues not contemplated by the statute—calculated to throw so many difficulties in the way of raising the capital of the company as would utterly defeat the objects of it,

(a) 8 Vic. c. 16, s. 98. *Sheffield, Ashton-under-Lyne, and Manchester Rail. Com. v. Woodcock*, 2 Rail. Ca. 522; 7 M. & W. 574.

(b) *Edinburgh, Leith, and Newhaven, Rail. Com. v. Hebblewhite*, 2 Rail. Ca. 237; 6 M. & W. 707.

and as opening questions not fit to be decided in a Court of Law, however suitable for discussion at the general meetings of the company, the tribunal especially appointed for their consideration and decision (*a*). In a similar case, where it was proposed to plead, first, that there were not a competent number of directors present when the calls were made; secondly, that no notice of the calls; thirdly, or of the time, or place, or person for payment thereof, was given; fourthly, that the calls were not made for the expenses of the undertaking, and not necessary for the purposes of the Act; fifthly, that they were not made upon all the subscribers and proprietors; sixthly, that they were not made by competent persons, and for the sole purpose of the undertaking; the pleas were disallowed as contrary to the provisions of the Act of Parliament under which the action was brought; and the defendant was confined to the pleas of *nunquam indebitatus*; that he was not a proprietor; and that the directors had exercised their option in declaring the shares to be forfeited, and had taken the steps thereon directed by the Act (*b*). A plea that, before the call was made, the defendant transferred his shares, and that the transfer was duly deposited with the secretary of the company, and a memorial thereof entered as required by the statute, is unnecessary and bad, as amounting to the general issue, and showing that the defendant was never indebted (*c*).

As we have already seen, defendants in actions for calls are precluded from raising questions by their pleas touching the general constitution, objects, and management of the company, so they cannot apply to the Court on motion requiring the Court to decide upon these points; inasmuch as it is hardly to be supposed that, when the

(*a*) London and Brighton Rail. Com. *v.* Wilson, 1 Rail. Ca. 533; 6 Bing. N. C. 135; Same *v.* Fairclough, *Ibid.* Judgment of Tindal, C. J.

(*b*) South Eastern Rail. Com. *v.* Hebblewhite, 2 Rail. Ca. 247; 12 A. & E. 497.

(*c*) Aylesbury Rail. Com. *v.* Mount, 3 Rail. Ca. 469; 4 M. & Gr. 669.

Legislature precluded them from raising these questions before a jury, or upon the record, it could have intended that the Court should dispose of them in a summary way (a).

On account of the great importance of the subject, we have entered into the above details of the proceedings when a company are suing for calls ; but it would be beyond the scope of this work to go more minutely into the questions of pleading and evidence in actions by railway companies. The above cases and observations will draw attention to the principal points which have been raised and decided in relation to these subjects ; and for further information, the reader is referred to the many valuable works which treat of the law of pleading and evidence (b).

## SEC. II.—*Criminal and Statutory Remedies by a Railway Company.*

AN incorporated company can prosecute by indictment like an ordinary person, either for felony or misdemeanor. They must, however, prosecute in their corporate name ; and the addition of such name, as a description of the persons of whom the corporation is composed, is not sufficient in an indictment (c). Therefore, if a railway company indict a man for the stealing of their goods, the property must be laid in the company, and not in the names of A. B. and others, members of the corporation. For where any description of men are directed by law to act in a corporate capacity, their natural and individual capacity, as to all matters relating to the subject of their incorporation, is totally extinct. Indeed, it is obvious that the law cannot

Indictment.

(a) Per Cresswell J. in *Thames Haven Dock and Rail. Com. v. Hall*, 3 Rail. Ca. 441 ; 5 Man. & Gr. 290.

(b) See *Pearson's Chitty Junior's Precedents in Pleading*.

(c) *Rex v. Patrick*, 1 Leach C. C. 253 ; 2 East, P. C. 1059.

regard the individuals of whom a corporation is composed, but only the creature of the corporation, which is impersonal; it being an accident only, and not essential to its existence, that certain persons are for the time being members of the body. Nor can the property of an incorporated company be considered, in any strict or legal sense, to belong to individuals; not even to all the members jointly, but to the abstraction which the statute has created and the law recognises as a corporation. In all legal proceedings, therefore, civil as well as criminal, the incorporated body must act and be dealt with in its corporate character. So it must sue and be sued, so it must indict and be indicted, so it must be restrained by injunction, so it must be compelled by mandamus (*a*). Therefore, if an action were brought in the private names of the plaintiffs for any matter or on any contract relating to their public capacity, they must unavoidably be non-suited; and, *a fortiori*, it must be erroneous in a criminal prosecution. In order to sustain an indictment for a larceny of the property of a railway company, a copy of the Special Act must be put in evidence, to prove their incorporation; yet it need not, in general, be a copy examined and compared with the parliamentary roll, as in the case of an ordinary private Act, but a copy purporting to be printed by the Queen's printer, will be sufficient for that purpose; Railway Acts usually containing a clause to the effect that they are to be deemed and taken to be public Acts, and to be judicially noticed as such (*b*). The trial, the verdict, and the judgment, on an indictment, at the instance and on the prosecution of a railway company, or other corporation, differ not at all from ordinary cases, and require, consequently, no further comment or explanation.

Summary proceedings.

We proceed, therefore, to notice briefly the peculiar remedies (chiefly by summary proceedings before magis-

(*a*) *Reg. v. The Great Western Rail. Com.* 3 Rail. Ca. 700; *Reg. v. West*, 2 Rail. Ca. 613. See also, *supra*, pp. 572, 573.

(*b*) *Stark, Ev.* vol. i. p. 232. Third edition.

trates), conferred on railway companies by the General and Special Acts, for the protection of their own and the public interests. In doing so, we shall treat of these proceedings, first, as they are applicable to cases in which the public safety is concerned; and, secondly, as they are adapted to enforce the rights, or protect the property, or interests of the company itself.

I. The power of a railway company over the persons in their own employment, or in the employment of other companies or persons, but occupied upon the railway, is very great in all cases in which the public safety is concerned. Thus, by a General Act for the regulation of railways (a), provision is made for the punishment of servants of railway companies guilty of misconduct; and the company are empowered, by any officer or agent in their employment, or by any special constable duly appointed, or by any persons called to their assistance, "to seize and detain any engine-driver, waggon-driver, guard, porter, servant, or other person employed by the said or by any other railway company, or by any other company or person, in conducting traffic upon the railway belonging to the said company, or in repairing and maintaining the works of the said railway, who shall be found drunk while so employed, who shall commit any offence against any of the bye-laws, rules, or regulations of the said company, or who shall wilfully, maliciously, or negligently do or omit to do any act whereby the life or limb of any person passing along, or being upon such railway or the works thereof respectively, shall be or might be injured or endangered, or whereby the passage of any engines, carriages, or trains, shall be or might be obstructed or impeded; and to convey such engine-driver, guard, porter, servant, or other person so offending, or any person counselling, aiding, or assisting in such offence, with all convenient dispatch before some justice of the peace," without warrant; and the

Proceedings to  
secure public  
safety.  
Company's  
servants guilty  
of misconduct.

(a) 5 & 6 Vic. c. 55, s. 17, amending and extending the provisions of 3 & 4 Vic. c. 97, s. 13.

person so apprehended may, upon conviction of the offence be imprisoned, with or without hard labour, for any term not exceeding two calendar months, or be fined any sum not exceeding £10, and in default of payment be imprisoned as before mentioned. The justice before whom a party is charged with any of the above offences may, if he think fit, instead of disposing of the matter summarily, commit the accused for trial at the quarter sessions; in the meanwhile ordering him to be imprisoned or admitting him to bail in his discretion. On conviction at the sessions, the offender will be liable to two years' imprisonment, with or without hard labour (*a*).

**Obstructions.** Persons guilty of wilfully obstructing any engine or carriage on a railway, so as to endanger the safety of persons in or on the same, are liable, on conviction, to imprisonment for any term not exceeding two years (*b*); but no summary remedy is given to the company in such case. But where any person wilfully impedes any officer or agent of a railway company in the execution of his duty upon any railway, or upon or in any of the stations, or other works or premises connected therewith, or wilfully trespasses upon the same, and refuses to quit on request, he may be detained by the company's officers or agents until he can be conveniently taken before a justice; and then, on conviction, will be liable to forfeit the sum of £5, or to be imprisoned for two months on default of payment (*c*).

**Breach of bye-laws.** We have already seen (*d*), that a railway company are authorised to enact bye-laws (*e*) for the regulation of the conduct of their officers and servants, and for the management of the business and affairs of the company; and to enforce them by reasonable penalties, to be recovered summarily before two justices of the peace (*f*), and levied by distress of the offender's goods; or, if they be insufficient for the purpose, then he may be imprisoned for three

(*a*) 3 & 4 Vic. c. 97, s. 14.

(*c*) Id. s. 16.

(*e*) See 8 Vic. c. 16, ss. 124—127.

(*b*) Id. s. 15.

(*d*) *Supra*, pp. 394—399.

(*f*) Id. ss. 142—158.

months. Any person transgressing these regulations may, if his name and residence be unknown, be detained (*a*) ; but the company have no right to detain him for the breach of some bye-law made only for the protection of the company, and in which the interest and safety of the public is in no way concerned (*b*). If the infraction or non-observance of any bye-law or other such regulation be attended with danger or annoyance to the public, or hindrance to the company in the lawful use of the railway, the company may interfere summarily to obviate or remove such danger, annoyance, or hindrance, without prejudice to any penalty incurred by reason of the offence complained of (*c*). In all cases of summary conviction before justices, any party aggrieved by their decision may appeal to the Court of quarter sessions, whose judgment will be final (*d*).

Any person omitting to shut and fasten any gate set up at either side of the railway for the accommodation of the occupiers of the adjoining lands, as soon as he, and the carriage or cattle, &c., shall have passed, is liable to a penalty of 40s., to be recovered summarily as above mentioned (*e*) ; and as such negligence greatly endangers the safety of the travellers on the railway, and is a breach of the Act of Parliament itself, the offender may no doubt be detained, if he refuse to give his name and residence. So, where mines are worked in the neighbourhood of a railway, the company are authorised and empowered to enter upon and inspect them, and to order the construction of such works as may be necessary to secure the stability of the line, and protect the public using it from accident (*f*). On the refusal of the owners of the mines to do what is enjoined, the company may themselves execute the works,

Gates.

Mines.

(*a*) 8 Vic. c. 16, s. 156.

(*b*) See *Chilton v. London and Croydon Rail. Com.* 16 L. J., N. S. 89. Ex. and Judgment of Mr. Baron Platt. See also, *supra*, p. 399.

(*c*) 8 Vic. c. 20, s. 109.

(*d*) 8 Vic. c. 16, ss. 159, 160. See *supra*, pp. 620—622.

(*e*) 8 Vic. c. 20, s. 75.

(*f*) 8 Vic. c. 20, s. 83.

and recover the expense from the parties liable (*a*). For any refusal to permit entry and inspection of mines, the parties refusing are liable to a penalty of £20 a day, recoverable summarily (*b*).

Dangerous articles.

On the same principle, and for the protection of the public, penalties are imposed on parties bringing dangerous, inflammable, or explosive goods on the railway, without giving notice thereof (*c*); and the company may open and inspect, and refuse to carry any parcel suspected of containing such articles. So, for bringing or using on the line any improper engine or carriage, or refusing to remove it on request by the company, a penalty may be recovered (*d*), and the company are empowered to remove it. So, if any carriage be improperly loaded, so as to be liable to collision with other carriages; or be left on the line so as to obstruct the passage of the trains, the company may unload or remove it; and will not be liable for any damage resulting from such unloading or removal (*e*).

Engines and carriages.

Proceedings for protection of company.

II. In all the instances above cited, the summary remedy, either by proceedings before justices, or by actual interference to abate or remove the cause of mischief or danger, or by the execution of works required to ensure the stability of the railway, is given to the company for the sake of the public, and to prevent danger and accident to the persons using the line. But there are other cases in which regulations, having been made to protect the property and interests, and facilitate the business of the company, their due observance is enforced by penalties recoverable as above, or their infraction remedied by other summary proceedings. Thus, where a railway company have entitled themselves, by a rigid compliance with statutory formalities, to enter upon and take possession of any lands, and the occupier refuses to give them up, they may issue their warrant to their sheriff to deliver possession thereof to

Entry on lands.

(*a*) 8 Vic. c. 20, s. 85.

(*c*) Id. s. 105.

(*e*) Id. ss. 122, 123.

(*b*) Id. s. 84.

(*d*) Id. ss. 116—119.



the party named in the warrant, and they then enter on the land under this summary process without the delay and expense attending an action of ejectment (a). So, where any person wilfully obstructs the company's servants in the lawful exercise of their power in setting out the line of railway, or pulls up or removes any stakes set up, or defaces any marks made for that purpose, he will be liable to a penalty of £5 (b). So, where any party defaces or destroys any milestones or marks on the side of the railway (c). So, if any trespass or damages be committed upon the company's premises, or to their property, by the engines or carriages of other parties, the amount of the damage, if not exceeding £50, may be recovered in a summary manner before two justices (d).

Construction  
of line.

Damage to  
works.

In a similar manner, the company's right to tolls is protected by remedies of the same character, and enforced by the like process. Thus, if the owner or party having the care of goods liable to toll refuse to give an account of their number, weight, or character, to the company's collector, for the purpose of ascertaining the charge to be made for their carriage, the party refusing is liable to a penalty (e). So, a refusal to pay tolls that are due may be remedied by the detention and sale of the carriages and goods liable thereto; or, if they have been removed from the railway, then by the sale of any other carriages and goods belonging to the debtor (f). So passengers practising frauds on the company in relation to fares, are liable to a penalty of £2, and may be detained until they can be taken before a justice, or be otherwise discharged by due course of law (g).

Tolls.

Before concluding, it is right to mention that the company have very stringent and effective remedies against

Remedies  
against clerks,  
&c. in default.

(a) 8 Vic. c. 18, s. 91.

(b) 8 Vic. c. 20, s. 24.

(c) Id. s. 95.

(d) Id. s. 124.

(e) Id. s. 99.

(f) Id. s. 97.

(g) Id. ss. 103, 104.

their own clerks, agents, toll-collectors, and others in their service and employment. Thus, it is provided by the Companies' Clauses Act (a), that any officer employed by the company refusing, when properly requested, to render an account and deliver up all vouchers and receipts in his possession, and to pay the balance due from him, and to hand over all papers, writings, property, and effects belonging to the company, may be summoned before two justices, who may order the money due to be paid by the defaulter, or to be levied by distress of his goods; or, in default of payment, may commit him to gaol for three months. If he refuse to make out and deliver his accounts, or to give up papers and documents, he may be imprisoned until he comply with the order of the justices to that effect. Or, if it be made to appear to a justice, on the oath of some person on behalf of the company, that the defaulting officer contemplates absconding, a warrant for his apprehension may be issued instead of a summons; but he must not be detained longer than twenty-four hours under such warrant without being brought before some justice, who may either discharge him or commit him (in default of satisfactory bail), until he can be brought before two justices who have jurisdiction to adjudicate on the complaint against him.

So, if any toll-collector or other officer in the company's service die, or be discharged or suspended from his office, or abscond or absent himself, and he, or his wife, widow, family, or representatives, refuse or neglect, after seven days' notice in writing, to deliver up to the company any station, dwelling-house, office, or other building, with its appurtenances, or any books, papers, or other matters belonging to the company, in the possession or custody of any such collector or officer at the occurrence of any such event as aforesaid, then, on application to a justice, he may

(a) 8 Vic. c. 16, ss. 111—114.

order a constable to enter on such station or other building, and take possession thereof, and of all books, papers, and other matters, and to deliver the same to the company, or any person appointed by them for that purpose (a).

(a) 8 Vic. c. 20, s. 106.



# APPENDIX.

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## No. I.

### ABSTRACT OF THE ENACTMENTS OF THE GENERAL RAILWAY ACTS.

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1 & 2 VIC. CAP. 98.

*An Act to provide for the Conveyance of the Mails by Railways.*

[14th August, 1838.]

1. Postmaster-General may require the company to convey the mails on their railway, either by ordinary or special trains, with guards and other officers.
2. Carriages to be exclusively appropriated for mails at the option of the Postmaster-General.
3. Separate carriages for sorting letters to be provided by the company.
4. Mail coaches and carts to be conveyed on railways.
5. Regulations of Postmaster-General to be observed by company; but the officer of the post-office not to interfere with the person having charge of the engine.
6. Remuneration to company for conveyance of mails; to be settled by agreement or arbitration.
7. Agreements or awards as to amount of remuneration to be altered in case of addition to, or discontinuance of, any part of services of company.

8. Postmaster-General may terminate services of company on notice.
9. Postmaster-General may terminate services of company without previous notice, but if without cause, compensation to be made to company.
10. Royal arms to be painted on carriages provided for the service of the post-office.
11. Bye-laws of the company not to be repugnant to the provisions of this act.
12. Penalty for refusing or neglecting to convey mails; or to observe regulations of Postmaster-General.
13. Company to give security by bond when required; such security to be renewed from time to time.
14. Lessees not being a body corporate or company not to be required to give security above £1,000.
15. Service of notices.
16. Differences between Postmaster-General and company to be settled by arbitration.
17. After contracts have existed three years, company may refer them to arbitrators to decide as to their continuance.
18. Arbitrators to be nominated within fourteen days after notice.
19. Interpretation of words.
20. Act may be amended or repealed.

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### 3 & 4 VIC. CAP. 97.

*An Act for regulating Railways.*

[10th August, 1840.]

1. One month's notice to be given of opening of railway to Board of Trade. [Repealed by 5 & 6 Vic. c. 55. s. 3.]
2. Penalty. [Repealed by 5 & 6 Vic. c. 55. s. 3.]
3. Board of Trade may require returns of traffic and accidents and a table of tolls.
4. Penalty for making false returns.

5. Appointment of inspectors of railways by Board of Trade,  
[Proviso in this section as to eligibility of inspectors,  
repealed by 7 & 8 Vic. c. 85. s. 15.]
6. Penalty for obstructing inspectors.
7. Bye-laws made before the passing of this act to be laid  
before Board of Trade, otherwise to be void.
8. Bye-laws hereafter made to be approved by Board of Trade.
9. Board of Trade may disallow bye-laws.
10. Provisions requiring confirmation of bye-laws by justices  
repealed.
- 11 } Prosecutions to enforce provisions of railway acts, [Re-
- 12 }       pealed by 7 & 8 Vic. c. 85. ss. 16 and 18.]
13. Railway servants guilty of misconduct. [Amended by 5 &  
6 Vic. c. 55. s. 17.]
14. Justice may send any case to be tried at the Quarter  
Sessions.
15. Punishment of persons obstructing engines or carriages.
16. Punishment of persons obstructing officers of railway, or  
trespassing.
17. Proceedings not to be quashed for want of form, or removed  
by certiorari, or otherwise.
18. Repeal of provisions in railway acts empowering justices to  
decide disputes as to branch railways.
19. Board of Trade to determine such disputes in future.
20. Service of notices to Board of Trade, and on company.
21. Interpretation of words.
22. Act may be amended or repealed.

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5 & 6 VIC. CAP. 55.

*An Act for the better regulation of Railways, and for the Convey-  
ance of Troops.* [30th July, 1842.]

1. Commencement of this Act.
2. 3 & 4 Vict. cap. 97, and this Act to be construed together.
3. Repeal of 3 & 4 Vict. 97, ss. 1 and 2.
4. Notice to Board of Trade of opening the railway.

5. Penalty for opening without notice.
6. Board of Trade may postpone the opening if inspector report that the same would be attended with danger: copy of inspector's report to be delivered to Company, together with the order of the Board.
7. Notice of accidents attended with personal injury, to be given to Board of Trade within forty-eight hours.
8. Board of Trade may direct returns of accidents, whether attended with personal injury or not; such returns to be deemed privileged communications.
9. Gates at level crossings to be kept closed across the road; Board of Trade may order that gates be kept closed across the railway.
10. Company to erect and maintain fences throughout the whole of the line.
11. Disputes between connecting railways to be decided by the Board of Trade.
12. Powers of making branch railways to be regulated by the Board of Trade; no railway to be considered a passenger railway, if two-thirds, or more, of the gross annual revenue, be derived from the carriage of coals, iron, stone, or other metals or minerals.
13. Board of Trade may authorise company to carry roads, now crossed on the level, over or under railway.
14. Board of Trade may authorise company to enter upon adjoining lands to repair or prevent accidents; compensation for damage to be given to owners and occupiers.
15. Board of Trade may extend the compulsory powers of taking lands, if thought necessary for the public safety; company applying to Board of Trade, to give notice to owners, and state particulars of lands required.
16. Repeal of provisions restricting weight of carriages to four tons; may be used of a greater weight.
17. Punishment of persons employed on railways guilty of misconduct.
18. If offence committed in Scotland, sheriffs to have jurisdiction.
19. Service of notices to Board of Trade and on company.
20. Conveyance of military and police.

[Amended by 7 & 8 VIC. CAP. 85, s. 12.]



21. Interpretation of words.
  22. Application of penalties.
  23. Act may be amended or repealed.
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## 7 &amp; 8 VIC. CAP. 85.

*An Act to attach certain conditions to the construction of future Railways, authorised or to be authorised by any Act of the present or succeeding sessions of Parliament; and for other purposes in relation to Railways.* [9th August, 1844.]

1. Treasury may revise the scale of tolls of future railways when they pay ten per cent., and fix a new scale; guaranteeing a dividend of ten per cent. to the proprietors; revised scale not to be altered for twenty-one years, without the consent of the company.
2. Treasury may purchase future railways, after three months notice, on payment of a sum equal to twenty-five years' divisible profits; or of a sum to be fixed by arbitration.
3. Option of revision or purchase not to be applied to existing railways.
4. Options not to be exercised by Treasury until authorised by Parliament.
5. Companies liable to the options to keep accounts and send copy of balance-sheet to the Treasury.
6. All passenger railway companies to provide one cheap train each way daily, with certain accommodations.
7. Penalty for non-compliance.
8. Board of Trade may dispense with conditions hereinbefore required, in consideration of other arrangements more beneficial.
9. No passenger-tax to be levied on receipts for the above trains.
10. If company run trains on Sundays, cheap trains to be likewise provided.

11. Mails to be conveyed at rate of speed to be fixed by the Postmaster-General, and by other trains than a mail train.
12. Military and police to be conveyed on certain terms, in carriages provided with seats and protected from the weather.
13. Company to allow lines of electrical telegraphs to be established for the use of her Majesty and the company on certain conditions.
14. Lines established by private parties to be open to the public.
15. Extension of power of appointment of inspectors of railways by Board of Trade; repeal of proviso to 3 & 4 Vic. c. 97, s. 5.
16. Repeal of 3 & 4 Vic. c. 97, s. 11; prosecutions to enforce provisions of railway acts may be directed by the Board of Trade in cases of non-compliance with such provisions; and in cases of commission of acts unauthorised by law.
17. Twenty-one days' notice of such prosecutions to be given to the company, and to be commenced within one year after the offence.
18. Issue of loan notes prohibited in future. Those already issued may be renewed.
19. Those already issued to be paid when due.
20. Register to be kept.
21. Remedy for recovery of tithe-rent charged on railway land.
22. Service of notices on company and to Board of Trade.
23. Recovery of penalties.
24. Interpretation of words.
25. Act may be amended or repealed.

## 8 VIC. CAP. 16.

*An Act for Consolidating in One Act certain Provisions usually inserted in Acts with respect to the Constitution of Companies incorporated for carrying on Undertakings of a Public Nature.*  
[8th May, 1845.]

1. Act to apply to all companies incorporated by Acts hereafter to be passed.
2. Interpretations in this Act.
3. Interpretations in this and the Special Act.
4. Short title of the Act.
5. Form in which portions of this Act may be incorporated with other Acts.
6. Capital to be divided into shares.
7. Shares to be personal estate.
8. Who are to be deemed shareholders.
9. Register of shareholders to be kept, and authenticated by company's seal.
10. Shareholders' address-book to be kept, and may be perused and copied.
11. Certificates of shares to be issued to the shareholders.
12. Certificate to be evidence of holder's title.
13. Certificate to be renewed when lost or destroyed; entry in register of shareholders.
14. Shareholders may transfer shares by deed.
15. Memorial of transfer to be entered in register of transfers; until registered vendor liable for calls, purchaser not entitled to profits.
16. Transfer cannot be made while calls are in arrear.
17. Closing of transfer books for fourteen days, after seven days' notice.
18. Transmission of shares by other means than transfer to be authenticated by a declaration; name to be entered in register of shareholders; not entitled to profits until authenticated.
19. Transmission by marriage, will, &c., to be proved by production of register or probate; entry in register of transfers.

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20. Company not bound to regard trusts; receipt of party named in register of shareholders a sufficient discharge.
21. Subscriptions to be paid when called for.
22. Power to make calls; notice; interval; prescribed amount.
23. Interest to be paid on calls unpaid.
24. Interest may be allowed on payment of subscriptions before call.
25. Payment of calls may be enforced by action.
26. Declaration in action for calls.
27. Matter to be proved in action for calls.
28. Register to be evidence.
29. If calls unpaid for two months, shares may be declared forfeited.
30. Notice of forfeiture to be given before declaration thereof.
31. Declaration of forfeiture to be confirmed by a general meeting.
32. When declaration confirmed, forfeited shares may be sold.
33. Evidence as to forfeiture of shares; declaration and receipt a good title to the purchaser.
34. No more shares to be sold than sufficient to pay calls, interest, and expences.
35. On payment of calls before sale, shares to revert.
36. Execution at suit of company's creditors may issue against shareholder to the extent of his shares in the capital not paid up; notice; inspection of register of shareholders.
37. Reimbursement of shareholders.
38. Company may borrow such sums as shall be authorised by a general meeting.
39. If borrowed money be repaid, company may again borrow.
40. Certificate of justice that required portion of capital is paid up evidence of authority for borrowing; order of general meeting necessary.
41. Mortgages and bonds to be by deed, according to form in schedules C and D.
42. Mortgagees entitled to proportions of tolls, &c., without preference.
43. Mortgage not to preclude receipt of calls.
44. Obligees in bonds entitled to proportion of tolls, &c., without preference.

45. Register of mortgages and bonds to be kept; inspection.
46. Transfer of mortgages and bonds to be by deed, according to form in schedule E.
47. Transfers of mortgages and bonds to be registered; fee.
48. Payment of interest on monies borrowed.
49. Interest on mortgage or bond not transferable.
50. Money borrowed to be repaid at time fixed; place of payment.
51. If no time fixed, money borrowed to be repaid at six months' notice; notice to company; notice by company.
52. Interest to cease on expiration of notice by company to pay off mortgage or bond.
53. Arrears of interest when to be enforced by appointment of a receiver; arrears of principal and interest; joint mortgages.
54. Receiver to be appointed by two justices; tolls, &c., to be paid to receiver; on payment of arrears, power of receiver to cease.
55. Account-books of company to be open to inspection of mortgagees and bond creditors.
56. Sum authorised to be borrowed may be raised by creating new shares.
57. New shares to be subject to same provisions as original shares.
58. If old shares at a premium, new shares to be offered proportionably to the shareholders.
59. Shares to vest in the parties accepting; otherwise to be at disposal of directors.
60. If old shares not at a premium, new to be issued as company may think fit.
61. Company may consolidate shares into stock.
62. After consolidation, provisions requiring capital to be divided into shares to cease; transfer of stock; registry of transfer; fee.
63. Register of holders of consolidated stock to be kept, and to be open to inspection of holders.
64. Proprietors of stock entitled to dividends, and same privileges as would have been conferred by shares of equal amount.

65. Money raised, whether upon shares or loan, to be applied first in payment of the costs and expences incurred in obtaining the Act, and then in carrying the purposes of company into execution.
66. Ordinary meetings to be held half yearly ; place of meeting.
67. Business at ordinary meetings.
68. Extraordinary meetings.
69. Notice of business at.
70. Shareholders may require directors to call an extraordinary meeting ; requisition to state object of meeting ; on failure of directors, shareholders may call a meeting.
71. Fourteen days' public notice of all meetings to be given by advertisement.
72. Quorum for a general meeting ; if quorum not present, meeting to be adjourned.
73. Chairman at general meetings.
74. Business at meetings and adjournments.
75. Votes of shareholders.
76. Manner of voting ; personally or by proxy.
77. Regulations as to proxies.
78. Of joint shareholders, the person whose name stands first, entitled to vote.
79. Committee of lunatic, and guardian of minor may vote.
80. Proof of a particular majority of votes only required in the event of a poll being demanded.
81. Number of directors to be as prescribed.
82. Company if so authorised may vary the number in general meeting.
83. Directors appointed by special Act to continue in office for one year ; election of new directors.
84. Existing directors continued, on failure of meeting for election of directors.
85. Qualification of directors.
86. Cases in which office of director shall become vacant.
87. Shareholder of an incorporated Joint Stock Company not disqualified.
88. Rotation of directors.
89. Directors may supply occasional vacancies in their body.
90. Powers of company to be exercised by directors.
91. Powers of company which can be exercised only at a general meeting.

92. Meetings of directors; to be called by the secretary; quorum; votes.
93. Directors to elect permanent chairman; deputy chairman.
94. Occasional chairman of directors.
95. Committees of directors; powers of committees.
96. Meetings of committees; quorum; chairman; votes.
97. Power to make contracts, which may be either in writing and under seal; or in writing signed by two directors; or by parol only without writing. Contracts to be binding on company and all other parties.
98. Proceedings to be entered in books, to be signed by Chairman, and to be evidence.
99. Acts of directors to be valid, notwithstanding defects in their appointment.
100. Directors not to be personally liable; but to be indemnified for all payments made, and liabilities incurred:
101. Election of auditors.
102. Qualification of auditors.
103. Rotation of auditors; may be re-elected.
104. Occasional vacancies in office of auditor; how supplied.
105. Failure of meeting to elect auditor.
106. Directors to deliver accounts, &c. to auditors fourteen days before ordinary meeting.
107. Auditors to examine accounts.
108. Auditors may employ accountants, &c.; confirmation of accounts.
109. Directors to take security of person entrusted with custody of monies.
110. Officers to deliver accounts on demand, with vouchers and receipts, and pay balance due.
111. Summary remedy against officers failing to account, by summons before two justices, who may order payment, issue warrant of distress, or commit defaulter to prison.
112. Officers refusing to give up documents, &c., to be imprisoned.
113. If officer about to abscond, a warrant may be issued in the first instance.
114. Such proceedings against defaulting officer, no discharge of sureties.
115. Accounts to be kept of all money received or expended.

116. Books to be balanced, and balance-sheet made up fourteen days before each ordinary meeting ;
117. And to be open to inspection of shareholders during that period.
118. Balance-sheet to be produced at meeting.
119. Directors to appoint book-keeper, who shall allow inspection of accounts at appointed times ; penalty.
120. Before meeting at which dividend is to be declared, scheme to be prepared by directors, showing profits of the company ; dividend to be declared according to such scheme.
121. Dividend not to be made so as to reduce capital.
122. Directors may set apart fund for contingencies.
123. No dividend to be paid to shareholder in respect of shares, unless all calls then due from him have been paid.
124. Company may make bye-laws for regulating the conduct of their officers and servants ; copies to be given to officers and servants.
125. Fines may be imposed for breach of such bye-laws.
126. Bye-laws to be so framed that penalties may be mitigated.
127. Evidence of bye-laws.
128. Where questions are to be determined by arbitration, arbitrators to be appointed within fourteen days after notice ; on failure of one party, the other may appoint arbitrator to act on behalf of both.
129. If any arbitrator die, or refuse to act, another may be nominated ; on failure, the remaining arbitrator may proceed.
130. Arbitrators to appoint umpire ; if umpire die, or refuse to act, another to be appointed.
131. In the case of railways, Board of Trade may appoint an umpire, on neglect of the arbitrators.
132. Arbitrators may call for documents, and administer oaths.
133. Costs to be in the discretion of the arbitrators.
134. Submission to arbitration may be made a rule of court.
135. Service of notices upon company.
136. Service of notices by company on shareholders.
137. Notices to joint proprietors of shares.



138. Notices by advertisement.
139. Authentication of company's notices by signatures of two directors, or by the treasurer or secretary.
140. Secretary or treasurer may act on behalf of company in proving debts, in case of bankruptcy or insolvency.
141. Tender of sufficient amends for irregularity in execution of Act, to preclude recovery in an action.
142. Damages, not otherwise provided for, may be ascertained by justices, and recovered by distress of the goods of company.
143. If sufficient goods of company cannot be found, then by distress of treasurer's goods; notice thereof to treasurer; treasurer may sue the company.
144. Proceedings before justices in questions of damages; upon appearance or proof of service of summons, justices may determine.
145. Company to publish short particulars of offences for which any penalty is imposed, and affix in conspicuous places, and renew when obliterated.
146. Penalty for defacing boards used for such publication.
147. Penalties may be recovered before two justices, by summons; upon appearance or proof of service of summons, justices may convict.
148. Penalties may be levied by distress.
149. Justices may detain offenders until return be made to warrant of distress; if no sufficient distress can be had, offenders may be imprisoned.
150. Distress to be levied by sale of the goods and chattels of the offender; overplus to be repaid.
151. Distress not to be deemed unlawful for want of form.
152. Justices may award penalties; one half to the informer, and remainder to overseers of the poor.
153. Penalties to be sued for within six months.
154. Damage to property of company to be made good in addition to penalty.
155. Justices may summon witnesses; witnesses making default to forfeit not exceeding £5.
156. Officers of company may detain offenders whose names and residence shall be unknown.
157. Form of conviction as in schedule G.

158. Proceedings not to be vacated for want of form; nor removed by certiorari, or otherwise.
159. Parties aggrieved by decision of justice may appeal to quarter sessions, within four months; on giving ten days' notice thereof to the other party, and entering into recognizances with two sureties to prosecute the appeal.
160. Court to hear the appeal, and make such order as they think reasonable.
161. Copies of Special Act to be kept at principal office of company, and deposited with clerks of peace and town clerks, and to be open to inspection.
162. Penalty on company failing to keep copies.
163. Act not to extend to Scotland.
164. Shareholders residing in Scotland may be proceeded against as provided by 8 Vic. c. 17.
165. Act may be amended or repealed.

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#### 8 VIC. CAP. 18.

*An Act for Consolidating in One Act, certain Provisions usually inserted in Acts authorizing the taking of Lands for Undertakings of a Public Nature.* [8th May, 1845.]

1. Act to apply to all undertakings authorized by Acts hereafter to be passed.
2. Interpretations in this Act.
3. Interpretations in this and the Special Act.
4. Short title of the Act.
5. Form in which portions of this Act may be incorporated in other Acts.
6. Promoters may purchase, by agreement, lands by the Special Act authorized to be taken.
7. Parties entitled to any such lands, or any estate or interest therein, empowered to sell the same to the promoters, and to enter into all necessary agreements for

that purpose; parties having limited interests enabled to sell and convey.

8. Parties under disability empowered to enfranchise copyholds, release lands from rent-charge, &c.
9. Amount of compensation where vendors are under disability to be ascertained by valuation; and the purchase-money paid into the bank for the benefit of the parties interested.
10. Vendors absolutely entitled may sell lands on chief rents.
11. Chief rents to be charged on tolls; and if unpaid may be recovered by action of debt, or levied by distress.
12. Parties enabled under above provisions may sell land to company for extraordinary purposes.
13. Promoters may sell lands purchased for extraordinary purposes, and purchase others, not exceeding in the whole the prescribed quantity.
14. Promoters not to purchase more than the prescribed quantity of land from parties under disability.
15. Municipal corporations not to sell lands without the approbation of the Lords of the Treasury.
16. Capital of company to be subscribed before compulsory powers put in force.
17. Certificate of justices' evidence that capital has been subscribed.
18. Promoters to give notice of their intention to take lands to all the parties interested; such notice to state the particulars of the lands required.
19. Notices to be served personally, or left at their places of abode, or with the occupiers, or affixed on the lands.
20. Notices to corporations to be left at their principal office.
21. If parties fail to treat or disagree as to compensation the amount to be settled as hereinafter mentioned.
22. Disputes as to compensation where claim is not more than £50. to be settled by two justices.
23. Compensation if claim exceed £50. may be settled by arbitration if claimant desire it.
24. In questions of disputed compensation to be settled by two justices, one justice may summon the parties before two justices, and upon their appearance, or proof of due service of summons, they may determine.

25. In questions of disputed compensation to be settled by arbitration each party to appoint an arbitrator; and the appointment cannot be revoked without consent; nor will the death of either party be a revocation. On failure of one party the other may appoint arbitrator to act on behalf of both.
26. If arbitrator die, &c. another may be appointed, and on failure the other may proceed *ex parte*.
27. Arbitrators to appoint umpire, and if umpire die another to be appointed.
28. In case of railway company being a party, Board of Trade may appoint an umpire on neglect of the arbitrators.
29. If single arbitrator die the matter to begin *de novo*.
30. If either arbitrator refuse to act, the other to proceed *ex parte*.
31. If arbitrators fail to make their award within twenty-one days, umpire to decide.
32. Arbitrators may call for documents and administer oaths.
33. Arbitrator or umpire to make and subscribe declaration; which is to be annexed to award.
34. Costs of arbitration to be settled by arbitrators and paid by promoters, unless sum awarded as compensation be the same or less than promoters offered; in which case costs of arbitrators to be borne equally by both parties, and the other costs by the party incurring them.
35. Arbitrators to deliver their award to promoters.
36. Submission to arbitration may be made a rule of court.
37. Award not to be set aside for error of form.
38. Promoters before summoning a jury to give notice and offer a sum for compensation.
39. In questions of disputed compensation to be settled by a jury, the promoters to issue their warrant for summoning a jury to the sheriff; or (if he be interested) to the coroner, or ex-sheriff, or ex-coroner, not interested in the matter in dispute.
40. Provisions applicable to sheriff to apply to coroner; delivery of jury lists.
41. Upon receipt of warrant sheriff to summon jury, and give notice to promoters of time and place appointed.

42. Jury to be drawn by sheriff out of jurors appearing upon summons.
43. Sheriff to preside on inquiry; claimant to be deemed plaintiff: on request of either party sheriff to summon witnesses, order to jury to view, &c.
44. If sheriff make default, to forfeit £50; jurors not appearing or neglecting their duty, liable to forfeit £10.
45. Witnesses not appearing or refusing to be examined, liable to forfeit £10.
46. Promoters to give other party ten days' notice of inquiry.
47. If claimant make default, inquiry not to proceed.
48. Jury and witnesses to be sworn by sheriff.
49. Jury to assess separately the sums to be paid for purchase of lands, and for damage to other lands by severance, or otherwise.
50. Verdict and judgment to be signed by the sheriff and kept by the clerk of the peace as records; and copies to be evidence; inspection, copying, and fees.
51. Costs of the inquiry to be borne by promoters where verdict is given for a greater sum than that offered; in other cases to be defrayed equally by both parties.
52. Costs of inquiry in case of difference to be settled by one of the masters of the Queen's Bench.
53. Costs payable by promoters may be recovered by distress; payable by owners of lands may be deducted from amount of compensation.
54. Either party may require that questions of compensation be tried by special jury; sheriff on receipt of warrant to nominate special jury.
55. Deficiency of special jurymen may be supplied by other persons qualified as special or common jurymen; trial to be in same manner as by common jury.
56. Other inquiries may be tried before such jury.
57. Jurymen not to be required, without consent, to attend such inquiry more than once in any year.
58. Compensation to absent parties to be determined by a surveyor appointed by two justices.
59. On application of promoters, two justices to nominate a surveyor.
60. Surveyor to make and subscribe declaration.

61. Nomination and declaration to be annexed to valuation.
62. Expences to be borne by promoters.
63. In estimating purchase money and compensation, regard to be had to damage by severance of lands.
64. When compensation to absent party has been determined by a surveyor, the party may afterwards have the same submitted to arbitration.
65. Question to be submitted to the arbitrators.
66. If further sum awarded, promoters to pay or deposit the same within fourteen days.
67. Costs to be in discretion of arbitrators if no further sum awarded, otherwise to be paid by promoters.
68. Compensation in respect of lands injuriously affected by works may be settled either by arbitration or a jury ; promoters on receiving notice either to pay amount claimed, or refer to arbitration, or issue warrant to sheriff to summon a jury.
69. Purchase money payable to parties under disability amounting to £200, to be deposited in the bank, in the name of the accountant-general (of Chancery in England, and Exchequer in Ireland,) and remain until applied to the following purposes—Purchase or redemption of land-tax, or discharge of debt affecting lands similarly settled ; purchase of other lands to be so settled ; removing or replacing buildings ; payment in money to any party becoming absolutely entitled.
70. Money may be so applied by order of court upon petition of party entitled ; interest to be paid to party entitled to profits.
71. Sums above £20. and under £200. to be deposited in the bank or paid to trustees ; money so paid to be applied as before directed.
72. Sums not exceeding £20. to be paid to parties entitled to profits.
73. All sums exceeding £20. payable under contract with persons not absolutely entitled, to be paid into bank ; court may allot to tenants for life, &c., compensation for injury sustained independently of value of lands.
74. Where compensation paid for leases or reversions, court may direct application of money as they may think just.

75. Upon deposit being made, the owners of the lands to convey ; or in default, the lands to vest in the promoters of the undertaking upon a deed poll being executed.
76. Where parties refuse to convey, or do not shew title, or cannot be found, the purchase money to be deposited in the bank.
77. Upon deposit being made in the bank a receipt to be given, and the lands to vest in the promoters upon a deed poll being executed.
78. Upon application of claimant of monies so deposited, the court may order such money to be invested or distributed.
79. Parties in possession of lands to be deemed the owners until the contrary be shewn to the satisfaction of the court.
80. In all cases of money deposited in the bank (except by reason of wilful refusal or neglect to receive the money, convey the lands, or shew a good title), the court may order the costs of investing and re-investing the monies, and of all necessary orders for those and other like purposes to be paid by the promoters ; costs of one application only for re-investment in land to be allowed, unless court otherwise orders.
81. Conveyances may be according to forms in schedule, or by deed ; forms in schedule will vest lands thereby conveyed in promoters, and merge all terms of years, bar and destroy all estates tail, &c. ; but terms so merged to afford same protection as heretofore.
82. Costs of conveyances to be borne by promoters ; such costs to include expences of verifying title and furnishing abstracts.
83. Costs of conveyances (if amount disputed), may be taxed by one of the taxing-masters of the Court of Chancery ; the expences of taxation to be borne by promoters, unless one-sixth part of costs be disallowed.
84. Promoters not to enter on lands, until purchase-money be paid or deposited ; except for surveying, taking levels, or setting out the line ; after giving not less than three, nor more than fourteen, days' notice.

85. If promoters be desirous of entering upon lands before agreement come to for purchase, they may deposit in bank amount claimed, or such sum as surveyor determines to be the value, and also give bond for payment of compensation to parties interested; and may thereupon enter on the lands.
86. Money to be deposited in bank in name of accountant-general of the Court of Chancery in England and the Court of Exchequer in Ireland; cashier of bank to give a receipt.
87. Money deposited to remain as a security to parties whose lands have been entered upon, and to be applied under the direction of the court.
88. The company may pay the deposit-money into the bank, by way of security, during the time that the office of the accountant-general is closed.
89. If promoters enter upon lands without consent before payment or deposit of purchase-money, to forfeit £10 above damage; and if they continue in possession after conviction in the penalty, they are to forfeit £25 per day; they are not to be liable if they have *bond fide* paid compensation to the parties believed to be entitled thereto.
90. On trial of an action for above penalty, decision of justices not to be held conclusive as to company's right of entry.
91. In case of refusal to deliver possession of lands, promoters may issue their warrant to sheriff; upon receipt whereof he shall deliver possession, and settle amount of costs, which are to be deducted from compensation payable, or levied by distress.
92. No party to be required to sell part of a house or other building.
93. Owners of intersected lands may, in certain cases, require promoters to purchase the same, or to throw them into their adjoining lands.
94. Promoters may insist on sale to them of intersected lands, where expence of bridges, &c., exceeds the value of lands; disputes as to value to be ascertained as provided for in cases of disputed compensation.



95. Conveyance of copyhold lands to promoters to be entered on rolls of manor; and, until enfranchised, to continue subject to fines and other manorial rights and services.
96. Promoters to procure lands holden of manors to be enfranchised, and pay such compensation therefor as shall be agreed upon or determined as in other cases of disputed compensation.
97. Upon payment or deposit of compensation, lord of manor to enfranchise lands; and in default thereof, promoters may execute a deed poll.
98. If part only of lands subject to copyhold rents be taken, the apportionment of such rent may be settled by agreement or by two justices.
99. Compensation for right in soil of common lands to be paid to lord of manor or other party entitled.
100. Upon payment or deposit of compensation for right in soil of common lands, the party entitled to convey such lands to promoters; or, in default thereof, they may execute a deed-poll.
101. Compensation for rights of common to be determined by promoters and a committee of parties entitled thereto.
102. Promoters may convene a meeting of parties entitled to rights of common by advertisement; notice of meeting to be affixed in parish church.
103. Meeting so called to appoint a committee.
104. Committee so chosen to agree with the promoters as to compensation for extinction of common rights, and receive the amount thereof.
105. Disputes as to such amount to be settled as in other cases.
106. If no committee appointed, compensation to be settled by a surveyor appointed by two justices.
107. Upon payment or deposit of compensation payable to commoners, the promoters may execute a deed-poll, and thereupon the lands shall vest in company, freed from commonable rights.
108. Promoters may purchase or redeem interest of mortgagee in lands required, by paying principal, interest, and costs, with six months' additional interest; or may give notice to pay off principal and interest at the end of six months;

- upon payment or tender of money, mortgagee to release his interest in lands.
109. If mortgagee fail to release his interest in lands, promoters may deposit money in bank, and execute a deed-poll; whereupon interest of mortgagee shall vest in promoters.
  110. If mortgaged lands be of less value than amount of mortgage, interest, and costs, compensation to be settled between promoters and mortgagee by agreement, or determined as in other cases of disputed compensation.
  111. If, upon payment or tender of compensation, mortgagee fail to convey, promoters may deposit money in bank, and execute a deed-poll, under which mortgagee's interest in lands shall pass to them, and they shall be entitled to immediate possession; rights of mortgagee against mortgagor in respect of unsatisfied debt to remain in force.
  112. If part only of mortgaged lands be required, the value to be settled by agreement, or determined as in other cases of disputed compensation; amount paid to be endorsed on mortgage-deed.
  113. If, upon payment or tender of compensation, mortgagee fail to convey, promoters may deposit money in bank, and execute a deed-poll, under which mortgagee's interest in lands shall pass to them; the rights of mortgagee in relation to the rest of the lands to remain in full force.
  114. In case of mortgages to be paid off at a stipulated time, promoters to pay costs of re-investing the money, and make compensation for loss of interest.
  115. Differences as to rent-charges to be determined as in other cases of disputed compensation.
  116. If part only of lands charged be required, the apportionment of rent charge may be settled by agreement, or by two justices.
  117. If, upon payment or tender of compensation, parties fail to release such charge, promoters may deposit money in bank, and execute a deed-poll, whereupon rent-charge will be extinguished.
  118. Charge to continue on lands not taken; promoters to subscribe memorandum on deed creating such charge, declaring what part of such lands have been purchased.

119. If part only of lands under lease be required, the rent to be apportioned by agreement or by two justices; lessee to be liable only for rent of lands not required, in respect of which all covenants of lease to remain in full force.
120. Lessees to be compensated for damage by severance.
121. Tenants for years and at will to be compensated by promoters, the amount to be settled by two justices in case of difference.
122. Parties claiming compensation as lessees, to produce their leases, or be treated as tenants from year to year.
123. Compulsory powers for purchase of lands not to be exercised after expiration of prescribed period, or (if none be prescribed) after three years from passing of Special Act.
124. Promoters may purchase interests in lands, the purchase whereof has been omitted by mistake, without quitting the possession of the lands, if within six months after notice of such interests, or (if disputed) within six months after the right to them has been established, the promoters pay compensation therefor, and for the mesne profits which have accrued due since their entry; such compensation to be agreed on, or awarded and paid in manner before provided.
125. Value of such lands to be estimated without regard to the improvements made by promoters.
126. Promoters to pay costs of litigation as to such lands, if right determined in favour of claimant.
127. Within prescribed period, or (if no period be prescribed) with ten years after period limited for completion of the works, land not wanted to be sold; and in default, to vest in owners of adjoining lands.
128. Such lands, before sale, to be offered to owner of lands from whom they were originally taken, and on their refusal, to owners of lands adjoining.
129. Right of pre-emption to be claimed within six weeks after offer of sale; declaration before justice evidence that such offer was made.
130. Differences as to price to be settled by arbitration.
131. Upon payment or tender of purchase-money, lands to be conveyed to purchasers, and company's receipt to be a sufficient discharge.

132. Effect of the word 'grant,' in conveyances of land by promoters, to be as follows, except as same shall be limited by express words: a covenant that promoters were seized of an estate of inheritance in fee simple, free from incumbrances; a covenant for quiet enjoyment; a covenant for further assurance; grantee may assign breaches, as if such covenants were expressly inserted.
133. Deficiency of land-tax and poor's-rate during execution of works, to be made good, and assessed on value of land at time of passing of Special Act; promoters may redeem land-tax.
134. Service of notices upon company.
135. In case of irregularity or trespass in execution of Special Act, parties not to recover in an action, if sufficient amends have been tendered.
136. Penalties not otherwise provided for may be recovered by summary proceeding; upon proof of the offence, justices may order payment.
137. Penalties may be levied by distress.
138. Distress to be levied by sale of goods of party liable; overplus to be repaid.
139. Justices may award one half of penalties to informer, and remainder to overseer of the poor.
140. Sums not exceeding £20, may be recovered by distress of goods of treasurer; treasurer may retain the amount, or sue company.
141. Distress not to be deemed unlawful for irregularity or want of form.
142. Penalties to be sued for within six months.
143. Justices may summon witnesses; witnesses making default to forfeit £5.
144. Form of conviction as in Schedule.
145. Proceedings in pursuance of this and Special Act not to be void for want of form.
146. Parties aggrieved by decision of justice, may appeal to Quarter Sessions, on giving security.
147. Court may make such order as they think reasonable.
148. Receiver of the Metropolitan Police district to receive penalties incurred within his district. (2 & 3 Vic. c. 71.)

- 149. Persons giving false evidence liable to penalties.
- 150. Copies of Special Act to be kept at principal office of company, and deposited with Clerks of the Peace; public may inspect and copy. (7 W. 4 & 1 Vic. c. 83. s. 3.)
- 151. Penalty on company failing to keep or deposit copies.
- 152. Act not to extend to Scotland.
- 153. Act may be amended or repealed.
- Schedule A. Form of conveyance.
- B. Form of conveyance on chief rent.
- C. Form of conviction.



## 8 VIC. CAP: 20.

*An Act for Consolidating in One Act certain Provisions usually inserted in Acts authorising the making of Railways.*

[8th May, 1845.]

- 1. Operation of this Act confined to future railways.
- 2. Interpretation clause of this Act.
- 3. Interpretations in this and the Special Act.
- 4. Short title of this Act.
- 5. Form in which portions of this Act may be incorporated in other acts.
- 6. Power given by Special Act to construct railway and take lands to be subject to the provisions of this Act, and the Lands Clauses Consolidation Act.
- 7. Errors and omissions in plans, &c., mentioned in Special Act may be corrected by two justices; certificates of justices to state particulars of such omission, and to be deposited with clerks of the peace, parish clerks in England, and post-masters in Ireland.
- 8. Works not to be proceeded with until plans of all alterations authorized by parliament have been deposited.
- 9. Clerks of the peace, &c., to receive plans of alterations, and allow inspection.

10. Copies of plans, &c., or of alterations to be evidence.
11. Company not to deviate from levels described in section more than five feet, or in towns, &c. two feet, without consent of owners, &c.; company may lower embankments or viaducts; notice of petty sessions for obtaining consent of justices.
12. Three weeks' public notice to be given by advertisement previous to making greater deviations; owners of adjoining lands may appeal to the Board of Trade against such deviations.
13. Viaducts, tunnels, &c., to be made as marked on deposited plans.
14. Limiting deviations from works in plan; inclination or gradients of railway; radius of curves, tunnels, and viaducts.
15. Limits of deviation from line marked on plans; deviations not to extend into lands of persons not mentioned in book of reference.
16. Company may execute the following works, subject to the restrictions in this and the Special Act; construct inclined planes, &c.; alter course of rivers, &c.; make drains, &c.; erect warehouses, &c.; alter and repair works; and do other necessary acts, inflicting as little damage as can be, and making full compensation.
17. Company not to construct works below high-water mark without consent of Commissioners of Woods, and Lords of the Admiralty; works not to be altered without like consent.
18. Company may alter position of water and gas pipes, &c., under superintendence of water or gas company; giving notice.
19. Company not to disturb pipes until they have laid down others for continuing the supply of water or gas.
20. Pipes not to be laid contrary to Acts, and eighteen inches surface to be retained.
21. Company to make good all damage done to property of water or gas company.
22. When railway crosses pipes, company to make a culvert.
23. If company obstruct supply of water, or gas, to forfeit £20. per day.

24. Persons obstructing construction of railway liable to a penalty of £5.
25. The company from time to time to submit to the drainage commissioners in Ireland plans, &c., of the railway.
26. Such commissioners to investigate and report on the works necessary for drainage; and works not to be proceeded with until their certificate is obtained.
27. Commissioners may make summary application to the Court of Chancery to enforce the execution of such works.
28. Powers of commissioners not to be affected by this Act.
29. Commissioners may decide questions as to the execution of works, or may themselves execute works for carrying watercourses across the railway.
30. Company may occupy, temporarily, private roads within five hundred yards of the railway; notice to owners; compensation.
31. Owners and occupiers of roads and lands may object that other roads should be taken.
32. Company may take temporary possession of land for certain purposes without previous payment of the price, but they will be liable to an action for nuisance; no quarry nor brickfield to be taken.
33. Company to give notice to owners and occupiers previous to taking such temporary possession.
34. Service of notices on owners and occupiers of lands.
35. Owner may object that other lands ought to be taken.
36. Owner may summon company before two justices; and upon appearance, or proof of due service of summons, justices to inquire into grounds of objection, and may order that lands and materials shall not be taken.
37. If owners object that other lands ought to be taken, justices may summon company and owners of such lands, and determine which land shall be taken.
38. Justices may adjourn the inquiry, and summon other owners before them, and determine finally which lands shall be used.
39. Company before entering upon such lands to give sureties, if required, for payment of compensation.

40. Company before using such lands to separate them from adjoining lands, and put up fences and gates.
41. Lands taken for getting materials, &c., to be worked as the surveyor of owner may direct.
42. Owner of lands may compel company to purchase lands so temporarily occupied.
43. Company to make compensation for temporary occupation of lands; and pay a rent to be fixed by two justices, and the full value of all materials taken.
44. Compensation to be ascertained under the 8 Vic. c. 18.
45. Company may purchase land for additional stations, &c.
46. Railway not to cross roads on the level unless otherwise provided by the Special Act; proviso as to highways other than carriage roads.
47. If railway cross public roads on a level, company to erect gates and keep the same closed across such roads; Board of Trade may order that such gates be kept closed across railway instead of across roads.
48. Trains not to cross roads adjoining stations at more than four miles an hour.
49. Construction of bridges over roads; width of arch; height of arch over public and private roads; descent in roads, &c.
50. Construction of bridges over railway; fence; width of road; ascent.
51. Width of bridges need not exceed the width of roads in certain cases; if road afterwards widened, bridges to be also widened.
52. Existing inclinations of roads crossed or diverted need not be improved.
53. Before roads interfered with others to be substituted.
54. If company fail to substitute a road to forfeit £20. per day.
55. Party suffering damage from interruption of road may recover in an action on the case.
56. Company to restore roads interfered with, or put substituted road into a permanently substantial condition, if it be a turnpike road within six months, and if it be not a turnpike road within twelve months after first interference with former road.



57. If road be not restored, nor substituted road completed, within period allowed, company to forfeit £5. per day.
58. Company to repair roads used by them; justices may determine disputes as to repairs and impose penalty of £5. per day, but tolls paid to be allowed for.
59. Company to give notice of application to justices for consent to level crossings of highways; justices may consent that highways be crossed on a level.
60. Parties aggrieved may appeal to Quarter Sessions against the decision of the justices.
61. Company to make approaches and fences to bridle-ways and footways crossed on level.
62. On failure of company justices may order approaches and fences to be made to highways crossed on the level, under a penalty of £5. a day for neglect.
63. Screens for turnpike roads to be made when required by the Board of Trade.
64. If company fail to construct such screens to forfeit £5. per day.
65. Justices may order repair of bridges, fences, gates, &c. and impose penalty of £5. per day on company for neglect.
66. Disputes as to the construction of certain roads, bridges, &c., may be referred to the Board of Trade; who may authorise other modes of construction, if private rights and interests be not thereby injured.
67. Authentication of certificates of the Board of Trade; service of notices on company, and to Board of Trade.
68. Company to make and maintain the following works, for the accommodation of the owners and occupiers of adjoining lands; gates, bridges, arches, culverts, passages; fences; drains; watering-places for cattle; such works not to be made so as to obstruct the working of the railway.
69. Differences as to accommodation works to be settled by justices.
70. On failure of company, owners may execute such works at their expense, and disputes as to the cost to be settled by justices.
71. Owners may make additional accommodation works at their own expense.

72. Such works to be constructed under the superintendence of the company's engineer.
73. Additional accommodation works not to be required after five years from completion and opening of line.
74. Owners to be allowed to cross railway until accommodation works are made, unless compensation has been given for absolute severance.
75. Persons omitting to fasten gates liable to forfeit 40s.
76. Owners may make private branch railways, communicating with the railway ; restrictions and conditions.
77. Company not entitled to minerals under any land purchased by them, unless expressly purchased, or necessary for construction of works.
78. Owners of mines lying near the railway to give notice before working ; company may purchase such mines, and disputes as to compensation to be settled as in other cases.
79. If company unwilling to purchase, owner may work the mines, making compensation to company for damage to the line by improper working.
80. If mines extend on both sides the railway, owners may make air-ways and other communications, of certain dimensions.
81. Company to make compensation to owners for loss by interruption of continuous working of such mines.
82. And also to owner of surface-lands for any air-way or other works made necessary by the railway.
83. Company may enter and inspect the working of mines.
84. Owners refusing to allow inspection liable to forfeit £20.
85. If mines improperly worked, company may require owners to adopt means for securing safety of railway.
86. Companies may use engines and carriages on the line, and convey passengers and goods.
87. Company may contract with other companies for passage of trains and apportionment of tolls.
88. Such contracts not to affect tolls payable by persons not parties thereto.
89. Company not to be liable to a greater extent than common carriers.

90. Company may alter and vary tolls, subject to prescribed limitations, and so as they be always equal and impartial.
91. Tolls on amalgamated railways to be calculated as if they were one line.
92. Company may take tolls, and all persons may use the railway on payment of them.
93. Lists of tolls to be exhibited on a board.
94. Railway to be measured, and mile-stones set up.
95. No tolls to be taken, unless boards exhibited and mile-stones set up.
96. Tolls to be paid as directed by company.
97. In default of payment of tolls, company may detain and sell carriages and goods of defaulters.
98. Owners of carriages and goods to give account of lading, &c., to collector of tolls.
99. Owners, &c., not giving account of lading, or not producing way-bill, or avoiding payment of tolls, liable to penalty.
100. Disputes as to amount of tolls to be settled by justice.
101. Differences as to weights arising, collectors may detain and weigh carriages and goods; if account of lading incorrect, owners to pay costs of examination; but, if correct, company to pay costs and damages.
102. Toll-collectors, for wrongful detention of goods, liable for costs and damages, recoverable by distress.
103. Passengers practising frauds on the company liable to forfeit 40s.
104. Parties practising frauds may be detained and taken before justice.
105. Persons bringing dangerous goods on the railway, without notice, liable to forfeit £20.
106. Matters in possession or custody of toll-collector to be delivered to company when required, or justice may order possession to be given.
107. Company to prepare annual account of receipts and payments, and transmit copy to overseers, clerks of the peace, &c., under a penalty of £20.
108. Company may make regulations as to speed of travelling, times of arrival and departure of trains, loading and unloading goods, receipt and delivery of goods, prevention

- of nuisances, and other purposes; so that railway be not closed unnecessarily to the public.
109. Company may make and alter bye-laws; and persons offending against them liable to forfeit £5, and (in certain cases) to be summarily dealt with.
  110. Substance of bye-laws protecting the company and the public in the use of the railway to be exhibited on a board.
  111. Such bye-laws to be binding on all parties, and publication to be proved by proof of their being painted or printed on a board.
  112. Lease of railway to contain all usual and proper covenants.
  113. Such lease to entitle lessees to use of railway and exercise of powers and privileges granted to company.
  114. Engines to consume their own smoke, under a penalty of £5. per day.
  115. No engines to be brought on railway until approved of by company, and certificate of approval given. Engines out of repair or unfit to be used, may be removed; differences as to fitness to be settled by arbitration.
  116. Persons using engines without certificate, or not removing improper engines, after notice, liable to forfeit £20.
  117. Carriages to be constructed according to company's regulations.
  118. Such regulations to apply also to company's carriages.
  119. If carriages used contrary to such regulations, owner liable to forfeit £10.
  120. Owner's name, etc., to be registered and painted on carriages.
  121. If owner fail to register, carriage may be removed.
  122. Carriages improperly loaded, or suffered to obstruct the road, may be unloaded or removed.
  123. Company not to be liable for damage by such unloading, &c.
  124. Owners of engines and carriages liable for damage done by their servants.
  125. Owners may recover amount of such damage from their servants.

126. When questions are to be determined by arbitration, each party to appoint an arbitrator ; appointment cannot be revoked without consent ; on failure of one party, the other may appoint arbitrator to act for both.
127. If arbitrator die or resign, another to be appointed.
128. Arbitrators to appoint umpire ; if umpire die, another to be appointed.
129. Board of Trade may appoint umpire on neglect of arbitrators.
130. If single arbitrator die, the matter to begin *de novo*.
131. If either arbitrator refuse to act, the other to proceed.
132. If arbitrators fail to make their award within twenty-one days, the matter to go to the umpire.
133. Arbitrators may call for documents and administer oaths.
134. Arbitrators and umpire to make and subscribe declaration ; declaration to be annexed to award.
135. Costs to be settled by arbitrators.
136. Submission to arbitration may be made a rule of court.
137. No award to be set aside for irregularity or error of form.
138. Service of notices upon company.
139. Amends may be tendered by company for irregularity or trespass in execution of Act ; and after tender of sufficient amends, party not to recover in any action.
140. Damages not otherwise provided for may be ascertained and enforced by justices, and recovered by distress.
141. Distress against company may, if not exceeding £20., and sufficient goods of the company cannot be found, be satisfied out of the goods of the treasurer, after seven days' notice ; treasurer to be reimbursed out of company's funds, or may sue.
142. In questions of damages, &c., one justice may summon parties before one or more justices, and upon appearance, or proof of due service of summons, the latter may determine the question, and give costs at their discretion.
143. Company to publish short particulars of offences for which any penalty is imposed, and affix the same to a board, and renew when obliterated.
144. Penalty for defacing boards used for such publication.

145. Penalties to be recovered before two justices, who may issue summons; and upon appearance or proof of due service of summons, convict the offender, and adjudge the costs.
146. Penalties may be levied by distress.
147. Justices may detain offenders convicted before them until return made to warrant of distress; if no sufficient distress can be had, offender may be committed for three months.
148. Distress to be levied by sale of goods of party; overplus to be repaid.
149. Distress not to be unlawful for irregularity or want of form.
150. Justices may award penalty; one half to informer, the other to overseers.
151. Penalties to be sued for within six months.
152. Damage to be made good in addition to penalty.
153. Justice may summon witnesses, who, for neglecting to appear or refusing to be examined, are liable to forfeit £5.
154. Officers of company may detain offenders whose names shall be unknown until taken before a justice.
155. Conviction to be in form given in schedule.
156. Proceedings not to be vacated for want of form, nor removed by certiorari or otherwise.
157. Parties aggrieved may appeal to quarter sessions, after ten days' notice, and entry into recognizances with two sureties.
158. Court of quarter sessions to decide appeal, and make such order as they think reasonable.
159. Receiver of Metropolitan Police District to receive penalties incurred within his district, and appropriate as provided by 2 & 3 Vic. c. 71.
160. Persons giving false evidence liable to penalties of perjury.
161. Money paid into the Bank of Ireland, under 1 & 2 Vic. c. 117, to be exempt from Usher's poundage.
162. Company to keep copy of Special Act at their principal office, and deposit copies with clerks of the peace, who are to receive them as under 7 W. 4, and 1 Vic. c. 83.

163. Penalties on company failing to keep or deposit copies.

164. Act not to extend to Scotland.

165. Act may be amended or repealed.

Schedule—Form of Conviction.

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7 & 8 VIC. CAP. 110.

*An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies.*

1. The Act to come into operation as to companies formed on and after the 1st of November, 1844.
2. Operation of the Act in respect of what companies; the application of the term, "Joint Stock Company;" the operation of the Act as to companies for executing parliamentary works; and its operation as to incorporated companies.
3. Interpretation of words.
4. The particulars to be registered previous to the obtaining a certificate of provisional registration, and the returns of certain particulars to be made to the registry office from time to time as they may be decided on.
5. Penalty on neglect of company to register particulars.
6. Appointment of solicitor, and relief from penalties on promoters on such appointment; return of appointment and acceptance, and penalty on solicitor failing to make returns.
7. Complete registration of companies; the particulars required previous to; the provisions to be contained in the deeds of settlement and the execution and registration thereof.
8. If deed of settlement incomplete or inconsistent, registrar of joint stock company may notify the same to company.
9. Companies for executing works requiring the authority of Parliament, in order to obtain certificate of complete registration, may deposit certificate of the receipt of

- plans, sections, and books of reference in compliance with standing orders.
10. Joint stock companies must make further registration and returns of further deeds and changes; penalty on neglecting so to do.
  11. Company must make half-yearly returns of changes and additions of members; penalty on directors neglecting to make returns.
  12. Party to transfer of shares may require directors to make return of transfer.
  13. Until transfer of share registered, transferee not entitled to profits, nor transferrer discharged from liability.
  14. Annually in month of January companies must return name and business of company; liable to penalty on neglect.
  15. Registrar of joint stock companies to write on documents and returns made to the registry office the day of the receipt thereof, and if documents conformable with Act to grant certificates of registration; certificate receivable in evidence.
  16. Returns previous to complete registration to be authenticated by promoters or solicitor, subsequent to complete registration by seal of company.
  17. Committee of Privy Council for trade may from time to time make regulations as to returns; such regulations to be published in the Gazette.
  18. All parties, on payment of certain fees, may inspect returns, &c., and require certified copies; such copies to be received as evidence.
  19. Board of Trade may appoint registrar and assistants.
  20. Registrar to attend at office from ten to five.
  21. Fees, and amount of, to be paid by companies; Commissioners of Treasury may fix others, and application thereof.
  22. Registrar of joint stock companies, or servants, demanding or receiving gratuities guilty of misdemeanour.
  23. Powers of company under certificate of provisional registration.
  24. Penalties on promoters advertising company, allotting



shares, or taking deposits previous to provisional registration.

25. Powers of companies under certificate of complete registration, and the restrictions on companies requiring the authority of Parliament previous to execution of works.
26. Shareholders restrained from selling shares previous to complete registration, and penalties thereon; shareholders not entitled to privileges until they have executed deed of settlement; having executed deed of settlement may attend meetings, vote, &c.
27. General powers of directors; directors restrained from lending money, or buying and selling shares belonging to the company.
28. Not lawful for director to hold office, or act, unless he hold at least one share; penalty on party acting, or party announcing, unqualified director.
29. Directors concerned in contracts with company disqualified from acting.
30. Acts of directors valid, although error or invalidity in appointment.
31. Directors falsifying, mutilating, or fraudulently erasing, books of company guilty of misdemeanour.
32. Proceedings of meetings signed by chairman to be received as evidence both as to proceedings of meeting, and of meeting being duly convened.
33. Shareholders entitled to inspect books of proceedings of company, subject, however, to provisions of deed of settlement.
34. Directors must keep proper account books.
35. Accounts must be balanced, and balance-sheet made out, at least fourteen days previous to meetings.
36. Balance-sheet to be produced to shareholders of meetings.
37. Fourteen days previous to, and one month subsequent to, meetings, shareholders may inspect books of accounts.
38. Auditors must be appointed annually at each meeting; Board of Trade to fix salary of auditor.
39. Accounts and balance-sheet to be produced to auditors twenty-eight days previous to ordinary meetings.

40. Auditors at all reasonable times empowered to inspect books of company.
41. Auditors within fourteen days after receipt of balance-sheet to reject or confirm accounts.
42. Directors must send to each shareholder copies of balance-sheet and report.
43. The balance-sheet and report of auditors to be registered.
44. All contracts, exceeding £50., made on behalf of company to be under seal of company and signed by two directors; contracts less than £50. to be reported to the secretary.
45. Bills of exchange and promissory notes must be accepted or made in the names of two of the directors on behalf of the company, and reported to the secretary, and entered in books for that purpose.
46. Deeds bearing the seal of the company to be signed by at least two of the directors.
47. All bye-laws must be reduced into writing, and have the seal of the company affixed and be registered at the registrar's office, and circulated among the shareholders.
48. Bye-laws having the seal of office of the registrar of joint stock companies to be evidence.
49. Directors must keep register of shareholders showing name, address, number of shares, and amount of instalments paid by each.
50. Shareholders may inspect register of shareholders gratis.
51. Shareholders entitled to certificate of shares.
52. Certificate of share to be evidence of title of the shareholder.
53. Certificate if lost, or destroyed, to be renewed.
54. Shareholders may transfer their shares by deed duly stamped; memorial of transfer must be deposited with company, and the entry of memorial indorsed on transfer; shareholders not having paid calls not entitled to transfer.
55. Shareholders failing to pay calls on shares may be sued in action of debt.
56. If share jointly held, notice to be served to party whose name is first on the register.

57. Directors bound at every principal place of business to have written or printed copies of an index or abstract of the deed of settlement, and a list of shareholders: shareholders entitled to inspect the same.
58. Companies existing previous to this Act entitled to be registered free of charge; effect of certificate.
59. Existing companies constituted in manner required with respect to companies formed under this Act, or executing deed in conformity with Act, may receive certificate of complete registration.
60. Provisions of Act applicable to companies formed, after passing of Act, and before 1st of November, 1844.
61. Existing companies incorporated liable to be sued in respect of obligations before incorporation, in the same manner as if they had not been incorporated.
62. Board of Trade may receive special applications for modifications of conditions and regulations, as enjoined by this Act.
63. Act not to extend to mining partnerships.
64. Act not to extend to Irish anonymous partnerships.
65. Where companies falsely pretend to be patronised by opulent persons, the persons issuing such notices liable to penalties.
66. Judgment against company, when effects of company insufficient, may be issued against shareholders.
67. Shareholders against whom execution has been issued, entitled to contribution from other shareholders.
68. Execution not to be taken out against shareholder, unless with leave of the court or a judge.
69. Penalties and forfeitures, where no mode of recovery specially provided, to be recovered before any two justices of the peace acting for the district where offence committed.
70. Penalties and forfeitures not specially appropriated, to be paid half to informer, half to her Majesty's use.
71. Any one justice before whom complaint made, may summon party and witnesses before any two justices, who are to determine the matter; penalties, costs, and forfeitures, may be levied by distress on goods of offender; in default of distress, offender may be committed to prison.

72. Witnesses refusing to attend before justices, or refusing to give evidence, and be examined on oath, liable to penalty.
  73. Proceedings for offences under the Act to be taken within six months.
  74. Parties aggrieved by decision of justices may, within one month, appeal to Quarter Sessions.
  75. Proceedings not to be vacated for want of form, nor removed by certiorari.
  76. Where action of debt brought for the recovery of penalties, the amount of penalty sought to be recovered must be endorsed on the writ of summons.
  77. Actions in any of the superior courts for penalties under the Act, must be commenced in the name and with the consent of the attorney-general.
  78. Instruments purporting to be made by the Board of Trade, if sealed by their seal, to be deemed authentic.
  79. Registrar of joint stock companies bound to make annual report.
  80. Act may be amended.
- 

10 & 11 VIC. CAP. 78.

*An Act to amend an Act for the Registration, Incorporation, and Regulation of Joint Stock Companies.*

1. Any company having obtained a certificate of complete registration, being desirous of holding lands may apply to the Board of Trade for a license, who may, if they think fit, grant the same.
2. Accounts of such renewals, licenses, extensions, &c., to be annually laid before Parliament.
3. Licenses granted before passing of this Act, to be deemed valid and effectual for the purposes therein mentioned.
4. So much of 7 & 8 Vic. c. 110, as requires a copy of every hand bill, prospectus, advertisement, &c. to be registered, is repealed.

5. In addition to particulars required by 7 & 8 Vic. c. 110, and not repealed by sec. 4, promoters must return—First, the amount of proposed capital—Secondly, the amount and number of shares into which the same is to be divided.
6. Alterations made in particulars registered, to be returned to registrar within one month. Penalty on promoters in default of.
7. Promoters issuing at any time before complete registration, any prospectus or other document containing statements at variance with particulars returned under the 7 & 8 Vic. cap. 110, liable to penalties.
8. Penalties imposed by this Act to be recovered in manner prescribed in 7 & 8 Vic. cap. 110.
9. Act may be amended or repealed.



## 9 VIC. CAP. 20.

*An Act to amend an Act of the second year of her present Majesty, for providing for the Custody of certain Monies paid in pursuance of the Standing Orders of either House of Parliament, by subscribers to works or undertakings to be effected under the authority of Parliament.*

1. Repeals 1 & 2 Vic., c. 117; monies already paid to be dealt with as directed by repealed Act.
2. Prescribes the mode in which the authority to deposit is to be obtained.
3. Prescribes the mode of payment of deposit; parties in lieu of cash may pay in Government Stock or Exchequer Bills; the value of such government securities to be taken at the price at which they were originally purchased.
4. Parties depositing may petition the court to invest the monies deposited.
5. On termination of session or withdrawal of bill, on production of certificate of speaker, court may order repayment of money deposited.

## 9 &amp; 10 VIC. CAP. 28.

*An Act to facilitate the Dissolution of certain Railway Companies. (a).*

1. Parties who have entered into contracts for making railways, whether or not contract or agreement shall contain powers for dissolving the same, may dissolve pursuant to the Act.
2. Committee of management may call meetings of shareholders to determine as to dissolving; if meeting determine on dissolving, directors to have no power to proceed further.
3. Any five shareholders by writing under their hands may require committee to call meeting; if committee neglect the five shareholders may do so; after requisition unlawful for committee to enter into any contracts.
4. Meeting to be deemed duly called, although certain votes may be disallowed.
5. Notice of meeting to be advertised in Gazette, and in three London daily papers, not less than eight nor more than fifteen clear days before day of meeting.
6. Notice must specify day, hour, and place of meeting; parties entitled to be present must produce either shares or proxies.
7. Meeting must elect chairman; chairman to be one of committee of management; if from any cause no member of committee elected, one of shareholders to be elected; chairman to have casting vote.
8. Chairman at meeting to put questions as to the dissolution of the company, or as to the bankruptcy, and also as to election of chairman and scrutineers.
9. After election of chairman, meeting to elect as scrutineers three shareholders; decision in writing of two of them final.

(a) From the wording of the first section, this Act would appear to apply only to companies formed previous to the passing of the Act.

10. If chairman found not to be entitled to vote, a shareholder to be elected as chairman.
11. If prescribed quorum not present at meeting, votes of parties present to be taken; meeting to be adjourned to a day not less than three nor more than seven days; notice of adjourned meeting to be advertised; at adjourned meeting votes at original meeting to be received.
12. Parties in possession of scrip entitled to vote, although not original allottees; nothing to authorise more than one vote in respect of any share.
13. Every shareholder on the questions of dissolution and bankruptcy entitled to one vote in respect of every share; fact of party voting not to increase or alter his rights and liabilities either in law or equity.
14. Appointment of proxy to be signed and verified by party appointing the same before justice of the peace or master extraordinary in chancery.
15. To constitute a meeting, parties holding at least one-third of shares issued must be present; and for the purpose of effecting a dissolution there must be a majority of the votes of the whole scrip-holders, or at least three-fifths of the parties present.
16. Chairman at meeting to sign, and scrutineers to counter-sign, minutes of the proceedings; minutes to be advertised in Gazette, and registered with Registrar of Joint Stock Companies.
17. Prescribes the places for holding meetings.
18. No parties allowed to vote except in respect of scrip issued previous to March, 1846; committees of railways to send in to the Registrar of Joint Stock Companies an account of shares issued; penalty on default.
19. Registrar of Joint Stock Companies to require return of issues; omission of registrar to send in notice not to exempt committees from penalties.
20. Committees of projected railways in Scotland to lodge a return with the sheriff-clerk of Edinburgh within twelve days from passing the Act; penalty for not lodging a return.

21. The sheriff-clerk in Scotland to give notice by advertisement for returns of issued scrip.
22. If, by any reason, return of shares and scrip actually issued be not made within one calendar month from the passing of the Act, meeting may be called and held under provisions of Act.
23. Meeting to decide whether the question of dissolution to be taken as an act of bankruptcy.
24. In case meeting shall resolve that dissolution be not an act of bankruptcy, then (subject to the power of committee or creditors petitioning for a fiat), the affairs shall be wound up as if dissolved by mutual consent.
25. Resolution to dissolve not to affect rights of shareholders, nor suits pending before the passing the Act.
26. Where meeting shall have determined not to dissolve, no new meeting can be called for six months.
27. Within three months after dissolution resolved on, any three of committee, or any creditor to an amount sufficient to support a fiat, may petition for a fiat in bankruptcy.
28. On the issuing of a fiat, company to be subject to the provisions of the Acts for winding up joint stock companies (a).
29. Sequestration of estates of dissolved Scotch railway companies may be awarded.
30. Where a company incorporated previous to this Act, has entered into contracts for forming branches, as to such branches deemed to be within the Act.
31. After dissolution of company under this Act, member against whom judgment shall have been recovered, entitled to be repaid by contribution from other members, together with costs.
32. After company has been dissolved, no action to be brought by any attorney until one month after bill of costs shall have been delivered; courts may refer bills for taxation to taxing officer.
33. Interpretation of words.
34. Act may be amended or repealed.

(a) 7 & 8 Vic. c. 111, and 8 & 9 Vic. c. 98.



## 9 &amp; 10 VIC. CAP. 57.

*An Act for Regulating the Gauge of Railways.*

1. Future railways to be constructed on a gauge of four feet eight inches and a half in Great Britain, and five feet three inches in Ireland; this Act not to affect the maintenance and repair of railways constructed before the passing thereof.
  2. Excepts certain railways from the operation of the Act.
  3. Declares that certain railways therein named are to be on the gauge of seven feet.
  4. Not lawful to alter the gauge of any passenger railway.
  5. Provisions in respect of the Oxford and Rugby, and Oxford, Worcester, and Wolverhampton railways.
  6. Penalty of £10 per mile per day upon companies making alterations contrary to the provisions of the Act.
  7. In addition to penalties, Commissioners of Woods and Forests, or Commissioners of Railways, may abate and remove any part altered.
  8. Recovery of penalties.
  9. Act may be amended or repealed.
- 

## 10 &amp; 11 VIC. CAP. 69.

*An Act for the more effectual Taxation of Costs on Private Bills in the House of Commons.*

1. Except as to costs incurred in the present or any preceding session of parliament, repeals 6 Geo. 4, cap. 123.
2. No parliamentary agent or solicitor can commence any action for the recovery of charges either relating to any petition for a private bill, or in respect of complying with standing orders, or opposing any bill in the House of Commons, until the expiration of a month after a signed bill

has been delivered to the party sought to be charged ; except where a judge of one of the superior courts shall be satisfied that the party sought to be charged is about to quit the kingdom.

3. Speaker of House of Commons to appoint taxing officers.
  4. Speaker to prepare a list of charges to be allowed upon the taxation of any such bills.
  5. Empowers taxing officer to examine parties on oath ; parties giving false evidence guilty of perjury.
  6. Taxing officer may call for books and papers in the hands of either party. Taxing officer not empowered to determine fees payable to the House of Commons.
  7. Taxing officer may demand such fees for taxation as the House of Commons may direct ; the costs of taxation to be in the discretion of the taxing officer.
  8. Either party may apply to taxing officer to tax the bill ; if either party refuse or neglect to attend at time appointed for taxation, officer may proceed, *ex parte* ; actions commenced pending taxation to be stayed ; party chargeable not entitled to have bill taxed after verdict, or execution of writ of inquiry in an action for the recovery of the demand, nor after the expiration of six months after the delivery of a signed bill, unless, in the latter case, the speaker shall think fit.
  9. Taxing officer, if required by either party, to report taxation to the speaker ; speaker may order the taxation to be reviewed ; certificate of speaker conclusive as to amount of bill, and to have the effect of warrant of attorney, or *cognovit actionem*, but not as to liability of party charged.
  10. Interpretation of words.
  11. Title of the Act.
  12. Act may be amended or repealed.
-

## 9 &amp; 10 VIC. CAP. 93.

*An Act for Compensating the Families of Persons killed by Accidents.*

1. Action to be maintainable against any person causing death through neglect, &c., although death should have been caused under circumstances amounting to felony.
  2. Action to be brought in name of executor or administrator, for the benefit of wife, husband, parent, or child, of the person killed; jury may apportion the damages as they think fit.
  3. Only one action to be brought in respect of same subject-matter: actions to be commenced within twelve calendar months of death of person.
  4. In action, plaintiff to deliver to the defendant or his attorney, together with the declaration, full particulars of the persons on whose behalf the action is brought, together with the nature of the claim.
  5. Interpretation of words.
  6. Operation of Act.
  7. Act may be repealed.
- 

## 9 &amp; 10 VIC. CAP. 105.

*An Act for Constituting Commissioners of Railways.*

Preamble recites that it is expedient that powers exercised under the provisions of 3 & 4 Vic. c. 97; 5 & 6 Vic. cap. 55; 7 & 8 Vic. cap. 85; and 8 & 9 Vic. cc. 20, 33 by the Lords of the Committee of Privy Council for Trade and Foreign Plantations should be exercised by a separate department.

1. The Queen empowered to appoint not more than five persons, one of whom to be president, and from time to time to remove them.

2. Power of Board of Trade transferred to the commissioners of railways.
3. Office to be provided under the direction of the Lords of the Treasury for the use of the commissioners of railways, to which office notices and documents must be sent.
4. Commissioners of railways to have a seal; documents sealed with the seal of the commissioners, and signed by two or more of them, to be received as evidence, without further proof.
5. Commissioners subject to approval of Lords of the Treasury may appoint secretary and requisite number of officers.
6. Prescribes the mode of payment of salaries to commissioners, officers, and servants.
7. President not disqualified from sitting in Parliament.
8. Unpaid commissioners not disqualified from sitting in Parliament.
9. After reciting that in some cases railway companies had exceeded their powers, enjoins commissioners of railways to prevent such proceedings by exercise of powers vested in Board of Trade.
10. Commissioners of railways to report to her Majesty and to both Houses of Parliament, upon any cases specially referred to them.
11. Commissioners of railways and their servants empowered to inspect and survey any proposed line of railway; expenses incurred in such survey to be paid by the promoters of such railways.
12. Act may be amended or repealed.

## APPENDIX N<sup>o</sup>. II.

### Forms.

Form of Return to be made on Application for Certificate of Provisional Registration.

7 & 8 Vic. c. 110.

Name of the Proposed Company.	Business or Purpose of the Proposed Company.	Names, &c., of Promoters of Company.			
		Name.	Occupation, or other Description.	Place of Business.	Place of Residence.
London and York Railway Company.	Construction of a Railway from London to York.	Smith, John	Merchant	1, Cheapside	Clapham Common

Dated            day of            Signature of { \_\_\_\_\_  
party registering { \_\_\_\_\_

*Consent to Act and Agreement to take Shares by Provisional Committee-men.*

7 & 8 Vic. c. 110, s. 4.

EACH of us, the undersigned, doth hereby declare his consent to become a provisional committee-man, and promoter of the Railway company, and each of us doth hereby separately for himself agree with A. and B., as trustees of the said company, to take one or more share or shares in the said undertaking, upon such share or shares being allotted to him according to the provisions of the said company.

*(Here follow the signatures.)*

## No. 2.

*Request to be inserted on Provisional Committee.*

To A. & B., Trustees for and on behalf of the \_\_\_\_\_ Company, and to the Managing Committee, for the time being, of the said company.

Gentlemen,

I request you will insert my name as one of the Provisional Committee of the said Company, and I hereby agree with you, the said A. and B., to take up and pay the deposit on \_\_\_\_\_ shares, or such other number as may be appropriated to members of the Provisional Committee; and I authorize the parties for the time being acting as managing committee to pledge my credit to an extent not exceeding the amount of deposit prescribed to be paid on the shares so allotted to me.

Yours, &c.

## No. 3.

*Appointment of Solicitor to a Company Provisionally Registered.*

7 & 8 Vic. c. 110, s. 6.

We, the undersigned, promoters of the \_\_\_\_\_ Company, do hereby appoint \_\_\_\_\_ Gentleman, \_\_\_\_\_ of her Majesty's Court of \_\_\_\_\_ to be Solicitor for the Promoters of the said Company, for the purposes specified in the sixth section of the Act for the Registration, Incorporation, and Regulation, of Joint Stock Companies. (7 & 8 Vic. c. 110.)

Signed on behalf of  
the Promoters of  
the said Company  
by

{ Promoters of the  
said Company.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 .

*Acceptance of Appointment by Solicitor.*

I, the undersigned, do hereby accept the office of Solicitor for the Promoters of the \_\_\_\_\_ Company, for the purposes specified in the sixth section of the Act for the Registration, Incorporation, and Regulation, of Joint Stock Companies. (7 & 8 Vic. c. 110.)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 .

Signature.

## No. 4.

*Revocation of Appointment of Solicitor.*

We, the undersigned, Promoters of the \_\_\_\_\_ Company, do hereby revoke the appointment of \_\_\_\_\_ to be Solicitor for the Promoters of the said Company, for the purposes specified in the sixth section of the Act for the Registration, Incorporation, and Regulation, of Joint Stock Companies. (7 & 8 Vic. c. 110.)

Signed on behalf of  
the Promoters of  
the said Company  
by

{ Promoters of the  
said Company.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 .

*Resignation of Office by Solicitor.*

I, the undersigned, do hereby resign the office of Solicitor for the Promoters of the \_\_\_\_\_ Company, for the purposes specified in the sixth section of the Act for the Registration, Incorporation, and Regulation, of Joint Stock Companies. (7 & 8 Vic. c. 110.)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 .

Signature.

No. 5.

*Form of Application for Shares.*

To A. and B., Trustees, acting on behalf of the \_\_\_\_\_ Railway Company,  
and to the Managing Committee for the time being of the said Company,  
Gentlemen,

I request you will allot me \_\_\_\_\_ shares in the above Company, or any less number you may think fit, and I agree with the said A. and B. to pay the deposit thereon, and execute the usual deeds when required, and to comply with all conditions and stipulations inserted in the letters of allotment issued by the said company.

Name,  
Address,  
Reference,

Dated, \_\_\_\_\_ day of \_\_\_\_\_

No. 6.

*Letter of Allotment.*

Letter	Number
A.	1000

\_\_\_\_\_  
*Railway Company.*

Sir,

I beg to inform you that the Managing Committee of the above Company have allotted you \_\_\_\_\_ shares in the said Company, and that on paying the deposit of £ \_\_\_\_\_ to any of the under-mentioned bankers on or before the \_\_\_\_\_ day of \_\_\_\_\_, and on executing the Parliamentary contract and subscribers' agreement, you will be entitled to receive scrip certificates in respect of the shares allotted to you. You will be required, on coming to execute the deeds, to produce the subjoined banker's receipt, for the amount of deposit, signed.

**Your obedient servants,**

{ \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

**Liverpool : Messrs.**

For (name of payer.)

**Banker's Signature.**

2s. 6d.

Dated the                      day of

A. B.  
C. D.



Form of Scrip Certificate in a Railway Company.

<p>_____ RAILWAY COMPANY.</p> <p>_____ to _____</p> <p>No. _____</p>	<p>~~~~~</p> <p><b>SCRIP CERTIFICATE FOR _____ SHARES.</b></p> <p>~~~~~</p>	<p>_____ RAILWAY COMPANY.</p> <p>_____ to _____</p> <p>No. _____</p>
<p><i>This is to certify that the party to whom this Certificate is issued having signed the Parliamentary Contract and Subscribers' Agreement, is the proprietor of _____ Shares, of £— each, in the above Company, upon each of which a Deposit of £— has been paid.</i></p>		
<p>No. _____</p> <p>Name _____</p> <p>No. of Letter _____</p> <p>Alphabetical Register _____</p> <p>Numerical Register _____</p> <p>Dated _____ 18 .</p>	<p>~~~~~</p> <p>OFFICES, _____</p> <p>Members of the Managing Committee.</p> <p>Dated, _____ 18 .</p>	

## No. 8.

*Parliamentary Contract.*

THIS INDENTURE made the \_\_\_\_\_ day of \_\_\_\_\_ between the several persons whose names are hereunder written, of the first part, and A. and B., trustees (a) appointed for enforcing and giving effect to the covenants hereinafter contained, of the second part, WITNESSETH that each of them, the parties, hereto of the first part DOTH hereby for himself, his heirs, executors, and administrators, so far only as relates to his or their own respective acts and to the extent only of the sum or amount in money set opposite to his name hereunder written, and not further or otherwise, covenant, promise, and agree, with and to the said parties hereto of the second part, and the survivor of them, and the executors and administrators of such survivor, in manner following, that is to say, That each of them, the several parties hereto of the first part, either have or will set their names and affix their seals to a certain other deed bearing even date with these presents, and that each of them, the said parties, have subscribed the several sums set opposite to their respective names, for the purpose of making, constructing, and establishing a railway, to be called or described as "The \_\_\_\_\_ Railway," or by such other name or names as may at any time be adopted by the Managing Committee or the Board of Directors for the time being, engaged in promoting the establishment of a company for the construction of such railway, to commence at \_\_\_\_\_, and proceed from thence by way of \_\_\_\_\_ to \_\_\_\_\_, [with a branch to leave the line of the said railway at or near \_\_\_\_\_, and to be carried by \_\_\_\_\_ to \_\_\_\_\_] in \_\_\_\_\_, or by such other course, route, or line, through such parishes, towns, townships, and places, as shall be hereafter from time to time settled and approved of by the said Managing Committee or Board of Directors for the time being, engaged in conducting and carrying into effect the said undertaking [and also with another branch to leave the main line of the said railway at \_\_\_\_\_ and proceed to \_\_\_\_\_] [and such other branch or branches from the line of the said railway to any towns, places, railways, canals, or works, by such course, route, or line, respectively, as may hereafter by such Managing Committee or Board of Directors be deemed necessary or desirable] together with proper stations, wharves, basins, warehouses, and other works, erections, and conveniences thereto, respectively, the same to be respectively made, constructed, established, and conducted, in such manner as shall be provided for and directed by an Act or Acts of Parliament to be applied for in the next session of Parliament, or in case such Act or Acts of Parliament shall not be applied for, or if applied for shall not be obtained in the next session, then such as shall or may be applied for and obtained in any subsequent session of Parliament.

AND THIS INDENTURE FURTHER WITNESSETH, that the several persons parties hereto of the first part for themselves respectively, and for their several and respective heirs, executors, and administrators, Do further covenant and agree with the said parties of the second part in manner following, that is to say, that they, the several persons parties hereto of the first part, or their respective heirs, executors, and administrators, shall and will well and truly

(a) It must be borne in mind that the shareholders in the company cannot be trustees.

pay or cause to be paid the amount subscribed by each of them respectively within            years from the date hereof, in such sums and at such times and places as shall be required, from and after the passing of the said Act or Acts, by the Directors or other persons authorised thereby to act in the management of the said company, or as they shall from time to time direct or appoint. And they, the several persons parties hereto of the first part for themselves respectively, and for their several and respective heirs, executors, and administrators, do and each of them DOth hereby give and grant unto the Managing Committee or Board of Directors for the time being, engaged in conducting the said undertaking, full power and authority to fix upon, and from time to time to alter and vary, as well the site or spot at which the said railway shall commence, as also the site or spot at which it shall terminate, and the intermediate course, route, or line, thereof, and also from time to time to determine what branch or branches shall be made therefrom, and to fix upon, and from time to time to alter and vary their route, course, or line, and also to fix upon, and from time to time to alter and vary the extent and situation of the stations, wharves, warehouses, and other works, erections, and conveniences thereto respectively belonging, and to make and renew from time to time applications to Parliament for power to effect all or any of such purposes as they in their discretion shall think proper, and to limit the application or applications to Parliament in the next or any future session to any portion or portions of the main line, with or without all or any of the branches, and to defer the application for the remainder of such main line, or any part or parts thereof, and for all or any of the branches to a future session or sessions of Parliament. And lastly they, the several persons parties hereto of the first part, do hereby for themselves and for their several and respective heirs, executors, and administrators, undertake and agree with the said parties hereto of the second part, that in the event of such Act or Acts not being obtained, or if from any other cause or causes the said undertaking should fail or be abandoned, that each of them severally and respectively shall and will well and truly bear, pay, allow, and discharge, the expenses already incurred, or hereafter to be incurred, in and about the formation of the said company, in obtaining surveys and estimates for the said railway, and all and every or any of the branches thereto, and all and every or any of the works connected therewith, solicitors' and counsels' fees and charges, travelling expenses, and all and every other the costs and charges of every description incident to the said company and undertaking, and to all every or any application or applications to Parliament as aforesaid, such expenses, costs, and charges, nevertheless, to be computed and assessed rateably upon the amount of the shares or sums subscribed by each of the several persons parties hereto of the first part.

IN WITNESS whereof the said parties to these presents have hereunto set their hands and seals on the several days and in the year written opposite their respective signatures.

## No. 9.

*Subscribers' Agreement.*

We, the several persons who have hereunto subscribed our names, and affixed our seals, being severally subscribers to a company or undertaking, for making or constructing a railway or railways to be called, "The Railway," or by such other name or names, as may from time to time, be adopted by the Managing Committee, or Board of Directors, for the time being, engaged in promoting such undertaking Do hereby recognize, and acknowledge, the following persons, and such of them as shall, from time to time, be willing to act as such Managing Committee, or Board of Directors, namely :—

*(Here insert the names of the Managing Committee.)*

And we do also hereby recognize (*here name the parties who acted previously*) to have been a Managing Committee for the purpose of promoting the said company or undertaking, and moreover, we do hereby, in furtherance of the said undertaking, (and in addition to a certain deed, or Parliamentary contract and engagement, bearing even date herewith, under our respective hands and seals) severally and respectively, and for our several and respective heirs, executors, and administrators, so far as relates to our and their acts only, mutually and reciprocally engage, and do also separately declare and agree, with and to the said Managing Committee, and with the directors for the time being, of the said company or undertaking, that we severally, our several and respective heirs, executors, and administrators, shall and will faithfully conform to and abide by, the several rules and regulations hereinafter contained for the management and conduct of the said company or undertaking until an Act of Parliament shall be obtained for that purpose, namely :—

That a capital not exceeding                      pounds, divided into                      shares of                      pounds each, shall be raised in the first instance, and that the said Managing Committee hereinbefore named, together with such other persons as shall be appointed in manner hereinafter mentioned, shall have power from time to time, to increase or decrease such capital, or other the capital for the time being of the said undertaking, as they shall deem advisable, and to raise such additional capital in like shares of                      pounds each, and to appropriate and allot the same, either amongst the original subscribers to the said undertaking, and their several executors, administrators, and assigns, or to such other persons as they may think proper.

That it shall be competent for the said Managing Committee to take steps for obtaining an Act of Parliament authorizing the execution of the said undertaking, or any portion thereof, before the whole of the said capital of                      pounds shall be subscribed, and when and in such manner as in their discretion they shall think proper, and to apply the funds and deposits of the said company to such purpose.

That a deposit of                      per share, shall be paid by each subscriber on each and every share subscribed for by him or her at the time of or previously to the execution of this contract and engagement.

That in case any such subscriber, his or her heirs, executors, or administrators shall neglect or refuse to execute such parliamentary or subscription contracts or undertakings, as are hereinafter mentioned, or either or any of them, for the space of five days after he, she, or they shall have been required so to do by notice in writing signed by the secretary, for the time being, of the said committee, or by one of the solicitors of the said company, or by any two of the members of the said committee, and delivered to such subscriber, his or her heirs, executors or administrators, or left at or sent by post, to his, her or their known or usual place or places of abode, or business, as appearing from the register of the company, (the certificate of the said secretary, or of one of the said solicitors, or of the said two members of committee being hereby declared to be sufficient proof of such notice having been duly and sufficiently given,) then and in such case it shall be lawful for the said committee, without further notice to the defaulting party, to pass a resolution declaring the shares of such last mentioned party, or of his or her heirs, executors, and administrators, to be forfeited, and thereupon such party, his or her heirs, executors and administrators, and all persons claiming under him, her, or them, shall lose and forfeit all share and interest in the said undertaking, and in the deposit money paid by him, her or them in respect of any share or shares therein, and shall be utterly debarred from afterwards claiming any right or interest in his, her or their shares, so declared to be forfeited as aforesaid, and from claiming or recovering the said deposit money, or any part thereof, and the said shares may be forthwith reallocated by the said committee to any other person or persons desirous of holding the same.

That the said committee shall have power from time to time to add to their number from among the subscribers to the said undertaking, and to supply in like manner any vacancies which may from time to time occur in the said committee.

That the said committee shall keep a minute book or minute books, in which shall be recorded all their proceedings, and all the minutes therein entered shall be signed by the chairman or other member presiding at any meeting, and the minute so signed shall be, and be held, good and sufficient proof of the several facts and proceedings therein mentioned or referred to, in all actions, suits, controversies, and questions, by, between, and among, the several members of the said company.

That all questions before the said committee, including the election of a chairman, or member, to preside at any meeting, shall be decided by the votes of a majority of the members of the said committee then and there present, (every such meeting of the committee to consist of not less than three members,) and such majority shall in all cases bind all the members whether present or absent, and the acts of the members of the committee so assembled shall be deemed to be the acts of the whole committee.

That the said committee shall have power to elect a chairman or shall from time to time choose one of their own number to preside at any of their meetings and to sign the minutes of their proceedings, and such chairman or other member presiding shall, in case the votes of members present, including his own, be equal, have a casting vote, and that the said committee shall have full power from time to time to make and establish and alter all such bye-laws

for their own government, as they may think necessary or expedient; also from time to time to name and appoint such sub-committees, temporary or permanent, of their own body as they may think expedient, and to delegate to such sub-committees such of their powers as they may deem necessary for the more ready conduct of the proceedings, or any of them, which sub-committees may consist of such number and have such quorum, and be subject to such regulations in all respects, as they the said committee shall from time to time appoint.

That the said committee shall have power to take such measures as they may deem expedient to carry out the aforesaid railway communication between and with any branch or branches which the said committee shall at any time hereafter fix upon and determine, and generally to carry the said undertaking into effect, and particularly that they shall be at liberty to cause such surveys to be made as they may think advisable, besides such as have already been made, and also estimates as well of the expense of effecting such railway communication as aforesaid, as of the traffic likely to pass thereon, and to take such measures for the purposes aforesaid and for all other purposes which the said committee may deem desirable for the advancement of the said undertaking generally, or for examining and testing the correctness of the plans, estimates and calculations of the promoters of any competing or other line or lines of railway, or of any parties opposing the said undertaking, or any part or parts thereof, and power is also hereby given to the said committee to enter into all such contracts and agreements as they shall deem advisable for the making of surveys and estimates, for the execution of the works now contemplated, or any part or parts thereof, and also for the construction and execution of the same works, or any part or parts thereof, in the event of an Act or Acts of Parliament being obtained, or for any other purposes which they may deem necessary in reference to all or any of the matters aforesaid, or in order to forward the said undertaking.

And further that the said committee shall be at liberty and have full power to enter into any bargains, contracts, submissions or references to arbitration, arrangements, or agreements with landowners, railway or canal companies, corporations, trustees of roads and bridges, and promoters or proprietors of other existing or competing railway schemes, or undertakings, or with any other persons or corporations, which may in their judgment be advisable for facilitating the obtaining of the authority of Parliament for the accomplishment of the aforesaid railway communication, and for the construction of the said line or for any part or parts thereof, and to agree with parties applying for powers to lease, take or execute the whole or any part or parts of the said line of railway and branches, and to grant to them a lease thereof, or surrender to them the same or any part or parts thereof, and to permit them to hold shares in the said undertaking, and to have such control in the management thereof, as may appear reasonable, or as in the opinion of the said committee may be advisable. And in pursuance of any such agreement, contract, or arrangement, for any of the purposes aforesaid to make application to Parliament for, or to consent to the introduction into any Act of Parliament for which application may be made as aforesaid of all or any of such clauses and provisions as to the said Managing Committee may seem proper and desirable, and to take such proceedings in Parliament or elsewhere, as they may

deem expedient for opposing, or altering the provisions of, any bill or bills for the establishment of any railway or other work or undertaking which may in their judgment interfere with, or tend to impede or defeat, the accomplishment of the said proposed railway communication or any branch thereof, or to affect its interests, or which may compete therewith, and to make or support such application or applications to Parliament as they may think fit, in the next or any subsequent session or sessions of Parliament, for an Act or Acts to carry into effect the said railway communication and the works connected therewith, or any part or parts thereof. And to fix upon and from time to time to alter and vary the termini, route, or course, of the line of the said railway communication, and the sites or spots of the stations, depôts, and works connected therewith, and to determine whether and how far and to what extent the said undertaking shall be carried out, deferred, or abandoned, and in like manner what branches, (if any,) from the said main line of railway shall be included in and form part of the said undertaking, and in case the first Act of Parliament, to be obtained in relation to the said undertaking, shall authorize the construction of a part or parts only of the proposed railway communication, the said committee shall have power to make, or support in any subsequent session or sessions, such application or applications to Parliament for the construction of the remainder of the aforesaid railway communication or any part or parts thereof as they may deem advisable, and generally to enter into, carry on, and make, all such arrangements, negotiations, provisions, contracts and agreements, and to make, do, and execute all such other acts, deeds, matters, and things whatsoever in relation to the said undertaking and the application or applications now or hereafter to be made to Parliament as aforesaid as they the said committee shall from time to time consider expedient.

That the said committee shall have full power, out of the monies which shall come to their hands by way of deposit or payment of calls or otherwise in relation to the said undertaking, to pay and allow all such fees, salaries, recompenses to bankers, counsel, solicitors, engineers, brokers, and other persons who shall be employed or who shall have been already employed in relation to the said undertaking, as they shall think right, and generally to apply such monies in and towards the fulfilment of any bargains, engagements, contracts, arrangements or agreements, into which they may have entered, or into which they are hereby empowered to enter, for the purposes aforesaid, and in meeting the cost of any works or proceedings connected therewith, and in and towards the soliciting, supporting or opposing such bill or bills in particular as are hereinafter mentioned, and in obtaining the necessary Act or Acts for carrying out the aforesaid railway communication or any part or parts thereof, and generally in paying and satisfying all other costs, charges, and expenses which they may sustain or incur under or by virtue of these presents, or which may have been already sustained, or incurred in relation to the said undertaking or otherwise, howsoever.

That the members of the said committee shall not be personally responsible for any loss arising from the bankruptcy, insolvency, or other default, of any banker, broker, or agent employed by the said company to receive the deposits aforesaid, nor for the loss (if any) sustained by reason of any investment of the said deposits in government or real securities.

That it shall be an instruction to the said committee to introduce into any

bill or bills presented by them to Parliament a provision that no call shall be made upon the subscribers to the said undertaking or any of them, exceeding the sum of \_\_\_\_\_ per share, at any one time, and also that no more than \_\_\_\_\_ calls shall be made in any one year, and that there shall be an interval of \_\_\_\_\_ months at the least, between two successive calls.

That the said committee shall be and they are hereby empowered to nominate the first directors to be appointed in and by every Act or Acts to be obtained for authorizing the construction of the said railway communication or any part thereof so contemplated as aforesaid, and they are also authorized to insert in any such Act or Acts as aforesaid all such clauses and provisions as they may think necessary, proper, or convenient for effecting the objects of the said undertaking, and for regulating the affairs thereof.

That the said committee shall, if they think proper, be entitled to apply from time to time for advice, or for instructions, or for an enlargement of their powers, to a general meeting of shareholders, and such general meeting shall be called by the chairman, on their request, by an advertisement, to be inserted twenty-one days before such meeting, once at least, in some newspaper published or circulated in each of the counties of \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, and also in some one newspaper published in London, which advertisement shall specify the object of the meeting, and the subjects to be discussed thereat.

That each shareholder may either attend such general meeting personally, or give a proxy to another shareholder, who holds not less than \_\_\_\_\_ shares in the said undertaking, to act for him, and each shareholder so present or represented, shall have one vote for every \_\_\_\_\_ shares held by him, of which the production of scrip, to be issued by the said company shall be evidence, and every question to be determined at any such general meeting shall be determined by the majority of votes of persons present in person or by proxy as aforesaid.

That whatever advice, instructions, or powers, shall be given to the committee by such general meeting on the special subject for the consideration and determination of which such meeting shall have been called, shall be considered as the advice or instructions, and as the act of the shareholders in the undertaking, whether present at such meeting or not, and shall be binding on them, to all intents and purposes; provided always, that no alteration of the fundamental rules and objects of the company be effected thereby.

That in the event of such Act or Acts not being obtained, each of the several persons subscribers hereto, and their several and respective heirs, executors, and administrators shall and will well and truly bear, pay, allow and discharge, rateably, and in proportion to their several and respective shares, the expenses already incurred, or hereafter to be incurred, relative to the surveys and estimates for the said railway, branches, and other works, solicitor's and counsel's fees, travelling expenses, and all other costs and charges of every description incident to the proposed undertaking, and to the application or applications to Parliament, such expenses, costs and charges to be computed and assessed rateably upon the amount of the shares or sums taken and subscribed for by each of them the said several persons subscribers hereto; and they the said several subscribers do hereby for them-



selves severally and their several and respective heirs, executors, and administrators, further undertake, promise, and agree that they respectively, and their respective heirs, executors, and administrators, shall and will from time to time whenever required by the said committee, and on tender of such deeds to them for execution, enter into and execute such Parliamentary contract or undertaking, or contracts or undertakings, relating to the said line of railway and branches, or such part or parts thereof as the said committee may from time to time deem it advisable to apply to Parliament for power to construct, to contain such clauses as the said committee shall consider reasonable and proper, and also execute such further deed or deeds for carrying into execution the said undertaking or any portion thereof, in the form now or hereafter to be required by the standing orders of either House of Parliament, to be executed by subscribers to undertakings of a similar description, as shall for that purpose be prepared by or under the direction of the said committee, expressly binding themselves therein and their respective heirs, executors, and administrators, for the payment of the several sums hereby subscribed by them respectively.

AND IT IS HEREBY FURTHER AGREED by and between all the persons, subscribers hereto that the members of the said Managing Committee hereinbefore named, and hereby recognized, or any three of them, their executors and administrators, shall be the parties for enforcing the obligations hereinbefore or in any other deeds or Parliamentary contracts contained for the purposes and in furtherance of the said undertaking.

AND LASTLY IT IS HEREBY DECLARED AND AGREED by the several persons, subscribers hereto, and their several and respective heirs, executors, and administrators, that in case at any time previous to the obtaining an Act or Acts of Parliament for the execution of the said undertaking a majority of the Managing Committee for the time being, at a meeting duly convened for the purpose, or a majority of the persons for the time being entitled to shares in the said undertaking, at a general meeting to be called, convened, constituted, and held in the manner prescribed by an Act of Parliament made and passed in the 10th year of the reign of Queen Victoria, entitled "An Act to facilitate the Dissolution of Railway Companies," shall decide to dissolve the company formed for the purpose of promoting the said undertaking, it shall thereupon be lawful for the said committee, and they are hereby required, to declare the said company dissolved, and the said company shall accordingly thenceforth be and be deemed to be dissolved to all intents and purposes; and the said committee shall within a reasonable time thereafter return to the several parties for the time being entitled thereto the remainder of the deposit money aforesaid, after discharging all just and reasonable costs, charges, and expenses, theretofore paid, sustained, or incurred, in the furtherance of the said undertaking, or in any way relating thereto.

IN WITNESS whereof the several persons subscribers to these presents have set their hands and seals on the several days and in the year written opposite their respective signatures.

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## No. 10.

*Notice of Intention to apply to Parliament to be published in the 'Gazette' and Public Papers.*

NOTICE is hereby given that application is intended to be made to Parliament in the next session for leave to bring in a bill or bills for making and maintaining a railway or railways, with a branch or branches therefrom, together with all proper and necessary stations, erections, bridges, wharves, works, communications, approaches, and conveniences, connected therewith, commencing at , and terminating at ; and which said intended railway and works will pass, or be made from, through, or into the several parishes, townships, townlands, hamlets, liberties, and extra-parochial and other places following, or some of them; that is to say [*here insert the names of all the parishes, townships, townlands, and extra-parochial places, from, in, through, or into which the line of railway is intended to be made, &c.*] Also for making and maintaining a branch from the main line of the said intended railway, commencing at , and terminating at ; and which branch will pass or be made from, through, or into the several parishes, townships, townlands, hamlets, liberties, and extra-parochial and other places following, or some of them; that is to say [*insert the places*]. And notice is hereby also given, that duplicate plans and sections of the said proposed works, with books of reference thereto, will be deposited for public inspection on or before the 30th day of November instant, with the clerk of the peace for the county of , at his office at , in the said county; also with the clerk of the peace for the county of , at his office at , in the said county [*state the whole of the counties*]. And that on or before the 31st day of December next, a copy of so much of the said plans and sections as relates to each parish in or through which the said works, or any part of them, are intended to be made, together with a book of reference thereto, will be deposited with the parish clerk of each such parish at his place of abode.

And notice is hereby also given, that it is intended to apply to Parliament for power to make lateral deviations from the line of the proposed works to the extent or within the limits defined upon the plans hereinbefore mentioned or referred to. And also to cross, divert, alter, or stop up all such turn-pike roads, parish roads, and other highways, streams, sewers, canals, navigations, railways, and tramroads, within the parishes, townships, townlands, hamlets, liberties, and extra-parochial and other places aforesaid, or some of them, as it may be necessary to cross, divert, alter, or stop up, for the purposes of the said railway or railways, branch or branches, or any of them, or the works, stations, and conveniences connected therewith respectively.

And also to authorise junctions with any railway or railways at their commencement or termination, or in the line or course of such railway or railways, and branch or branches respectively, in the several parishes, townships, townlands, hamlets, liberties, and extra-parochial and other places respectively; and with powers also to sell or lease such railway or railways, and branch or branches, to any other railway company; and to enable the last-mentioned company to purchase or rent the same, and to exercise all powers and authorities to be conferred by the said bill or bills in connexion therewith, and to enter into such arrangements as may seem expedient, or to amalgamate and

become incorporated with such company, or otherwise to purchase or rent, and to use and work the railway and works belonging to any such company, and to enable any such company to sell or lease the same.

And notice is hereby further given, that it is intended by the said bill or bills to incorporate a company, for the purpose of carrying into effect the proposed works, and to apply for powers for the compulsory purchase of lands, houses, tenements, and hereditaments necessary for the making and completion of the said undertaking; and to vary or extinguish all rights and privileges in any manner connected with the lands, houses, tenements, and hereditaments proposed to be taken for the purposes aforesaid, or which would in any manner impede or interfere with the objects aforesaid; and also to levy tolls, rates, or duties upon or in respect of the said railway and works; and to alter existing tolls, rates, or duties, and to confer, vary, or extinguish exemptions from the payment of tolls, rates, and duties, and other rights and privileges.

Dated this        day of \_\_\_\_\_

No. 11.

*Notice of Intended Application to Parliament to be given to Owners,  
No. ——. Lessees, and Occupiers.*

SIR,—We beg to inform you, that application is intended to be made to Parliament in the ensuing Session, for 'An Act' [*here insert the title of the Act*], and that the property mentioned in the annexed schedule, or some part thereof, in which we understand you are interested as therein stated, will be required for the purposes of the said undertaking, according to the line thereof as at present laid out, or may be required to be taken under the usual powers of deviation, to the extent of \_\_\_\_\_ yards on either side of the said line, which will be applied for in the said Act, and will be passed through in the manner mentioned in such schedule.

We also beg to inform you, that a plan and section of the said undertaking, with a book of reference thereto, has been or will be deposited with the several clerks of the peace or sheriff-clerks of the counties of [*specify the counties in which the property is situate*], on or before the 30th of November, and that copies of so much of the said plan and section as relates to the parish or royal burgh in which your property is situate, with a book of reference thereto, has been or will be deposited for public inspection with the clerk of the said parish, schoolmaster of the parish, town clerk of the royal burgh, or the clerk of the Union within which such parish is included [*as the case may be*], on or before the 30th day of November instant, on which plans your property is designated by the numbers set forth in the annexed schedule.

As we are required to report to Parliament whether you assent to or dissent from the proposed undertaking, or whether you are neuter in respect thereto, you will oblige us by writing your answer of assent, dissent, or neutrality in the form left herewith, and returning the same to us with your signature on or before the \_\_\_\_\_ day of \_\_\_\_\_ next; and if there should be any error or misdescription in the annexed schedule, we shall feel obliged by your informing us thereof at your earliest convenience, that we may correct the same without delay.

We are, Sir,

Your most obedient servants,

To \_\_\_\_\_

## No. 11.

SCHEDULE referred to in the foregoing Notice, and which is intended to show the Property therein alluded to, and the Manner in which the Line of the deposited Section will affect the same.

—	Parish, Township, Townland, or Extra-parochial Place.	Number on Plans.	Description.	Owner.	Lessee.	Occupier.	Description of the Section of the Line deposited, and of the greatest Height of Embankment and Depth of Cutting.
Property in the Line as at present laid out.							
—	Parish, Township, Townland, or Extra-parochial Place.	Number on Plans.	Description.	Owner.	Lessee.	Occupier.	
Property within the Limits of the Deviation intended to be applied for.							

No. 12.  
TABLE of Assents, Dissents, and Neuters.

Description.	Number.	Length.			Amount.		
		Miles.	Furlongs.	Chains.	A.	R.	P.
<b>Owners :—</b> Assenting ..... Dissenting ..... Neuter..... No answers.....							
<b>Occupiers :—</b> Assenting ..... Dissenting ..... Neuter..... No answers.....							
<b>Lessees :—</b> Assenting ..... Dissenting ..... Neuter..... No answers.....							

## No. 13.

## BOOK OF REFERENCE.

Containing the Names of the Owners or reputed Owners, Lessees, or reputed Lessees, and Occupiers of Lands and Property intended to be taken under the authority of an Act of Parliament for making a Railway from \_\_\_\_\_ to \_\_\_\_\_.

Number on Plan.	Description of Property.	County, Parish, or Extra-parochial Place.	Owners, or Reputed Owners.	Lessees, or Reputed Lessees.	Occupiers.

## No. 14.

*Petition for Leave to bring in a Railway Bill (a).*

“ ———— Railway ”

To the Honourable the Commons of the United Kingdom of  
Great Britain and Ireland in Parliament assembled.

The humble petition of the several persons whose names are hereunto  
subscribed, sheweth,

That the making and maintaining a railway or railways, with proper works  
and conveniences, commencing at, in, or near to \_\_\_\_\_ in the county of  
, and passing in, through, or into the several counties, cities, parishes,  
boroughs, towns, townships, hamlets, or places of \_\_\_\_\_, and \_\_\_\_\_, and  
terminating in, at, or near to, \_\_\_\_\_ in the county of \_\_\_\_\_. (If  
*any branches are proposed, here state them*) [together with a branch railway,  
commencing at, &c., and terminating at, &c.,] would not only be of great advan-  
tage to your petitioners, and the other inhabitants of the said counties, cities,  
towns, and places, but would tend to the improvement of the trading and  
manufacturing interests in the said districts, by affording the means of a safe,  
cheap, and speedy conveyance for passengers, goods, and merchandise, which  
your petitioners humbly conceive would be of great public utility.

That your petitioners are willing, if authorised by Parliament, to undertake  
the execution and construction of the said railway [and branches].

That for attaining these objects, your petitioners have caused to be prepared  
a bill, a printed copy of which is hereunto annexed. Your petitioners, there-  
fore, humbly pray your Honourable House that leave may be given them to  
bring in the said bill, subject to such conditions as to your Honourable House  
may seem proper.

And your petitioners will ever pray.

(Here follow the signatures and date.)

## No. 15.

*Memorial complaining of Non-Compliance with Standing Orders. (b)*

“ ———— Railway.”

Memorial complaining of non-compliance with standing orders.

To the Examiners of Petitions for Private Bills.

The humble memorial of the undersigned owners and occupiers of land  
upon the line of the proposed railway, and others,  
Sheweth,

That a petition has been deposited in the Private Bill Office of the Honour-  
able the House of Commons, for leave to introduce a bill with the short title  
above mentioned.

That your memorialists are affected by the said bill as owners and occupiers  
of lands upon the line of the intended railway, or within the limits of deviation  
described upon the plans, or otherwise.

(a) See pages 102—104 *supra*.

(b) See page 117, *supra*.

That the standing orders of the House of Commons have not been complied with in relation to the said bill in the following particulars.

*[Here state the instances of non-compliance according to the facts ; as that the notices in the ' Gazette ' did not specify the intention of the company in the same manner as the bill ; that notices were not delivered to the proper parties at the proper times and places ; that the subscription contract is invalid (assigning the reasons) and the like.]*

*[The following objections are given at length for the purpose of showing the form in which parties may take advantage of defects in the plans, sections, and books of reference.]*

That the plans are defective, inasmuch as a house and garden adjoining No.                      in the parish of                      , within the limits of deviation marked upon the plan, is not numbered upon the said plan, nor is the same, nor the owner, lessee, or occupier thereof, mentioned in the book of reference.

That similar objections apply to                      and                      in the parishes of                      .

That the plans being upon a scale of four inches to the mile, there is no additional plan, on a scale of not less than one quarter of an inch to every one hundred feet. of a garden in the parish of                      within the limits of deviation marked upon the said plan adjoining the properties numbered thereon and                      in the said parish.

That the sections of the proposed railways deposited in the Private Bill Office, are inaccurate and defective in the following, amongst other particulars.

That on sheet                      of the section of the intended railway, the line drawn thereon to correspond with the upper surface of the rail is at the point                      miles,                      furlongs, nearer the datum line by                      feet, or thereabouts, than the line upon sheet No.                      at the same distance upon the said section.

That the vertical height from the datum line to the several roads mentioned in the annexed schedule, as appearing by calculation from the figured heights and inclinations marked upon the said sections, differs from the vertical height of the said several roads above the datum line, as measured by the vertical scales attached to the said sections, in the instances and to the extent shown in the following schedule ;—

Road occurring in the said section at the distance of			Height of road from the datum line as appearing from the figured heights and inclinations on the section.		Height of roads from the datum line, as measured by the vertical scale attached to the respective sections.	
Miles.	Furls.	Chains.	Feet.	Inches.	Feet.	Inches.
6	6	11	376	4	382	4



That the vertical height from the datum line to the line corresponding with the upper surface of the rails, as marked in feet and inches at the change of the gradient or inclination, differs from the height as measured by the scale for vertical heights attached to the said section, in the instance and to the extent set forth in the following schedule :—

Distance upon the section at which the vertical height occurs.			Height marked in feet and inches upon deposited section.		Height as measured upon the section by the scale for vertical heights.	
Miles.	Furl.	Chains.	Feet.	Inches.	Feet.	Inches.
4	6	5	363	9	357	8

That the said section does not show correctly the surface of the ground marked upon the plan, nor the true level thereof, with reference to the datum horizontal line described upon the section, in the cases of the roads occurring at the distances set forth in the following schedule ; inasmuch as the height of the surface of the said roads above the said datum line, as calculated from the figured heights and inclinations upon the said section, appears to be as stated in the second column of the annexed schedule, whereas the true height thereof above the said datum line, is as appears by the figures stated in the third column of the said schedule.

At the roads occurring at the distance upon the said section of			Height above the datum line, as calculated from deposited section.		True height above the datum line, ascertained by levelling on the ground.	
Miles.	Furl.	Chains.	Feet.	Inches.	Feet.	Inches.
1	2	2	194	8	187	5
5	1	3	270	2	260	7

That the proportion, or rate of inclination, between each change of gradient, is not correctly marked upon the said section in the following instances :—

The gradient running between			Rate of inclination marked on section.	Correct rate of inclination.
Miles.	Furl.	Chains.	1 in 170.	1 in 150, or thereabouts.
5	3	2		
6	and 4	1		
7	6	4	1 in 300.	1 in 250, or thereabouts.
9	and 3	2		

That, although it appears by the said plans that it is the intention of the petitioners for the said bill to take power to construct the works to be authorised thereby, or some part thereof, in the parish of \_\_\_\_\_, the notice of intention published in the Gazette, and in the \_\_\_\_\_ newspaper, does not contain the name of the said parish, nor was any deposit of so much of the said plans and books of reference as relates to such parish, made with the clerk of the said parish on or before the 30th day of November last.

Your memorialists therefore request, that they may be heard by themselves, their agents, and witnesses, before the Examiner, to whom the said petition may be referred, in support of the allegations above written, and that the Examiner may certify upon such petition, that the standing orders have not been complied with, and may report to the House of Commons accordingly.

(Here follow the signatures.)

No. 16.

*Petition against a Railway Bill. (a)*

\_\_\_\_\_ Railway Bill.

Against.

Petition of the undersigned \_\_\_\_\_ against the said Bill, praying to be heard by counsel.

To the Honourable the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled.

The humble petition of the several persons whose names are hereunto subscribed.

(a) See *supra* page 136.

Sheweth,

That a bill is at present depending in your Honourable House, intituled 'A Bill to make a Railway from \_\_\_\_\_ to \_\_\_\_\_'

That the powers and provisions of the said bill are injurious to the interests of your petitioners, and injurious to public policy, (*or, if clauses only are objected to state*) ['that the powers and provisions contained in certain clauses (*specifying them*) of the said bill,' &c.

That, &c., [*here state the grounds of objection, taking care that the grounds assigned are sufficient to give the petitioners a locus standi.*]

That in these and other respects the said bill (*or*) [the said clauses] would be highly injurious to your petitioners, and the preamble of the said bill (*or*) [the said clauses] cannot be substantiated by evidence.

Your petitioners therefore humbly pray that the said bill may not be allowed to pass into a law as it now stands (*or*) [that the said clauses be not allowed to form part of the said bill] and that they may be heard by themselves, their counsel, agents and witnesses against the preamble (*or*) [the said clauses of the said bill affecting their interests,] and that they may have such other and further relief in the premises as to your Honourable House shall seem meet.

And your petitioners will ever pray, [*Here follow the signatures*].

#### No. 17.

#### *Agreement for Sale to a Railway Company of certain Land, and for the withdrawal of opposition in Parliament. (a)*

Articles of Agreement made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, between A. B. and C., promoters of a company for making a railway, to be called the \_\_\_\_\_ Railway, of one part, and \_\_\_\_\_ of the other part.

Whereas a Bill, entitled \_\_\_\_\_, is now depending in Parliament.

And whereas the said \_\_\_\_\_ is the owner of a considerable estate in the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, and it appears by the plan referred to in the said bill as having been deposited with the Clerk of the Peace for the said county of \_\_\_\_\_ that the said proposed line of railway is intended to pass through the estate of the said \_\_\_\_\_, in the said parish, for a distance of \_\_\_\_\_, or thereabouts, and it is calculated that the quantity of land to be taken from the estate of the said \_\_\_\_\_ will amount to \_\_\_\_\_ acres, or thereabouts.

And whereas the said railway, if made, will be very injurious to the said estate of the said \_\_\_\_\_, and particularly by reason of the severance thereof, and whereas in reply to an application made to him by the said company, he has returned an answer of 'Dissent' to the said bill.

And whereas the said \_\_\_\_\_ hath duly presented a petition unto the Honourable the House of Commons against the preamble of the said bill, which said petition has been referred to the same committee, to which the said bill has also been referred.

And whereas the said A. B. and C. have applied to the said

(a) This form may be used by an established company; but in such case it must be under seal. See *Supra*, pages 176 and *seqq.*

A A A

to withdraw his opposition in Parliament to the said Bill and his answer of dissent, and to substitute an assent to the said bill, which he has agreed to do upon the terms and conditions hereinafter contained.

Now, therefore, it is hereby declared and agreed by the said A. B. and C, for themselves, their heirs, executors and administrators, and by the said , for himself, his heirs, executors, and administrators,

That in consideration of the said withdrawing his opposition to the said bill, and giving his assent thereto, as aforesaid, they the said A. B. C. will forthwith pay unto the said , his executors and administrators the sum of £ , for and on account of his expenses incurred in opposing the said bill.

That in case the said bill shall pass into a law, and any part of the lands of the said in the said parish of , shall be required for the purposes of the said railway, the said company, their successors or assigns shall and will before entering upon the same (except for the purpose of survey and taking levels) pay to the said his heirs or assigns the sum of £ , for the purchase of any quantity of his land not exceeding acres, including in such measurement land covered by water, the said , nevertheless, is to be at liberty to take down and convert to his own use all timber and other trees growing thereon, and such consideration money to be in satisfaction of all damage by severance or otherwise, except compensation to tenants, and damages for temporary possession of lands, as provided by the Railways Clauses' Consolidation Act, 1845.

That if the said company shall require more of the land of the said for the purpose of forming the line of the said railway, and the slopes of the cuttings and of the embankments and fencing, the excess over and above the said acres shall be paid for after the rate of £ for every acre, and so on in proportion for any greater or less quantity than an acre.

That if any of the lands required for the purposes aforesaid shall be of copyhold tenure, then the said shall allow out of the price so as aforesaid agreed to be paid by the said company their successors and assigns, the sum of £ for every acre of the aforesaid lands which shall be of copyhold tenure, and so in proportion for any greater or less quantity than an acre, to be in full satisfaction of all fines and fees of admission and in compensation for the cost of the enfranchisement of such copyhold lands.

That the said company their successors or assigns shall not construct, erect, or make any house, yard, wharf, warehouse, toll-house, depôt, station, landing, waiting, watering, loading or unloading place, engine-house or building, whatever on or adjoining the said proposed line of railway through the said estate of the said , except such level crossing houses as are required by the Railways Clauses Consolidation Act 1845, and such bridges, arches, and culverts, as are hereinafter provided for.

That the said company their successors and assigns shall and will at their own expense, immediately after the completion of the said railway, sow the embankments and slopes thereof on each side through the estate of the said with furze, gorse, or grass seeds, and thenceforth from time to time when necessary resow such seeds as aforesaid, and destroy all thistles or other noxious weeds growing on the said railway and the embankments and slopes thereof, so as to prevent their running to seed.

That the said company shall not permanently deposit on the estate of the said any soil, earth, gravel, sand or other materials whatever, but shall remove every such deposit and every part thereof within three calendar months after the said railway shall be completed.

That the said his heirs or assigns shall be entitled to remove for his and their own use, within weeks after payment of the said purchase or consideration money, the top spit of all the meadow and pasture land on the surface of the proposed line of railway where there is to be any embankment through the estate of the said , and that the said company and their successors and assigns shall and will remove to each side of every cutting through the same estate the top spit of earth of such cuttings to be carted from thence by the said his heirs or assigns or his or their tenants.

That the said company their successors and assigns shall and will erect, and for ever after maintain, the bridges, arches, and culverts, and make the level crossings with proper approaches on the line of the said railway through the estate of the said .

Subject nevertheless and without prejudice to the right of the said , his heirs and assigns, within the period of five years after the completion of the said line of railway, to claim such and so many other convenient gates, bridges, arches, culverts, passenger posts, rails, hedges, ditches, mounds, fences, drains, and watering places for cattle as may be necessary, subject to the determination of two justices under the provisions of the Railways Clauses Consolidation Act, 1845.

As witness our hands this day of .

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No. 18.

*Requisition to Clerk in Private Bill Office for Warrant to pay Deposit into the Court of Chancery. (a)*

To ———, one of the clerks in the Private Bill Office of the House of Commons.

Sir,—We, the undersigned, being a committee of the subscribers towards the undertaking hereinafter mentioned, having the charge thereof, do hereby in pursuance of the provisions contained in an Act passed in the ninth year of the reign of her present majesty, entitled "An Act to amend an act of the second year of her present majesty, providing for the custody of certain monies paid in pursuance of the Standing Orders of either House of Parliament by subscribers to works or undertakings to be effected under the authority of Parliament," request that you will grant us your warrant or order for payment, into the Bank of England, in the name and with the privy of the Accountant-General of the Court of Chancery, according to the provisions of the said Act, the sum of pounds, being one-tenth part or upwards of the amount subscribed towards the construction of a certain railway from to

(a) See Supra, page 110.

, to be called the \_\_\_\_\_ Railway, and to be executed under the authority of an Act of Parliament.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

(This requisition to be signed by not more than five members of the committee.)

Names.	Residences.	Description.
A. B.	.....	.....
C. D.	.....	.....
E. F.	.....	.....
G. H.	.....	.....
K. L.	.....	.....

We hereby certify that the above-named \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, are known to us as a committee of subscribers having charge of the undertaking above mentioned.

No. 19.

*Warrant for Payment of Deposit into the Court of Chancery. (a)*

To the Accountant-General of the High Court of Chancery in England.

In pursuance of the provisions contained in an Act of Parliament passed in the ninth year of the reign of her present majesty, entitled "An Act to amend an Act of the second year of her present majesty providing for the custody of certain monies paid, in pursuance of the Standing Orders of either House of Parliament," by subscribers to works or undertakings to be effected under the authority of Parliament, I do HEREBY ORDER

and \_\_\_\_\_ and \_\_\_\_\_ and \_\_\_\_\_, being five of the committee of the subscribers to, and having charge of, the undertaking for constructing a certain railway from \_\_\_\_\_ to \_\_\_\_\_ to be called the \_\_\_\_\_ Railway, and to be executed under the authority of an Act of Parliament, to pay into the Bank of England, in the name and with the privity of the Accountant-General of the Court of Chancery, according to the provisions of the said Act the sum of \_\_\_\_\_ pounds, being one tenth part or upwards of the amount subscribed towards the said undertaking.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_,

One of the Clerks in the Private Bill  
Office of the House of Commons.

(a) See Supra, page 112.

No. 20.  
REGISTER BOOK OF SHAREHOLDERS.  
8 Vic. c. 16, sec. 9.

FORMS.

717

Name of Shareholder.	Residence.	Occupation.	Number of Shares.	Registered Numbers of Shares.	Amount of Subscription paid.	Date of Registration.
Abel, John	Wakefield.	Banker.	10 of £ — each.	1001, 200, 310, 526 to 530 inclusive. 19, 47.	£17 10s. per share.	1st Nov. 1847

## APPENDIX.

**No. 21.**

## SHAREHOLDERS' ADDRESS BOOK.

8 Vic. c. 16. sec. 10.

Name.	Place of Abode.	Description.
Abel, John	High Street, Southampton.	Gentleman.

No. 22.

### *Form of Certificate of Share.*

**8 Vic. c. 16, Schedule A.**

**The ——— Railway Company.**

No. — } Incorporated By & 18 . } £ —  
Victoria.

THIS is to certify that (name in full) of (address) is the proprietor of the £ share, No. of the Railway Company, subject to the regulations of the said company.

Given under the common seal of the said  
company, the                      day of                      in  
the year of our Lord

**A. B. Secretary.**

**உ. த.**



No. 23.

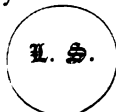
*Form of Transfer of Shares or Stock.*

8 Vic. c. 16, Schedule B.



I, \_\_\_\_\_ of \_\_\_\_\_ in consideration of the sum of \_\_\_\_\_ paid to me by  
 of \_\_\_\_\_ do hereby transfer to the said \_\_\_\_\_ share [or shares]  
 numbered \_\_\_\_\_ in the undertaking called "The \_\_\_\_\_ Company," [or,  
 pounds consolidated stock in the undertaking called "The \_\_\_\_\_ Company,"  
 standing (or, part of the stock standing) in my name in the books of the com-  
 pany.] to hold unto the said \_\_\_\_\_ his executors, administrators, and assigns  
 [or, successors and assigns], subject to the several conditions on which I  
 held the same at the time of the execution hereof; and I the said  
 do hereby agree to take the said share [or shares] [or stock], subject to the  
 same conditions. As witness our hands and seals, the \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_



\_\_\_\_\_



No. 23 (A.)

*Agreement for Sale of Shares. (a)*

A. B., of \_\_\_\_\_, agrees to buy, and C. D., of \_\_\_\_\_, agrees to sell  
 \_\_\_\_\_ shares, of £ \_\_\_\_\_, each, in the \_\_\_\_\_ Railway Company, on each  
 of which the sum of £ \_\_\_\_\_, has been paid up, at and for the price of  
 £ \_\_\_\_\_, per share, the said shares to be delivered on or before the  
 day of \_\_\_\_\_; and the said C. D., agrees to assign over all rights and  
 advantages in respect of the said shares arising or accruing by the creation of  
 new shares or otherwise, subsequent to the date of this agreement; and the  
 said A. B., agrees to indemnify the said C. D., against all calls payable upon  
 the said shares at any time subsequent to the date of this agreement.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, Signed.

(a) See Supra, page 475.

No. 24.

*Notice of Closing Transfer Books.*

8 Vic. c. 16. s. 17.

\_\_\_\_\_ Railway Company.  
 Offices, \_\_\_\_\_ Street, \_\_\_\_\_

NOTICE is hereby given, that on and after the \_\_\_\_\_ (a day not less than  
 seven days after the publication of the notice) day of \_\_\_\_\_ the transfer

books of the said company will be closed for a period of fourteen days, previous to the next ordinary meeting of the said company, to be held on the day of \_\_\_\_\_ and that all transfers made during the time when the transfer books are so closed will, as between the company and any party claiming under the same, but not otherwise, be considered as made subsequently to the said meeting. By order of the Board of Directors,

A. B.  
Secretary of the said Company.

Dated the \_\_\_\_\_ day of \_\_\_\_\_

## No. 25.

*Notice of Ordinary Meeting and of the Closing of Register of Transfers previous thereto. (Another Form.)*

8 Vic. c. 16. s. 17.

The \_\_\_\_\_ Railway Company.  
Offices, \_\_\_\_\_ Street, London.

\_\_\_\_\_ (a) day of \_\_\_\_\_ 184

This is to give notice that the \_\_\_\_\_ ordinary meeting of the shareholders in the said company will be held at the offices of the company at \_\_\_\_\_ afore-said, on the \_\_\_\_\_ day of \_\_\_\_\_ next, at eleven o'clock in the forenoon.

And this is to give further notice, that the register of transfers of the said company will be closed from the \_\_\_\_\_ to the \_\_\_\_\_, both days inclusive (b), and that all transfers made during the time the transfer books are so closed shall, as between the company and party claiming under the same, but not further or otherwise, be deemed as made subsequent to the said meeting.

By order of the Board of Directors, A. B. Secretary.

(a) This notice must be given seven days at least before the first day of intended closing, and fourteen days at least before day of meeting.

(b) Period during which they are closed must not exceed fourteen days.

## No. 26.

*Declaration of Transmission of Interest in Shares by Death of Shareholder. (a)*

I, A. B. of \_\_\_\_\_ gentleman, in pursuance of "The Companies' Clauses Consolidation Act," 1845, do hereby declare that X. Y., late of \_\_\_\_\_ in the county of \_\_\_\_\_ who stands in the register of shareholders of the \_\_\_\_\_ Railway Company as owner of the several shares, respectively numbered \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, has lately departed this life, having first duly made and published his last will and testament in writing, whereby he appointed O. P. and C. L. his executors, who on the \_\_\_\_\_ day of \_\_\_\_\_ duly proved the said will in the (*state what court*) the probate whereof is herewith produced, and that under and by virtue of the said will, the interest of the said X. Y. in the said shares has been transmitted to and has become vested in the said O. P. and C. L. as such executors as aforesaid.

Made and signed by the said A. B.,  
on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ A. B.

Before me, C. D.,  
Master Extraordinary of the High Court of Chancery.

(a) See *Supra*, page 483.

## No. 27.

*Same, where Party dies Intestate.*

(Copy the above Form to "departed this life," and proceed,) without having made any will or testament, and that O. P. of                      did, on or about the day of                      , duly take out letters of administration (which are herewith produced,) in the (*state what court*), of all and singular the goods, chattels, effects, and credits of the said X. Y., under and by virtue whereof the interest of the said X. Y. in the said shares has been transmitted to and become vested in the said O. P., as such administrator as aforesaid.

Made and signed, &c.

A. B.

## No. 28.

*Same, in cases of Marriage of Female Shareholder. (a)*

I, A. B., of                      gentleman, in pursuance of "The Companies' Clauses Consolidation Act," 1845, do hereby declare that on the day of                      a marriage was duly had and solemnized between A. M., of                      and E. D., of                      , spinster, (a copy of the register of which marriage is hereunto annexed) and that the said E. D. therein named, is the party who stands in the register of shareholders of the                      Railway Company as owner of the several shares, numbered respectively                      , and that the interest of the said E. D. in the said shares has by virtue of the said marriage become vested in the said A. M., as husband of the said E. D.

A. B.

Made and Signed, &c.

(a) See *Supra*, page 484.

## No. 28. (A)

*Same, in case of Bankruptcy. (a)*

I, A. B., of                      , in pursuance of "The Companies' Clauses Consolidation Act," 1845, do hereby declare that on the                      day of                      a Fiat in Bankruptcy was issued against C. D. of                      a trader, within the operation of the statutes relating to bankrupts, and that the said C. D., at the time of the committing the act of bankruptcy in respect of which the said Fiat was issued, stood in the register of shareholders of the                      Railway Company as owner of the several shares numbered respectively                      , and that                      and                      and                      were on the                      day of                      duly appointed assignees of all and singular the estate and effects of the said C. D., and that under and by virtue of the said Fiat in Bankruptcy and of the several statutes relating thereto, the interest of the said C. D. in the said shares has become vested in the said                      as such assignees as aforesaid.

Made and signed, &c.

A. B.

(a) See *Supra*, page 485.

No. 29.

*Notice of Call. (a)*

\_\_\_\_\_ Railway Company.

\_\_\_\_\_ Call, of £        per share.

Notice is hereby given that the Directors, in execution of the powers conferred on them by the Acts of Parliament relating to the said company, have, pursuant to the provisions thereof, made a call of £        per share, making the sum of £        called up, and have ordered that such call be paid to one of the undermentioned bankers.

(Names of bankers)

on or before the \_\_\_\_\_ day of \_\_\_\_\_

Interest, at the rate of \_\_\_\_\_ per cent. per annum will be charged on all calls not paid on or before that day.

A. B.,

Secretary.

(a) See Supra, page 494.

(b) There must be a lapse of twenty-one days between the day of payment and notice.

No. 30.

*Declaration in an Action for Calls.*

In the \_\_\_\_\_

\_\_\_\_\_ The \_\_\_\_\_ day of \_\_\_\_\_ A.D.  
\_\_\_\_\_ to wit, the \_\_\_\_\_ Railway Company by \_\_\_\_\_, their attorney,  
complain of A. B. who has been summoned to answer the said \_\_\_\_\_ Railway  
company in an action of debt, and the said \_\_\_\_\_ Railway Company de-  
mands of the defendant the sum of £        which he owes to and unjustly  
detains from them.

For that whereas, the defendant before and at the time of the commencement of this suit, to wit, on (&c.), was and still is the holder of divers, to wit, [        ] shares in the said company, and at the time of the commencement of this suit was and still is indebted to the said company in a large sum of money, to wit, the sum of £       , in respect of a call of a certain sum of money, to wit, the sum of £       , upon each of the said shares, theretofore, to wit, on (&c.), duly made by the said company, and by reason of the said sum of £        being and remaining wholly unpaid to the said company, an action hath accrued to the said company by virtue of a certain Act of Parliament made and passed in a session of Parliament holden in the eighth and ninth years of the reign of her Majesty Queen Victoria, entitled "An Act for Consolidating in one Act certain provisions usually inserted in the Acts with respect to the Constitution of Companies incorporated for carrying on Undertakings of a public nature;" and also by virtue of an Act of Parliament made and passed in a session of Parliament held [&c.], and intituled, "An Act, &c.," [the Special Act], to demand from the defendant the said sum of £       , above demanded, yet the said defendant has not paid the said sum above demanded, or any part thereof, to the damage of the said company of £       : and therefore the said \_\_\_\_\_ Railway Company brings this suit, &c.

## No. 31.

*Pleas in an Action for Calls.*

In the  
The            day of            , A.D.            .

\_\_\_\_\_  
*Ats.* } The defendant by            , his attorney, as to the causes  
 — Rail. Com. } of action in the said declaration mentioned says that he  
 never was indebted in manner and form as in the said  
 declaration is alleged, and of this he puts himself on the country, &c.

And for a further plea in this behalf the defendant says that at the time of the making of the said call he was not a holder of the said shares or of any or either of them in manner and form as in the said declaration is alleged, and of this he puts himself on the country, &c.

## No. 32.

*Notice of Intention of Forfeiture of Shares. (a)*

The ——— Railway Company.

Sir,

I hereby give you notice that in pursuance of the provisions contained in (*insert title of Special Act*), and in the Companies' Clauses Consolidation Act, 1845, the Directors of the said company intend after the expiration of twenty-one days from the date hereof to declare the shares held by you in the said company forfeited, by reason of the non-payment of calls duly made on the said shares, and that the said declaration will be duly submitted for confirmation at the first general meeting of the said company to be held after the expiration of two months from the day of the date of this notice.

C. D.,

Secretary, &c.

The            day of            , 18   .  
 To Mr. A. B., of ———.

(a) See *Supra*, page 486.

## No. 33.

*Declaration, to accompany the Receipt of the Treasurer of a Railway Company for the price of shares sold under a Forfeiture for non-payment of Calls. (a)*

8 Vic. c. 16. ss. 29—35 inclusive.

I, C. D., Secretary of the            Railway Company, do hereby declare that on the            day of            last a call of £            per share was duly made on the shares of the said company, and that at the time of the making of the said call A. B., of            was registered in the books of the said company as owner of the several shares, numbered respectively ———

(a) See *Supra*, page 488.

\_\_\_\_\_, \_\_\_\_\_, and that notice of the time and place of payment of such call was duly given to the said A. B., and that the said A. B. did for the space of two months after the day appointed for payment of the said call, and hath since continued, altogether to neglect and make default in the payment thereof; and I do hereby further declare that afterwards and after the expiration of the said two months and after due service upon the said A. B. of twenty-one days' notice of intention to make the declaration of forfeiture hereinafter mentioned, the said shares were on the \_\_\_\_\_ day of \_\_\_\_\_ declared forfeited by the Directors of the said company, and that afterwards and after the expiration of two months from the giving of the said last-mentioned notice, the declaration of forfeiture aforesaid was duly confirmed by the said company, at a general meeting of the shareholders, holden at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, and it was thereupon ordered that the said shares should be sold; and I do hereby further declare that afterwards on the \_\_\_\_\_ day of \_\_\_\_\_, the said call still remaining due and unpaid upon the said shares of the said A. B. as aforesaid, in obedience to the order of the general meeting aforesaid, the said shares were sold and disposed of, (*if the whole of the shares were not sold, state according to the fact*) and that X. Y. of \_\_\_\_\_ then became the purchaser thereof at and for the price of £ \_\_\_\_\_ per share, which said sum of money has been duly paid by the said X. Y. as appears from the receipt of \_\_\_\_\_, the Treasurer of the said company, hereunto annexed.

Made and signed, &c.

C. D.  
Secretary of the \_\_\_\_\_ Railway Company.

### No. 34.

*Notice by a Judgment Creditor of a Railway Company that he is about to move for Execution against a Shareholder. (a)*

8 Vic. c. 16. s. 36.

A. B. v. \_\_\_\_\_ Railway Company.

Sir,—I hereby give you notice that on the \_\_\_\_\_ day of \_\_\_\_\_ the above-named plaintiff A. B. by the judgment of the Court of \_\_\_\_\_ recovered against the said company as well a certain debt of £ \_\_\_\_\_ as also £ \_\_\_\_\_ which were awarded to the said A. B. for the damages which he had sustained, and that thereupon, in order to recover the aforesaid debt and damages, the said A. B. sued out a certain writ called a *feri facias* directed to the sheriff of \_\_\_\_\_ commanding the said sheriff out of the goods and chattels of the said company to levy the said debt and damages, and that the said sheriff has made his return to the said writ that (*here state the return*) and that the sum of £ \_\_\_\_\_ still remains due and unsatisfied upon the said judgment, and I hereby give you further notice that it is the intention of the said A. B. to move the said court to order execution to be issued against you or against your goods and chattels for the sum of £ \_\_\_\_\_, being the amount of capital still due and unpaid upon

(a) See *Supra*, page 471.

the several shares in the said company numbered respectively ———, ———, ———, and standing in your name at the time of the entering up of the judgment aforesaid.

Dated the       day of

C. D

Attorney for the said A. B.

To       of       .

The motion to charge a shareholder in execution must be made to the court on affidavits entitled in the cause, showing that judgment has been entered up against the company, that a *feri facias* has been issued against the goods of the company, that the sheriff has made his return thereto, that the judgment still remains unsatisfied to the extent of £       , that the party sought to be charged is a registered owner of       shares upon which a portion of the capital still remains unpaid.

No. 35.

*Certificate that definite Portion of Capital has been Paid. (a)*

——— to wit.

8 Vic. c. 16. s. 40.

I, A. B., a Justice of the Peace in and for the said County of       , the       Railway Company having produced unto me the books of the said company and also the copy of an order of a general meeting of the said company held on the       day of       authorising the borrowing of money by the said company (and which copy is certified by the secretary of the said company to be a true copy), do hereby certify that the amount of capital prescribed in that behalf in the special Act of the said company has been paid up, and that the order for borrowing money has been duly made at a general meeting of the said company in pursuance of the provisions of The Companies' Clauses Consolidation Act, 1845.

Given under my hand and seal  
this       day of       .

A. B.

**L. S.**

(a) See Supra, page 507.

No. 36.

*Form of Mortgage Deed. (b)*

8 Vic. c. 16, Schedule C.

The       Railway Company.

Mortgage, Number       £.

By virtue of (*here name the Special Act*), we, "The       Company," in consideration of the sum of       pounds paid to us by A. B. of       do assign unto the said A. B., his executors, administrators, and assigns, the said undertaking, [and (*in case such loan shall be in anticipation of the capital authorised to be raised*) all future calls on shareholders.] and all the tolls and sums of money arising by virtue of the said Act, and all the estate,

(b) See Supra, page 508.

right, title, and interest of the company in the same, to hold unto the said A. B., his executors, administrators, and assigns, until the said sum of pounds, together with interest for the same at the rate of for every one hundred pounds by the year, be satisfied. The principal sum to be repaid at the end of years from the date hereof (*in case any period be agreed upon for that purpose,*) at (*or any place of payment other than the principal office of the company*).

Given under our common seal, this day of in the year of our Lord

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No. 37.

*Form of Bond. (a)*

8 Vic. c. 16, Schedule D.

“ The ——— Railway Company.”

Bond, Number £

By virtue of (*here name the Special Act,*) we, “ The Company,” in consideration of the sum of pounds, to us in hand paid by A. B. of do bind ourselves and our successors unto the said A. B., his executors, administrators, and assigns, in the penal sum of pounds. The condition of the above obligation is such, that if the said company shall pay to the said A. B., his executors, administrators, or assigns, at (*in case any other place of payment than the principal office of the company be intended,*) on the day of which will be in the year One Thousand Eight Hundred and the principal sum of pounds, together with interest for the same, at the rate of pounds per centum per annum, payable half-yearly on the day of and day of . Then the above written obligation is to become void, otherwise to remain in full force.

Given under our common seal, this day of One Thousand Eight Hundred and

(a) See Supra, page 511.

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No. 38.

*Form of Transfer of Mortgage or Bond. (b)*

8 Vic. c. 16, Schedule E.

I, A. B. of in consideration of the sum of paid to me by G. H. of do hereby transfer to the said G. H., his executors, administrators, and assigns, a certain bond (*or mortgage*) number made by “ The Company” to bearing date the day of for securing the sum of and interest (*or, if such transfer be by indorsement*) [the within security] and all my right, estate, and interest in and to the money thereby secured, (*and if the transfer be of a mortgage*) [and in and to the tolls, money, and property, thereby assigned.]

In witness whereof, I have hereunto set my hand and seal this day of One Thousand Eight Hundred and

(b) See Supra, page 514.



## No. 39.

*Appointment of Receiver of Tolls, &c. on Application of Mortgagee. (a)*

8 Vic. c. 16. ss. 53, 54.

\_\_\_\_\_ to wit,

Whereas application hath been made by A. B. of \_\_\_\_\_ a mortgage creditor of the \_\_\_\_\_ Railway Company, to us J. P. and P. O., two of the justices of the peace, acting in and for the said county, to appoint a receiver of the tolls and sums of money arising from the undertaking of the said company; and whereas it appears to us, that the sum of \_\_\_\_\_ pounds principal, together with \_\_\_\_\_ pounds arrears of interest, now remains due and owing by the said company to the said A. B., by virtue of an indenture of mortgage, bearing date the \_\_\_\_\_ day of \_\_\_\_\_ and also that the period of thirty days has elapsed since the said sum of \_\_\_\_\_ pounds for interest has become due and payable (*if principal sought to be recovered add*) [that the period of six months has elapsed since the principal sum of \_\_\_\_\_ pounds became due and payable] and that the said A. B. has made a demand in writing on the said company for the payment of the said sum of \_\_\_\_\_ pounds (*state the amount of principal or interest as the case may be*).

Now we do, therefore, in pursuance of the provisions contained in the (*Special Act*), and in The Company's Clauses Consolidation Act, 1845, hereby appoint X. Y. of \_\_\_\_\_ to be receiver of such of the tolls and sums of money arising from the said undertaking as may be liable to the payment of the said sum of \_\_\_\_\_ pounds, and we do empower the said X. Y. to receive and take all such tolls and sums of money until the said sum of \_\_\_\_\_ pounds, together with the costs of receiving such tolls and sums of money shall be fully paid and discharged.

Given under our hands and seals }  
this \_\_\_\_\_ day of \_\_\_\_\_ }

J. P.  
P. O.

(a) See Supra, page 512.

## No. 40.

*Requisition by Shareholders to Directors to call an Extraordinary Meeting of the Company. (b)*

8 Vic. c. 16. s. 70.

To the Directors of the \_\_\_\_\_ Railway Company.

We, the undersigned, being more in number than twenty of the shareholders in the said company, and holding, in the aggregate, not less than one-tenth of the capital of the said company, do hereby require you, within twenty-one days after the receipt of this notice, to call an extraordinary meeting of the shareholders of the said company for the purpose of [*here state fully the objects of the proposed meeting, as no business not distinctly specified in this requisition can be brought forward*].

Dated the \_\_\_\_\_ day of \_\_\_\_\_

A. B.  
C. D.  
E. F., &c.

(b) See Supra, page 446.



41.

*Form of Proxy. (a)*

8 Vic. c. 16, s. 76. Schedule F.

A. B. , one of the proprietors of "The Railway Company," doth hereby appoint C. D. of (b) to be the proxy of the said A. B. in his absence to vote in his name upon any matter relating to the undertaking proposed at the meeting of the proprietors of the said company, to be held on the day of next, in such manner as the said C. D. doth think proper.

In witness whereof the said A. B. hath hereunto set his hand (or, if a corporation, say the common seal of the corporation), the day of , One Thousand, Eight Hundred, and .

(a) See Supra, page 445.

(b) The proxy must be a shareholder.

42.

*Form of Conviction.*

8 Vic. c. 16. Schedule G.

\_\_\_\_\_ to wit.

Be it remembered, That on the day of in the Year of our Lord, A. B. is convicted before us, C. D., two of her Majesty's Justices of the Peace for the county of [here describe the offence generally, and the time and place when and where committed], contrary to the [here name the Special Act].

Given under our hands and seals the Day and Year first above written.

43.

*Warrant of Distress against a Railway Company to levy Penalties and Costs under a Conviction by Justices. (a)*

8 Vic. c. 16, s. 142.

\_\_\_\_\_ to wit.

To the constable of \_\_\_\_\_ in the said county, and to all other constables in and for the said county.

Whereas the Railway Company was on the day of duly convicted before us, J. P. and P. O., two of the Justices of the Peace in and for the said county, for that the said company [here state the offence as in the conviction], against the form of the statute in that case made and provided, and we the said J. P. and P. O. thereupon adjudged the said company for the said offence [here set out adjudication as in conviction]; and whereas the said company being so convicted as aforesaid and being required to pay the said sums hath not paid the same or any part thereof, but therein hath made default; and whereas seven days have elapsed since the said company were required to pay the said sum of £ . These are therefore to command you forthwith to make distress of the goods and chattels of the said company, and if within the

(a) See Supra, page 616.

space of [not less than four or more than eight days] next after making such distress the said sums, together with the reasonable charges of taking and keeping such distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale [if the penalty is awarded by the Act one half to the informer and one half to the poor] that you do pay one moiety of the said sum of £                      so forfeited as aforesaid, together with the said sum of                      for costs, unto A. B. who hath informed us of the said offence, and the said other moiety of the said sum of £                      so forfeited as aforesaid unto the overseers of the poor of the parish of                      where the said offence was committed, for the use of the poor of the said parish [or according to the provisions of the statute] rendering the overplus on demand unto the said company, the reasonable charges of taking, keeping, and selling the said distress being first deducted. And if no such distress can be made, that then you certify the same unto us to the end that such further proceedings may be had therein as to the law doth appertain.

Given under our hands and seals this                      day of                      , &c.

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No. 44.

*Notice to the Treasurer of a Railway Company, Demanding Payment of a Sum of Money under £20, due by the Company under a Conviction by a Justice.*

8 Vic. c. 16. s. 143.

I hereby give you notice that on the                      day of                      the Railway Company was duly convicted before J. P. and P. O.,\* two of the justices of the peace in and for the county of                      for that [here state the offence] against the form of the statute in that case made and provided, and thereupon the said J. P. and P. O., adjudged the said company, [set out adjudication], and whereas the said company neglected to pay the said sums of £                      and £                      in the said warrant mentioned in the manner prescribed in the Companies' Clauses Consolidation Act, 1845.

And whereas on the                      day of                      , the said J. P. and P. O. issued their warrant of distress directed to me, the constable of                      in the said county, commanding me to make distress of the goods and chattels of the said company, and whereas I,                      have certified unto the said J. P. and P. O. that sufficient goods and chattels of the said company cannot be found whereon to levy the sums of money aforesaid. Now this is to give you notice that unless the sum of £                      and £                      costs be paid by you on or before the                      day of                      [a day more than seven days from service of notice] application will be made to the said J. P. and P. O. or one of them to issue a warrant of distress against your goods and chattels for the purpose of levying the said sums.

(Signed,)

To Mr.                      , Treasurer of the                      Constable of                      in the said county.  
Company.

B B B

## No. 45.

*Form of Conveyance on Chief Rent.*  
8 Vic. c. 18. Schedule B.

I, \_\_\_\_\_ of \_\_\_\_\_ in consideration of the rent charge to be paid to me, my heirs and assigns as hereinafter mentioned, by "the Promoters of the Undertaking," (*naming them*) incorporated [*or constituted*] by virtue of the (*here name the Special Act*) do hereby convey to the said company (*or other description*) their successors and assigns, all (*describing the premises to be conveyed,*) together with all ways, rights, and appurtenances thereunto belonging, and all my estate, right, title, and interest in and to the same and every part thereof, to hold the said premises to the said company, (*or other description*) their successors and assigns, for ever, according to the true intent and meaning of the said Act, they the said company (*or other description*), their successors and assigns, yielding and paying unto me my heirs and assigns, one clear yearly rent of £ \_\_\_\_\_ by equal quarterly [*or half yearly, as agreed upon*] portions, henceforth on the (*stating the days*), clear of all taxes and deductions. In witness whereof I hereunto set my hand and seal, the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord, \_\_\_\_\_.

## No. 46.

*Certificate that the whole of the Capital of the Company has been Subscribed (a).*  
8 Vic. c. 18. s. 17.

\_\_\_\_\_ To wit.

We the undersigned, J. P., and P. O., two of the Justices of the Peace in and for the said county, do hereby certify that the promoters of the undertaking called the \_\_\_\_\_ Railway have produced unto us a subscription contract relating to the same, duly executed by, and binding, the parties thereto their heirs executors and administrators for the payment of the several sums by them respectively subscribed, and we do further certify that the whole of the capital prescribed by the (*name the Special Act*), and the estimated sum for defraying the expenses of the said undertaking has been subscribed in manner required by the Lands' Clauses Consolidation Act, 1845. In witness whereof we have hereunto set our hands this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_.

J. P.  
P. O.

## No. 47.

*Notice to Landowner of Intention of Company to take Lands (b).*

8 Vic. c. 18. s. 18.

The \_\_\_\_\_ Railway.

In pursuance of the provisions contained in an Act of Parliament, passed in the eighth year of the reign of her present Majesty, Queen Victoria, intituled,

(a) See *Supra*, p. 202.(b) *Ib.* 181.

"The Lands' Clauses Consolidation Act, 1845," and in a certain other Act of Parliament, passed in the \_\_\_\_\_ year of the reign of her said present Majesty, intituled, "\_\_\_\_\_ Railway Act, 18\_\_\_\_," I do hereby for and on behalf of the \_\_\_\_\_ Railway Company, established and incorporated by the said last mentioned Act, give you notice, that all those pieces or parcels of land together with the buildings if any thereon, and other the tenements and hereditaments mentioned and described in the schedule hereunder written and delineated, belonging or reputed to belong to you or some or one of you, or in which you or some or one of you have or claim some estate or interest, are required by the said company and are intended to be taken and used for the purposes of the said Acts, and the said railway company do hereby demand from you, and you and each of you are hereby required to deliver to [me] [or at the office of the said company] a statement in writing of the particulars of the estate, share, interest or charge which you or any or either of you claim to be entitled to, or to be authorised to receive satisfaction and compensation for, of and in the said lands so required to be taken and used as aforesaid, and you and each of you are hereby required to take notice that the said railway company are willing to treat with you and each of you for the purchase of the said lands, messuages, tenements, and other hereditaments and for the amount of compensation to be paid to you and each or any of you for the damage to be sustained by reason of the execution of the works of the said company.

And you are hereby further required to take notice, that, if for the space of twenty-one days after the service hereof upon you, you or any of you shall fail to state the particulars of your claims, in respect of any of the said lands, tenements, hereditaments, and premises required to be taken and used as aforesaid, or to treat with the said company, in respect of your several interests therein; or if you or any of you and the said railway company shall not agree as to the amount of the compensation to be paid to you respectively by the said company, for any such interest, or for any damage that may be sustained by you or any of you, by reason of the execution of the works of the said railway, the amount of compensation to be paid to such of you as shall fail or neglect in manner aforesaid, will be settled in the manner provided by "The Lands' Clauses Consolidation Act, 1845," for settling cases of disputed compensation; and the said company will adopt such measures in the premises as by the said Acts of Parliament, or either of them, they are empowered to do, for the purpose of obtaining immediate possession of the said lands, tenements, hereditaments and premises, and forthwith proceeding with the works of the said railway.

A. B.

On behalf of the said company.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_ .  
To \_\_\_\_\_

Annexed to this notice the company should send an extract from the book of reference relating to the lands in question, and also a tracing of such portion of the deposited plans as delineates the property required, coloured and figured so as to shew the quantities which are proposed to be taken.

B B B 2

No. 48.

*Notice by Landowner to Company of a Desire to have the Amount of Compensation settled by Arbitration (a).*

8 Vic. c. 18. s. 23.

To the ——— Railway Company.

I, A. B., of ——— in the County of ———, being possessed of, or otherwise well entitled to, certain lands and other premises situate in the parish of ———, [or in the several parishes of A——, B——, C——, and D——], in the County of ———, (which said lands and premises are more particularly described in the schedule annexed to the notice hereinafter next mentioned;) having received a certain notice from you the said company bearing date the ——— day of ———, demanding from me a statement in writing of the particulars of my estate and interest in certain lands therein mentioned and required for the purposes of the said company, and also of the claims made by me in respect of the same, DO hereby give you notice that I claim (*here state the nature of the estate claimed.*) an estate of fee simple in possession, or [an estate of fee simple in possession subject to a certain lease bearing date the ——— day of ——— and granted to one E. F., gentleman, for a period of ——— years, and which lease will expire on the ——— day of ———] or [an estate in fee, &c., in the said lands which are copyhold of the manor of ———] or [an estate for life in the said, &c.] or [an estate for lives] or [years.] (*specifying particulars*). And I hereby further give you notice that I claim the sum of £ ———, for the purchase of my interest in the lands specified in the said notice as required for the purposes of the said railway, and the sum of £ ———, as compensation for injury by severance, and other the damage to be sustained by me by reason of the execution of the works of the said railway; the said last mentioned sum nevertheless not to be deemed compensation as for an absolute and total severance of the said lands, so as to exonerate or discharge the said company from making all proper communications and accommodation works in relation thereto. And I hereby further give you notice that unless you the said company agree to pay the several sums of money above claimed, it is my desire that the amount to be paid to me in respect of the above claims shall be settled by arbitration in the manner prescribed in "The Lands' Clauses Consolidation Act, 1845," and I do hereby give you notice that I have by writing under my hand, bearing even date herewith, nominated and appointed X. Y., of ———, to be the arbitrator on my behalf in the matters aforesaid, and do request you to nominate and appoint some person to act as arbitrator on your behalf in the said matters.

Signed,

A. B.

Dated the ——— day of ———

(a) See *Supra*, p. 204.

## No. 48 A.

*Form of Appointment of Arbitrator by Landowner.*

8 Vic. c. 18. ss. 23—26.

Whereas, I, the undersigned A. B. (a), of \_\_\_\_\_, &c., did on or about the day of \_\_\_\_\_, receive a notice in writing from the \_\_\_\_\_ Railway Company (a copy of which is hereunto annexed,) requiring certain lands, therein particularly mentioned and described, for the purposes of the said railway, and whereas I am possessed of, or otherwise well entitled to, the said lands, and I have been unable to agree with the said company as to the sums of money to be paid to me for the purchase of the same, and for the compensation for injury by severance and other the damage to be sustained by me by reason of the execution of the works of the said railway; and whereas by a notice in writing under my hand bearing even date herewith, and directed to the said company, containing the several particulars prescribed in that behalf, in "The Lands' Clauses Consolidation Act, 1845," I have signified to the said company my desire to have the question of compensation in relation to the matters in the said notice contained settled by arbitration. NOW THEREFORE in pursuance of the provisions of the said Lands' Clauses Consolidation Act, 1845, I do hereby nominate and appoint X. Y., of \_\_\_\_\_, to be the arbitrator on my behalf in and concerning the premises.

As witness my hand, this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_.  
 Witness \_\_\_\_\_ A. B.

## No. 49.

*Affidavit of the due Appointment of Arbitrators in support of a motion for making the Submission to Arbitration a Rule of Court.*

In the \_\_\_\_\_

In the matter of the Arbitration between the \_\_\_\_\_ Railway Company and A. B.

O. P., of \_\_\_\_\_, and P. Q., of \_\_\_\_\_, severally make oath and say, and first the said O. P. for himself saith, that he was present at the time of the signing the writing hereunto annexed, marked A. (b), and that A. B., of \_\_\_\_\_, therein mentioned, did duly sign the said writing in the presence of this deponent, and that the name A. B., subscribed to the said writing, is of the proper handwriting of the said A. B., and that the name O. P. set and subscribed as the witness to the said writing, is of the proper handwriting of this deponent; and this deponent further saith, that he did afterwards, on the day of \_\_\_\_\_, deliver to X. Y., the arbitrator therein named, the said writing; and this deponent, P. Q., for himself saith, that he was present at the time of the signing of the writing hereunto annexed, marked B. (c), and that the said C. D., who then was and still is the secretary of the \_\_\_\_\_ Railway Company, did duly sign the same, and that the name C. D. subscribed to the said last mentioned writing is of the proper handwriting of the said C. D., and that the name P. Q., set and subscribed as the witness to the said last-mentioned writing, is of the proper handwriting of this deponent.

Sworn, &amp;c.

O. P.  
P. Q.

(a) The appointment of an arbitrator should be under the hand of the landowner, as it is not clear that an appointment by an agent would be good.

(b) The appointment of arbitrator by landowner.

(c) The appointment of an arbitrator on the part of the company.

No. 50.

*Rule making Appointment of Arbitrators a Rule of Court.*

8 Vic. c. 18. ss. 25 &amp; 36.

In the matter of the — Rail. Com. } and A. B.	In the —.
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Upon reading the affidavits of O. P. and P., Q., and the writings thereunder written, the tenure of which said writings are in the words following, that is to say,

*(Here copy out verbatim the appointments of the arbitrators.)*

Now upon reading the appointment of X. Y. to be arbitrator on behalf of the said A. B., and the appointment of Y. Z. to be arbitrator on behalf of the said company, IT IS ORDERED that the said appointments be, and the same are hereby made a rule of this court, pursuant to the provisions of the Lands' Clauses Consolidation Act, 1845.

By the Court.

No. 51.

*Appointment by Landowner of Arbitrator to act ex parte on Default of Company to appoint one.*

To Mr. X. Y.

Whereas I, the undersigned A. B. of                      in the county of                      did on or about the                      day of                      receive a notice in writing from the                      Railway Company requiring me to treat for the purchase by them of certain lands therein mentioned and for compensation for damage to be caused thereto by the execution of the works of the said railway. And whereas I, the said A. B., in pursuance of the provisions in that behalf contained in the Lands' Clauses Consolidation Act, 1845, and previous to the said company issuing their warrant to the sheriff of the said county to summon a jury to assess the amount of compensation to be paid to me in respect of the said lands, did on the                      day of                      serve or cause to be served on the said company a notice in writing stating the nature of the interest in the said lands in respect of which I claimed compensation, and also the amount of the compensation so claimed by me, and in which said notice I signified my desire to have the amount of such compensation settled by arbitration in the manner prescribed by the said Act, and gave notice to the said company that I had nominated and appointed you, X. Y., to be the arbitrator on my behalf in relation to the premises, and therein required the said company to appoint a person to be arbitrator on their behalf. And whereas on the said                      day of                      , I did by writing under my hand appoint you, the said X. Y., of                      , to act as arbitrator on my behalf in respect of the matters aforesaid, and did deliver or cause to be delivered unto you the said appointment. And whereas the period of fourteen days and more has expired since the notice aforesaid



requiring my claims against the said company to be settled by arbitration was delivered at the office of the said company, and the said company have altogether failed to appoint an arbitrator to act on their behalf. Now in pursuance of the provisions in that behalf contained in the said Act, I do hereby nominate and appoint you the said X. Y. to act as arbitrator both on my behalf and on behalf of the said company in respect of the matters so referred to arbitration as aforesaid.

As witness my hand, &c.

A. B.

No. 52.

*Appointment of Umpire by Arbitrators. (a)*

8 Vic. c. 18. s. 27.

We the undersigned X. Y. and Y. Z. do hereby nominate and appoint E. F. of                      Esq. to be Umpire between us in and concerning the several questions and matters referred to us as to the sum or sums of money to be paid by the                      Railway Company to A. B. of                      in respect of the purchase by the said company of certain lands of the said A. B. to be taken and used by the said company, and for the compensation for damage to be sustained by the said A. B. by reason of the execution of the works of the said railway, and in respect of all other matters and things connected with the said arbitration.

As witness our hands, &c.

X. Y.

Y. Z.

No. 53.

*Award of Arbitrators.*

To all to whom these presents shall come, we, X. Y. of                      and Y. Z. of                      send greeting [*here recite the notice to treat, the notice by the landowner requiring the amount of compensation to be settled by arbitration, the appointment of arbitrators and umpire, the officer of company, the declaration of arbitrators, the time for making the award, and exercise of the power of enlargement.*] Now know ye that we, the said X. Y. and Y. Z., having taken upon ourselves the burthen of the said arbitration, having examined all such witnesses as were produced before us by the said parties respectively, and having heard and duly considered all the allegations and evidence of the said respective parties of and concerning the matters in difference and so referred as aforesaid Do make this our award in writing of and concerning the said matters in difference and so referred to us as aforesaid, and do hereby award, order, determine and direct that the said company shall pay to the said A. B. the sum of £                      for the purchase of the lands specified in the schedule annexed to the said hereinbefore recited notice, and so required for the purposes of the said company as aforesaid, and that the said company shall pay to the said A. B. the further sum of £                      for severance and other the damage to be sustained by the said A. B. by reason of the execution of the works of the said railway, so nevertheless as that the payment of the said last mentioned sum of money shall not discharge the said company from their liability, under and by virtue

(a) See Supra, p. 207.

of the several Acts of Parliament relating to the said railway, to make such works for the accommodation of the said lands adjoining the said railway as are therein directed and prescribed; and we do hereby declare that the costs of the said A. B., of and incident to this arbitration, and settled by us, are £            to be paid by the said company, (a) in manner provided by the said Lands' Clauses Consolidation Act, 1845.

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No. 54.

*Declaration by Arbitrator or Umpire to be Annexed to Award.*

8 Vic. c. 18. s. 33.

I           , do solemnly and sincerely declare that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the (*Special Act*).

Made and subscribed by the said           , in the presence of           .

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No. 55.

*Notice by a Railway Company to Landowners of their Intention to Issue their Warrant to the Sheriff. (b)*

8 Vic. c. 18. s. 38.

Whereas the           Railway Company did by a notice in writing, bearing date the           day of           , served on you, in pursuance of the provisions of the several Acts of Parliament therein mentioned, inform you and each of you that they the said company required to purchase and take for the purposes and under the provisions of the said Acts, certain lands, messuages, tenements, and hereditaments belonging or reputed to belong to you or some or one of you, or in which you or some or one of you have or claim to have some interest, and which lands and other the premises are described and delineated in the schedule and plans annexed to the said notice, and whereas the said company have been unable, within the time limited for that purpose, to come to any agreement with you or any of you in respect of the sum or sums of money to be paid for the purchase of the lands so required as aforesaid, and as compensation for the damage to be sustained by you or any of you by reason of the execution of the works of the said railway. Now THIS IS TO GIVE YOU AND EACH AND EVERY OF YOU NOTICE that the said company, in pursuance of the provisions contained in the said Acts, do hereby offer you and each of you the sum or sums of money set opposite to your several names in the schedule hereunder written, as compensation for the purchase of the several interests in the said lands of you and each of you, and as compensation for the damage to be sustained by you and each of you by reason of the execution of the said works; and the said company do hereby give you and each of you further notice that if for the period of ten days after the service hereof, you, or any of you, shall refuse or neglect to accept the said several sums of money set opposite to your respective names, and hereby offered by the said company, the said company will issue their war-

(a) It is here assumed that a greater sum has been awarded than had been offered by the company.

(b) See Supra, p. 211.

rant to the sheriff of the said county to summon a jury for the purpose of determining the amount of compensation to be paid to you and each of you in respect of the premises.

\_\_\_\_\_ On behalf of the said company.  
Dated this      day of      , 18 .

To A. B. C. &c.

Care must be taken in the schedule annexed to this notice that the parties entitled to separate interests in the lands, are each offered a separate sum for their several interests; and it is also advisable to make a separate offer of a sum for the purchase of the lands, and of a sum as compensation for severance and damage.

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No. 56.

*Warrant by a Railway Company to the Sheriff to Summon a Jury. (a)*  
8 Vic. c. 18. s. 39.

\_\_\_\_\_ To wit.

To the Sheriff of the said county of .

We the      Railway Company by virtue of (*Special Act*)      and of the Lands' Clauses Consolidation Act, 1845, do by this our warrant require you the said sheriff to summon, impanel, and return, a jury of twenty-four indifferent persons duly qualified to act as common jurymen for trials of issues in Her Majesty's Courts of Record at Westminster, to be and appear before you, the said sheriff, at such place, not being more than eight miles distant from the lands and premises hereinafter mentioned, and at such time not being less than fourteen, nor more than twenty-one days after the receipt of this warrant, as you may appoint, and there to attend from day to day until duly discharged, [*if the place and time has been agreed upon between the parties say at      , in the said county on the      day of      , next, according to an agreement to that effect entered into between A. and B. the owners of the said lands, and the said company,*] and by this our warrant we further require you to cause to be drawn out of the persons so to be summoned, or out of such of them as may appear upon the said summons, a jury of twelve persons, in such manner as juries for trials of issues joined in the superior courts are by law required to be drawn; and in case a sufficient number of jurymen do not appear in obedience to such summons, to return other indifferent men of the bystanders duly qualified as aforesaid, or others that can be speedily procured, to make up the said jury to the number aforesaid, subject to such lawful challenge, as in the said Lands' Clauses Consolidation Act, 1845, mentioned, and such jury so summoned and drawn, shall upon their oaths, or, being quakers, upon their solemn affirmations, inquire of and assess, and give a verdict for the sum of money to be paid by the said company to (*here name the various parties*) for the purchase of, &c. (*here state the lands required by the company, as in the notice to treat*) which in the schedule and the plan hereunto annexed, are more particularly described and delineated, and which said several pieces and parcels of lands, tenements, and hereditaments, are men-

(a) See *Supra*, p. 213.

tioned in the plans and books of reference of the said railway deposited with the clerk of the peace of the said county, and which the said company are authorised to take under the said Acts, or some or one of them, and also for the sum of money to be paid by the said company to the said parties or any or either of them, as compensation for severance and other the damage already sustained or to be sustained by reason of the execution of the works of the said railway, and which said last mentioned sum of money shall be assessed separately and distinctly from the sum of money to be given for the purchase of the said lands and premises, &c., so to be taken and used as aforesaid. And the said jury shall further, upon their oath or affirmation as aforesaid (as the case may be), inquire of, and by their verdict settle and ascertain all such other matters and things as they may by virtue of the provisions of the said Acts, or any or either of them, be lawfully required to do.

Given under our common seal this                      day of                      , A.D.                      .

Care must be taken in specifying the quantities and parcels of land required that the warrant correspond in these respects exactly with the notice to treat served upon the landowner.

#### No. 57.

#### *Warrant to the Sheriff.*

(Another form, reciting the several facts from which the jurisdiction of the sheriff will appear.)

\_\_\_\_\_ to wit.                      }                      To the Sheriff of the county of \_\_\_\_\_.

Whereas A. B., and C. D. claim to be the owners of or to be otherwise well entitled to certain lands, messuages, tenements, and hereditaments, situate and being in the several parishes of                      and                      , &c., in the said county, and which several lands, messuages, tenements, and hereditaments (which are more fully described in the schedule hereunder written, and are delineated on the plan hereunto annexed, and thereon coloured red) are in the respective occupations of                      and                      , as tenants of the said A. B. and C. D., and which said lands and other the premises are contained in the plans and books of reference of the                      Railway, (as amended and approved of by Parliament,) lodged with the clerk of the peace for the said county. And whereas the said lands, &c., are required and authorised to be taken for the purposes of the said railway. And whereas the said Railway Company, in pursuance of an Act passed in the                      year of the reign of her Majesty Queen Victoria, and of other Acts of Parliament, enabling them in that behalf, did by a notice in writing under the hand of the secretary [or two directors, *as the case may be*], bearing date the                      day of                      , A.D. 18                      , and directed to the said A. B., and C. D. and to whom else it might concern, give each of them the said parties notice, and required them respectively to make a statement in writing of the particulars of the estate, share, interest, or charge they and each of them claimed to be entitled to, or to be authorised to receive satisfaction and

compensation for, in the said lands so required to be taken and used, and did also give them and each of them notice that the said company were willing to treat for the purchase of the said lands, and as to the compensation to be made to them and each of them for the damage they, or any, or either of them might sustain by reason of the execution of the works of the said railway. And the said company did by the said notice in writing give further notice to the said parties and each of them, that in case they did for the space of twenty-one days next after the receipt of the said notice neglect or refuse to treat, or should not be able to agree with the said company for the value of the said lands and premises, or for the compensation to be paid in respect of any injury, damage, or loss to be sustained by them or any of them by reason of the execution of the said works; then and in that case the said company would issue their warrant to you, the sheriff of the said county, requiring you to summon a jury in manner prescribed by the Lands Clauses Consolidation Act, 1845, for making inquiry into and assessing compensation for the several matters and things therein specified, and would also take such further proceedings in the premises as they the said company under or by virtue of any Act or Acts of Parliament would be entitled to take. And whereas the said A. B. and C. D., [*here insert only the names of those that cannot agree*] did not, nor did any or either of them, within twenty-one days next after the service of the notice aforesaid, or at any other time, treat or agree with the said company as to the matters in the said notice contained. And whereas the said company did, in pursuance of the said Lands' Clauses Consolidation Act, 1845, by a further notice in writing under the hand of their secretary, bearing date the       day of       , A.D.       , and directed to the said A. B. and C. D., and to each and every of them, inform the said A. B. and C. D., and each and every of them, that they the said company intended to issue their warrant to the sheriff of       , requiring him to summon a jury to assess the compensation to be paid to the respective parties for the land to be taken, and for the damage to be sustained by each of them by reason of the execution of the said works; and in the said notice the said company did state the sums of money that they were willing to give for the interest of each of them the said parties in the lands sought to be purchased by the said company as aforesaid, and for the damage to be sustained by them and each of them by reason of the execution of the said works; and did offer to the said A. B. the sum of £       for the purchase of his interest in the lands aforesaid, and the sum of £       as compensation for the damage to be sustained by him as aforesaid; and to the said       , &c. &c.

(*Here copy the company's offer in their notice to the landowner of their intention to issue their warrant to the sheriff.*)

Now we, &c. (*Conclude with the precept to the sheriff as in the preceding form.*)

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## No. 58.

*Notice by Company to Landowner of Time and Place of Inquiry.*

8 Vic. c. 18. s. 46.

In pursuance of an Act of Parliament passed in the                      year  
 Queen Victoria, intituled, [*Title of Special Act*] and of the Lands' Clauses  
 Consolidation Act, 1845, Notice is hereby given you, that a jury, to be sum-  
 moned, impannelled, and returned according to the provisions of the said Acts,  
 will come and appear before the sheriff of the county of                      at the house  
 of                      known by the name or sign of                      in  
 in the said county on                      the                      day of                      , at  
                     of the clock in the forenoon, precisely, of the same day, for  
 the purpose of inquiring of, assessing, and giving a verdict for the sum of  
 money to be paid for the purchase of all, &c. [*here describe the lands as in the*  
*notice to treat*] and which several pieces and parcels of land, hereditaments  
 and premises, and the buildings thereon, (more particularly mentioned and  
 described in the schedule to a certain notice in writing from the said company  
 served upon you on the                      day of                      last, and delineated on a  
 plan thereunto annexed,) are about to be purchased and taken under the  
 authority of the said Acts, to be used for the purpose of the said railway, and  
 whereof, whereto, or wherein, you or some or one of you are or is possessed  
 entitled or interested, or are or is reputed so to be, and also the sum of money  
 to be paid by way of satisfaction or compensation to the owners, or reputed  
 owners and occupiers, of the said pieces or parcels of land, buildings, here-  
 ditaments and premises hereinbefore mentioned, or any of them or other the per-  
 sons interested therein respectively, for the damage which before the said  
 day of                      next, shall have been done to or sustained by such owners and  
 occupiers as aforesaid, or any or either of them, or other the persons interested  
 therein, respectively, by reason of the execution of any of the works by the  
 said Act authorized; which satisfaction or compensation is to be inquired into  
 and assessed separately and distinctly from the value of the lands, buildings,  
 hereditaments and premises, so required to be taken as aforesaid, when and  
 where you and each of you are requested to attend, and when and where you  
 and each of you are hereby required to produce all and every of your grants,  
 leases, agreements for leases, valuations, rentals, receipts for rent, and other  
 evidence, papers and writings whatever, touching or relating to the said lands,  
 buildings, hereditaments and premises, and the several interests therein afore-  
 said, or any of them. Dated, &c.

To A. B. and B. C.

And to all and every the owners, lessees,  
 and occupiers of the said lands and premises, or of any of them,  
 and all and every person having any estate or interest therein.

## No. 59:

*Form of Inquisition (a).*

8 Vic. c. 18. s. 50.

——— To wit. An inquisition indented, taken pursuant to [*Special Act*] and the Lands' Clauses Consolidation Act, 1845, at                      on the day of                      before me,                      Esq., sheriff of the county aforesaid, by virtue of a certain warrant hereunto annexed under the seal of the Railway Company on the oath of [*here insert the names of the jurors*], good and lawful men of my said county qualified according to the laws of this realm to serve on juries in Her Majesty's Courts of Record at Westminster; notice in writing having been on the                      day of                      duly given to the said [*claimant*] by and on behalf of the said company according to the said Acts that the lands hereinafter mentioned were required for the purposes of and authorized to be taken by the said Acts [*if omitted by mistake state certificate of justice, &c.*] and the said (*claimant*) not having within the space of twenty-one days and more after the giving such notice agreed with the said company for the sale, conveyance, or release of the said lands, hereditaments, and premises, or of his estate and interest therein. And notice in writing having been duly given on the                      day of                      last to the said (*claimant*) by the said company of their intention to issue their warrant to me the said sheriff to cause a jury to be summoned as aforesaid, and in which notice the said company stated they were willing to give the sum of £                      for the interest of the said (*claimant*) in the said lands sought to be purchased by them, and the sum of £                      for the damage to be sustained by him by reason of the execution of the works of the said railway; and notice in writing of the time and place at which the said jury were required to be returned having been duly given fourteen days and more before the said [*day of trial*], which said [*names of jurors*] being sworn to inquire of and concerning the matters mentioned in the said warrant and thereby directed to be inquired of, assessed, and ascertained by them in manner therein mentioned, and the said (*claimant*) by his counsel having at the time aforesaid appeared before me and the said jurors, and having adduced evidence before me and the said jurors touching the matters in question, and the said company having also appeared and adduced evidence before me and the said jurors: the said jurors on their oaths aforesaid say that they do assess and give a verdict for the sum of £                      to be paid to the said (*claimant*) for the purchase of the estate, right, title and interest of the said (*claimant*) of and in [*here describe the lands as in notice to treat and warrant*] and the said jurors do in like manner assess and give a verdict for the further sum of £                      to be paid to the said (*claimant*) by the said company as well by way of satisfaction, recompense, or compensation for the damages which have before the said [*day of trial*] been done to or sustained by the said (*claimant*) by reason of the execution of the works by the said Act authorized, as for the damage to be by the said (*claimant*) sustained by reason of the severing or dividing of the said lands (or, *if the payment is not intended as compensation for a total severance, add*) nevertheless so as that the payment

(a) See Supra, pp. 219—221.

of the said last mentioned sum shall not exonerate the said company from making all necessary communications between and accommodation works to the lands of the said (*claimant*) intersected by the said railway, in manner prescribed by the said Lands' Clauses Consolidation Act, 1845, and I the said sheriff do hereby pursuant to the said Acts adjudge and order the several sums of £        and £        making together the sum of £        to be paid by the said company to the said (*claimant*).

In witness whereof I the said sheriff have hereunto set my hand and seal of office, and the said jurors have hereunto set their hands and seals the day and year first above written.

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No. 60.

*Appointment of Surveyor by two Justices where the Owner of Lands has Failed to Appear at Writ of Inquiry (a).*

— To wit.

Whereas application hath been made by the        Railway Company to us,        and       , two of the justices of the peace acting in and for the        division of the said county to nominate under our hands an able practical surveyor to determine the compensation to be paid to or other the parties claiming any estate or interest in certain lands, hereditaments, and premises, situate lying and being in the parish of        in the said county (more particularly mentioned and described in the schedule, and delineated on the plans, hereunto annexed) and which are required and authorized to be taken for the purposes of the        Railway, and whereas the said company have given us good and satisfactory proof that they the said company did on the        day of        duly serve upon the said        a notice in writing that the said lands, hereditaments, and premises were required and authorized to be taken by the said company, and that the said        did not within the space of twenty-one days and more after service of the said notice agree with the said company for the sale, conveyance, or release to them of the said lands, hereditaments, and premises, or of his interest therein, and that the said company did on the        day of        give the said        further notice that they intended to issue their warrant to the sheriff of the said county requiring him to summon a jury to inquire of, assess and give a verdict for the sum of money to be paid by the said company for the purchase of the interest of the said        in the said lands so required as aforesaid, and also for the sum of money to be paid by the said company to the said        as compensation for severance and other the damage to be sustained by him by reason of the execution of the said works; and in the said last mentioned notice the said company did state that they were willing to give to the said        the sum of £        for the purchase of his interest in the lands required as aforesaid and the sum of £        as compensation for the damage to be sustained by him by reason of the execution of the said works, and that the said company did afterwards on the        day of       

(a) See *Supra*, p. 225.



in pursuance of the said last mentioned notice duly issue their warrant to the said sheriff for the purposes aforesaid, and that the said company did afterwards on the \_\_\_\_\_ day of \_\_\_\_\_ give the said notice in writing that a jury, impanelled and returned for the purposes last aforesaid, would meet at the house of \_\_\_\_\_ in the parish of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock in the forenoon, and that the said sheriff by \_\_\_\_\_ his deputy did attend at the time and place aforesaid, and that a jury was then and there duly impanelled and sworn for the purposes aforesaid, and that the said company by \_\_\_\_\_ their counsel were present, but that the said \_\_\_\_\_ did fail to appear; *Now we do* therefore in pursuance of the powers contained in the said (*Special Act*) and the said Lands' Clauses Consolidation Act, 1845, hereby nominate and appoint \_\_\_\_\_ of \_\_\_\_\_ surveyor and valuer, to be the surveyor for the purpose of determining the amount of compensation to be paid by the said company to the said \_\_\_\_\_ for the purchase of his interest in the land so required as aforesaid, and for the damage already sustained or to be sustained by the said \_\_\_\_\_ by reason of the execution of the said works.

Given under our hands and seals,  
this \_\_\_\_\_ day of \_\_\_\_\_ .

\_\_\_\_\_

**L. S.**

\_\_\_\_\_

**L. S.**

In case of the appointment of a surveyor by justices where the owner of lands is absent from the kingdom, or after diligent inquiry cannot be found, a form similar to the above will suffice, the recitals being according to the facts.

No. 61.

*Declaration of Surveyor appointed by Justices.*

8 Vic. c. 18. s. 59.

I, \_\_\_\_\_, do solemnly and sincerely declare that I will faithfully, impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me.

Made and subscribed by the said \_\_\_\_\_ in the presence of \_\_\_\_\_

This declaration is to be annexed to the valuation when made.

## No. 62. .

*Notice to Company by a Landowner Dissatisfied with Surveyor's Valuation (a).*

8 Vic. c. 18. s. 64.

To the ——— Railway Company.

Whereas I , of , in the county of , am possessed of or otherwise well entitled to certain lands, hereditaments, and premises situate at , in the county of , and which said lands or some portion thereof have been taken by you the said company, for the purposes of the Railway, under the provisions of the several Acts of Parliament relating to the same. And whereas I was absent from the kingdom at the time when the said lands were so required, and you the said company thereupon in pursuance of the provisions of the said Acts in that behalf, caused a valuation to be made of the sums of money to be paid to me for the purchase of my interest in the said lands and as compensation for the injury to be sustained by me by reason of the execution of the works of the said company, and whereas in the said valuation it is determined that the sum of £ , should be paid to me by the said company for the purchase of my interest in the said lands, and the sum of £ , as compensation for the injury to be sustained by me by reason of the execution of the said works as aforesaid, and whereas I am dissatisfied with the said valuation and am desirous of having the question of compensation payable to me in respect of the premises submitted to arbitration in the manner provided by the Lands' Clauses Consolidation Act, 1845.

Now this is to give you notice that I claim to have the amount of such compensation submitted to arbitration in manner aforesaid. And I hereby give you further notice that I have by writing under my hand duly nominated and appointed , of , to be the arbitrator on my behalf in relation to the matters aforesaid, and I hereby require you within the space of fifteen days from the service of this notice to appoint some proper person to act as arbitrator on your behalf in relation thereto.

As witness my hand, \_\_\_\_\_.

This day of .

## No. 63.

*Notice to Company by Owners of Land taken or Injuriouslly Affected by the Execution of Railway Works (b).*

8 Vic. c. 18. s. 68.

To the ——— Railway Company.

Whereas, I , of , &c., am the owner of or otherwise interested in certain lands, hereditaments and premises situate in the parish of , in the county of , and whereas by reason of the prox-

(a) See *Supra*, p. 225.(b) *Ib.* 212.

imity of the                      Railway, and by reason of the execution of the works thereof, my said lands and premises are injuriously affected.

Now this is to give you notice that I am the owner of the freehold of the said lands (*or as the case may be*), and that I hereby claim from you the said company the sum of £                      , as compensation for the injury by me sustained by reason of the execution of the said works, and that unless the said company shall pay such amount of compensation, or enter into a written agreement with me for that purpose, within twenty-one days after the receipt of this notice, I hereby signify my desire to have the said compensation inquired into and assessed by a jury, under the provisions of the Lands' Clauses Consolidation Act, 1845, and request you to issue your warrant to the sheriff of the said county, requiring him to summon a jury for that purpose.

As Witness, &c.

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No. 64.

*Adjudication of Justices where Compensation Claimed is under £50.*

8 Vic. c. 18. ss. 22—24.

————— To wit.

Whereas application has been made to us, J. P. and P. O., two of the justices of the peace acting in and for the                      division of the said county, by the

Railway Company, to adjudicate upon and assess the amount of compensation to be paid by the said company to A. B., (who is or claims to be the owner of, or otherwise interested in, certain lands, hereditaments and premises, situate and being in the parish of                      , in the said county, required and authorised to be taken and used for the purposes of the said railway,) for the purchase by the said company of the said lands and for the damage to be sustained by the said A. B., by reason of the execution of the works of the said railway.

And whereas the said company have given us good and satisfactory proof that they did on the                      day of                      duly serve upon the said A. B. a notice in writing that the said lands, hereditaments, and premises were required and authorized to be taken by the said company as aforesaid. And that the said A. B. did, by a notice in writing under his hand served upon the said company claim a sum of £                      (*under £50.*) for such compensation as aforesaid. And whereas the said company have not been able to agree with the said A. B., as to such compensation within the space of twenty-one days and more, after the service by the said company of the notice aforesaid.

And whereas the said A. B., having been duly summoned, did as well as the said company, come and appear before us at                      , in the said county, on this                      , day of                      . Now we the said justices having examined both the said parties and their several witnesses upon oath, and duly considered the circumstances of the case do, in pursuance of the provisions authorizing and empowering us in that behalf, contained in the (*Special Act.*) and in the Lands' Clauses Consolidation Act, 1845, order, determine, and

c c c

adjudge that the said company shall pay to the said A. B., the sum of £ , for the purchase of the lands aforesaid, and also the sum of £ , as compensation for the damage to be sustained by him by reason of the execution of the said works. And we do further adjudge that the sum of £ , being the costs of this inquiry and adjudication, shall be paid and borne by the said company.

Given under our hands and seals,  
this            day of            18 .

J. P.



P. O.



(The above form may be easily adapted to the other cases, as to compensation to be paid by railway companies, which fall within the jurisdiction of magistrates. Such are compensation to tenants from year to year, to commoners, &c.)

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No. 65.

*Form of Conveyance.*

8 Vic. c. 18 Schedule (A.)

I            of            in consideration of the sum of            paid to me [or, as the case may be, into the bank of England, or bank of Ireland] in the name, and with the privity of the Accountant-General of the Court of Chancery, *ex parte* "The promoters of the undertaking," [naming them] or to A. B. of           , and C. D. of           , two trustees appointed to receive the same, pursuant to the [here name the Special Act], by the [here name the company or other promoters of the undertaking,] incorporated [or constituted] by the said Act, do hereby convey to the said company [or other description] their successors and assigns all [describing the premises to be conveyed] together with all ways, rights, and appurtenances thereunto belonging, and all such estate, right, title, and interest in the same as I am or shall become seized, or possessed of, or am by the said Act empowered to convey, to hold the premises to the said company, (or other description), their successors and assigns, for ever, according to the true intent and meaning of the said Act.

In witness whereof I have hereunto set my hand and seal, the            day of            in the year of our Lord,

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## No. 66.

*Form of Conveyance of Lands to a Railway Company.*

**This Indenture** made the                      day of                      , 184    , between A. B., of the one part, and the                      Railway Company, of the other part, *Witnesseth*, that in consideration of the sum of £                      , paid to the said A. B.,                      pursuant to the (*name the Special Act*) by the said company, incorporated by the said Act, he, the said A.B.                      , doth, by these presents [*if vendor has power to appoint, direct, limit, and appoint, and also*] grant, release, and convey, (*and in case of trustees for sale, &c., whose power is sufficient, refer to such power*) unto the said company, their successors, and assigns, all those (*five*) pieces or parcels of arable, meadow, and pasture land, containing together, by admeasurement, A.                      R.                      P. be the same more or less, situate, lying and being in the parish of                      , in the county of                      , and being parts and parcels of certain pieces of arable, meadow, and pasture land there, called or known by the name of                      ; and now or late in the tenure or occupation of                      . Which said closes, pieces, or parcels of land, parts of which are hereby conveyed, are respectively numbered                      , in the parish of,                      in the county of                      , in the plan of the                      Railway, deposited in the office of the clerk of the peace for the county of                      . And the said pieces or parcels of land hereby conveyed are delineated in the map or plan drawn on the                      skin of these presents, and are therein coloured                      , which is a copy of part of the said plan of the said railway; Which said lands were formerly the estate of (*trace and show the title*)

                    . Together with all ways, rights, and appurtenances to the said lands and hereditaments hereby conveyed, respectively belonging, and all mines and minerals in and under the same, respectively (*unless specifically mentioned these would not be included*), and all timber, and other trees thereon, and all such estate, right, title, and interest in and to the same hereditaments, as the said A. B. (*add, the other parties conveying*) is or shall become seized, or possessed of, or is by the said Act empowered to convey, to hold the said lands and premises hereby conveyed or intended so to be, freed and discharged of and from, or otherwise indemnified against the land tax payable in respect of the said premises, and also of, from, and against the tithe-commutation rent charge, or rent charges to which the same are respectively subject or liable, unto and to the use of the said company, their successors and assigns for ever, according to the true intent and meaning of the said Act; And the said A. B.                      , doth hereby for himself, and his heirs, executors, administrators, and assigns, covenant with the said company, their successors and assigns, that he the said A.B. hath not at any time heretofore made, done, committed, executed, or willingly or knowingly suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby, or by reason or means whereof, he is prevented from conveying, or otherwise assuring the said lands, hereditaments, and premises hereinbefore conveyed unto and to the use of the said company, their successors and assigns, in manner aforesaid, or whereby the same hereditaments and

premises, or any part thereof, are, is, can, shall, or may be impeached, incumbered, or prejudicially affected in title, estate, or otherwise, howsoever; and also that he, the said A. B., his heirs and assigns, and all persons lawfully or rightfully claiming, through, under, or in trust for him or them, shall and will, from time to time, at the request and expense of the said company, their successors or assigns, execute or procure to be executed, all such further assurances of the said hereditaments, hereby conveyed, as they shall require, and likewise produce, or cause to be produced to them or their agents, the several deeds and instruments mentioned and specified in the schedule hereunder written, which relate as well to the hereditaments hereby conveyed, as also to other hereditaments now vested in the said A. B.; and also shall and will permit copies or extracts to be made thereof, or taken therefrom, by or on behalf of the said company, their successors or assigns; And further, that the said lands and hereditaments hereby conveyed shall be held and enjoyed by the said company, their successors and assigns, freed and discharged of and from the tithe commutation rent charge, or rent charges, charged upon or payable out of any lands and hereditaments of the said A. B., of which the said lands and hereditaments hereby conveyed form part, and which shall henceforth be borne and paid solely and wholly by the said A. B., his heirs and assigns, or other the owner or owners, for the time being, of the hereditaments liable to such rent charge or rent charges, jointly with the said lands and hereditaments hereby conveyed, to the exoneration of such last mentioned lands and hereditaments therefrom: And also that the said A. B., his heirs and assigns, shall and will, at the costs and charges of him, the said A. B., his heirs or assigns, upon the request of the said company, their successors or assigns, redeem the aforesaid land tax to the intent that the said hereditaments hereby conveyed may be exonerated from all land tax, and also procure the said lands and hereditaments hereby conveyed, to be effectually released and discharged from the said tithe commutation rent charge, or rent charges, to which the same are now subject, as aforesaid, or procure the apportionment of such rent charge or rent charges to be altered, to the intent that the other hereditaments of the said A. B., his heirs and assigns, jointly liable thereto, as aforesaid, may thenceforth be solely and exclusively charged therewith, and liable thereto (a). And it is hereby agreed and declared, between and by the said parties to these presents,

*(a) If part be Copyhold, add as follows:—*

And further, that he the said A. B., and his heirs and assigns, shall and will, [at the costs and charges of the estate held by him in trust, as aforesaid (or) at his and their own costs and charges] (as the case may be) procure the said copyhold lands and tenements hereby conveyed, to be released by the lord, or at some customary court, of the said manor, from the customary rents to which the same are or may be subject, either solely or jointly with other lands held of the said manor, [and devised by the said will of the said C. D. (or) belonging to the said A. B.] (as the case may require).

*In conveyance of both freeholds and copyholds follows this declaration:—*

And it is hereby declared, that if and so far as it shall be necessary for the purpose of ascertaining the stamp duties to be imposed in respect of the aforesaid conveyance of the said freehold, and the said copyhold hereditaments, respectively, the sum of £ , part of the said sum of £ , shall be deemed the consideration money for the purchase of the said freehold hereditaments, and the sum of £ , residus thereof, the consideration money for the purchase of the said copyhold hereditaments.

that the said sum of £ , purchase or compensation money herein-before mentioned, is paid by the said company, and is accepted by the said A. B. , by virtue of the said Act, in satisfaction of all claims to compensation for the damage or injury sustained, or to be sustained, by him, the said A. B., or his heirs, executors, administrators, or assigns, by reason of the severance of the lands and hereditaments hereby conveyed from the other lands and hereditaments now vested in him, adjoining thereto, or otherwise, by reason of the exercise of the powers by the said (*Special Act*), or the Lands' Clauses Consolidation Act, 1845, or the Railways' Clauses Consolidation Act, 1845, vested in the said company; and also, in full satisfaction of and for all communications, works, and things, which may, or otherwise might be required to be made, constructed, maintained, or done, under any of the said Acts, for the better enjoyment, protection, or accommodation of the hereditaments and property of the said A. B. , adjoining the said lands and hereditaments, hereby conveyed, respectively, or of the owner or owners thereof, respectively, for the time being (*if any restrictions or covenants are to be added as to the company being compelled to do certain works, add here*) [save and except that the said company, &c.] (*then specify what the company is to do*). In witness, &c. (*Specify the Deeds*.)

The schedule above referred to.

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No. 67.

*Nomination of two Trustees by a Party under Disability where Compensation does not exceed £200.*

8 Vic. c. 18. s. 71.

To all to whom these presents shall come, A. B. of and the Railway Company, send greeting. Whereas the said A. B. is tenant for life (*or as the case may be*) of certain lands, hereditaments, and premises, required for the purposes of, and authorised to be taken by, the said company, and the said A. B. would not have power to sell and convey the said lands, hereditaments, and premises, except under the provisions of the Lands' Clauses Consolidation Act, 1845, and the (*Special Act*); and whereas the amount of the sums of money to be paid to the said A. B. for the purchase of the said lands, hereditaments, and premises, and as compensation for the damage to be sustained by him by reason of the execution of the works of the said railway, does not exceed the sum of £200.

Now these presents witness, that the said A. B. in pursuance of the provisions contained in the said Acts, and with the approbation of the said company testified by their being a party to and executing these presents, does hereby nominate and appoint X. Y. of and Y. Z. of to be the trustees for the said A. B., for receiving from the said company the several

sums of money above mentioned, and investing the same in manner provided in the said Lands' Clauses Consolidation Act, 1845. In witness, &c.

A. B.

£. S.

The ——— Railway Company.

£.  
2s. 6d.

No. 68.

*Deed-poll executed by Company on Inability, Neglect, or Refusal of Landowner to Convey.*

8 Vic. c. 18. s. 75.

£. S.

To all to whom these presents shall come, the                      Railway Company send greeting. Whereas (*here recite service of notice to treat; of notice of intention to issue warrant to sheriff; the issuing of the warrant; the summoning of the jury; service of notice of day of inquiry; the holding of the inquiry, as ante, page     , and proceed*); and whereas the said jurors did assess and give a verdict for the sum of £                      to be paid to the said                      for the purchase of the estate, right, title, and interest, of the said                      of and in the said lands, hereditaments, and premises; and did also assess and give a verdict for the further sum of £                      by way of satisfaction, recompense, or compensation, for the damage which had before that time, or might be thereafter sustained by the said                      by reason of the execution of the works of the said company; and thereupon judgment was given by the said sheriff for the several sums of money aforesaid, as appears by the verdict and judgment in the said inquiry, signed by the said sheriff, and kept by the clerk of the peace of the said county among the records of the general and quarter sessions. And whereas the said                      hath hitherto failed (*or [refused] as the case may be*) to adduce a good title to the said lands, hereditaments, and premises, to the satisfaction of the said company. And whereas the said company did on or about the                      day of                      pay the several sums of money above mentioned into the Bank of England, in the name and with the privity of the Accountant-General of the Court of Chancery in England.

Now these presents witness, and the said company, in pursuance of the Lands' Clauses Consolidation Act, 1845, and of (*Special Act*), doth hereby declare that, from and after the execution of these presents, all the estate, right, title, and interest, of the said                      in the said lands, hereditaments,



and premises, capable of being sold and conveyed to the said company under and by virtue of the said last mentioned Acts, shall vest absolutely in the said company; and, as against the said                      and all parties on behalf of whom he is, under the said last mentioned Acts, enabled to sell and convey, the said company shall be entitled to immediate possession of the said lands, hereditaments, and premises.

Given under our common seal, this                      day of

*Note.*—It is advisable to have a schedule and plan (*as ante*) annexed to this deed.

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No. 69.

*Notice by Company of Intention to Enter on Lands for the purpose of Surveying, &c.*

8 Vic. c. 18. s. 86.

————— Railway Company.

To A. B. and C.

This is to give you and each of you notice that the                      Company, in pursuance of the provisions in that behalf contained in the (*Special Act*), and the Lands' Clauses Consolidation Act, 1845, intend to enter on certain lands, hereditaments, and premises, situate at                      in the county of                      , of which you or some of you are the owners and occupiers, (which said lands are by the said Acts authorised to be taken for the said railway,) for the purpose of surveying, levelling, probing, and boring, and of setting out the line of the works, and that they said company are willing, and hereby undertake to make compensation for any damage that may be thereby occasioned to you or any of you.

Dated the                      day of

A. B.

Secretary of the said company.

---

No. 70.

*Bond to be given by a Railway Company where they Enter on Land before the Assessment of Compensation.*

Know all men by these presents, that we the                      Railway Company, and A. B. and C. D. are held and firmly bound to (*the landowner*) in the penal sum of £                      to be paid to him, his executors or administrators, for which payment well and truly to be made, we the said company, A. B. and C. D., bind ourselves and each and any two of us, our and each and any two of our successors, heirs, executors, and administrators, firmly by these presents, sealed with the common seal of the said company, and given under the hands and seals of the said A. B. and C. D., on this                      day of                      . Now the condition of the above written bond or obligation is such, that if the above bounden company, their successors, and assigns, or the said A. B. and C. D., or their respective heirs, executors, and administrators, shall pay or cause to be paid to the said                      , his heirs, executors, admi-

nistrators, or assigns, or do or shall deposit in the Bank of England for the benefit of the parties interested in such lands, under the provisions of the Lands' Clauses Consolidation Act, 1845, as the case may require (a), the amount of all such purchase-money and compensation, as shall, in the manner provided in the said Act, be determined to be payable by the said company, in respect of the lands intended to be entered upon by the said company, with interest for the same at five per cent. per annum, from the time of the entry on the said lands, until payment or deposit of the said sums of money, then this obligation shall be void and of none effect, or else shall be and remain in full force and virtue.

(Company's Seal.)

L. S.

Sealed and delivered, being first duly stamped, in the presence of, &c.

A. B.

L. S.

C. D.

L. S.

No. 71.

*Warrant by Company to Sheriff to Deliver Possession.*

8 Vic. c. 18. s. 91.

To the Sheriff of the county of

Whereas, in pursuance of the provisions contained in (*Special Act*), and in the Lands' Clauses Consolidation Act, 1845, the Company did (*here recite service of notice to treat; notice of intention to issue warrant to sheriff; the issuing of the warrant; the summoning of the jury; service of notice of day of inquiry; the holding of the inquiry; the verdict and judgment; the neglect or refusal to show title; the payment of the purchase-money and compensation into the Bank as ante, and proceed.*)

And whereas the said A. B. has refused, and still refuses, to give up possession of the said lands, hereditaments, and premises, and has and does hinder and obstruct the said company, by themselves and servants, from entering upon and taking possession thereof; and whereas the said company are fully entitled, under and by virtue of the provisions contained in that behalf in the Acts aforesaid, to immediate possession of the said lands, hereditaments, and premises.

Now we, the said company, do by this our warrant, issued under our common seal, pursuant to the powers and provisions contained in, and conferred by, the several Acts of Parliament relating to the said company, require you the said sheriff to deliver possession of the said lands, hereditaments, and premises, unto X. Y., duly appointed by us to receive the same for and on behalf of the said company.

The day of

L. S.

\* See *Poynder v. Great Northern Rail. Com.* 2 Phill. Rep. 330.

## No. 72.

*Notice by Company to the Owners of Lands Omitted, &c. by mistake, of Intention to apply to Justices for Correction of the Schedule and Plans, &c.*

8 Vic. c. 20. s. 7.

To A. B., C. D., E. F., and whom else it may concern.

Whereas you, the said A. B., &c., or some or one of you, claim to be possessed of, or otherwise interested in, certain lands, premises, and hereditaments, situate and being in the parish of \_\_\_\_\_ in the county of \_\_\_\_\_, particulars of which are fully specified in the schedule hereunder written; and whereas the said lands, premises, and hereditaments, or some of them, were by mistake omitted to be inserted [or, were misdescribed, or, in respect to which a mis-statement was made,] in the schedule, plans and books of reference, annexed to the (*Special Act*) authorising the construction of a railway from \_\_\_\_\_ to \_\_\_\_\_, to pass through the said lands, or some of them, and which said lands are required and authorised to be taken for the purposes of the said railway.

Now, you are hereby required to take notice, that on the \_\_\_\_\_ day of \_\_\_\_\_ next (*any day, being not less than ten days after the service of the notice,*) application will be made by the \_\_\_\_\_ Railway Company, to two of her Majesty's justices of the peace assembled at petty sessions, at \_\_\_\_\_, for the division of the said county of \_\_\_\_\_, in which the said lands, hereditaments, and premises, are situate, for a certificate, that the said lands and other premises have been omitted [or, have been mis-described, or, in respect to which a mis-statement has been made,] by mistake in the said plans and books of reference, and in the schedule to the said Act.

Dated the \_\_\_\_\_ day of \_\_\_\_\_

X. Y.,  
Secretary of the said Company.

## No. 73.

*Certificate of Justices correcting Plans and Books of Reference.*

8 Vic. c. 20, s. 7.

\_\_\_\_\_, } We, J. P. and P. O., two of her Majesty's justices of the  
to wit. } peace for the said county of \_\_\_\_\_, acting in and for the division  
of the said county, in which the several lands, hereditaments, and premises,  
hereinafter mentioned and specified in the schedules hereunder written are  
situate; having carefully inquired into the circumstances, and proof having  
been adduced before us, that a notice of intended application to us for the  
purposes hereinafter mentioned, has been duly served by the \_\_\_\_\_ Railway  
Company upon the several parties to be affected by the corrections to be made  
by this our certificate, and also having had good and satisfactory proof adduced  
before us of the facts; do hereby, in pursuance and exercise of the power and  
authority granted to us by the Lands' Clauses Consolidation Act, 1845, and the  
(*Special Act*), certify, that the said lands, hereditaments, and premises, were by

mistake omitted to be inserted [*or, were misdescribed,*] in the schedule to the said last mentioned Act of Parliament; and we do further certify, that the several omissions [*or, mis-descriptions,*] referred to in this our certificate, and in the schedule hereunder written have arisen from mistake, and that the said several lands, hereditaments, and premises, in this our certificate mentioned and referred to, appear to us to be required for the purposes of the said railway, by the said last mentioned Act authorised to be made, and to be within, and subject to the powers and authorities in and by the said Acts given to the said company.

As witness our hands and seals, this                      day of

J. P.

L. S.

P. O.

L. S.

SCHEDULE above referred to.

No. on Plan,	Owners or Reputed Owners, as appears by the Book of Reference, X. Y.	Occupier as described in the Book of Reference, P. L.  Real Occupier J. H.	Description of Property in the Book of Reference, House.  Correct Description, A Barn and Shed.
120.	Real Owner Y. Z.		

No. 74.

*Notice by Company to Landowner and Occupier of Entry upon Land for Temporary Occupation.*

8 Vic. c. 20. ss. 32, 33, 39, 42.

To A. B., and C. D.

You are hereby required to take notice, that the                      Railway Company intend, in exercise of the powers in that behalf conferred on them by the Railways' Clauses Consolidation Act, 1845, and the (*Special Act*) to enter upon certain lands belonging, or reputed to belong to you, the said A. B., and in the occupation of you, the said C. D., situate and being in the parish of                      , in the county of                      , and not being more than two hundred

yards distant from the centre of the said railway, as delineated on the plans thereof approved by parliament, and deposited with the clerk of the peace for the said county, and not being a garden, orchard, or plantation attached or belonging to a house, nor a park, planted walk, avenue, or ground ornamentally planted, and not being nearer to the mansion house belonging to the said lands, than five hundred yards; and that it is the intention of the said company to enter upon and occupy the said lands, so long as may be necessary for the construction [or repair] of that portion of the railway, and of the accommodation works connected therewith, adjoining or near to the said lands, for the purpose of taking earth and soil, by side cuttings therefrom [or, for the purpose of depositing spoil thereon; or, for the purpose of obtaining materials therefrom, for the construction and repair of the said railway and accommodation works, or, for the purpose of forming roads thereon, to and from, and by the side of the said railway] (*as the case may be*). And this is further to give you notice that you may, if you think fit, on giving a notice to that effect seven days before the expiration of this notice, require the said company, before entering upon any of the said lands for the purposes aforesaid, to find two sufficient persons, to be approved of, in case of difference, by a justice acting in and for the said county, to enter into a bond to you, in a penalty of such amount as shall be approved of by such justice, conditioned for the payment of such compensation as may become payable in respect of the said lands, or that you may, previous to accepting compensation from the said company, in respect of such temporary occupation as aforesaid, serve a notice in writing upon, and require the said company to purchase the said lands, or the estate and interest therein capable of being sold and conveyed by you respectively, and in which said last mentioned notice you and each of you must set forth the estates and particulars of your several and respective interests in the said lands, and the amount of your several claims in respect thereof.

Dated the                      day of                      ,

X. Y.,  
Secretary of the said company.

If the lands are required for the purpose of making spoil banks, or side cuttings, or of obtaining materials, this notice must be served twenty-one days before entry; if for any other purpose ten days' notice will suffice.

---

No. 75.

*Notice by Landowner to Company Objecting to their Entry on his Lands for Temporary Purposes.*

To the                      Railway Company.

Whereas, I, the undersigned A.B., did, on or about the                      day of                      last, receive a notice in writing from you, the said company, requiring possession of certain lands therein mentioned, belonging to me [or, in my occupation], for the purpose of (*here state, as in the notice served by the*

company, the purpose for which the lands are required). Now I do hereby, in pursuance of the provisions in that behalf in the Lands' Clauses Consolidation Act, 1845, contained, give you notice that I object to you, the said company, entering upon, occupying, or using the said lands, or any of them, for the purposes and in manner in the said notice above mentioned, specified, because the said lands proposed to be taken for the purposes aforesaid, and the materials contained therein are essential to be retained by me, in order to the beneficial enjoyment of other neighbouring lands belonging to [or. occupied by] me [or, because other lands lying contiguous or near to those proposed to be taken as aforesaid, are more fitting to be used by the said company for such purposes.]

Dated this                      day of                      ,

A. B.

---

No. 76.

*Order of Justices that certain Lands required by the Company for Temporary Purposes, shall Not be Taken, on the ground that they are Necessary for the Beneficial Enjoyment of other Lands.*

8 Vic. c. 20. s. 36.

——— To wit.

Whereas it hath been made to appear unto us, J. P. and P. O., two of her Majesty's justices of the peace, acting in and for the said county, that the Railway Company did, by a certain notice in writing, under the hand of the secretary of the said company, bearing date                      , and addressed to A. B., of                      , give notice that they, the said company, intended to enter upon certain lands belonging, or reputed to belong to the said A. B., more particularly mentioned and described in the said notice, for the purpose (*here state purpose as specified in the notice*); and that the said A. B. did, by notice in writing to the said company, within ten days after the service of such first mentioned notice, object to the said company making use of such lands (*if objection applies only to part of the lands, state it accordingly*) on the ground that the lands proposed to be taken for such purposes are essential to be retained by him, the said A. B., in order to the beneficial enjoyment of other neighbouring lands belonging to him. And whereas the said company being duly summoned, and also the said A. B. (*if company do not appear, state it accordingly*) did come and appear before us, the said J. P. and P. O. Now we, the said justices, having duly considered the circumstances of the case, and having inquired into the truth of such ground of objection on the part of the said A. B., do, for the reason hereinafter assigned, think it proper to order, and do hereby order, that it shall not be lawful for the said company to take or use, without the previous consent, in writing, of the said A. B., any of the lands or materials in the said notice, alleged to be required by the said company, and so proposed to be taken (*if part only is not to be taken, describe such portion*) on the ground that the said lands (*or such of them as are comprised in the order*) are essential to be retained by the said A. B., in order to the bene-

ficial enjoyment of his other neighbouring lands, by reason that the occupation of the lands for the purposes aforesaid, by the said company, would seriously interfere with the drainage of the neighbouring lands aforesaid, and thereby damage, and seriously injure the said A. B., in respect of the beneficial enjoyment of such lands (*or as the case may be*).

Given under our hands and seals, this                      day of                      .

J. P.



P. O.




---

 No. 77.

*Order of Justices that certain Lands, Other than those Originally Required by the Company, shall be Taken on the ground that they are more Fitting.*  
 To wit.

(Commence as ante to, "on the ground," and then proceed) that other lands lying contiguous or near to those proposed to be taken, belonging, or reputed to belong to C. D., and in the occupation of E. F., and which are authorised to be taken by the said company for the purposes aforesaid, under the provisions of the said Acts, are sufficient in quantity for the purposes of, and are more fitting to be used by the said company; and whereas the said company have refused, and still refuse to occupy such last mentioned lands, in lieu of those mentioned in the notice served by them upon the said A. B.; and whereas the said company and the said C. D. and E. F. being duly summoned, together with the said A. B., did come and appear before us, the said J. P. and P. O. Now we, the said justices, having heard the evidence of the said several parties and their respective witnesses, and diligently considered the circumstances of the case, do order and determine that the said company do use, and we do hereby authorise them to occupy and use accordingly, the lands belonging to the said C. D., and in the occupation of the said E. F., [particularly mentioned and described in the schedule, and delineated on the plan hereunto annexed] for the purposes aforesaid, instead and in lieu of the lands of the said A. B., originally proposed to be taken by the said company, as aforesaid.

Given under our hands and seals, this                      day of                      ,

J. P.



P. O.



If the justices should be of opinion that portions of the lands belonging to different owners should be taken, or that the lands of some party not brought before them, are most suitable for the company's purposes, the order must be drawn accordingly. In the latter case, however, the inquiry must be adjourned until the owner whose lands it is proposed to enter upon, is summoned before the justices.

No 78.

*Consent of Justices that Railway may be carried Across Public Highway on a Level.*

8 Vic: c. 20, ss. 46, 59.

——— to wit.

Whereas application hath been made to us, J. P. and P. O., two of her Majesty's justices of the peace, acting in and for the division of \_\_\_\_\_, in the said county, and for the district in which the highway hereinafter mentioned at the proposed crossing thereof is situate, in petty sessions assembled, by the \_\_\_\_\_ Railway Company to permit the said railway to be carried on the level across a certain highway in the parish of \_\_\_\_\_, (not being a public carriage road,) leading from M. to N., in the said county. And whereas satisfactory proof has been given to us, the said J. P. and P. O., that the said Company, fourteen days at least before the holding of this petty sessions, did cause a notice of their intention to make such application to us as aforesaid, to be given in the \_\_\_\_\_ Newspaper, circulating in the said county, and also a copy of such notice to be affixed upon the door of the parish church, of the said parish in which the said crossing is intended to be made. Now, we the said J. P. and P. O., after due proof of such notice as aforesaid, being of opinion that the said railway may, consistently with a due regard to the public safety and convenience, be carried across the said highway, in the parish aforesaid, on a level, do hereby consent that the same may be so carried accordingly.

Given under our hands and seals,  
this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_.

J. P.



P. O.





*Articles of Agreement between a Railway Company and an Opposing Landowner,  
for Withdrawing Opposition, Giving Compensation, and Construction of Works.*

Articles of agreement made and entered into this                      day of                      1847, between T. S. of                      in the county of                      , architect and surveyor, of the one part, and the                      Railway, of the other part. Whereas a Bill promoted by the said company is now in progress through Parliament for authorising the formation by the said company of a railway from                      to the                      Railway at                      , and thence to the town of                      . And whereas in the execution of the said proposed undertaking, the lands hereinafter mentioned belonging to the said T. S., situate in the parish of                      , in                      , aforesaid, will be required by the said company; and it is proposed in the said Bill to authorise the taking of such lands for the purposes of such undertaking. And whereas the said T. S. duly presented his petition to Parliament against the said Bill, and the said company being desirous of inducing the said T. S. to assent to, or not to oppose, the passing of the said Bill, have made a proposal to the said T. S. for the purchase, conditionally on the said Bill receiving the sanction of Parliament, of the lands hereinafter mentioned, and for compensating the said T. S. for the damage which in respect of such lands, and the mansion-house now occupied by the said T. S., may be sustained by him by reason of the construction of the said intended railway, and the exercise by the said company of the powers which shall be vested in them for such purpose, in the manner and upon the terms hereinafter expressed; and the said T. S. has agreed to accept the said proposal, and in consideration of the stipulations and agreements herein contained, to discontinue his opposition to the passing of the said Bill.

NOW THEREFORE THESE PRESENTS WITNESS, that the said T. S., for himself, his heirs and assigns, doth agree to sell to the said company, and the said company agree to purchase of and from the said T. S. upon the terms hereinafter expressed, but conditionally, as aforesaid, the fee-simple and inheritance of and in such of the lands of the said T. S., situate in the parish aforesaid, in the county aforesaid, and delineated and shown in the map drawn in the margin of these presents, as the company shall be authorised to purchase and take, and as shall be necessary for the purpose of carrying the line of the said railway through the said lands.

AND IT IS HEREBY DECLARED AND AGREED, that in case the said T. S. and the said company shall not agree as to the price or sum to be paid by the said company, for the said lands so hereby agreed to be sold and purchased, and as to the sum or sums of money to be paid by the said company to the said T. S. by way of compensation for any damage to be sustained by him, by reason of the severance of the lands so purchased from the said adjoining lands of him the said T. S., and for the injury and inconvenience arising to the owner and occupier of the mansion aforesaid, from the construction of the said intended railway, and for all other loss and damage to be sustained by the said T. S., by reason of the exercise by the said company of the powers to be conferred on them in relation to the carrying out of the said undertaking; then, and in such case, the amount of the said purchase-money and compensation shall be settled by arbitration, pursuant to the provisions in that behalf contained in the Lands' Clauses Consolidation Act, 1845; and that in determining and awarding the amount of such purchase-money and compensation, the arbitrators to be appointed shall take into their consideration all circumstances touching the nature and character of the said lands, and the use and appropriation thereof by the said T. S., having regard to the position and profession of the said T. S., and the injury to be sustained by him in such professional character and position, by reason of the interference of the said railway with the lands aforesaid, and with the adjoining estate and property of the said T. S., and all present and future temporary, permanent, and perpetually recurring damage arising from the carrying of the said line of the said railway over and across the said lands.

AND IT IS HEREBY FURTHER AGREED, that the purchase-money and compensation to be ascertained as aforesaid, shall be paid into the hands of the said T. S. previously to the execution of the conveyance of the said lands to the said company, and their entering into possession of the said lands, but subject to the title thereto being satisfactorily deduced; and further, that the expense of preparing such abstracts of title as the said company shall require, and of the necessary deed of conveyance to them, and all other

expenses connected with the sale and purchase aforesaid, as well on the part of the vendor as of the purchasers, and all costs, charges, and expenses, incurred and sustained by the said T. S. in and about the said arbitration, or preparatory thereto, or consequent thereon, or in any manner connected therewith, including fees to counsel, and expenses of employing engineers and surveyors, and all other costs and expenses incurred shall be paid by the said company.

PROVIDED ALWAYS, in relation to the costs and charges of the said T. S. in and about the said arbitration as last aforesaid, that if they exceed the sum of £200. then the said arbitrators shall determine whether such excess, or what proportion thereof, shall be paid by the said company.

AND IT IS HEREBY FURTHER AGREED, that it shall be referred to the said arbitrators, and they shall be required to determine whether any, and if any, what proportion of the costs incurred by the said T. S. in preparing and presenting the petition aforesaid, and appearing in support of the same by counsel, agents, and witnesses, shall be paid by the said company; and in case the said arbitrators shall decide that the whole or any part of such costs shall be borne and paid by the said company, that then the amount so ascertained and awarded to be paid, and also the whole or such proportion of the costs of arbitration hereinbefore mentioned as shall be decided to be payable by the said company, and all other the costs hereinbefore provided to be paid by the said company, shall be paid into the hands of the said T. S. at the time of the payment of the purchase and compensation moneys aforesaid, and before the entry by the said company upon any of the lands of the said T. S. hereby agreed to be sold and purchased as aforesaid.

AND IT IS HEREBY FURTHER AGREED AND DECLARED, that in carrying the line of the said railway across the lands of the said T. S. situate as aforesaid, the said company shall not deviate from the line thereof as delineated and shown on the plan of the said railway deposited with the clerk of the peace of the said county, and with the parish clerk of the said parish, in any direction to the east or south-east, or so as to bring the said railway and the embankment thereof nearer to the mansion of the said T. S. than the line of the said proposed railway as delineated on the said plans; and that in the construction of the said railway across the lands aforesaid, the said company shall not require a larger quantity of such lands than is absolutely necessary for the said embankment and a double line of rails thereon, and shall not allow to be thrown or deposited upon any of the adjoining lands of the said T. S. or any or either of them, or on the lands hereby agreed to be sold, any spoil or waste, and shall not dig nor excavate any pits, ditches, or ballast holes, nor make, nor suffer to be made, any unsightly heaps or mounds of earth upon the said several lands.

AND IT IS HEREBY FURTHER AGREED, that the said company shall forthwith, after the part of the said railway passing over the said lands shall have been laid out or formed, or during the formation thereof, make and complete according to the award of the arbitrators aforesaid, and at all times thereafter maintain, all such and so many accommodation works of such a character and architectural appearance as shall be decided by the said arbitrators after consultation with the engineer of the said company; and all convenient gates, bridges, arches, culverts and passages, over, under or by the side of, or leading to or from the said railway; and such posts, rails, hedges, or other fences, together with all necessary gates to the same; and such arches, tunnels, culverts, drains, or other passages, in, over or under, or by the side of the said railway, and of such dimensions as will be sufficient at all times to convey the water as clearly from the said lands as before the making of the said railway; and will not impede, interrupt, or throw back, or dirty or discolour, the water at present flowing through the said lands; and that such last-mentioned works shall be made from time to time as the said railway works proceed.

AND IT IS HEREBY FURTHER AGREED, that the said company shall forthwith on the execution of these presents, pay to the said T. S. all the costs of and preparatory to this agreement and consequent thereon, and surveyor's charges connected therewith.

AND IT IS AGREED, that the said T. S. shall be considered as having, upon the faith of the execution of these presents been an assenting party to the said Bill.

AS WITNESS, &c.

# INDEX.

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## A

### ABANDONMENT,

- of project,
- right of allottee to recover deposit in case of, 54—56.

### ABSENT PARTIES,

- compensation to,
- to be ascertained by surveyor appointed by justices, 224, 225.
- declaration by surveyor previous to appraising, 225.
- if owner dissatisfied, to be settled by arbitration, 225.
- costs incurred in ascertaining, 225.
- notices relating to, how served, 181, 272.

### ABSTRACT,

- of title, expense of must be paid by company, 237.
- of receipts and expenditure to be delivered to railway commissioners, 384.

### ACCESS TO SPECIAL ACT,

- penalty on company not allowing, 619.

### ACCIDENTS,

- returns of, involving serious personal injury, to be made to commissioners of railways, 415.
- penalty for not making returns of, 415.
- returns of, not attended with personal injury, may be required, 416.
- penalty for not making returns of, 416.
- entry by company on adjoining lands to prevent or repair, 269.
- caused by negligence, company liable for, 353—355.

### ACCOMMODATION WORKS,

- in mines,
- nature of, 283.
- expenses of increased cost of working caused by, to be paid by company, 283.
- disputes as to costs of, how settled, 283.

## ACCOMMODATION WORKS — *Continued.*

- for owners of adjoining lands, 314 to 320.
- to give access to lands, 314.
- to enclose railway, 314.
- for drainage of lands, 315.
- for watering cattle, 315.
- disputes as to, how settled, 316.
- may be made by owner at expense of company, 316.
- additional, may be made by owners of lands, 317.
- must be executed under control of company, 317.
- may not be required after five years after opening of line, 317.
- until made, owners may cross the line, 317.
- not to be required where compensation given as for total severance, 318.
- expense will not excuse the making of, 319.
- agreement for, will be enforced, 319, 552.
- must be maintained by railway company, 320.

### ACCOUNTANT GENERAL,

- deposits required by standing orders to be paid to account of, 111.
- must receive government securities as cash, 112.
- investment of deposit by, 113.
- compensation to commoners, when to be paid to account of, 226.
- compensation to parties under disability to be paid to account of, 226, 227.
- deposit of money in name of, as security, previous to entry on lands, 243.

### ACCOUNTABILITY.

See SECURITY.

### ACCOUNTS,

- company bound to keep generally, 433.
- bookkeepers to be appointed for purpose of keeping, 433.

D D D

**ACCOUNTS—Continued.**

- inspection of,
  - by shareholders, 467.
  - by judgment creditors, 433.
  - by mortgage and bond creditors, 433, 514.
  - by commissioners of railways, 384.
  - by inspectors of stamps, 401.
- delivery and deposit of copy of
  - to auditors, 433, 452.
  - to lords of the treasury, 436.
  - to clerks of the peace, 413.
  - to overseers of the poor, 413.
  - to commissioners of stamps, 401.
  - penalties, 401, 413.
- secretary to make out, when required by company, 408, 409. See **SECRETARY**.

**ACQUIESCENCE,**

- by landowner will destroy equitable right, 544, 553.
- what will be deemed, 546.
- will not be presumed, 546.

**ACTS,**

- special, how construed, 174, 180. See **POWERS**.
- injunction when granted where construction of doubtful, 540.

**ACTION.—See ASSUMPSIT, CASE, DEBT, EJECTMENT, TRESPASS, TROVER.**

- notice of when to be given to railway company, 531.
- proceedings in, how served on company, 205, 609.
- injunction to restrain, when granted, 542.

**ADDITIONAL LANDS,**

- what may be taken for stations, &c., 186.
- quantity of, prescribed in Special Act, 187.

**ADDITIONAL POWERS,**

- company seeking, must call meeting of shareholders, 92.

**ADDITIONAL PROVISIONS,**

- consideration of, when to be referred to committee on standing orders, 150, 151.

**ADDRESSES,**

- of shareholders to be entered in book, 454.
- book of, to be open to inspection of shareholders, 454.

**ADJOINING LANDS,**

- accommodation works for, 314—320.

**ADJOINING LANDS—Continued.**

- owners of, when may cross line, 317, 320.

**ADJOURNMENT,**

- of meetings when quorum not present, 443.
- when to be considered as *sine die*, 443.
- of inquiry before justices as to lands temporarily taken, 275.

**ADMINISTRATORS,**

- must take out administration for shares belonging to intestate, 456.
- may become personally liable to pay calls, 483, 484.
- authentication by, of transmission of interest, 483.

**ADMIRALTY, LORDS OF,**

- deposit with of plans and sections, 100.
- works between high and low water mark, to be made under inspection of, 292.
- may abate works erected without permission, 293.
- may recover costs of abatement, 293.

**ADVERTISEMENTS,**

- of intention to apply to parliament, in Gazette when to be published, 91.
- contents of, 91.
- when to be delivered at office of Gazette, 92.
- receipt of by printer of Gazette, 92.
- in public journals when to be published, 91.
- in case additional powers are sought, 92.
- of alterations in Bill made in House of Commons, 154, 155.
- of meetings where company are about to execute works other than those for which they were established, 155.
- of proposed deviations from levels, 294.
- of intention to cross highway on a level, 300.
- of meetings, 442.
- of extraordinary meetings must state purposes of, 442.

**AGENT,**

- parliamentary
  - who may be, 89.
  - registry of name, and address of, 90.
  - bond to be given by to secure payment of fees, 90.
  - may be removed for misconduct, 90.
  - address of must be registered in Private Bill Office open to public, 90.

**AGENT—Continued.**

- must be employed to bring in Bill, 90.
- notices not received at Private Bill Office, until appearance entered by, 90.
- must be employed to petition against a Bill, 90.
- must produce certificate of appearance, 90.
- to be heard before examiners of petitions, 116.
- must deposit filled up Bill in Private Bill Office, 131, 132.
- must give notice at Private Bill Office of sitting of committee on Bill, 132.
- must give notice at Private Bill Office of bringing up report, 147.
- taxation of bill of, 166, 167, *add.*

**AGREEMENT,**

- to become provisional committee-man. See **PROVISIONAL COMMITTEE-MAN.**
- for purchase of land previous to incorporation must be conditional, 29.
- to withdraw opposition will be enforced, 177.
- must be express and show consideration, 177.
- with one company may be binding on another, 177.
- qualified assent not equivalent to, 179.
- undertaking in Chancery not equivalent to, 179.
- effect of to purchase lands not required for purposes of Act, 179.
- to purchase lands after Act obtained, 195—199. See **PURCHASE OF LANDS.**
- to purchase lands does not preclude company from disputing title, 232.
- injunction on company in case of breach of, 539, 545.
- specific performance of by company when decreed, 549, 553.

**ALLEGATIONS**

- of petitions in opposition to Bill, 147.

**ALLOTMENT**

- of shares. See **SHARES.**
- number to be allotted, 16.
- consequences of allotting too many or too few, 16.
- consequences of allotting to improper persons, 17.
- letter of
  - form of, 18.
  - must not vary terms of application, 53, 54.
- effect of clause of forfeiture in, 54. See **FORFEITURE.**

**ALLOTMENT—Continued.**

- exchanged for banker's receipt on payment of deposit, 18.
- returned by bankers to company, 19.
- must be stamped to be given in evidence when, 56.
- creates a contract to become partner, 18, 54.
- may be sold as scrip, if no scrip issued, 74.

**ALLOTTEE,**

- selection of by managing committee, 17.
- identification of previous to execution of deeds, 19.
- cautions to be observed by, previous to execution of deeds, 19, 20.
- becomes partner on execution of deeds, 20.
- effect of refusal by, to execute deeds, 20.
- liabilities of,
  - to perform conditions of contract, 51.
  - may be sued at common law, 51.
  - or in equity for specific performance, 52.
- not liable to third parties for expenses incurred, 54.
- rights of,
  - to recover deposit on abandonment of scheme, 54, 55.
  - dependent on terms of prospectus, 55.

**ALTERATIONS,**

- what may be made by company in execution of works, 289.
- of plans and books of reference by parliament to be deposited with clerks of the peace, 287, 288.
- certified copies of to be evidence, 288.
- of gradients, see **GRADIENTS.**
- of levels, see **LEVELS.**
- of embankments, see **EMBANKMENTS.**
- of curves, see **CURVES.**
- of tunnels, see **TUNNELS.**

**ALTERNATIVE LINE**

- not permitted to be set up, 95.

**AMALGAMATION,**

- tolls on amalgamated lines, how estimated, 386.

**AMENDED BILL, see BILL.**

- must be printed at expense of parties applying for, 148.

- abbreviates of must be prepared, 148.

**AMENDMENTS IN BILL, see BILL.**

- notice of proposed, 150.
- referred to chairman of ways and means, 150.
- report upon, 150.
- allowed, must be entered on printed copy of bill in Private Bill Office, 152.
- made in House of Lords must be sent to Commons for approval, 164.

**AMENDMENTS IN BILL—Continued.**  
 effect of rejection of by Commons, 164.  
 made by Commons on those of Lords,  
 164.

**AMENDS,**  
 tender of by company in action, when  
 may be made, 599.  
 when not, 600.

**AMMUNITION,**  
 special contract for carrying, 373.

**APPEAL,**  
 by landowners against alteration of  
 levels, 294, 295.  
 against order of magistrates as to level  
 crossings, 300.  
 lies against conviction under bye-law  
 regulating conduct of company's  
 servants, 396.  
 does not lie against conviction under  
 bye-law affecting public safety, 396.

**APPLICATION,**  
 of capital, see **CAPITAL**.  
 of compensation, see **COMPENSATION**.  
 for investment of compensation. See  
**INVESTMENT**.  
 for shares, 15 to 17. See **SHARES**.  
 of penalties, see **PENALTY**.

**APPOINTMENT,**  
 of solicitor, see **SOLICITOR**.  
 of arbitrator, see **ARBITRATION**.

**APPORTIONMENT,**  
 of rents and services relating to copy-  
 holds, see **COPYHOLDS**, 249.  
 of rent charge, see **RENT CHARGE**,  
 257.  
 of rent in respect of leaseholds, see  
**LEASES**, 258.  
 of mortgage debt, 255.  
 of poor's rate, 407.  
 of tithe rent charge, 413.  
 of new shares  
   if old at premium, 490.  
   if old at discount, 491.

**APPROACH,**  
 to be made by company to highways  
 not public carriage roads crossed on  
 the level, 301.  
 penalty on company neglecting to make,  
 301.  
 company bound to keep in repair, 301.  
 penalty on company neglecting to re-  
 pair, 301.  
 to be made by company to bridges  
 crossing turnpike roads, 300.  
 not to be contracted where width of bridge  
 less than road, 311.

**ARBITRATION,**  
 disputes when to be settled by.  
   party claiming more than £50, has  
     the option of, 204.  
   company have not the option of, 204.  
   option of when to be claimed, 204.  
   absent party dissatisfied with valuation  
     may claim, 225.  
   as to additional expense of working  
     mines, 282.  
   as to value of superfluous lands, 282.  
   as to compensation for services in  
     carrying mails, 369.  
 arbitrators,  
   appointment of,  
     to be in writing, 205.  
   to be deemed a submission to arbitra-  
     tion, 205.  
   may be made rule of court, 205.  
   by agreement, both parties may ap-  
     point a single arbitrator, 205.  
   how made on failure of one party to  
     appoint, 206.  
   of another, in case of death of, 206.  
   powers of new arbitrator, 207.  
 umpire,  
   appointment of,  
     to be made before entering on refer-  
       ence, 207.  
   Board of Trade may make on neglect  
     of arbitrators, 207.  
   of another, in case of death, 207.  
 proceedings in,  
   declaration to be signed by arbitrators  
     previous to, 207.  
   arbitrators may call for documents,  
     206.  
   may examine witnesses on oath, 206.  
   award must be made within twenty-  
     one days after appointment of  
     arbitrators, unless time extended,  
     207.  
   if single arbitrator die, to commence  
     *de novo*, 207.  
 award,  
   must be in writing, 208.  
   when to be made, 209.  
   not to be set aside for error of form,  
     209.  
   must be delivered to company, 209.  
   to be produced by company, on de-  
     mand, 209.  
   costs of, how to be paid, 210.  
   compensation under, how to be re-  
     covered, 209.

**ARBITRATOR.**—See **ARBITRATION**.

**ARCHES.**—See **BRIDGES**.  
 dimensions of crossing highways, 309, 310.

**ARCHES—Continued.**

- construction of enactments relating to, 316.
- road may be sunk to give height to, 312.

**ARREARS OF INTEREST,**

- what recoverable under mortgage of undertaking, 512.
- what recoverable under bond of company, 513.

**ASCENT OF ROADS.—See INCLINATION OF ROADS.**

**ASSENTS,**

- lists of, by owners and occupiers, to be made out, 94.
- lists of to be deposited in Private Bill Office, 94, 95.
- special report as to, to be made by committee on bill, 95, and 146, 147.

**ASSESSMENT,**

- of compensation by jury.
- of value of land, and damage by severance, to be separate, 218.
- enactment as to separate directory only, 218.
- if interests several, joint assessment bad, 218.
- of poor's rate, See **TIT POOR'S RATE.**

**ASSUMPSIT,**

- action of, 582.
- against railway company,
  - on executed contracts, 583.
  - on executory contracts, 584.
  - on implied contracts, 584, 585.
- by railway company, 627.

**ATTESTED COPIES,**

- company must pay expense of, 237.

**ATTORNEY GENERAL,**

- prosecutions of railway companies by, 623.

**ATTORNEY.—See SOLICITOR.**

**AUDITORS,**

- appointment of, 451.
- number of, 451.
- qualification of, 451.
- tenure of office by, 452.
- vacancies how supplied, 452.
- duties of, 452.
- report of, 452.

**AUGMENTATION OF CAPITAL,**

- by creating new shares, 490.
- See **NEW SHARES.**

**AUTHENTICATION,**

- of transmission of interest, by death, 483.

**AUTHENTICATION—Continued.**

- by mortgage of shares, 481.
- by marriage of female shareholder, 484.
- by bankruptcy or insolvency, 485.
- of certificates of railway commissioners, 290.

**AVENUE,**

- must not be taken for temporary purposes, 269.

**AWARD.—See ARBITRATION, 208, 209.**

**B.**

**BALANCE SHEET. See ACCOUNTS.**

- directors must cause to be made out, 433.
- must be delivered to auditors, 433.

**BANK OF ENGLAND,**

- payment into
  - of parliamentary deposits, 111.
  - of compensation to Commoners, 226.
  - of compensation to parties under disability, 226—229.
  - of compensation where parties refuse to convey, 231.
  - of deposit by way of security previous to entry on land, 243.

**BANKER'S RECEIPT,**

- form of, 18.
- given on payment of deposit, 18.
- transfer of does not give transferee right of action, 18.
- indorsement on previous to execution of deed, 19.
- may be sold as shares where no scrip issued, 74.

**BANKRUPTCY,**

- transfer of shares by, how authenticated, 485.
- railway shares pass as goods and chattels in case of, 455.
- of director disqualifies as such, 421.

**BILL,**

- title of, must correspond with advertisement, 105.
- clauses to be inserted in, 105 to 109.
- portion of preamble of, when may be withdrawn, 104.
- deposit of
  - in Private Bill Office, 109.
  - with commissioners of Railways, 109.
- petition for. See **PETITION.**
- presentation of, and first reading. See **FIRST READING, 124.**
- must be printed previous to first reading, 124.

- copies of to be delivered to door-keeper, 125.
- after first reading to be copied into examination book, 126.
- examination of, by clerks of Private Bill office, 126.
- breviate of, must be laid on table before second reading, 126.
- second reading of. See **SECOND READING**.
- unopposed, how dealt with, 130, 131.
- reference of, to committee on bill. See **COMMITTEE**.
- copy of, to be deposited in Private Bill Office before meeting of committee, 131, 132.
- copies of, to be given to members of committee, 131.
- as amended to be signed by chairman of committee, 145.
- clauses added to, to be signed by chairman, 145.
- as amended to be printed for use of members, 148.
- breviate of, as amended to be made, 148.
- amendments in subsequent to report, 149.
- clauses of amended to be printed *in extenso*, 150.
- as proposed to be amended referred to chairman of ways and means, 150.
- recommittal of, 150, 151.
- recommitted to be deposited in Private Bill Office, 151.
- amendments on recommitted to be entered by clerk of Private Bill Office, 152.
- engrossment of, 152.
- third reading of. See **THIRD READING**.
- engrossment of title on, 153.
- how taken up to the House of Lords, 154.
- alterations made in, in Commons, to be advertised, 154, 155.
- before introduction of into House of Lords plans of proposed variations to be deposited with clerk of parliament, 155.
- for executing new works by old company to be advertised, 155, 156.
- first reading of, in Lords. See **FIRST READING**.
- second reading of. See **SECOND READING**.
- committal of, in House of Lords, 161.
- alterations in, made by Lords must be referred to Commons, 164.
- royal assent to, 165.
- BOARD OF TRADE.** See **RAILWAY COMMISSIONERS**.
- BONA NOTABILIA,**  
of what province or diocese railway shares to be deemed, 456.
- BOND.** See **LOANS**.
- Company may borrow money on, 506, 507.
- preliminaries to borrowing, 507.
- register of, must be kept, 509.
- of company does not pass interest in undertaking, 511.
- priority of date of, does not give preference, 511.
- directors not individually liable upon 511.
- arrears of interest recoverable under 513.
- may be transferred by holder, 514.
- register of transfers of to be kept, 514.
- repayment of money secured by, 515.
- to be given by company previous to entry on lands, 242.
- to be given when lands used for temporary purposes, 275, 276.
- to be given by company to postmaster-general, 371.
- to be given by company to commissioners of taxes, 401.
- BOND CREDITORS,**  
entitled to payment of principal and interest, 513.
- demand by, previous to right of action, 512.
- entitled to inspect registers of company, 509, 514.
- entitled to inspect books of company, 514.
- BOOKS,**  
of register.  
of reference.  
of address of shareholders.  
of transfer.  
of accounts.  
of proceedings.  
[See particular Heads.]
- BOOK-KEEPER,**  
company must appoint, 433, 467.  
must allow accounts to be inspected, 467.  
penalty on refusal by, 467.  
proceedings by company against, 640, 641.
- BORROWING MONEY.** See **LOANS, BONDS, MORTGAGE.**
- BOUGHT AND SOLD NOTE,**  
names of principals should be inserted in, 73.  
when required to be stamped, 75.



**BRANCH RAILWAYS,**

- who may make, 320, 321.
- what may be made, 320.
- where company must make openings for, 320.
- disputes as to openings for, how settled, 321.
- consent of railway commissioners when required for, 321.
- persons using, subject to bye-laws of company, 321.
- repairs of plates and switches for, 321.
- right to make, not confined to parties owners of land at time of passing of act, 322, 323.
- locomotives may be used on, 323.
- proceedings on refusal of company to make openings for. See **OPENINGS**, 323.
- parties using subject to bye-laws of company, 321.

**BREVIATE OF BILL,**

- form and examination of, 126.
- to be laid on table of House of Commons, 126.
- of amendments in, 148.

**BRICKFIELD,**

- company may not take for getting materials, 272.

**BRIDGES,**

- construction of generally, 309, 313.
- width of arches of,
  - over turnpike roads, 309.
  - over public carriage roads, 309.
  - over private roads, 309.
- height of arch over
  - turnpike roads, 309.
  - carriage roads, 309.
  - private roads, 309, 310.
- construction of, over railways
  - in case of carriage roads, 311.
  - width of need not to be greater than road, 311.
  - when to be widened, 311.
  - approaches to not to be narrowed, 311.
- inclinations of roads over and under. See **ROADS**, 311.
- construction of enactments relating to, 310.
- mandamus to compel proper construction of, 311.
- disputes as to, to be settled by commissioners of railways, 290, 313.
- when to be substituted for level crossings, 300.
- fences to be made. See **FENCES**, 312, 313.

**BRINGING UP REPORT.** See **REPORT.****BROKER,**

- sale and purchase of scrip shares effected by, 73.
- bound to name his principals, 73.
- personally liable where principal unnamed, 73.
- in London, bond given by may be put in suit for refusing to name principal, 74.
- liability of to his own principal, 73, 74.
- liability of on custom of place of contract, 75.
- may recover differences paid on account of principal, 76.
- before buying in against vendor must tender conveyance, 477.

**BUBBLE ACT,**

- provisions of, 2, 3.
- proceedings under, 2, 3.
- repeal of, 3.

**BUBBLE SCHEMES,**

- remedies by shareholders in, 58.

**BUILDINGS,**

- portions of, may not be taken by company, 187.
- application of compensation money in replacing, 227.

**BYE-LAWS,**

- general power of company to make, 394, 399.
- regulating servants of company, 394.
  - must not be repugnant to law, 394.
  - penalties under, must be reasonable, 394.
  - must not impose penalties greater than £5., 394.
  - must give justice discretion as to reducing fine, 394.
  - of no effect until reduced into writing, 394.
  - copies of, must be given to servants of company, 394.
  - how proved, 394.
  - offenders against may be detained in custody, 395.
  - convictions under, 396.
  - no appeal against convictions under affecting public safety, 396.
  - appeal allowed when relating to company only, 396.
- regulating user of line and public safety.
  - authorising closing of line bad, 397.
  - must be submitted to railway commissioners, 398.
  - must be published at stations, 398.

**BYE-LAWS—Continued.**

- must not be repugnant to general law, 398.
- how to be proved, 398.
- offender to be summoned before a magistrate, 399.
- offender against affecting public safety may be taken into custody, 399.
- apply to parties using branch railways, 321.

**C.****CALLS,**

- number and amount of, prescribed by Special Act, 493.
- time of making in discretion of directors, 493.
- may be made prospectively, 493.
- several may not be made at once, 494.
- public notice of, must be given, 494.
- notice should specify amount, time, and place of payment of, 494.
- incompleteness of number of directors will not invalidate, 495.
- deviation from original plans will not invalidate, 496.
- previous must be enforced before making others, 496.
- party on register *prima facie* liable for, 496.
- register not conclusive evidence of liability for, 496.
- purchaser of scrip not registered when liable, 496.
- vendor of shares when transfer not delivered to secretary liable for, 472, 497.
- party not on register, when liable for, 497.
- personal representatives of deceased shareholders liable for, 501.
- assignees of bankrupt shareholders liable for, 501.
- vendor of shares executing transfer in blank, liable for when, 497.
- informality of transfer when no discharge of liability for, 497.
- party making transfer between day of call and payment, liable for, when, 498.
- general conclusions as to liability for, 501.
- when to be considered as made, 499, *Add.*
- interest chargeable on unpaid, 502.
- shareholder in arrear of cannot vote at meetings, 502.
- shares may not be transferred when unpaid, 502.
- dividends not payable when in arrear, 502.

**CALLS—Continued.**

- company may sue for, 502.
- shares may be forfeited for non-payment of, 503.
- future may be mortgaged. See **MORTGAGE**, 508.
- when mortgage not to preclude company from receiving, 509, 510.
- mandamus to compel making of. See **MANDAMUS**, 557.
- actions for, 627—633.
- form of declaration in action for, 628.
- evidence required in action for, 629.
- defence to action for, 631.
- what pleas allowed in action for, 631.

**CAPITAL,**

- to be divided into shares, 453.
- must be applied for purposes of company, 431.
- directors to be indemnified out of, 436.
- shareholders when to be reimbursed out of, 471, 472.
- special report by committee on bill as to, 145.
- must be fully subscribed before exercise of compulsory powers, 201, 202.
- full subscription of, how evidenced, 202.
- injunction on ground of incomplete subscription of, 202.
- injunction on ground of insufficiency of, 202, 203.
- dividends not to be paid out of, 505.
- not required may be paid back, 505.
- loans may be converted into, 490.
- augmentation of by creating new shares, 490.
- proportion of, to be paid up previous to borrowing, 507.

**CARRIAGE OF GOODS,**

- charges for. See **CARRIER**.

**CARRIAGE ROAD,**

- public not to be crossed on a level without sanction of Parliament, 299.

**CARRIAGES,**

- belonging to company,
  - must be properly constructed, 358.
  - for third class passengers, See **CHEAP TRAINS**, 362.
  - for post office, See **POSTMASTER GENERAL**, 361.
  - for military and police, See **MILITARY AND POLICE**, 362.
- belonging to third parties.
  - company may make bye-laws relating to, 363.
  - bye-laws relating to binding on company, 363.

**CARRIAGES.—Continued.**

- not constructed according to byelaws, not to be used, 364.
- must not be overloaded, 364.
- if overloaded may be removed by company, 364.
- expenses of removing to be recovered by company, 364.
- must be registered with secretary of company, 364.
- may be weighed at expense of company, 365.
- owners of liable for injuries done by, 365.
- owners of may recover from their own servants, 365.

**CARRIERS,**

- company cannot be compelled to become, 340.
- company may become if they choose, 340.

**of goods, duties of.**

- bound to carry for reasonable hire, 342, 343.
- unless goods of a dangerous nature, 343, 344.
- or delivered at unreasonable times, 343, 344.
- bound to use diligence and care, 345.
- to provide proper carriages, 345.

**of passengers, duties of.**

- to carry for reasonable hire, 351.
- not bound if no room in carriages, 352.
- to convey to journey's end, 352.
- to provide suitable carriages, 353.
- to provide proper engine drivers, &c., 353.
- to attend to comfort of passengers, 355.

**of goods, liability of.**

- commences with delivery of goods to, 345.
  - determines on delivery by, 345, 346.
  - extent of, 347.
  - how far limited by Carriers Act, 348.
  - decisions on Carriers Act, 349.
  - when notice limiting ineffectual, 350.
  - limitation of by special contract, 350.
- of passengers, liability of.**
- not insurers against accidents at all events, 354.
  - for accidents arising from improper construction of carriages, 353.
  - for accidents arising from negligence of servants, 353.
  - for accidents arising from non-repair of line, 353.
  - to executors of persons killed, 354.

**CARRIERS—Continued.**

- for baggage of passengers, 356.

**CARRIERS' ACT,**

- provisions of, 348.
- cases upon, 349.

**CASE, ACTION ON THE.**

- when will lie against railway company, 590.
- will not lie for damages done in execution of powers of Act, 590.
- will not lie for damages done partly under Act, 590.
- will lie against company exceeding their powers, 592.
- will lie for damage not necessary consequence of Act, 593.
- will lie for damage caused by malice or negligence, 594.
- will lie for misfeasance as carriers, 597, 599.
- when amends may be tendered in, 599.

**CASTING VOTE,**

- chairman of directors to have, 439.

**CERTIFICATE,**

- of provisional registration, 8.
- complete registration, 82.
- of justices, that capital is fully subscribed, 301, 302.
- of justices, that half of capital is paid up, 507.
- of justices as to errors in plans, 287.
- of shares, owner entitled to, 465.

**CERTIORARI,**

- nature of writ of, 575.
- right to when taken away by railway acts, 575.
- application for writ of.
  - on ground of total want of jurisdiction, 576.
  - on ground of jurisdiction defectively exercised, 576, 577.
  - on ground of excess of jurisdiction, 577.
  - on ground of malversation, 578.
- court will not allow provisions as to, to be evaded, 580.
- application for to be made upon affidavits, 581.
- indictment against company must be removed by, 581.

**CHAIRMAN,**

- of committee, see COMMITTEE.
- of meetings who to be, 443.
- must sign minutes of proceedings at meetings, 440.
- minutes of former meeting signed by, at subsequent meeting, 440.

**CHALLENGE,**

of jury when allowed, 215.  
of array not allowed, 215.

**CHARGES.** See **RATES AND CHARGES.****CHEAP TRAINS,**

company bound to run, 373.  
times of starting, 374.  
speed of, 374.  
stoppages to be made by, 374.  
carriages must be made to satisfaction  
of railway commissioners, 362, 374.  
fares in, not to exceed one penny per  
mile, 374.  
quantity of luggage to each passenger,  
374.  
charges for carriage of children in, 374.  
penalty on company neglecting to run,  
375.  
when to be run on Sundays, 375.  
discretion as to, in commissioners of  
railways, 375.

**CHILDREN.** See **CHEAP TRAINS,** and  
**MILITARY AND POLICE.****CHOSSES IN ACTION,**

shares in railway company are, 456.  
on marriage of female shareholder must  
be reduced into possession, 456.

**CHURCH DOOR,**

what notices to be affixed on, 93.

**CLAUSES,**

what to be inserted in bill, 108, 109.  
consideration of, see **COMMITTEE.**

**CLERK OF PARLIAMENT,**

delivery to of subscription contract and  
estimate, 102.  
plans of intended variations to be depo-  
sited with, 155.  
statement of land required, to be de-  
posited with, 157.

**CLERKS OF THE PEACE,**

deposit of plans and books of reference  
with, 98.  
deposit of altered plans, 287.  
must allow inspection of plans, &c., 99.  
penalty on refusal of, 99.  
must produce sealed up plans in parlia-  
ment, 99.  
accounts of company, when to be depo-  
sited with, 413.

**COMMISSIONERS,**

*of railways,*  
railways not to be opened before  
notice to, 334.  
may appoint inspectors to examine  
works, 334.

**COMMISSIONERS, &c.—Continued.**

may postpone opening of line, 335.  
return of accidents involving per-  
sonal injury must be made to,  
415.  
may require returns of all accidents,  
416.  
may require returns of tolls, 416.  
making false return to, a misdemea-  
nor, 417.  
bye-laws made by company to be  
approved by, 398.  
disputes as to openings for branch  
railways to be settled by, 321.  
power of to modify construction of  
works, 290.  
appeals to by owners of land against  
alterations in levels, 294.  
may allow or disallow alterations, 295.  
may authorise alterations in curves,  
297.  
may authorise viaduct to be made in-  
stead of embankment, 299.  
may authorise bridges in place of  
level crossings, 300.  
may require gates to shut across  
railway, 302.  
may order screens to be put up near  
turnpike-roads, 313.  
may require electrical telegraphs to  
be erected, 329.  
may remove line laid on wrong gauge,  
331.  
third class carriages to be made to  
satisfaction of, 375.  
may make arrangements as to cheap  
trains, 375.  
may permit company to enter on  
lands to prevent accidents, 269.  
certificates of, how authenticated, 290.  
notices &c., of how served on com-  
pany, 291.  
*of stamps,*  
account of passenger's traffic to be  
sent to, 401.  
officer of, may inspect accounts of  
company, 401.

**COMMITTEE,**  
*on standing orders in House of Com-  
mons,*  
appointment and quorum of, 122.  
bills endorsed "non-compliance with  
standing orders" referred to, 122.  
reasons in writing for dispensing with  
standing orders, to be given to,  
123.  
may have evidence if they think fit,  
123.  
report of, 123.

**COMMITTEE, &c.—Continued.**

- recommittal of bill to, 124.
- amendments in bill when referred to, 150.
- n standing orders in House of Lords,*
  - appointment of, 157.
  - chairman of, 157.
  - proceedings before, 157.
  - notice of meeting of, 158.
  - statement of land required to be deposited with clerk of parliament, 157.
  - who may oppose before, 158.
- dissentient member of company may oppose, 158.
- compulsory attendance of witnesses before, 158.
- proofs required by, 159.
- report of, 159.
- of selection in House of Commons,*
  - how constituted, 129.
  - functions of, 129.
  - clerk of, to give notice of meeting in Private Bill Office, 129.
  - notice of meeting to be given to members of, 129.
- on unopposed bills, 130.
- select committee on bill in House of Commons,*
  - how constituted, 131.
  - declaration to be made by members of, 132.
  - meetings of, 132.
  - postponement of meetings of, 132.
  - adjournments of sittings, 132.
  - absence of members of, 133.
- jurisdiction of,*
  - cannot inquire into compliance with standing orders, 133.
  - attendance of witnesses how enforced, 133.
  - how far may alter preamble, clauses, and plans, 134.
  - cannot consolidate or divide a bill, 134.
- opposition before, 134, 138.
  - what parties may oppose, 134.
  - when promoters of rival schemes may, 135.
- promoters of schemes partially rival, 135.
- promoters of schemes not before parliament, 135.
- when and what landowners may oppose, 136.
- must be made by petition. See **PETITION**, 136.
- grounds of, must be stated in petition, 136.

**COMMITTEE, &c.—Continued.**

- petition in, must be in writing, 137.
- must be signed by petitioners, 137.
- if by corporation must be under seal of, 137.
- form of petition in, generally, 137.
- when to be presented, 137.
- proceedings before,
  - petitions for and against read in first instance, 138.
- opposition of parties not appearing deemed abandoned, 138.
- order in which bills are taken, 138.
- practice of different committees, 139.
- evidence to be given by promoters, 141.
- evidence as to portion of bill withdrawn not required, 142.
- evidence of opponents not confined to interests of petitioner, 142.
- landowners may use plans of rival companies, 142, 143.
- decision on preamble by, 144.
- consideration of clauses by, 144.
- plans and documents produced must be signed by chairman, 144.
- committee-bill must be signed by chairman of, 145.
- report of,
  - form of, generally, 145.
  - special of alteration of preamble, 134.
  - matters to be reported specially by chairman of, 145—147.
- must be brought up by chairman. See **REPORT**, 147.
- revival of committee how made, 151.
- notice of sittings of, 151.
- proceedings before, 152.
- select committee on bill in House of Lords,*
  - how constituted, 161.
  - times of meeting, 162.
  - proceedings before, 162.
  - opposition by dissentient shareholder, 162, 163.
  - proofs required from promoters, 163.
  - report of, 163.
  - consideration of report, 163.
- of commoners.* See **COMMON LANDS.**
- of directors,*
  - board may delegate authority to, 429.
  - appointment of, 439.
  - proceedings of, 439.

**COMMON CARRIERS.** See **CARRIERS.**

**COMMONERS.** See **COMMON LANDS.**  
committee of, 251.

**COMMON LANDS,**

- compensation to be paid for right of soil in, 250.
- compensation to be paid for commonable rights, 250, 252.
- meeting of commoners, how to be convened 251.
- committee of commoners to be appointed, 251.
- compensation to be paid to committee, 252.
- if no committee, compensation to be paid into bank, 252.
- proceedings where no committee appointed, 252.

**COMMUNICATIONS,**

- company bound to make between lands, 314.
- not to be made where compensation paid for total severance, 317.
- owners of lands may cross line where none made, 317.

**COMPANY. See RAILWAY COMPANIES.****COMPENSATION,**

- who may claim generally, 188—191.
- persons having present interests, 189.
- lessees and tenants from year to year, 189, 191, 259.
- parties owning easements, 189.
- parties whose property is not actually taken, 190.
- parties owning tithes, 190.
- lords of manor for rents and services, 189.
- lords of manor for right of common, 189.
- to be claimed in respect of possessory right, or right to rents and profits, 190.
- for lands actually taken, 191.
- for severance from other lands, 191.
- for lands injuriously affected, 192.
- nature of damage subject of,
  - injury must be physical, 192.
  - loss of trade not subject of, 193.
  - chance of renewal of leaseholds not subject of, 259.
- damage must be present not contingent, 193.
- for entry on lands for purposes of surveying, 268.
- for entry on adjoining lands to prevent accidents, 269.
- for rent of ground during temporary occupation, 277.
- for temporary occupation of roads, 270.
- for taking materials for works, 277.

**COMPENSATION, &c.—Continued.**

- for damage to growing crops, 276-7.
- damage the consequence of their works 277, 289.
- to owners of mines prevented working near line, 283.
- to owners of land above mines, 285.
- to owners of mines for increased cost of working, 283.
- how ascertained in case of agreement, 195—199.
- with parties absolutely entitled, 198.
- with parties under disability, 198.
- in case of dispute,
  - where claim under £50, 204.
  - where claim above £50. See **ARBITRATION AND INQUIRY.**
- where claim in respect of tenancy from year to year, 204.
- where parties absent from the kingdom, 224, 226.
- where claimant neglects to attend at inquiry, 217.
- in respect of interests omitted to be purchased, 261.
- in respect of parties claiming common rights, 250, 253.
- in respect of tithe rent charge, 413.
- in respect of temporary use of lands and roads, 268—270.
- payment of, how to be made,
  - to parties absolutely entitled, 226.
  - to parties for common rights, 226.
  - where parties are unable, or refuse to convey, 231.
  - to parties under disability,
    - where compensation exceeds £20, 229.
    - where compensation exceeds £200, 227.
    - where less than £20, 230.
  - for land subject to mortgage, 254, 257.
  - for commonable rights, 252.
  - for lands subject to rent charge, 257.
- application of, where parties under disability
  - Court of Chancery exercises general jurisdiction, 227.
  - portion of may be allotted to tenant for life, 230.
  - may be applied in replacing buildings, 227.
  - may be laid out in renewal of leases, 231.
- investment of, and costs. See **INVESTMENT.**
- in case of death before payment, when considered realty, 228.

- COMPLETE REGISTRATION.** See **REGISTRATION.**
- COMPULSORY POWERS,**  
 must be express, not implied, 200.  
 for taking lands, cannot be exercised before capital subscribed, 201.  
 limit of time for exercise of, 200.  
 time of exercising when extended, 200.  
 notice of intended application for extension of time, 201.
- CONFIRMATION,**  
 forfeiture of shares must receive at general meeting, 487.
- CONSENT.** See **ASSENTS.**
- CONSIDERATION OF REPORT.** See **REPORT.**
- CONSOLIDATION OF SHARES INTO STOCK,**  
 when all calls paid, shares may be, 491.  
 must be exercised at meeting of shareholders, 492.  
 register of stock-holders to be kept, 492.  
 right of stock-holders same as shareholders, 492.
- CONSTRUCTION,**  
 of bridges. See **BRIDGES.**  
 of works. See **WORKS.**  
 of engines and carriages. See **ENGINES AND CARRIAGES.**  
 of powers. See **POWERS.**
- CONTINGENT DAMAGES,**  
 not subject of compensation, 193.
- CONTINGENT FUND,**  
 directors may set apart out of dividend, 504.
- CONTRACTS,**  
 what may be made by company previous to incorporation, 28—30.  
 mode of making under Companies' Clauses Act, 518.  
 minutes of, must be entered in books, 439, 520.  
 power to make confined to objects of company, 520.  
 contracts concerning the purchase of lands, 521, 522.  
 relating to lands to be in writing, 522.  
 relating to works, labour, and services, 523.  
 construction of, and stipulations embodied in, 523—526.  
 relating to borrowing money, 527.  
 relating to carriage of goods, &c., 528.  
 company must not make with directors, 422.
- CONTRACTS—Continued.**  
 with incorporated companies of which director is a member not bad, 422.
- CONVEYANCE,**  
 of freehold lands to company ordinarily, 236.  
 of copyholds. See **COPYHOLDS.**  
 company must pay costs of, 237, 238.  
 unless costs caused by omission of landowner, 238.  
 execution of, where parties refuse or are unable to make title, 239.  
 when Court of Equity will direct, 240.  
 costs of, how taxed, 238.  
 stamps on, 239.  
 not always necessary, inquisition being evidence of title, 239.  
 of shares. See **TRANSFER.**  
 of superfluous lands by company. See **SUPERFLUOUS LANDS,** 264, 265.  
 of military and police. See **MILITARY AND POLICE.**  
 of third-class passengers. See **CHEAP TRAINS.**
- CONVICTION,**  
 for offences against bye-laws of company, 636.  
 appeal against, when allowed, 637.
- COPYHOLDS,**  
 conveyance of must be enrolled, 248.  
 steward's fees must be paid, 248.  
 subject to fines until enfranchised, 248.  
 enfranchisement of,  
     company must enfranchise within three months after enrolment, 249.  
     by company on refusal of lord of manor, 249.  
     compensation for, how ascertained, 249.  
     if several tenants, separate enfranchisement unnecessary, 249.  
     apportionment of rents and services of, 249.  
     customs touching remaining lands, not affected, 249.
- CORONER,**  
 if sheriff interested, must preside at inquiry, 212.  
 juror's book and list must be delivered to, 214.
- CORPORATIONS,**  
 generally must contract under seal, 517.  
 in what cases may contract by parol, 517, 518.

**CORPORATIONS—Continued.**

- petitions by must be under seal of, 137.
- sole and aggregate may treat for sale of land, 196.
- municipal require consent of treasury, for sale of land, 197.

**COSTS,***Parliamentary.*

- for business done in Commons in support of Bill, how taxed, 167.

application for taxation of, how made, 167.

speaker may appoint officer for taxing, 167.

certificate of taxing officer, conclusive as to, 167.

recovery of under certificate, 167.

incurred in opposing Bill not taxable, 168.

costs of taxing in discretion of officer, 169.

for business done in House of Lords, 169

clerk of Parliament may appoint officer for taxing, 169.

taxing officer may administer oaths, 169.

incurred in opposing Bill may be taxed, 169, 170.

*connected with the taking of lands.*

where disputes settled by justices,

where claim less than £50., 204.

of arbitration, how settled, 210.

of arbitration where parties absent, 225.

of inquiry by jury, 222, 224.

where verdict for greater sum than offered, 222.

where verdict for less sum, 222.

what may be claimed as, 225.

taxation and recovery of, 224.

of valuation where parties absent, 225.

*of conveyance.* See CONVEYANCE.*of investment,*

of deposit must be paid by company, 234.

what may be included in costs of, 234.

of one application for investment only allowed, 234.

court in its discretion may allow costs of more than one, 234, 235.

of obtaining possession of land, 244.

of obtaining possession of lands in mortgage, 256.

**COVENANT,**

action of against railway companies, 589.

**CREDITORS OF COMPANY,**

must sue company in the first instance, 470.

**CREDITORS, &c.—Continued.**

if effects of company insufficient, may levy judgment on shareholders, 471.

must obtain leave of court, 471.

must serve notice on party to be charged, 471.

may inspect books of company, 471.

**CROPS,**

company must compensate for, in respect of lands taken for getting material, 276, 277.

**CROSSINGS,**

of public highways. See BRIDGES.

of highways on level must be sanctioned by Parliament, 299.

gates to be made at level, 301.

gates to be kept shut, 302.

of highways not public carriage roads, 300.

justices may permit on level, 300.

notices of application for, when to be given, 300.

appeal against decisions of justices as to, 301.

approaches to must be made and repaired by company, 301.

**CROSS SECTIONS.** See PLANS and SECTIONS.**CURVES,**

how far radius of may be diminished, 297.

radius of may be improved to any extent, 297.

**CUSTODY,**

offenders against bye-laws when may be taken into, 399, 637.

**CUTTINGS,**

tunnels may be substituted for, 299.

**D.****DAMAGE,**

nature of to be compensated, 191—193.

future or contingent not subject of compensation, 193, 194.

company must make compensation for all, 289.

repair of caused by working mines,

**DAMAGES,**

how measured in action for, for non-performance of contract of sale or purchase of shares, 71.

**DANGEROUS ARTICLES,**

company not bound to carry, 344.

company may open packages suspected to contain, 344.



**DANGEROUS ARTICLES**—*Continued.*  
penalty on parties bringing on line  
without notice, 344.

**DATUM LINE**,  
for whole length of line must be marked  
on section, 96.  
distances in miles and furlongs to be  
marked on, 97.  
distances on to correspond with plan, 97.  
vertical measure from at each change of  
gradient, 97.  
rate of inclination to be marked on, 97.

**DEATH**,  
transmission of interest by, how authen-  
ticated, 483.

**DEBT, ACTION OF**,  
when will lie against railway companies,  
585.  
on executed contracts, 585.  
on mortgage by company, 586.  
on bonds of company, 586.  
on agreements under seal, 586.  
on records of quarter sessions, 586.  
on awards of arbitrators, 587.  
on statutory enactments, 587.  
for recovery of compensation claimed,  
587.  
to recover chief rents and rent charges,  
587.  
to recover penalties imposed by statute,  
588.

**DECLARATION**,  
by parliamentary agent, form of, 104,  
105.  
to be annexed to petition, 104.  
to be made by arbitrator previous to  
entering, 207.  
by surveyor appointed by justices, pre-  
vious to surveying, 225.  
in action for calls. See **CALLS**, 628.

**DEED**. See **SUBSCRIPTION CONTRACT**.  
execution of, 19.  
inquiries previous to execution of, 19, 20  
effect of execution of, 20.  
of transfer of shares. See **TRANSFER**  
**OF SHARES**.

**DEED POLL**,  
company may execute where landowners  
do not convey, 239.  
costs of, to be borne by company,  
company may execute on refusal of lord  
of manor to enfranchise, 249.

**DEMAND**. See **MANDAMUS**, 566—571.

**DEODAND**,  
abolished, 355.

**DEPOSIT**,  
of plans. See **PLANS**.  
of bill. See **BILL**.  
of petition. See **PETITION**.  
amount of to be taken under provisional  
registration, 8.  
payment of, to banker of company, 18.  
recovery of, by allottee. See **ALLOTTEE**,  
54—56.  
recovery of, by shareholder, in cases of  
fraud, 57.  
of money in compliance with standing  
orders, 110.  
amount of to be deposited, 110  
application to make, 110.  
form of application, 111.  
payment of, to whom to be made, 111.  
Government securities receivable as, 112  
warrant to pay, how obtained, 112.  
petition for investment of, 113.  
in what securities to be invested, 113.  
repayment of, when allowed, 113.  
petition for repayment of, 113.  
certificate of Speaker necessary for re-  
payment of, 114.  
injunction against repayment of, when  
granted, 114.  
of compensation money before entry  
on lands, 241—243.

**DEPUTY-CORONER**,  
when to preside at inquiry, 213.

**DESCENT OF ROAD**. See **INCLINA-**  
**TION OF ROADS**.

**DETENTION**,  
parties offending against bye-laws of  
railway company liable to when,  
635—637.

**DEVIATION AND ALTERATIONS**,  
intended to be made in inclination of  
roads to be marked on section, 97.  
of levels,  
in towns and villages, not to exceed  
two feet, without consent of land-  
owners, 293.  
in other places, not to exceed five feet,  
293.  
consent of parties, how obtained, 294.  
notices of intended alterations of, 294.  
appeals against, how made, 294.  
Commissioners of Railways may de-  
cide as to, 295.  
of embankments,  
may be lowered to any extent, 294.  
of gradients,  
may be amended to any extent, 295.  
how far to be increased, 295.  
of curves,  
may be improved to any extent, 297.

**DEVIATIONS, &c.—Continued.**

- how far may be diminished, 297.
- of cuttings,
- tunnels may be substituted for, 299.
- lateral, how far to be made, 296.
- must not be made into lands not scheduled, 296.
- how far limits of restricted by standing orders, 297.
- time within which to be made, 297.
- rights in respect of deviated line, 298.
- limits of, how calculated, 298.
- what parties may object to, 298.

**DIRECTORS See PROVISIONAL COMMITTEE-MAN.**

- previous to incorporation.
- definition of term of, 10.
- names of, specially reported by committee on bill, 145.
- after incorporation.
- number of.
- prescribed by Special Act, 420.
- power to increase or decrease, 420.
- incompleteness of number of will not vitiate acts of company, 420.
- mandamus to complete, number of, 421.
- variation of, to be exercised at meeting, 421.
- qualification of,
- number of shares requisite for, 421.
- disqualification,
- by bankruptcy, 421.
- by parting with shares, 421.
- not by mortgage of shares, 421.
- by interest in contracts with company, 422.
- not if contract with incorporated company, 423.
- by incompetency to act, 424.
- of director does not vitiate acts of company, 423.
- election of,
- first, when to be made, 424.
- mode of, where poll demanded, 424.
- by minority, when good, 425.
- rotation of.
- number retiring by, 425.
- vacancies caused by, how filled up, 425.
- retiring, may be re-elected, 426.
- tenure of office of re-elected directors, 426.
- powers of,
- to manage affairs of company, 426.
- subject to control of shareholders, 426.
- extent of, 427.

**DIRECTORS, &c.—Continued.**

- may be exercised by sub-committees, 429.
- what to be exercised at meetings of shareholders, 429.
- duties of,
- correspond with powers of, 430.
- to company,
- to apply monies to purposes of Act, 431.
- to make calls, 431.
- to keep books and accounts, 432.
- to give certificates of shares, 432.
- to apportion new shares among shareholders, 433.
- to take securities from servants entrusted with monies, 433.
- to fill up vacancies in direction, 434.
- to convene meetings, 434.
- to the public,
- to give proper notices, 434.
- to make proper accommodation works, 434.
- to charge tolls equally, 435.
- to make returns to government, 435, 436.
- to prepare scheme for dividend, 503—505.
- liabilities of,
- not individually liable on contracts for company, 436.
- may become personally liable if they act beyond the scope of their powers, 437.
- personally liable, if guilty of fraud, 438.
- proceedings of,
- meetings of, when to be held, 439.
- appointment of sub-committees, 439.
- records of, must be kept, 439.
- remuneration of, to be fixed by shareholders, 441.

**DISABILITY,**

- parties under, may agree for sale of lands, 195, 196.
- parties under, cannot agree as to compensation to be paid for, 197.
- parties under, not entitled to receive compensation money, 226—230.

**DISPUTED COMPENSATION,**

- how to be settled. See COMPENSATION, 203—224.

**DISQUALIFICATION,**

- of director. See DIRECTORS, 421—424.

**DISSENTS. See ASSENTS.****DISSENTIENT MEMBER OF COMPANY,**

- may oppose grant of new powers, 158, 163.

**DISTRESS.** See **EXECUTION, GOODS.**  
 rent charge in lieu of compensation may be levied by, 614.  
 tithe rent charge may be levied by, 414, 615.  
 for costs, &c. under £20 may be levied on goods of treasurer, 450, 616.  
 notice previous to must be given to treasurer, 450.  
 poor's rate may be levied by, 412.  
 infinite to compel appearance to indictment, 614.  
 damages and costs when to be recovered by, 616.  
 penalties when recoverable by, 617.  
 irregular does not make company trespassers, 617.

**DIVERSION OF ROADS.** See **ROADS.**

**DIVIDENDS,**  
 must be declared at general meeting only, 503.  
 previous to declaration of, scheme must be prepared, 503.  
 fund for contingency to be set apart before declaring, 504.  
 scheme for must be exhibited at meeting, 504.  
 interest on loans must be paid previous to making, 505.  
 must not be paid out of capital, 505.  
 not payable if calls in arrear, 505.  
 whether may be appropriated for payment of calls in arrear, 506.

**DOWER,**  
 women entitled to, enabled to release, 197.

**DRAINAGE**  
 of lands in Ireland, 323—325.  
 plans of railway to be inspected by commissioners of, 323.  
 approval of commissioners of, previous to commencing works, 324.  
 compliance with certificate of, how forced, 324.  
 works affecting may be done by commissioners of, 324.  
 works affecting water courses under power of commissioners of, 325.  
 company must make accommodation works for, 315.

**DRAINS,**  
 company may make through lands adjoining railway, 289.  
 company must make for adjoining lands, 315.

**DRUNKENNESS,**  
 punishment of railway servants for, 635.

E E E

**DRUNKENNESS—Continued.**

persons in state of, not to be taken as passengers, 351.

**DUTIES,**

payable in respect of passengers, 400.  
 not payable in respect of cheap train passengers, 401.  
 account relating to, to be forwarded to government, 401.  
 payment of secured by bond, 401.  
 penalty on company refusing to give bond for, 401.

E

**EASEMENT,**

injury to, subject of compensation, 189.  
 compensation for, cannot be claimed previous to injury done, 194.

**EJECTMENT,**

nature of action of, 606.  
 lies against company, for entering on lands previous to performance of preliminaries required by act, 606.  
 will lie by one of several tenants in common against company, 607.  
 does not lie against company on assignment of undertaking, 608.  
 service of declaration of on clerk of company, good, 609.

**ELECTION,**

of Directors. See **DIRECTORS**, 424, 425.

**ELECTRICAL TELEGRAPH,**

railway commissioners may erect on line, 330.  
 compensation for, to be made to company, 330.  
 subject to prior right of Crown may be used by company, 330.  
 if erected by company, may be used by public, 330.

**EMBANKMENT,**

solid, may be lowered to any extent, 294.  
 viaduct, when, may be substituted for, 299.

**ENFORCEMENT,**

of award, how made, 209, 210.

**ENFRANCHISEMENT.** See **COPYHOLDS.**

of copyholds sold to company, 249.  
 of copyholds, where several tenants of same manor, 249.  
 where tenant holds several parcels in same manor, 249.

**ENFRANCHISEMENT—Continued.**

on refusal of Lord to make, company may execute deed poll, 249.

**ENGINES,**

must be properly constructed, 358.  
ought to be examined before every journey, 359.

to be constructed to prevent escape of fire, 360.

must consume their own smoke, 360.  
enactment relating to weight of, repealed, 361.

belonging to third parties to be approved by engineer of company, 362.

company must appoint party to inspect, 362.

disputes as to, how to be settled, 363.  
penalty on parties bringing on to line without approval, 363.

out of order may be removed by company, 363.

**ENGINE DRIVER,**

offending against bye-laws of company, may be taken into custody, 395.

**ENGINEERS,**

evidence of, before committee on Bill, 141.

may be indicted for construction of works, obstructing highways, 612.

**ENGINEERING WORKS,**

report of select committee upon, 146.

**ENGROSSMENT,**

of Bill, time of, 152.

of title of Bill, 153,

**ENTRY UPON LANDS,**

for execution of works,  
illegal before payment of compensation money, 241.

may be made on deposit, previous to compensation ascertained, 242.

proceedings where parties obstruct, 243.

company may be treated as trespassers for when, 244, 245.

penalty on company for, 245.

decision of justices as to, not conclusive as to right, 246.

injunction when granted to restrain, 246, 248.

for purposes of surveying,

notice must be served on occupiers previous to, 268.

company must pay compensation for damage done by, 268.

for temporary uses during construction of line, 268.

**ENTRY UPON LANDS—Continued.**

for getting materials,

when may be made, 271.

when may not be made, 272.

previous to, company must give notices to owners, 272.

notices must specify purposes of, 273.  
previous to, company must find sureties. See **MATERIALS.** 275.

for preventing accidents,

leave of commissioners of railways must be had for, 269.

in case of urgency may be made at once, 269.

report of entry, when to be made, 269.

compensation for injury by, to be made, 269.

when restrained by injunction, 535.

**EQUALITY OF CHARGES,**

all parties must be charged equally, 379, 380.

not to be evaded by allowances to particular persons, 380.

construction of rules as to several packages included in one, 381.

mandamus to enforce, when will be granted, 383.

**ERRORS AND OMISSIONS,**

correction of, in plans and books of reference, 287.

notice of intended amendment of, to be given, 287.

justices may give certificate of amendment of, 287.

certificate of amendment of, to be deposited with clerks of peace, 287.

**ESTIMATE,**

of expense of works, to be made by engineer, 101.

deposit of copies of, 102.

special report by committee as to adequacy of, 146.

subscription contract to be executed to three fourths of amount of, 101.

to be deposited in Private Bill Office, 101.

**EVIDENCE,**

to be produced before committee, 141, —144.

to be produced at inquiry before jury, 217.

certificate of share, prima facie of title, 465.

registration of shareholder, prima facie of liability to calls, 464.

of transmission of interest by death, marriage, etc., 482—485.

**EVIDENCE—Continued.**

- required in an action for calls, 629.
- inquisition to be in all courts, 218.
- inquisition made conclusive of title, 239, 240.
- what required of bye-laws affecting servants of company, 393.
- what of bye-laws affecting the public, 398.

**EXAMINATION OF BILL,**

- between first and second reading, 126.
- for engrossing, 152.

**EXAMINER OF PETITIONS,**

- appointment of, how made, 115.
- must give notice of day of examination, 115.
- may strike out petition on non-appearance of petitioner, 115.
- to inquire into compliance with standing orders, 116.
- certificate to be given by, 116.
- opposition before, how to be made, 117.
- what parties may appear in opposition before, 117, 118.
- memorial of opposition when to be delivered, 117.
- attendance of witnesses before, 118.
- special report by, 119.
- must endorse petition, 104, 120.

**EXECUTION,**

- of deeds. See **SUBSCRIPTION CONTRACT.**
- of works. See **WORKS.**
- writ of. See **DISTRESS, GOODS.**
- against shareholder, when may be taken out, 471.
- proceedings previous to, 471.
- for purpose of issuing, creditor may inspect register of shareholders, 471.
- directors not liable to, on contracts of company, 436.

**EXECUTORS,**

- of party killed on railway, may sue company, 354, 356.
- of deceased shareholder when liable to calls, 484.
- must authenticate death of testator, 483.
- when to pay future calls on shares bequeathed, 456.
- may sue company for injuries caused to testator, 354.

**EXERCISE OF POWERS,**

- company must do as little damage as possible in, 291.

**EXPENSES,**

- of obtaining act to be paid out of first monies, 431.
- shareholder after incorporation may recover from company, 468.
- of obtaining act not to be deducted in estimating poor's rate, 412.

**EXTENSION OF TIME,**

- when to be granted for compulsory purchase, 200.
- notice of intended application for to be given to landowner, 201.
- opposition by landowner to, 201.
- for restoration of roads, how obtained, 308.

**EXTRAORDINARY MEETINGS. See MEETINGS.**

**EXTRAORDINARY PURPOSES,**

- company may purchase lands for, 186.
- quantity of land to be taken for, fixed in act, 187.

**F.**

**FARES. See RATES and CHARGES.**

**FEES,**

- scale of, payable in House of Commons, 166.
- scale of, in House of Lords, 166.
- payment of, secured by bond of agent, 90.
- royal assent may be withheld until payment of, 165.
- to steward of manor, to be paid, 248.
- to be paid for certificate of shares, 465.

**FEMALE SHAREHOLDERS,**

- marriage of, how authenticated, 456.
- shares of, if reduced into possession go to husband, 455.
- when shares survive to, after coverture, 455.

**FENCES,**

- company must make round land taken for materials, 276.
- must be made on each side of bridges, 301, 312.
- must be maintained by company, 313.
- disputes as to maintenance of, 313.
- penalty for neglect to repair, 313.
- must enclose railway, 314.
- liability of company for non-repair of, 315.

**FINES,**

- application of, imposed by justices, 617, 618.

**FIRST READING,**

- of Bill in the House of Commons.
  - presentation for, 124.
  - when may be had, 125.
  - previous to, bill must be printed, 124.
  - must not be later than one day after report of Committee on Standing Orders, 125.
- extension of time for, when granted, 125.
- mode of, 125.
- of Bill in House of Lords
  - as soon as brought up from Commons, 157.

**FLANCHES.** See **OPENING OF FLANCHES.****FOOTWAYS,**

- may be crossed on a level, 300.
- consent of justices, when to be had, 300.
- company must make approaches to, 301.

**FORFEITURE,**

- of shares allotted,
  - by non-payment of deposit, 53.
  - effect of proviso of on rights and liabilities of allottee, 54.
- of shares,
  - for non-payment of calls, 486.
  - suing for calls does not alter liability to, 486.
  - notice of intention of, must be served on shareholder, 486.
  - declaration of, when to be made, 487.
  - must be confirmed at general meeting, 487.
  - after confirmation of, shares may be sold, 487.
  - title of purchaser of shares under, how confirmed, 488.
  - irregularities in, will not affect purchaser, 488.
  - shares sufficient to pay calls and expenses may be sold under, 488.
  - shares may be redeemed previous to actual sale under, 488.
  - equity will not in general grant relief against, 489.
  - irregularities in sale under, equity will relieve against, 489.

**FORMATION OF LINE.** See **WORKS.****FRAUD,**

- penalty on passenger practising, 392.
- liability of directors in case of, 57, 438.

**FRAUDS, STATUTE OF,**

- shares not within operation of, as interest in land, 455.
- nor as goods and chattels, 455.

**FRAUDULENT APPLICATION FOR SHARES.** See **SHARES.****FUND,**

- directors may set apart for contingencies, 504.

**G.****GARDEN,**

- plan of, on enlarged scale, must be made, 96.
- may not be taken for getting materials, 271.

**GAS AND WATER PIPES,**

- in execution of works, company may alter, 279.
- alterations to be made under superintendence of surveyor of, 279.
- notice of intended alteration to be given to surveyor, 279.
- company bound to use care in altering, 279.
- new to be laid before old disturbed, 280.
- existing acts affecting must not be contravened, 280.
- penalty on railway company hindering supply through, 280.
- application of penalties for obstructing, 280.

**GATES,**

- must be erected where highways crossed on level, 301.
- must be kept shut, 302.
- penalty on parties neglecting to close, 302, 315, 637.
- for accommodation of lands to be kept closed, 315.

**GAZETTE.** See **ADVERTISEMENTS.****GENERAL MEETING.** See **MEETING.****GOODS,**

- to be carried must be brought at reasonable times, 344.
- of a dangerous nature, notice to be given of, 344.
- of company may be taken in execution, 615, 616.
- of treasurer, in what case distress may be levied on, 450, 616.

**GOODWILL,**

- deduction in respect of, not allowed in assessing poor's rate, 409.

**GRADIENTS.**

- special report as to, 146.
- alteration and amendment of. See **DEVIATION** and **ALTERATION**, 295.

**GRANT,**

meaning of word in conveyance of  
superfluous lands, 265.

**GROWING CROPS,**

company must compensate for loss of,  
276.

**GUAGE OF LINE,**

special report must be made as to, 146.  
what to be adopted, 331.  
when wrong commissioners of railways  
may remove, 331.  
penalty on company for breach of regu-  
lations as to, 331.

**GUARD.** See **RAILWAY SERVANTS.****GUARDIAN,**

may sell lands of ward to company, 194.  
may vote for infant shareholder, 444.

**GUNPOWDER,**

notice of, brought on line to be given to  
company, 343, 373.  
special contract for conveyance of, with  
secretary at war, 373.

**H.****HABERE FACIAS POSSESSIONEM,**

warrant of by company to sheriff, 243.  
costs of, may be recovered from land-  
owner, 244.

**HEIGHT OF RAILWAY,**

over or under highway, to be marked  
on section, 97.  
clear height of, over roads. See **ARCHES,**  
**BRIDGES.**

**HIGH WATER MARK,**

works between high and low water  
mark to be executed under Admiralty,  
292.  
works may be removed, if executed with-  
out approval of Admiralty, 292.

**HIGHWAYS,**

crossings of, by railways, 299.  
company may be indicted for obstruct-  
ing, 303.

**HOUSE,**

company cannot compel owner to sell  
portion of, 187.

**HOUSE OF COMMONS,**

proceedings in on a railway bill, 121—  
153.

**HOUSE OF LORDS,**

proceedings in on a railway bill, 154—  
170.

**I.****IDIOT,**

guardian of, may contract with company  
for sale of lands, 196,

**ILLEGALITY,**

none in sale of scrip, 67—73.  
test of, in joint stock companies, 71.

**IMPLIED CONTRACT.** See **CONTRACTS.****INCLINATION OF ROADS.** See **ROADS.**

intended alterations of, to be marked on  
section, 97.  
cross sections of, and scale of, 97, 98.

**INCLINED PLANES,**

railway company may make, 289.

**INDICTMENT,**

railway companies liable to, for acts of  
omission, 610.  
not liable to, for acts of commission, 610.  
of company for disobeying order of  
justices, 610.  
for neglect to repair the line, 612.  
of servants of company for wrongful  
acts, 612.  
only lies for wrongs affecting the public,  
613.  
against company must be moved by  
*certiorari* into Queen's Bench, 581,  
613.  
appearance of company to, may be com-  
pelled by distress infinite, 614.  
railway company can prosecute by, 638.

**INJUNCTION,**

to restrain repayment of deposit, 114.  
nature of writ of, 532.  
may have a restorative, as well as pro-  
hibitive, effect, 532.  
at whose suit will be issued, 532.  
in what cases to be issued, 532, 533.  
when company acting in excess of  
powers, 533.  
to restrain company from issuing  
warrant to sheriff, 533.  
where warrant differs from notice to  
landowner, 213, 534.  
where land not authorized to be taken,  
533.  
where there has been no offer by com-  
pany to treat, 534.  
on ground of non-subscription of capi-  
tal, 535.  
on ground of insufficiency of capital,  
535.  
on ground that termini of line changed,  
535.  
to prevent company taking materials,  
534.

**INJUNCTION—Continued.**

- to restrain entry on lands previous to assessment of compensation, 536.
- to prevent commission of nuisance, 536.
- to restrain directors using money for purposes not authorized, 537.
- to restrain directors from forfeiting shares, 537.
- to restrain directors varying constitution of company, 537.
- to restrain company doing unnecessary injury, 538.
- to restrain company from proceeding in breach of agreement, 539.
- when construction of powers in act doubtful, 540.
- when construction of act doubtful, 541.
- when construction of private instrument doubtful, 541, 542.
- under what terms granted, 542.
- when legal right has not been ascertained, 543.
- cause of complaint must exist at time of application for, 544.
- right to, will be lost by acquiescence, 545.
- will not be granted unless agreement is absolute, 545.
- will not be granted when injury is not irreparable, 546, 547.
- when granted to restrain actions at common law, 547.
- not granted where illegality of instrument is apparent, 547.
- in granting, equity will put liberal construction on acts, 548.

**INJURY,**

- to lands must be physical to be subject of compensation, 192.
- distinction between obvious and remote, 194.
- unnecessary, restrained by injunction, 538.

**INQUIRY,**

- before jury, when to be had
  - where compensation claimed exceeds £50, 211.
  - where arbitrators have failed to make award, 211.
- landowner cannot take initiative in instituting, 214.
- where to be held, 214.
- preliminaries to,
  - company must give notice to landowner, 211.
  - notice must make offer of compensation, 211.
  - company when to issue warrant to sheriff, 212.

**INQUIRY—Continued.**

- when warrant to issue to coroner or deputy, 213.
- warrant must conform with notice to party, 213.
- jury, how summoned, 214.
- jury, how selected, 214.
- special jury, when to be had, 215.
- attendance of witnesses at, 216.
- notice of day of, to be given to claimant, 216.
- proceedings at execution of writ of, who must preside, 215.
- claimant to be considered plaintiff, 216.
- parties may appear by counsel, &c., 216.
- cannot be held in absence of claimant, 216.
- may be held in absence of company, 217.
- evidence to be adduced at, 217.
- verdict,
  - for purchase money and compensation to be assessed separately, 218.
  - enactment as to separate assessment, directory only, 218.
  - aliter* if interests separate, 218.
- judgment,
  - must be signed by sheriff, 218.
  - must be delivered to clerk of peace, 218.
  - to be made record of quarter session, 218.
  - action will lie on, 221.
- costs of,
  - where verdict for sum greater than offered by company, 222.
  - where verdict for same or less sum, 222.
  - where claimant fails to appear, 222.
  - what to be considered as costs in, 222, 223.
  - disputes as to, how to be settled, 224.
  - taxation and recovery of, 224.

**INQUISITION,**

- general form of, 219, 220.
- must show jurisdiction, 219.
- must be made record of quarter sessions, 218.
- to be evidence in all courts, 218.
- final and conclusive, 220.
- cannot be quashed for want of form, 221.

**INSOLVENCY OF SHAREHOLDER,**  
how authenticated, 485.**INSPECTION,**

- of plans, sections, and books of reference.
- See **PLANS** and **SECTIONS**.



**INSPECTION—Continued.**

- of mines by company, 282, 285.
- of books of company by Commissioners of Excise, 401.
- of books of company by judgment creditor, 471.

**INSPECTOR OF RAILWAYS,**

- Commissioners of Railways may appoint, 334.
- may enter on works of company, 334.
- must not interfere in affairs of company, 335.
- penalty on parties obstructing, 335.
- may report that opening of line should be postponed, 335.
- report of, when to be given to company, 336.

**INTEREST**

- payable on calls in arrear, 502.
- may be recovered in action for calls, though no count for, 502.
- on loans. See **BOND** and **MORTGAGE**.
- may be recovered by appointment of receiver, when, 513.
- arrears of, recoverable under mortgage deed, 513.
- arrears recoverable under bonds of company, 513.
- in land, omitted to be purchased, 261.
- after notice company to pay value of, 261.
- compensation for, how assessed, 261.
- costs of disputed claim to, 261.

**INTERSECTED LANDS,**

- company when bound to purchase, 187.
- company when to require sale of, 187.

**INTESTACY,**

- of shareholder, how authenticated, 483.

**INVESTMENT,**

- of compensation money to parties under disability. See **COMPENSATION**, 227, 228.
- costs of how many allowed, 234.
- what considered as costs of, 234—236.

**J.**

**JOINT SHAREHOLDER,**

- name of first in register entitled to vote, 444.

**JOINT STOCK COMPANIES,**

- members of, partners at common law, 1.
- members of, individually liable, 1.
- restrictions on, by statute, 3.
- effect of incorporation of, 3.

**JOINT STOCK COMPANIES ACT,**

- to what companies applicable, 4, 5.
- application of, to railway companies, in respect of provisional registration, 7, 8.
- as to appointment of solicitor, 9.
- as to revocation of appointment, 9.
- as to returns to be made by company, 10.
- as to the prospectus, 13, 14.
- old companies applying for new powers not within operation of, 7.

**JUDGMENT,**

- in writ of inquiry to be signed by sheriff, 218.
- to be evidence in all courts, 218.
- action may be brought on, 221.
- shares may be charged with, 457.
- against company, when to be issued against shareholder, 471.

**JURY,**

- summoning of, to assess compensation, 214.
- number and selection of, 215.
- bystanders may be taken, 215.
- special, when to be had, 215.
- array of, may not be challenged, 215.
- person need not attend on more than once in a year, 216.
- penalty for non-attendance, 216.
- may by consent hear other cases, 215.

**JUSTICES,**

- settlement of compensation by, where damages claimed less than £50, 204.
- in cases of tenancy from year to year, or at will, 204.
- in respect of roads used temporarily, 270.
- may decide as to what lands are to be taken for materials, 275.
- to approve of sureties previous to entry on lands, 275.
- to decide as to rent of land temporarily occupied, 277.
- to decide on objections as to use of roads, 270.

**L.**

**LACHES,**

- will defeat right to relief in equity, 544, 553.

**LANDS,**

- cannot be purchased under provisional registration, 83.
- notice to take,—form, service, and effect of, 180—184.

**LANDS**—*Continued.*

- what may be taken by railway companies, 185—188.
- company must not take more than required for the line, 185.
- what may be taken for additional stations, 186.
- distinction as to taking by agreement or compulsorily, 185.
- under jurisdiction of woods and forests, 186.
- belonging to the crown, 186.
- intersected, 187.
- portions of buildings, 187.
- within certain distances of railways, 189.
- required for the repair of the line, 269.
- required for getting materials, 270—272.
- required for temporary purposes, 269.
- what may not be taken,
  - portions of buildings, 187.
  - ornamental grounds, 271.
- what lands company compelled to purchase,
  - portions of buildings, 187.
  - intersected lands, 187.
- parties in possession of, to be deemed owners, 233.

**LANDOWNERS,**

- until accommodation works made, may cross the line, 317—319.
- may not cross the line if compensation paid for total severance, 318.
- of adjoining lands may make branch railways, 320.

**LAND TAX,**

- of lands taken by company must be made good, 253.
- may be redeemed by company, 253.

**LATERAL DEVIATIONS.** See **ALTERATIONS** and **DEVIATIONS.****LEASES,**

- taking of lands subject to, 258—260.
- apportionment of rent under, 258.
- liability of lessee to apportioned rent, 258.
- compensation to lessee, how estimated, 191, 259.
- lessees failing to produce to be considered as tenants from year to year, 260.
- chance of renewal of, not subject of compensation, 259.
- compensation money, when to be applied in renewal of, 231.

**LENGTH OF TIME.** See **ACQUIESCENCE.****LETTERS PATENT,**

- incorporation under, 4.

**LETTER OF ALLOTMENT.** See **ALLOTMENT** and **SHARES.****LESSEES.** See **LEASES.**

- for lives or years cannot sell more than their own interests, 197.

**LEVELS,**

- alteration of. See **DEVIATIONS** and **ALTERATIONS**, 293, 294.

**LEVEL CROSSINGS.** See **CROSSINGS.**

- bridges may be substituted for existing, 300.

**LIABILITY,**

- of promoters. See **PROMOTERS.**
- of allottee. See **ALLOTTEE.**
- of provisional director. See **PROVISIONAL COMMITTEEMAN.**
- of broker. See **BROKER.**
- of one company on agreements made with another, 178.
- to perform agreements, made before act obtained, 176—180.
- of company for acts of contractors, 280.
- of company for damages done in execution of works, 277.
- of company for nuisances, 272, 610—614.
- of company as carriers. See **CARRIERS**, 342—357.

**LIEN,**

- company may have, on goods of parties for tolls, 387.
- on goods conveyed by company as carriers, 390.
- claim for on general balance, 602.
- on goods of contractor brought upon the works, 603.
- claim of must not contravene operation of bankrupt laws, 603—606.

**LIMITATIONS, STATUTE OF,**

- how applicable to the recovery of interest or mortgage of undertaking, 513.
- how applicable to arrears under bonds, 513.

**LIMITED INTEREST,**

- parties having, may agree for sale of lands, 195.

**LIMITS OF DEVIATION,**

- to be marked on plans, 96.
- how measured, 298.

**LINE OF RAILWAY,**

- limits of deviation of, how measured, 298.

**LINE OF RAILWAY—Continued.**

- same rights attach to deviated as original, 298.
- company must complete and maintain throughout, 325—329.
- mandamus to company to complete, 564, 565.

**LISTS,**

- of owners and occupiers of lands must be made out, 94, 95.

**LOAN CREDITORS. See BOND CREDITOR.**

**LOAN NOTES,**

- issue of by company illegal, 508.
- penalty for issuing, 508.
- recovery of penalty for issuing, 508.

**LOANS,**

- power of company to raise money by, 506.
- amount to be raised by, 506.
- power to raise must be exercised at general meeting, 507.
- previous to raising, company must procure certificate of payment of capital, 507.
- may be raised by mortgage or bond, 508.
- raising by loan notes illegal, 508.
- register of, must be kept, 509.
- precautions to be observed by parties advancing on, 508.
- new shares may be created in place of raising, 490.
- re-payment of,
  - six months' notice previous to, requisite, 515.
  - where loan for time certain, 515.
  - interest runs on default of, 515.
  - on tender of, interest ceases, 515.

**LORD OF MANOR. See COPYHOLDS.**

**LORDS OF THE TREASURY**

- consent of to sale of corporation lands, 185, 186.

**LUGGAGE,**

- quantity allowed for passengers in cheap trains, 374.
- for military and police, 372, 373.
- company liable for, belonging to passengers, 356.

**LUNATIC,**

- committee of, may agree for sale of land to company, 197.
- committee of may vote for, 444.

**M.**

**MAILS. See POSTMASTER GENERAL.**

**MAINS. See GAS and WATER PIPES.**

**MALICIOUS DAMAGE,**

- to railways, parties how punished, 639.

**MANAGING COMMITTEE. See PROVISIONAL COMMITTEE-MAN.**

- primarily liable for expenses incurred, 35.

**MANDAMUS,**

- nature of writ of, 554.
- when grantable in general, 554.
- grantable, though an indictment will lie, 554.
- though a party has Equitable remedy, 554.
- to register shares, 555.
- to give and renew certificates, 556.
- to register death of owner of shares, 556.
- to register transfer of shares and mortgage, 556.
- to enforce provisions of Railway Acts, 557.
- to complete number of direction, 557.
- not grantable, on application of creditor to compel making of calls, 557.
- aliter*, if shareholder require to be reimbursed, 558.
- will not lie to declare dividend, 558.
- to compel company to issue precept, 559, 561.
- to issue a second precept, 560.
- to justice to hear and adjudicate, 560.
- to arbitrators to appoint an umpire, 561.
- to compel company to build bridges and construct works according to Act, 304, 564.
- to compel company to pay compensation, 561.
- to compel company to pay costs, 563.
- to assess value of lands comprised in notice to landowner, 563.
- to compel company to complete the line, 564.
- to construct works, 564.
- to compel company to keep line in repair and permit use, 565.
- will not be granted, to compel company to carry goods, 565.
- application for,
  - made to court upon affidavits, 565.
  - affidavits must be properly entitled, 566.
  - affidavits must show a proper demand and refusal, 566.

**MANDAMUS—Continued.**

- effects of imperfect affidavits, 571.
- renewal of affidavits, when allowed, 572.
- demand necessary before granted, 566.
- must be distinct, 566.
- must require specific act to be done, 566.
- must not require too much, 566.
- must show right of party to thing demanded, 567.
- when may be in the alternative, 567.
- must be made on proper parties, 568.
- on clerk of company insufficient, 569.
- must be made in reasonable time, 567.
- must not be made too soon, 568.
- there must be an express refusal by company, in order to obtain, 569.
- or something equivalent to an express refusal, 570, 571.
- when condition precedent no bar to obtaining, 567.
- writ of, must be properly directed, 572.
- must contain proper suggestions, 573.
- must require performance of specific act, 573.
- must not require too much, 574.

**MANOR,**

- lord of, entitled to compensation, 189.
- several parcels in, may be enfranchised together, 249.<sup>1</sup>
- right of soil in common lands in lord of, 250.

**MANUFACTURING PURPOSES,**

- works affecting water for, in Ireland, 325.

**MAP,**

- showing line of railway, to be deposited, 98, 99.

**MARRIAGE,**

- transmission of shares of female shareholder by, 484.
- shares transmitted by, when reduced into possession pass to husband, 484.
- if shares not reduced into possession survive to wife, 484.
- death of wife before reduction into possession, 484.

**MARRIED WOMEN,**

- entitled to dower cannot sell more than their own interest, 197.

**MATERIALS,**

- company may enter on lands for purpose of getting, 271.
- may not take from quarries or brick-fields, 272.

**MATERIALS—Continued.**

- previous to taking, company must give security, 275.
- notice of intention to take, to be served on owners, 272.
- notices must state for what purpose materials are required, 273.
- objection by landowner as to taking, 274.
- land taken for getting, company may be compelled to purchase. See **ENTRY ON LANDS**, 276.
- compensation must be paid for growing crops destroyed in getting, 276.

**MEETINGS,**

- ordinary,
  - times and places of, named in act, 441.
  - when to be held, if no time specified, 441.
  - fourteen days' notice of, must be given, 442.
  - notice of, must specify time and place, 442.
  - business to be transacted at, 442.
- extraordinary,
  - notice of, must state purpose of, 442.
  - business not specified cannot be done at, 442.
  - quorum requisite to form, 442.
  - proceedings if quorum not present at, 443.
  - scale of voting at, 444.
  - appointment of proxies for, 444.
  - questions brought forward at, to be decided by majority, 445.
  - majority of votes at, how ascertained, 445.
  - poll when demanded at, 446.
- special general,
  - what parties may require, 446.
  - requisition for, how to be made, 446.
  - proceedings where directors neglect to call, 446.
  - notices for, how to be issued, 446.
  - business to be transacted at, to be specified in notices, 446.
  - of shareholders, previous to second reading of Bill in House of Lords, 155.

**MEMORIAL OF OPPOSITION,**

- must be headed with short title of bill, 117.
- must state specifically cause of opposition, 117.
- generally against bill, bad, 117.

**MERGER,**

- of terms of years in conveyance to company, 236, 237.

**MILE STONES,**

must be erected before tolls can be taken, 329.

penalty on parties defacing, 329.

**MILITARY AND POLICE,**

railway company bound to convey, 372.  
fares to be charged for conveyance of, 373.

fares to be charged for children of, 373.  
quantity of baggage allowed to, 373.

**MINES AND MINERALS,**

company not entitled to under lands purchased, 281.

restrictions on owners in working, 281.  
notice of working within prescribed distance to be served on company, 282.

inspection of, by company, 282.

owner must repair damage to line, caused by improper working of, 282.

*aliter*, if company refuse to purchase near line, 282, 283.

company must pay expenses of accommodation works for, 283.

and compensate for losses incurred by restrictions in mode of working, 283.

disputes as to accommodation works in, how settled, 283.

dimensions of accommodation works, 283.

compensation for not worked, how ascertained, 284.

compensation, when to be claimed, 284.  
owner of lands over, entitled to compensation, 285.

penalty on owners refusing to allow inspection of, 286, 637.

company may execute works at expense of owner of, 286.

expense of works in, how recovered, 286.

**MINOR,**

guardian of, may agree for sale of lands to company, 196.

**MINUTES,**

of all proceedings must be entered in books, 439.

must be signed by chairman of meetings, 440.

signature of, at subsequent meeting good, 440.

**MISAPPLICATION OF FUNDS,**

remedy against directors for, 58.

**MISDEMEANOUR,**

making false returns to commissioners of railway, a, 417.

**MISTAKES,**

in plans and books of reference, may be corrected by two justices, 287.

notice of intention to correct, to be given to parties affected, 287.

certificate of correction of to be deposited with clerks of the peace, 287.

**MODIFICATION,**

of works, when allowed, 290.

appeal to commissioners of railways for 290.

effect of certificate of, 290.

**MORTGAGE,**

taking lands subject to, 254—257.

company may redeem lands subject to required for the line, 254.

proceedings on part of company for redemption of, 254.

if mortgagee fail to show title, money to be deposited in the bank, 255.

proceedings where value of lands less than, 255.

apportionment of on remaining lands, 255, 256.

proceedings where mortgagee refuses to convey, 256.

payment of part does not affect rights of mortgagee as to remainder, 256.

mortgagee entitled to costs of re-investment when, 256.

compensation for loss of interest on, 257.

of shares. See **TRANSFER OF SHARES**, 481, 482.

does not disqualify party as director, 421.

of the undertaking,

company may give as security for loans, 508.

power when may be exercised, 507.  
form of, 508.

may include future calls, 509.

calls though mortgaged may be used for purposes of company, 510.

company must keep register of, 509.

passes right to profits of undertaking to mortgagee, 509.

does not pass interest in lands, 509, 608.

priority of, does not give preference, 511.

interest to be paid on, previous to dividends, 505, 511.

recovery of arrears of interest on, 512.

arrears of, when may be recovered from shareholders, 513.

**MORTGAGE—Continued.**

what arrears recoverable under, 513.  
 may be transferred, 514.  
 transfers of, must be registered, 514.  
 repayment of money secured by, 515.  
 notice required previous to repayment of, 515.

**MORTGAGEE OF SHARES,**

not liable to payment of call, 482.  
 must give notice of mortgage, 482.  
 has lien upon shares for calls paid, 482.

**MORTGAGOR OF SHARES,**

liable to payment of calls, 482.

**MUNICIPAL CORPORATIONS. See CORPORATIONS.**

restraint on sale of land by, 185, 186.

**N.****NAVIGATIONS,**

consent of proprietors of, to alteration in levels, 294.

**NEUTERS. See ASSENTS and DISSENTS.****NEW SHARES,**

creation of, 490.  
 apportionment of, 490.  
 acceptance of, 490.

**NOTICES,**

by advertisement. **See ADVERTISE-  
 MENT.**

at Quarter Sessions. **See QUARTER  
 SESSIONS.**

by judgment creditors, of intended execution against shareholders, 471.  
 by directors, of intended forfeiture of shares, 486.

by shareholders to directors, to convene special meeting, 446.

of meetings, 442.

by landowner, to have claim settled by arbitration, 204.

to arbitrator to proceed *ex parte*, 207.

of intention to take land, 180.

upon what parties to be served, 180.

how to be served, 181.

must describe the property required, 182—184.

must specify quantity of land required, 182.

must offer to negotiate, 182.

service of, determines option of company to take lands, 184.

service of, establishes relation of vendor and purchaser, 184.

**NOTICES—Continued.**

service of precludes company from varying terms of, 184.

previous to service of, capital must be fully subscribed, 201.

of entry, for purposes of surveying, 268.

of temporary occupation of roads, 268.

of objection by owners of roads, 270.

must state time of intended occupation, 270.

of entry on lands to get materials.

statements required in, 273.

not specifying purposes, bad, 273.

of objection by owners of lands, 274.

by owners of, requiring company to purchase, 276.

of intention to issue warrant to sheriff, 211.

must contain offer to treat, 211.

must state price company will give, 211.

must be served on parties, 211.

effect of waiver of service of, 211, 212.

to sheriff to hand over jury books, 214.

to landowners of day and place of inquiry, 216.

of requirement of special jury, 215.

to landowners of intention to apply for extension of compulsory powers, 201.

of intention to apply to justices for correction of errors, 287.

of intended alterations in levels, 294.

by landowners against alterations in levels, 294.

of intention to cross highways on a level, 300.

of appeal against decision of justices as to, 300.

of meeting of parties entitled to common rights, 251.

to water and gas companies of alterations in mains, 279.

by owner of mines worked within forty yards, 282.

to owners of mines before inspection, 285.

to owners of mines to construct works for safety of line, 286.

to company to erect screens, 313.

to and by mortgagees and bond creditors of intention of repayment, 515.

to mortgagees of intention to pay off, 254.

to treasurer previous to distress of goods, 616.

of accidents attended with serious personal injury, 415.

of entry on lands to prevent accidents, 269.

of opening railway, 334.

**NOTICES—Continued.**

- of intended modification of works, 290.
- to company to make approaches for level crossings, 301.
- of call to be given to shareholders, 494. must contain amount, time, and place of payment of, 494.
- to shareholder of allotment of new shares, 490.
- to shareholder of intended forfeiture of shares, 486.
- by Board of Trade of intention to proceed against railway company, 624.
- by company requiring purchase by treasury, 385.
- by lords of treasury of intention to revise tolls, 384.
- of intention to buy railway, 385.
- by landowners of interests omitted to be purchased, 261.
- by postmaster-general requiring company to provide for carriage of mails, 361.
- to owners and occupiers of intended application to parliament, 94, 95. when and how to be served, 94, 95.
- of intended relinquishment of work, 95.
- service of notices under standing orders, 93.
- how made and proved on owners and occupiers, 95.
- on company, 205.
- on landowners, 281.
- on shareholders, 487.
- on Board of Trade, 334.

**NUISANCE,**

- company may be liable to action for, in getting materials, 272.

**NURSERY GROUND.** See **GARDEN.**

**O.**

**OATH,**

- witness on inquiry must be examined on, 216.

**OBLIGEE,**

- in bond. See **BOND CREDITOR.**

**OBSTRUCTION,**

- penalty on parties guilty of, 331, 636.
- by improper workings of mines may be removed, 282.
- costs of removing may be recovered by company, 282.
- of inspector of railways, 335.

**OCCUPIERS OF LANDS,**

- notice of intended application to parliament to be served on, 94.

**OFFICERS.**

- See **DIRECTORS.**
- TREASURER.**
- SECRETARY.**
- AUDITORS.**
- BOOK-KEEPER.**

**OMISSIONS,**

- of interests in lands purchased, 261.
- notice of, to be given to company, 261.
- compensation for, how assessed, 261.
- how supplied in parliamentary plan, 287.

**OPEN CUTTINGS,**

- tunnels may be substituted for, 299.
- when may be substituted for tunnels, 299.

**OPENING OF RAILWAY,**

- month's notice of intention of, to be given to commissioners of railways, 334.
- ten days' notice to ditto, that line ready for, 334.
- penalty on without notice, 334.
- inspection by government previous to, 334.
- Railway Board may postpone, 335.
- report of inspector as to, to be sent to company, 336.

**OPENING OF FLANCHES,**

- company must make, for branch railways, 321.
- not to be made in places appropriated for specific purposes, 321.
- disputes as to, to be settled by commissioners of railways, 321.
- not to be made to cause obstruction, 323.

**OPERATION,**

- of General Railway Acts, 106.

**OPPOSITION,**

- on standing orders. See **STANDING ORDERS.**
- before committee on bill. See **COMMITTEE.**
- agreements to withdraw may be enforced, 177.

**OPTION,**

- of revision of tolls, or purchase of railway, 383—385.

**ORNAMENTAL GROUNDS.** See **GARDEN.**

**OVERSEERS OF POOR,**

- entitled to yearly accounts from company, 413.
- penalty on company neglecting to send accounts to, 413.

**OWNERS OF LANDS.** See **LANDS**,  
**NOTICES, LANDOWNERS.**  
 notice of intended application to parliament to be served on, 94.  
 list of assenting, dissenting, and neutral, to be made out, 94.  
 persons in possession deemed, until contrary shown, 253.

## P.

**PARISH CLERKS,**  
 deposit of plans and books of reference with, 99.

**PARLIAMENTARY AGENT.** See **AGENT.**

**PARLIAMENTARY CONTRACT.** See **SUBSCRIPTION CONTRACT.**

**PARLIAMENTARY FEES.** See **FEES.**

**PARTNERS,**  
 promoters of scheme deemed to be, 27.  
 when members of provisional committee are deemed to be, 31—45.  
 allottees of shares are not, 51.  
 parties executing deeds are, 19, 57, 61, 63.  
 shareholders in incorporated company are not, 46.

**PARTNERSHIP,**  
 distinction between actual and proposed, 60, 61.

**PASSENGERS,**  
 penalty on, practising fraud, 392.  
 must produce ticket when required, 393.  
 must observe bye-laws of company, 393.  
 may not be taken into custody for neglecting to produce ticket, 393, 399.  
 tax payable in respect of, 400—402.  
 tax not payable in respect of, travelling in cheap train, 400.  
 entitled to carry certain quantity of luggage, 357.  
 company liable for luggage of, 356, 357.  
 offering, company must carry when, 351, 352.  
 may maintain action against company for injury, 353, 354.  
 killed, executors of, &c., may maintain action, 354, 355.

**PASSENGER RAILWAY,**  
 definition of term, 321, 384.

**PAYMENT,**  
 of interest on monies borrowed. See **LOANS.**  
 of deposit. See **DEPOSIT.**

**PAYMENT—Continued.**  
 of calls. See **CALLS.**  
 of money into court. See **COMPENSATION.**

**PENALTY,**  
 for advertising company previous to provisional registration, 9.  
 for neglecting to register documents, and make returns, 10.  
 on company issuing loan notes, 508, 588.  
 for not making returns of traffic, 401, 402.  
 for not depositing annual accounts with overseers and clerks of the peace, 413, 588.  
 for not repairing roads used by company, 308.  
 for obstructing supply of water and gas, 280, 589.  
 for opening railway without notice, 334.  
 for opening railway contrary to order of commissioners of railways, 335.  
 for refusing to convey mails, 368, 588.  
 for refusing to execute bond to postmaster-general, 371, 588.  
 for refusing to run cheap trains, 375.  
 for using engines not consuming their own smoke, 360.  
 on officers of company found drunk, 635.  
 on company neglecting to make returns to Board of Trade, 416.  
 on parties for breach of bye-laws, 394—399, 636, 637.  
 on owners of goods not giving account of, 388, 639.  
 for bringing dangerous goods on railway, 344, 638.  
 for defacing milestones, 329, 639.  
 for obstructing construction of line, 331.  
 for endangering safety of passengers, 395, 636.  
 for obstructing inspector of railways, 335.  
 for using carriages not registered, 364, 638.  
 for using engines before approved by company, 363, 638.  
 on company entering on lands before payment of compensation, 245, 589.  
 neglecting to construct screens for turnpike roads, 313.  
 neglecting to keep copies of Special Act, 588.  
 neglecting to make approaches, 589.  
 neglecting to repair works, &c., 309, 589.



**PENALTY—Continued.**

- failing to restore roads, 303, 589.
- for interfering with roads before substituting others, 303.
- on parties omitting to close gates, 302, 637.
- on owners of mines refusing to allow company to inspect, 286, 637.
- on sheriff and jurymen neglecting to attend inquiry, 216.
- on witnesses making default, 216.
- may be recovered by action of debt, 588.
- may be enforced by distress, when, 617.
- application of, generally, 617.

**PERSONALTY,**

- railway shares to be deemed, 454.
- compensation money, when to be deemed, on death of landowner, 228, 229.

**PETITION,**

- for the Bill,
  - form of, 103.
  - heading of, 103.
  - substance of, 104.
  - signatures to, 103.
  - must correspond with Bill, 104.
  - endorsements on, by examiner, 104.
  - declaration must be annexed to, 104.
  - requisites of, for supplemental Bill, 104.
  - for further time, 121.
- deposit of,
  - in Private Bill Office, 109.
  - with commissioners of railways, 109.
  - receipts of plans to be indorsed on when deposited, 109.
- examination of,
  - by examiner of petitions, 115.
  - in absence of petitioner, may be struck out, 115.
  - how re-inserted, 115.
- presentation of to the House, 121.
  - when to be presented, 121.
  - by whom presented, 121.
  - how presented, 121.
  - extension of time for, 121.
- for recommittal to Standing Orders Committee, 121.
- for extension of time for first reading, 125.
- against the Bill,
  - must be in writing, and signed by petitioner, 137.
  - must appear to be *against*, 137.
  - grounds of opposition must be stated in, 137.
  - grounds of opposition must show a *locus standi*, 137.

**PETITION—Continued.**

- must be presented three days before the meeting of the committee, 137.
- referred to the committee on the Bill, 138.

**PLAINTIFF,**

- claimant to be considered as, on inquiry, 217.

**PLANS AND SECTIONS,**

- plan,
  - must describe the whole line, 95.
  - scale on which to be made, 96.
  - distances must be exhibited on, 96.
  - radii of curves less than a mile to be marked on, 96.
  - limits of deviation to be defined on, 96.
  - enlarged scale of, when to be made, 96.
  - tunnelling must be marked on, 96.
- section,
  - line marked on to correspond with upper surface of rail, 96.
  - scale on which to be made, 96.
  - must show surface of ground, 96.
  - must have a datum line. See DATUM LINE, 96.
  - heights of crossing over roads, &c. to be marked on, 97.
  - altered levels of highway to be marked on, 97.
  - scale of cross sections of, 97.
  - tunnelling must be marked on, 98.
  - viaducts to be marked on, 98.
- deposits of,
  - within what hours to be made, 100.
  - with the clerk of the peace, 98.
  - open to public inspection, 99.
  - with Board of Trade, 99.
  - with parish clerks, 99.
  - with Admiralty, 100.
  - in Private Bill Office, 100.
  - copies of may be taken, 99.
- alterations in, made in House of Commons, must be advertised, 155.
- of alterations to be deposited with clerk of parliament, 155.
- of railways in Ireland to be submitted to drainage commissioners, 288.
- certified copies of, to be evidence, 287.
- omissions and mis-statements in, how rectified, 287.

**PLEAS,**

- what allowed in actions for calls, 631.

**POLL,**

- if demanded on behalf of one director, must be opened for all, 425.

**POLL—Continued.**

at meetings, if not demanded, chairman may declare resolution carried, 446.

**POOR'S RATE,**

payment of during the construction of the line, 253, 402.

after completion of the line, 402.

assessment of,

property to be rated, 403.

gross receipts taken as basis of value, 404.

deductions to be made from gross receipts, 408—412.

deduction in respect of interest on plant, 408.

in respect of profits of trade, 408.

in respect of wear and tear, 408.

in respect of costs of management, 408.

in respect of stations separately rated, 408.

how apportioned through the line, 407.

account of receipts and expenditure to be sent to clerks of the peace and overseers for assessment of, 413.

may be recovered by distress on any part of the line, 412.

application for mandamus to compel payment of, 412.

**PORTIONS OF BUILDINGS,**

owners not required to sell, 187.

what to be considered as, 187.

**POSSESSION,**

party in, to be deemed owner until contrary shown, 233.

party in, entitled to compensation on his own affidavit, 233.

of lands required for company, how given, 243.

costs of giving, to be paid by landowner, 243.

**POSTMASTER-GENERAL,**

may require company to furnish carriages, 361.

may require speed of trains not exceeding twenty-seven miles per hour, 367.

may send guards and letter-bags by any train, 368.

may make regulations binding on company, 369.

officer of, must not interfere with engine driver, 369.

remuneration to be paid by, how settled, 369.

may discontinue services of company, 370.

**POSTMASTER-GENERAL—Continued.**

may require security from company, 371.

**POWERS,**

under provisional registration. See PROVISIONAL REGISTRATION.

construction of, conferred on railway companies, 174—181.

to be construed strictly against company, 174.

not to be extended by construction, 175.

if ambiguous, to be construed in favour of public, 175.

Acts giving to be construed as contracts between promoters and the public, 175.

will not be construed to give unfair advantage, 176.

modified by agreements before Act, 176.

modified by agreements to withdraw opposition, 176.

agreement must be absolute, to modify, 178.

a qualified assent will not modify, 179.

undertaking in Chancery will not modify, 179, 180.

how far modified, where company unable to perform their agreement, 179, 180.

compulsory, when may be enforced, 200—203.

of company, in execution of works, 288, 289.

restrictions on, 291.

of directors. See DIRECTORS, 426, 429.

injunction to restrain exercise of, when granted, 532, 549.

**PREAMBLE,**

when may be altered by committee on bill, 134.

special report as to alterations in, 134.

part of may be withdrawn, 104.

must not be larger than petition, 104.

consideration of, and decision on, 144.

**PRE-EMPTION,**

right of belongs to owner of adjoining lands, 263.

**PRESENTATION,**

of petition. See PETITION.

of Bill. See BILL.

**PRIVATE BILL OFFICE,**

deposit in,

of plans and sections, 100.

**PRIVATE BILL OFFICE**—*Continued.*  
 of subscription, contract, and estimate,  
 102.  
 of Bill, 109.  
 of Bill as amended in Commons, 152.  
 of Bill, as amended in Lords, 164.

**PROBATE,**  
 must be taken out for shares of deceased  
 proprietor, 456.  
 in what diocese to be taken out, 483.  
 necessary for authentication of trans-  
 mission of interest, 483.

**PROCEEDINGS OF DIRECTORS,** 438  
 —441.

**PROMOTERS,**  
 definition of, 7 note (b) 10, 11, and  
 24.  
 registration of scheme by, 8.  
 qualification of, 11.  
 penalty on, for advertising before regis-  
 tration, 9.  
 liability of, 24, 25.  
 rights of, 26.  
 previous to incorporation, cannot sue  
 for services, 26, 27.  
 equitable right to be reimbursed money  
 expended, 26.

**PROOF OF DEBTS,**  
 in case of bankruptcy, to be made by  
 secretary on behalf of company,  
 450.

**PROSECUTIONS,**  
 of company by attorney-general, 623,  
 624.

**PROSPECTUS,**  
 form of, 13.  
 effect of, 14.  
 must be registered, 14.  
 penalty on neglect to register, 14.

**PROVISIONAL COMMITTEE MAN,**  
 definition of, 10, 11.  
 agreement to become such, 12.  
 qualification of, 11.  
 rights and powers of,  
 may issue prospectus after provisional  
 registration, 28.  
 may allot shares, 29.  
 may receive deposits, 28.  
 may do all necessary for obtaining act  
 of parliament, 29.  
 may cause surveys to be made, 28.  
 may agree with landowners and others,  
 29.  
 may pledge credit of the concern, 30.  
 may indemnify himself out of deposits,  
 30.

**PROV. COMMITTEE MAN**—*Continued.*  
 must not act beyond powers given in  
 subscribers' agreement, 30.  
 may file bill against allottees, 52.  
 liabilities of, to third parties,  
 at common law, 32.  
 not affected by Joint Stock Act, 32.  
 by taking shares, 34.  
 by interfering in management, 34.  
 by attending meetings, 35.  
 by holding out name to the world, 36,  
 40, 41.  
 by assenting to act, 36.  
 what a sufficient assent to incur, 37.  
 on common law doctrines of partner-  
 ship, 38, 39.  
 on doctrines of implied agency, 38, 39.  
 result of recent cases relating to,  
 42—45.  
 commencement of, 45.  
 extent of, 45—49.  
 on contracts made during the time  
 they are such, 46, 47.  
 on contracts made before, but only  
 partly executed, 46, 47.  
 are joint, 48.  
 case of dissenting party, 48, 49.  
 determination of, 49, 50.  
 to shareholders,  
 to return deposits to allottees in case  
 scheme abandoned, 55.  
 to return whole deposit to share-  
 holders in cases of fraud, 57.  
 for misappropriation of funds, 58, 59.

**PROVISIONAL REGISTRATION,**  
 particulars required for, 8.  
 certificate of, how obtained, 8.  
 duration of certificate of, 8.  
 renewal of certificate of, 8.  
 powers to be exercised under, 8, 9.  
 penalty on neglecting to obtain, 9.

**PROXY,**  
 who may be, for a shareholder, 445.  
 appointment of, how made, 444.  
 appointment of, to be transmitted to  
 secretary, 445.  
 stamp on appointment of, 445.

**PUBLICATION OF TOLLS.** See **TOLLS.**

**PUBLIC STORES,**  
 company bound to carry, 373.  
 charge to be demanded for carriage of,  
 373.  
 special contract to be made for gun-  
 powder, 373.

**PURCHASE OF LANDS,**  
 as to what lands may be taken. See  
**LANDS, 185—188.**

**PURCHASE OF LANDS—Continued.**

- by agreement,
  - company must serve notice to treat, 195.
  - with parties having limited interests, 195.
  - with parties under disability, 195.
  - with parties filling representative capacity, 196.
  - with corporations sole or aggregate, 196.
  - with corporations municipal, 196.
  - with married women entitled to dower, 197.
  - consideration for, where parties absolutely entitled, 198.
  - consideration for, how ascertained where parties not absolutely entitled, 198.
  - effect of agreement for, 199.
  - agreement for, will be enforced, 199.
- under compulsory powers,
  - matters preliminary to exercise of, 200.
  - time within which to be exercised, 200.
  - time for exercise of, when may be extended, 200.
  - previous to exercising, capital must be fully subscribed, 201.
  - where taken for materials, 276.

**PURCHASE MONEY. See COMPENSATION.****PURCHASER,**

- of scrip,
  - whether entitled to be registered as shareholder, 71, 77, 462.
  - may maintain action for performance of contract, 71, 73.
  - neglecting to perform contract, scrip may be bought in against, 76.
  - sending in claim to be registered, liable for calls, 77.
  - on abandonment of scheme, may recover from his vendor, 78.
  - in absence of special agreement, does not indemnify vendor against calls, 78.
  - rights of, where subscriber registered by company, 79.
  - right of, to specific performance by vendor, 80.
- of shares,
  - entitled to specific performance of contract, 475.
  - may recover damages for breach of contract, 476.
  - may buy in against vendor, 476.

**PURCHASER—Continued.**

- previous to right of action, must tender conveyance, 476.
- must execute deed of transfer, 476.
- mere request by to transfer gives no right of action, 478.
- need not accept shares belonging to third party, 478.
- need not tender conveyance where vendor fails to make out title, 478.
- cannot require a transfer with name of purchaser in blank, 478.

**Q****QUALIFICATION,**

- of provisional committee man. See PROVISIONAL COMMITTEE MAN.
- of director. See DIRECTOR.
- of auditor. See AUDITOR.

**QUARRY,**

- may not be taken by company to get material from, 272.

**QUARTER SESSIONS,**

- notices of intention to apply to parliament to be given at, 93.
- appeal to, from convictions under bye-laws, 396, 620—622.

**QUIT RENTS. See RENT CHARGE.****QUORUM,**

- of directors, 439.
- of shareholders, 442.

**R****RAILWAYS,**

- construction of, 287—320.
- line of, must be completed throughout, 325—329.
- must be kept in repair, 329.
- opening of, how and when to be made, 334—336.
- user of, by public, 338—340.
- user of, by company as carriers, 340—357.
- mandamus to company to complete, 564, 565.

**RAILWAY COMMISSIONERS,**

- deposit of plans at office of, in compliance with standing orders, 99.
- deposit of Bill and petition with, 109.
- deposit with, of copy of Bill before third reading in House of Lords, 164.

**RAILWAY COMMIS.—Continued.**

powers of.

- to appoint inspectors of railways, 334.
- to postpone opening of railways, 335.
- to appoint umpire on neglect of arbitrator, 207.

to extend time of compulsory powers, 200, 201.

to authorise deviations and alterations, 294, 295.

to authorise modification of works, 290.

to authorise bridges to be substituted for level crossings, 300.

to authorise company to enter on lands to prevent accidents, 269.

to require company to erect electrical telegraph, 330.

to require screen to be constructed near turnpike roads, 313.

to decide disputes as to branch railways, 321, 323.

to require gates to be closed across railway, 302.

to make arrangement as to cheap trains, 375.

to revise scale of tolls when, 384.

to require returns of all accidents, 415, 416.

to require returns of traffic and tolls, 416, 417.

to allow or disallow bye-laws, 398.

to direct attorney-general to prosecute, 623, 624.

service of notices on, 334.

**RAILWAY COMPANIES,**

must apply monies received for purposes of company, 431,

must construct line in accordance with Act, 325, 564.

must keep line in repair, 329, 565.

must allow parties to use, &c., 338, 565.

may take tolls, 377.

may carry goods and passengers, 340.

may make bye-laws, 394.

must perform services for Post Office. See **POSTMASTER-GENERAL**, 366.

must carry military, police, and public stores, 372.

must run cheap trains, 373.

**RAILWAY SERVANTS,**

found drunk may be taken into custody without warrant, 395, 635.

guilty of negligence involving public safety liable to be apprehended, 395, 635.

offending against bye-laws may be summoned before justice of the peace, 395, 635.

**RAILWAY SERVANTS—Continued.**

liable to fine or imprisonment, 395, 635.

may be committed for trial at quarter sessions, 396, 636.

may be imprisoned with hard labour, 396, 636.

have no appeal against conviction under bye-law affecting public safety, 396, 620—622.

may appeal against conviction of bye-law relating to company only, 396, 620—622.

**RATES AND CHARGES,**

distinction between, and tolls, 389.

company may demand, previous to services, 390.

strictly legal tender of, not required, 343.

may hold lien on goods for payment of, 390.

lien for, when lost cannot be resumed, 390.

may be recovered by action, 390.

maximum scale of, limited by Act, 390.

maximum scale of does not apply to special services, 391, 392.

for military and police. See **MILITARY & POLICE**.

for passengers in cheap trains. See **CHEAP TRAINS**.

recovery of excessive, from company, 383, 584.

**RATING OF RAILWAYS.** See **POOR'S RATE**.

**RECEIPT.** See **BANKER'S RECEIPT**.

**RECEIPTS AND PROFITS,**  
return of, to be made to commissioners of railways, 416, 417.

**RECEIVER,**

of tolls, when may be appointed, 512, 618.

**RECOMMITTAL OF BILL,**

in case of amendments made after report, 151.

order of, how made, 151.

members of committee on, 151.

to committee on standing orders. See **PETITION**, 124.

**REFERENCE, BOOKS OF,**

must contain names of owners and occupiers, 96.

must accompany plans and sections, 96.

notice in Gazette must name places of deposit of, 91.

must be deposited with clerk of peace, 98.

**REFERENCE BOOKS—Continued.**

- receipt of by clerk of peace, to be indorsed on, 98.
- must be deposited with commissioners of railways, 99.
- with parish clerks, 99.
- with schoolmasters in Scotland, 99.
- with clerks of union in Ireland, 99.
- in Private Bill Office, 100.
- with clerk of parliament, 100.

**REFUSAL.** See **MANDAMUS**, 569—571.  
 on refusal by party to convey. company may execute deed poll, 231.  
 must be after inquiry or award, 231.

**REGISTER,**

- of shareholders,
  - to be authenticated at each ordinary meeting, 454.
- entry on, requisite to entitle party to profits, 459.
- who may claim to be entered on, 460—464.
- entry of name in, not evidence of title to shares, 479.
- entry not necessary to render party liable to calls, 459.
- consequence of improperly filling, 463.
- how to be completed, 463.
- prima facie* evidence of title, 464.
- irregularity in, will not vitiate, 465.
- of parliamentary agents. See **AGENT**.
- of transfer of shares, 481.
- of mortgages and bonds, 509.
- of transfer of mortgages, 514.
- on entry in, assignee entitled to rights of assignor, 514.

**REGISTRATION.** See **PROVISIONAL REGISTRATION.**

- of preliminaries required by Joint Stock Act, 7, 8.
- of appointment of solicitor. See **SOLICITOR**, 9.
- of documents issued by company, 13.
- of consent to act as provisional committee man, 12.
- complete,
  - to what companies applicable, 81.
  - requisites of, 81, 82.
  - certificate of, how obtained, 82.
  - payment of fees on, 82.
  - return of fee for when made, 82.
  - advantages of, 85.
  - powers of company under, 84, 85.
  - how effected, when plans, &c., not lodged in Private Bill Office, 86, 87.

**REGISTRATION—Continued.**

- of carriages, &c.,
  - owners of, must register with secretary, 365.

**RE-INVESTMENT.** See **COMPENSATION.**

**RELEASE.**

- of action by one of several co-contractors, 51.
- of lands subject to rent charge, 257.

**RELINQUISHMENT,**

- of works, notice of intention of to be served on parties affected, 95.

**REMEDIES,**

- against railway companies. See **INJUNCTION**, **SPECIFIC PERFORMANCE**, **MANDAMUS**, **CERTIORARI**, **ASSUMPSIT**, **DEBT**, **TRESPASS** and **CASE**, **TROVER**, **EJECTMENT**, **INDICTMENT**.
- division of subject, 529—531.
- against railway companies, 529—624.
- by railway companies, 625—641.

**REMUNERATION,**

- member of unincorporated company cannot claim, 26.
- of directors to be fixed at meetings, 441.
- of secretary to be fixed in like manner, 443.

**RENT,**

- company liable to pay, for lands temporarily occupied, 277.
- amount to be ascertained by two justices, 277.
- tenant evicted by company when liable for, 260.

**RENT CHARGE,**

- party absolutely entitled may take, in lieu of sum in gross, 198.
- to be secured on tolls, 198.
- may be recovered by action or distress, 198.
- compensation for lands subject to, 257.
- apportionment of, 257.
- release by owner of, 257.
- indorsement on instrument creating, 258.
- in lieu of tithes. See **TITHES** **RENT CHARGE.**

**REPAIRS,**

- entry on lands by company for purposes of, 269.
- of roads used by company, 308, 589.
- of fences and accommodation works, 309, 589.

**REPAYMENT,**

- of mortgage or bond when to be made, 515.
- notice requisite previous to, 515, 516.
- of deposit. See **DEPOSIT.**

**REPORT,**

- of committee on standing orders, 123.
- of committee on Bill, 145.
- what to be reported specially, 145, 146.
- bringing up of, 147.
  - one day's notice of, required, 147.
  - appointment of day for, 148.
  - last day of, 148.
  - extension of time for, 148.
  - how effected, 148.
- consideration of,
  - preliminaries to, 148.
  - notice of, 149.
  - mode of, 149.
  - amendments, 149.
  - notices of amendments, 149.
  - amendments in Commons referred to chairman of ways and means, 150.
- of committee on standing orders in lords, 159.
- of select committee in lords, 163.

**RETURNS.** See **NOTICES.**

- of serious accidents. See **ACCIDENTS**, 416.
- of receipts and expenditure. See **TOLLS**, 384.
- of traffic and tolls, 416.

**REVOCATION,**

- of appointment of solicitor, 9.
- of submission to arbitration, 205.

**REVISION OF TOLLS,**

- lords of treasury may require, 383.
- when dividend more than 10 per cent., 384.
- accounts for purposes of to be sent to commissioners of railways, 384.
- option as to, or sale of line, 385.

**REVIVAL OF COMMITTEE,**

- on amended Bill, 151.
- proceedings before committee on, 151.

**RIVERS,**

- courses of not navigable may be changed in execution of works, 289.

**ROADS,**

- temporary occupation of private, 269.
- compensation for use of private, 270.
- objection to user of, 270.
- public carriage must be crossed by railway over or under, 299, 300.
- not to be crossed on level without sanction of Special Act, 300.
- other than public carriage may by order of justices be crossed on a level, 300.
- alteration and diversion of,
  - new road must be substituted previous to, 302.

**ROADS—Continued.**

- penalty on company interfering with, previous to substitution, 303.
- company may be indicted for, 303.
- liable to action for, 303.
- liable to mandamus to compel restoration of old road, 304.
- equity will restrain alteration of by injunction, 304—308.
- substituted road to be put in repair by company, 308.
- within what time to be substituted or old road repaired, 308.
- penalty on company neglecting to restore, 308.
- settlement of disputes as to, 309.
- width of not to be contracted where crossed by bridge, 311.
- construction of bridges over. See **BRIDGES**.
- inclination of. See **INCLINATION OF ROADS**.
- over or under turnpike roads, 311.
- over or under private roads, 312.
- road may be sunk to give sufficient, 312.
- fences to be made where bridges cross, 312.
- fences to bridges crossing to be repaired by company, 312.
- screen to be erected at crossings of, 313.
- ROTATION.** See **DIRECTORS**.
- number of directors retiring by, how settled, 425, 426.
- of auditors. See **AUDITORS**, 452.

**ROYAL ARMS,**

- to be painted on carriages in service of post-office, 361.

**ROYAL ASSENT,**

- how given in case of railway bills, 165.
- may be stopped until payment of fees, 165.

**RULE OF COURT,**

- appointment of arbitrator may be made, 205.

**S.**

**SALE,**

- of scrip. See **SCRIP CERTIFICATES**.
- of shares, contract for
  - need not be in writing, 474.
  - in practice generally in writing, 475.
  - seller and buyer should be named in, 475.
  - seller need not be possessed of at time of, 475.
  - may be made for a future day, 475.
  - remedy for breach of, 475.
  - remedy of purchaser on, 475.

**SALE—Continued.**

- condition precedent to right to sue on, 476.
- mere request to transfer will not give right of action on, 477.
- broker employed in must observe conditions precedent, 477.
- purchaser under need not accept shares of a third party, 478.
- proceedings by purchaser under where vendor fails to make out title, 478.
- remedy on part of vendor for breach of, 478.
- conditions precedent to right of vendor to sue on, 479.
- of superfluous lands. See **SUPERFLUOUS LANDS**.
- of railway,
  - company to have option of, 385.
  - notice of intention of to be given, 385.

**SCALE,**

- of plans and sections. See **PLANS and SECTIONS**.

**SCHEME,**

- to be prepared by directors previous to meetings, 503.
- to be delivered to auditors, 433.

**SCREENS,**

- company may be compelled to make, for turnpike roads, 313.
- penalty on company neglecting to make, 313.

**SCRIP CERTIFICATES,**

- issued on execution of deeds, 19.
- nature of, 19.
- restrictions on sale of, by Bubble Act, 67, 68.
- sale of, good at Common Law, 68—71.
- sale of, gives purchaser an interest, 71.
- sale of, not affected by 7 & 8 Vic. c. 110, 72, 73.
- agreement for sale of, may be enforced, 71.
- sale of, need not be by writing, 75.
- contract for sale of, if in writing, must be stamped, 74.
- proceedings for breach of contract of sale of, 76.
- preliminaries to be observed on breach of such contract, 76.
- rights and liabilities of vendors and purchasers of, 76—80.
- purchaser of, when entitled to be registered, as against company, 77, 462.
- when as against vendor, 79, 80.
- purchaser of, not bound to indemnify vendor against calls, 77.

**SCRIP CERTIFICATES—Continued.**

- purchaser of, may become liable to calls, 77.
- vendor of, when liable to calls, 79.
- vendor of, should require indemnity against calls from purchaser, 79.

**SEAL,**

- petition by corporation must be under, 103.
- register of shareholders to be authenticated under, 453.

**SECOND READING,**

- of Bill in the House of Commons,
  - three clear days' notice of, must be given, 127.
  - interval between, and first reading, 127.
  - opposition to, how made, 128.
  - postponement of, 129.
- of Bill in the House of Lords,
  - Bill to be deposited with Clerk of Parliament previous to, 160.
  - names of subscribers to be deposited with Clerk of Parliament, 160.
  - to be committed subsequent to, 161.

**SECRETARY,**

- appointment of, by directors, 448.
- remuneration of, by whom fixed, 448.
- general duties of, 448.
- may be required to find sureties, 449.
- must render accounts on request, 449.
- remedies against, for neglect to account, 449.
- proceedings against, will not release sureties, 449.

**SECTIONS. See PLANS and SECTIONS.****SECURITY,**

- company bound to take, from servants entrusted with money, 433.
- secretary must give, 449.
- treasurer must give, 449.
- company bound to give, to Postmaster-general, 371.
- Government stock may be deposited for, 372.
- by company previous to entry on lands, 243.

**SELECT COMMITTEE. See COMMITTEE.****SERVANTS,**

- of company liable to penalties, 635, 639.

**SERVICE OF NOTICES. See NOTICES.****SESSIONS HOUSE,**

- notices when to be affixed to, 93,



**SEWERS,**

consent of Commissioners of, required for alterations in levels, 294,

**SHARES,**

in companies, previous to incorporation, form of application for, 15.  
effect of application for, 15.  
fraudulent application for, 16.  
allotment of, 16.  
number to be allotted, 16.  
allotment of too many, 16.  
allotment of too few, 16.  
allotment of, to improper parties, 17.  
form of letter of allotment of, 18.  
amount of deposit to be taken on, 8, 110.

after incorporation,  
capital of company divided into, 453.  
to be numbered, 453.  
must be entered in register, 453.  
are personal property, 454.  
are goods and chattels within the bankrupt laws, 454.  
not interest in lands within Statute of Frauds, 455.  
not goods and chattels within Statute of Frauds, 455.  
are choses in action of wife, 455.  
how to be reduced into possession, 456.  
on death of owner of, probate must be taken out, 456.  
of what province *bona notabilia*, 456.  
may be charged with judgment debt, 457.

ownership of, how acquired, 457.  
by subscription, 458.  
by purchase from registered owner, 458.  
by purchase of scrip, 458.  
by purchase of forfeited shares, 458.  
by marriage of female shareholder, 484.  
as representative of deceased owner, 482.  
by bankruptcy of owner, 485.  
forfeiture of, how effected. See **FORFEITURE**, 485—489.  
transfer of, how made. See **TRANSFER**, 474—485.  
new, how created. See **NEW SHARES**, 490.  
consolidation of, into stock. See **STOCK**, 491.

**SHAREHOLDERS,**

previous to incorporation,  
definition of, 63.  
are partners, 63.

**SHAREHOLDERS—Continued.**

in case of fraud may recover deposit, 57, 58.  
right of to recover deposit if scheme abandoned, 58.  
may be compelled to pay calls, 60, 79.  
personal representatives of, liable, 60.  
cannot sue members of company for work and labour, 61.  
may sue for work, &c., done before becoming such, 62.  
after incorporation may sue for work done before, 62.  
may sue directors on express covenant, 62.  
entitled in equity to be reimbursed money paid, 63.  
liable to perform covenants in subscription contract, 59.  
liability of, to third parties restricted by 7 & 8 Vic. c. 110, 65.  
commencement of liability of, 64.  
extent of liability of, 65.  
determination of liability of, 78, 79.  
liability to purchaser of scrip on abandonment of scheme, 78.  
after incorporation,  
who may claim to be, 458—462.  
original subscribers, 458.  
transferees of original subscribers, 461.  
transferees of parties registered, 460.  
scripholders registered, 462.  
are not partners, 466.  
rights of,  
to have certificate of shares, 465.  
to attend meetings, 466.  
to share in profits, 467.  
to proportion of new shares, 467.  
to inspect books of company, 467.  
to transfer shares, 468.  
to sue for work and labour, 468.  
to contract with company, 469.  
to be reimbursed monies paid on execution, 469.  
liability of,  
commences from becoming such, 469.  
claiming to be registered will involve, 469.  
as to payment of calls. See **CALLS**, 470, 496—503.  
not direct to third parties, 470.  
to extent of shares only, 471.  
to execution to extent of shares, 471.  
determines on transfer of shares, 472.  
determines on forfeiture of shares, 473.  
declaration of forfeiture will not determine, 472.

**SHERIFF,**

- warrant to, to summon jury, 212.
- duty of, on receipt of warrant from company, 213—215.
- if interested, must deliver jury lists to coroner, 214.
- or undersheriff must preside at inquiry, 215.
- undersheriff cannot appoint a deputy, 215.
- penalty on neglecting to attend at inquiry, 216.
- must sign judgment, 218.
- must give possession of land to company, 243.

**SLOPES,**

- necessary for safety of line not reckoned in deviation, 298.

**SOLICITOR,**

- appointment of, to schemes provisionally registered, 9.
- acceptance of appointment by, must be registered, 9.
- revocation of appointment of, or resignation by, 10.
- duties of, 10.
- penalties on, for omitting to make due returns, 10.
- guilty of fraud, may be struck off the rolls, 11.
- if original promoter, cannot sue for services, 27.

**SPEAKER OF HOUSE OF COMMONS,**

- may remove parliamentary agent for misconduct, 90.
- may appoint officer for taxing parliamentary bills, 167.
- certificate of, required for return of deposit, 114.

**SPECIAL ACT,**

- penalty on company for not depositing and permitting inspection of, 588.

**SPECIAL JURY.** See **JURY.****SPECIAL TRAINS,**

- company not bound to provide, 352.

**SPECIFIC BEQUEST,**

- shares may be subject of, 456.
- calls unpaid on shares subject of, to be paid out of estate of testator, 456.

**SPECIFIC PERFORMANCE,**

- bill for, against allottee, 52.
- effect of decree of, 52.
- who to be parties to bill for, 53.
- for purchase of shares when requisite, 476.

**SPECIFIC PERFORM.—Continued.**

- of contracts relating to compensation for lands, 549.
- of contracts relating to withdrawal of opposition, 549.
- of agreements made by agents of company, 550.
- of agreements made by other companies, 550.
- of agreements relating to construction of works, 551.
- of agreement implied in notice to treat, 552.
- party seeking must not be guilty of laches, 553.

**SPEED,**

- Postmaster-general may require, not exceeding twenty-seven miles per hour, 367.
- of cheap trains, 374.

**SPRINGING OF ARCH,**

- clear height of, crossing roads, 309.

**STAMPS,**

- on transfer of shares, 480.
- on transfer of mortgages and bonds, 514.
- on bought and sold notes, 74, 75.
- on conveyances to company, 239.

**STANDING ORDERS,**

- committee on. See **COMMITTEE.**
- proof of compliance with, to be made before examiner of petitions, 117.

**STATIONS,**

- quantity of lands required for, to be specified in act, 109, 187.

**STATUTE,**

- of frauds. See **FRAUDS.**
- of limitations. See **LIMITATIONS.**

**STOCK,**

- shares may be converted into, 491.
- effect of consolidation, 492.
- rights of holders of, 492.

**STONE QUARRY,**

- not to be taken for materials, 272.

**SUBMISSION TO ARBITRATION,**

- appointment of arbitrator to be deemed, 205.
- irrevocable without consent, 205.
- may be made rule of court, 205.

**SUBSCRIBERS.** See **SHAREHOLDERS.**

- when entitled to be entered on register, 460.
- transferree of original when entitled, 461.

**SUBSCRIBER'S AGREEMENT,**

- provisions of, 21—23.

**SUBSCRIPTION OF CAPITAL.** See  
CAPITAL.

**SUBSCRIPTION CONTRACT,**  
nature and form of, 21, 101.  
when to be entered into, 101.  
deposit of, 102.

**SUMMARY CONVICTIONS,**  
under Railway Act, 618—620.  
appeal against, in what cases allowed,  
620—622.  
not removable by *certiorari*, 622.

**SUMMONS,**  
service of, on companies, 215.

**SUNDAYS,**  
notices in compliance with standing  
orders not to be served on, 93.  
company when compelled to run cheap  
trains on, 375.

**SUPERFLUOUS LANDS,**  
sale of, by company when to be made,  
262.  
when must be offered, first to owner of  
adjoining lands, 263.  
if not sold, to vest in owner of adjoining  
lands, 263.  
time within which owner must elect to  
take, 264.  
value of, how ascertained, 264.  
neglect of offer of to owner of adjoining  
land does not invalidate contract  
with other parties, 264.  
conveyance of, by company, 265.  
cost of conveyance of, 266.  
purchase money of, to be applied to  
purposes of act, 263.

**SUPPLEMENTAL BILL,**  
petition for, to be presented to House,  
104.

**SURETIES,**  
company required to find, previous to  
entry on lands, 275.  
directors must require of servants en-  
trusted with money, 433.  
proceedings against principal will not  
exonerate, 449.

**SURVEYOR,**  
lands of parties under disability to be  
valued by, 198.  
declaration to be attached to valuation  
of, 198.  
appointment of, and valuation by, where  
claimant fails to appear at inquiry,  
217.  
appointment of, etc., where parties ab-  
sent, 224, 226.

T.

**TAKING LANDS.** See LANDS.

**TAX,**  
to be paid in respect of passengers,  
401.  
not to be paid in respect of cheap trains,  
401.  
payment of, to be secured by bond,  
401.  
penalty on company neglecting to give  
bond, 402.

**TAXATION OF COSTS,**  
for business done in House of Commons,  
167.  
Speaker may direct, 167.  
certificate of taxing officer, 167, 168.  
costs of, 169.  
for business in House of Lords, 169.  
where compensation assessed by jury,  
224.

**TELEGRAPH.** See ELECTRICAL TELE-  
GRAPH.

**TEMPORARY OCCUPATION,**  
of lands for repair of line, 268, 269.  
company may make erections during,  
268.  
of roads during construction of line,  
269.  
of lands for getting materials, 271.

**TENANT IN TAIL,**  
may agree with company for sale of  
land, 196.  
agreement of, binding on remainder-man,  
196.  
cannot agree as to the value of the land,  
197.

**TENANTS FROM YEAR TO YEAR,**  
entitled to compensation, when, 191.  
compensation to, how ascertained, 204.  
on what principle entitled to compensa-  
tion, 259.  
lessee failing to produce lease to be  
considered as, 260.  
liable to rent, though evicted by com-  
pany, 260.

**TENANTS IN COMMON,**  
one of several may bring ejectment  
against company, 608.

**TENDER,**  
strictly legal, not requisite for carriage  
of goods, 343.

**THIRD CLASS PASSENGERS.** See  
CHEAP TRAINS.

**THIRD READING**

- of bill in Commons,
  - preliminaries to, 153.
  - how made, 153.
  - proceedings subsequent to, 153.
- of bill in the House of Lords,
  - previous to, bill if amended must be returned to Commons, 164.
  - proceedings where amendments refused, 164.
  - amended bill must be printed previous to, 164.
  - copies of bill to be deposited with railway board previous to, 164.
  - provision restricting mortgage previous to, 165.

**TICKETS,**

- passenger bound to produce, 395, 399.

**TIME,**

- when the essence of a contract, 80.
- for exercise of compulsory powers, for completion of works limited in act, 109.

**TITHE RENT CHARGE,**

- apportionment of, 413.
- mode of recovery of, 414.
- may be levied by distress, 414, 615.

**TITLE,**

- proceedings where party refuses a, or is unable to make out, 231, 239.
- the demand to make out must be after compensation assessed, 231, 232.
- objections to, not waived by agreement to purchase, 233.
- disposal of compensation money where cannot be made out, 231.
- inquisition evidence of in company, 240.

**TOLLS,**

- distinction between, and fares, 376.
- company empowered to take, by act, 377.
- ambiguity in right to take, to be construed in favour of public, 378.
- act giving power to take to be construed as a bargain with public, 379.
- must be charged equally on all parties, 340, 380.
- may be varied from time to time, 379.
- may be revised by government, 383.
- cannot be taken before lists of, exhibited, 336, 385.
- nor before milestones set up, 329.
- amount of, fixed by act, 386.
- chargeable where railways amalgamated, 386.
- payment of, how and when to be made, 387.

**TOLLS—Continued.**

- recovery of, 387.
- lien for, and extent of, 387.
- disputes as to, how settled, 388.
- disputes as to quantity and quality of goods liable to, 389.
- penalties on parties making false returns, relating to, 388.
- before equity will interfere, illegality of, must be established, 382.
- injunction against company, when will be granted as to, 382.
- mandamus to compel equality of, 383.
- returns of, to government, 416.
- making false return of, a misdemeanour, 417.
- revision of tolls. See **REVISION**, 383.

**TOLL COLLECTOR**

- liable to action for wrongful detention of goods, 389.

**TOWN CLERKS,**

- deposit of plans with, 99.

**TRAFFIC,**

- returns of, to be made by company, 416.

**TRAINS,**

- number and times of running, in discretion of directors, 366.
- speed of, crossing roads on a level, 366.
- for conveyance of mails, 367.
- for military and police. See **MILITARY AND POLICE**.
- for public stores. See **PUBLIC STORES**, for poor passengers. See **CHEAP TRAINS**.

**TRANSFER,**

- of shares
  - by purchase,
    - must be by deed duly stamped, 474.
    - consideration for, must be stated in, 480.
    - must be executed by vendor and purchaser, 480.
    - bad, if name of purchaser in blank, 478, 480, 481.
    - deed must be delivered to secretary, 481.
    - effect of, 481.
    - cannot be made if call in arrear, 502.
  - by mortgage,
    - mortgagee must give notice to company, 481.
    - mortgage must be authenticated by declaration, 482.
    - mortgagor remains liable for calls, 482.
    - does not disqualify as director, 482.
    - mortgagee not liable for calls, 482.

**TRANSFER—Continued.**

mortgagee paying calls may retain shares as security, 482.

by death,

shares go to personal representatives, 482.

authentication of transmission of, 483.

entry of in register, 483.

probate of will, where to be taken out, 483.

liability of executor for calls, 484.

by marriage,

right accruing to husband, 484.

authentication of transmission, 484.

death of husband before authentication, 484.

death of wife before, 484.

by bankruptcy,

shares pass to assignees, 485.

authentication of transmission, 485.

assignees need not take, 485.

of bonds and mortgages, 514.

**TRANSFER BOOK,**

times and effect of closing,

**TRANSIENT OFFENDERS,**

whose address is unknown, may be taken into custody, 637.

**TREASURER,**

appointment of, 450.

remuneration of, fixed by shareholders, 451.

duties of, 451.

penalties on, for neglecting to account, 451.

may be required to find security, 449.

receipt of money by, for forfeited shares, 450.

in case of bankruptcy may represent the company, 450.

signature of notices by, 450.

damages when may be levied on goods of, 450.

right to be re-imbursed by company, 450.

**TRESPASS,**

penalty on company for, 244—246.

action of against company, 590—600.

**TRESPASSER,**

when owner of land crossing line, is not, 317.

owner if paid for total severance is, 318.

on railway, proceedings against, 636.

**TROOPS. See MILITARY AND POLICE.****TROVER,**

will lie against railway companies generally, 601.

**TROVER—Continued.**

will lie against railway companies as carriers, for wrongful delivery, 602.

will lie to recover goods wrongfully detained, 602.

will lie to recover plant of bankrupt contractor, 603.

**TRUSTS,**

company not affected by notices of affecting shares, 458.

notice of, when necessary, 459.

**TUNNELS,**

to be marked on plans and sections, 96, —98.

ventilation of, report as to, 146.

open cuttings may not be substituted for, 299.

may be substituted for open cuttings, 299.

**TURNPIKE ROAD. See ROADS.**

legal definition of, 302.

**U.****UMPIRE,**

must be appointed previous to arbitration, 207.

Commissioners of Railways may appoint when, 207.

*mandamus* to appoint, 561.

**UNDER SHERIFF. See SHERIFF.****UNOPPOSED BILL,**

what to be deemed, 131.

proceedings in relation to, 131.

**USER OF RAILWAY, 337—357.****V.****VACANCY,**

in direction, how filled up, 434.

**VALUATION,**

of lands belonging to parties under disability, 198.

**VENDOR,**

of scrip. See **SCRIP.**

of shares. See **SALE OF SHARES.**

**VERDICT,**

must be signed by sheriff, 218.

must assess purchase money and compensation separately, 218.

**VERTICAL SCALE,**

to be taken from datum line to line of railway, 97.

**VIADUCT,**

- to be marked on section, 98.
- may be substituted for embankment, when, 299.
- height of, may be lowered, 204.

**VOTE OFFICE,**

- deposit in, of subscription-contract, and estimate, 102.

**VOTES, and VOTING,**

- at election of directors, 424.
- at meeting of directors, 439.
- scale of, for shareholders, 443.
- of joint shareholders, 444.
- of lunatics and minors, 444.
- by proxy, 444.
- proportion of, need not be ascertained, if poll not demanded, 446.

**W.****WAREHOUSES,**

- company may construct, 289.

**WARRANT,**

- by company to sheriff to summon jury, 211.
- notice to be given to landowner previous to issuing, 211.
- if sheriff interested must be issued to coroner, 213.
- remedy where company refuse to issue, 212.
- must agree with notice to landowner, 213.
- to sheriff to deliver possession of lands, 243.
- issuing of, when restrained by injunction, 533.
- mandamus* to company to issue, 559.

**WATER PIPES.** See **GAS and WATER PIPES**, 279—281.**WATER COURSES,**

- must be made for works affecting water power in Ireland, 325.
- owners of lands may compel company to make, 326.

**WATERING PLACES,**

- accommodation works in respect of, 314.

**WIDTH OF BRIDGE.** See **BRIDGE**.**WITNESSES,**

- attendance of in Commons, how enforced, 133.
- attendance of, in House of Lords, 158.
- examined on oath in the House of Lords, 159.
- arbitrator must examine, 208.
- on writ of inquiry, to be examined on oath, 216.
- penalty on, refusing to attend at inquiry, 216.

**WOODS AND FORESTS,**

- works to be done under superintendence of commissioners of, 292.

**WORKS,**

- company liable for damage in execution of, 277.
- preliminaries to execution of, 287.
- what may be executed by company, 288, 289.
- must be executed in conformity with plans, 289.
- compensation must be paid for damages caused by, 289.
- modification of, when allowed, 290.
- in execution of, company must not act capriciously, 291.
- must not do avoidable injury, 291.
- must be executed in conformity with agreements, 291.
- between high and low water mark to be done under Admiralty, 292.
- for drainage of adjoining lands, 315.
- for drainage of lands in Ireland, 323, 325.

**WORKING THE LINE.** See **USER OF RAILWAY**, 333—417.**WORKING MINES.** See **MINES AND MINERALS**, 281—286.**WRONGFUL ENTRY,**

- penalty on company making, 245.
- in addition to penalty, action may be brought for, 245.
- injunction to restrain, 246, 535, 536.

**Y.****YARD,**

- meaning of term, 188.

